

Zsófia Hajnal

Written and Unwritten Values in the Preamble of the United Nations Charter – The Axioms of Human Coexistence and Progress

I. Introduction

I.1. The aim of this study

In my paper I examine the Preamble of the United Nations Charter¹, with special emphasis on its written – and unwritten, but intrinsic – values.

The paper is based on theory. No practical analysis of the United Nations Organization is involved, neither about its structure, nor on its operation in the past and present. In my paper the focus is on a single document, the Preamble, and on a sequence of events which led to its creation.

My goal is to revive the past regarding the motivations and philosophies which were present at the foundation of the United Nations, because I see the Preamble as the focal point of our knowledge about global values. What has led to its birth was more than the experience of two world wars. The values in the Preamble show an imprint of philosophical thoughts more than a thousand years old, but the text itself looks rather into the future. This fact resonates with a quote of Sumner Welles. The former American diplomat suggested that to create the post-war international order the world needed „men who have their eyes on the stars but their feet on the ground”².

I.2. Hypothesis

The values mentioned in the Preamble form a system, which originates from three basic unwritten values. The text is like the tip of an iceberg³: there are means and ends listed, but the system-context remains hidden.

Although the values possess an intrinsic timelessness, I find it timely to re-examine them at this point of human history. Again and again we face the questions where we are from, where we go, and what the meaning of our progress is. The history of international relations seems young compared to the history of humankind, however, it is time for international relations experts and the international community to ask the same questions with respect to the international level. In my opinion, global values and their history hold the best answers to these questions.

What helps in getting familiar with the value system is examining the events which occurred directly before the Preamble’s drafting and examining the preceding long-term historical trends. The United Nations value system has a starting point and a goal with many connections in between. In this complex „chain” of values I analyze the relationship between morality and law, security and freedom, individual and community, and between progress and the pursuit of happiness. But before the analysis, the reader will acquire a general knowledge about preambles, a relevant historical awareness and a knowledge about the legal context.

¹ Preamble of the United Nations Charter: <http://www.un.org/en/documents/charter/preamble.shtml>

² Spijkers, Otto [2011]: The United Nations, the Evolution of Global Values and International Law. Intersentia Ltd, Cambridge, United Kingdom; p. 68.

³ Balázs Fekete, a Hungarian scholar in law uses the same expression for preambles in a 2014 study.

I.3. Methodology

My paper is multidisciplinary. It contains methods and approaches of international law, history and philosophy separately and combined as well.

The analysis takes place in a qualitative frame, containing comparative elements. After summarizing the relevant literature, I examine the implications for the given chapter.

Presenting the genre of the Preamble will happen as follows: After a definitional comparison I analyze preambles' form and content, applying my observations to the U.N. Charter's Preamble. What helped me most in writing about the genre were the articles of Liav Orgad⁴ and Makane Moïse Mbengue⁵.

When writing the chapter about the creation of the United Nations, its historical background and the steps which led to the wording of the U.N. Charter's Preamble, I was relying – among others – on Stephen C. Schlesinger's book⁶ and Jean-Pierre Cot's article⁷. It is in this chapter that I examine the imprint of historical events on the text of the Preamble, and this is where I look deeper behind the founders' intentions and present their philosophies.

When getting to the legal aspects, Hans Kelsen's critical approach plays an emphasized role. As for the research methods in this section, I used a former group-experiment and the comparison of other international legal documents' preambles as well.

All the above mentioned methods prepare the reader for the last main chapter, which is more comprehensive and somewhat adventurous. While in the first three parts a descriptive perspective is used, this chapter is concentrating on the concepts and is testing the hypothesis. Here I look at the values of the Preamble. The study of Otto Spijkers which I will often refer to (*The United Nations, the Evolution of Global Values and International Law*) was the basis for this part. Through my systematization and through putting the unwritten values in the value context, the reader will understand the newly discovered connections. I aim to reach this mainly by separating the values and levels of individual and community, and by finding out what unites these two. My approach is somewhat close to the teleological interpretation of international contracts,⁸ as it is researching aims, but this paper goes even deeper, beyond researching the founders' intentions.

I.4. Theoretical approach

Examining global values makes one tempted to lean towards idealism, especially when reading the eloquent words of the significant works in this field. Elements of the liberal and neoliberal school⁹ can be found in my paper, yet I am trying to keep the balance,

⁴ Orgad, Liav [2010]: *The Preamble in Constitutional Interpretation*. International Journal of Constitutional Law, October http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1686745

⁵ Mbengue, Makane Moïse: *Preamble*, September 2006, Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1456?rskey=b9QT73&result=29&q=contract%20interpretation&prd=EPIL>

⁶ Schlesinger, Stephen C. [2003]: *Act of Creation. The Founding of the United Nations*. Westview Press, Cambridge, US.

⁷ Cot, Jean-Pierre: *United Nations Charter, History of*, 2011. April, Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e541?rskey=nhuGUG&result=5&q=&prd=EPIL>

⁸ Kardos, Gábor; Lattmann, Tamás [2010]: *Nemzetközi jog. (International Law)* ELTE Eötvös Publisher, Budapest; p. 84.

⁹ Szörényi, András [2009]: *Kiindulópontok a nemzetközi kapcsolatok elméletében a nem állami szereplők természetének és szerepének értelmezéséhez. (Starting points in International Relations Theory to*

and to stay objective despite the eloquent topic. In this context, a crucial point is standing up for the objectivity of values, and within that for morality, which is the „hallmark”¹⁰ of natural law.

My jurisprudential approach is that of natural law, but this does not mean a commitment to any special discipline within natural law. Natural law is neither a starting point, nor a destination in my paper, but the created value-system is underpinning the most basic idea of natural law disciplines: that basically, law stems not from the people, but somewhere „above”. However, I treat the terms in this field very cautiously. and I am not arguing against that law would stem from human nature, or the nature of society. By no means would I approach the related questions of religion. Thus, although the approach from the natural law perspective becomes clear in the last main chapter, natural law is not a central theme.

Integrating the philosophy of the United Nations into a unified system has made writing the final chapter a great challenge. My cosmopolitan worldview has helped me much (the reader will learn in more detail about cosmopolitanism in the following chapters). In many parts of the world, the cosmopolitan view has been accepted, and there are far more „cosmopolitan philosophers” than in the age of Diogenes.¹¹

At two points, my paper examines the connection between preambles and the constitutionalization of international law, thus the constitutionalist discipline is another basis of the research. Legal research projects in general do not use only one theoretical or methodological approach¹², therefore I find my eclectic, yet logical approach to be correct.

II. The preamble as a genre

In order to deal properly with the contents of the U.N. Charter’s Preamble, it is worth learning about the genre itself. Relatively few scholars have been dealing with preambles – the topic is considered especially understudied in comparative constitutional law¹³ – however, the few existing works about preambles are fairly detailed.

The Latin *praeambulus* word is the origin of the English word *preamble*, and means „going before”.¹⁴ Here I would mention another Latin expression, which is used in connection with preambles: *captatio benevolentiae* – meaning that preambles are attempts to earn the readers’ goodwill.¹⁵ Preambles always stand at the beginning of

understand the role and behaviour of non-state actors) December, Grotius http://www.grotius.hu/doc/pub/DLNNNSK/2009_160_szorenyi_andras_%20elmeleti_iskolak.pdf

¹⁰ Cryer, Robert; Hervey, Tamara; Sokhi-Bulley, Bal [2011]: *Research Methodologies in EU and International Law*. Hart publishing, Oxford and Portland, Oregon; p. 36.

¹¹ Spijkers [2011] p. 6.

¹² Cryer, Hervey, Sokhi-Bulley [2011]; p. 14.

¹³ Foti, Nick; Ginsburg, Tom; Rockmore, Daniel [2013]: „We, the peoples”: *The Global Origins of Constitutional Preambles*. University of Chicago Public Law and Legal Theory Working Paper 447. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1438&context=public_law_and_legal_theory

¹⁴ Google, word origin.

¹⁵ Antal, Attila [2011]: *A Preambulum ornamentikája és közjogi ereje. (The ornamentation and public power of the Preamble)* In: *Az alkotmány arca. Preambulum tanulmányok. (The face of the constitution. Preamble-studies)* Méltányosság Politikaelemző Központ (Méltányosság Center of Political Analysis), L’Harmattan [2011], Budapest.

contracts, conventions, constitutions or charters (the syllable „pre” in their name is referring to this), their title is usually „Preamble”, but the words prolog, *prolegomena*¹⁶ are also in use. Their content varies in time and space, i.e. historically and geographically.

II.1. Definition

The Encyclopaedia Britannica defines preambles as follows: „*The preamble provides the names and styles of the contracting parties and is a statement of the treaty’s general objectives.*”¹⁷ This definition fits the U.N. Charter’s Preamble, even if the contracting parties are introduced in only seven words („*We the peoples of the United Nations...*”).

We can read in more detail about the concept of the preamble in legal encyclopaediae. An article of the Max Planck Encyclopedia of Public International Law reads: „*Both bilateral and multilateral treaties may contain a preamble enumerating the contracting States involved in their conclusion. A treaty’s preamble defines, in general terms, the purposes and considerations that led the parties to conclude the treaty. (...) The preamble may also incorporate the parties’ motivations for concluding the treaty by describing the foundation of their past, present, and future relations in so far as it relates to the treaty. Preambles are thus indicia of the intention of the parties to a treaty.*”¹⁸ Concerning past relations, a single line in the Preamble of the UN Charter refers to them, summarizing the relations of the signatory nations quite succinctly: „... *to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...*”. Since we are discussing a multilateral treaty, a more detailed description of past relations would have caused difficulties in complying to the spatial limitations.

The third and most relevant description of the preamble is to be found in the Encyclopedia of the United Nations and International Relations. In the article „*Preamble*” it reads: „*The introduction to legal acts (e.g. to a constitution, or a treaty) explaining the reasons and conditions of preparing the act or of concluding the treaty. The importance of a preamble depends on its precision in formulating the principles of the treaty. Under the influence of an extremely well-balanced preamble to the Charter of the United Nations and similar preambles to various other conventions elaborated by the Committee on International Law of the United Nations, the importance of preambles for the interpretation of the agreement’s text has significantly increased in the second half of the 20th century.*”¹⁹ This definition suits the Preamble of the United Nations Charter as well, moreover: it is actually based on it.

Although preambles are not compulsory elements of national constitutions and international treaties, they may be needed because of their form and content.

II.2. A short history of preambles – from the beginning until 1945

The concept of preambles existed already in Plato’s time, around 400 BC. In his dialogue titled *Laws*, Plato gives a thorough analysis of this concept. According to him,

¹⁶ Silagi, Michael: *A német alaptörvény preambuluma: a preambulmok alkotmányos helyzete és jelentősége a német jogban. (The preamble of the German Basic Law: the constitutional state of preambles and their importance in German law)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

¹⁷ Encyclopedia Britannica Online, search: „preamble”
<http://www.britannica.com/EBchecked/topic/603884/treaty#ref236133>

¹⁸ Mbengue [2006].

¹⁹ Osmanczyk, Edmund [1990]: *The Encyclopedia of the United Nations and International Relations*. Taylor & Francis, New York; p. 711.

every law (or treaty) should have a preamble.²⁰ The discussion of preambles continued after Plato, but preambles came only slowly into „fashion” in practice. Diocletian was the first Roman emperor to use a preamble, in one of his edicts (in 301 BC). Characteristics of the Latin and Early Medieval preambles are: originating the political power from God, emphasizing the paternal care for the subjects, and enumerating the memories about historical events. From the Late Middle Ages, already thousands of preambles are available, as of when the enumeration of the ruler’s virtues became a constant pattern.²¹

Leo VI, Byzantine emperor (866-912 AD) was a very important ruler from the viewpoint of this paper. In his preambles he identified the law, and not himself, as the caring „father” of the people. His further innovation is the introduction of values into the texts of preambles, instead of worshiping the greatness of the emperor. He wrote about humanity, equality and justice, and outlined a global concept, a philosophy of society.²² As there are no other examples of this kind in the given age and before, I would highlight Leo VI as someone who was ahead of his time. We will encounter similarly open minded personalities in Chapter III of the paper (at the philosophical history section).

Before the existence of constitutions, preambles fulfilled their task „in miniature”: rulers explained their views and ideas about themselves, the country and governing’s principles in preambles. However, during the French Revolution preambles got banned for the first time in history. This is understandable, firstly, as the king has been removed, so there was no ruler to write a preamble, and secondly, as the „recipients” have disappeared. The legislation fell into the hands of the people, and the people saw it pointless to address themselves.²³ As we will see, later this was not an obstacle anymore²⁴, but with the spread of the revolution-wave in the nineteenth century, the art of persuasion through preambles has completely died out in European countries (for a while).²⁵

Somewhat overlapping the previously mentioned period, from the early years of constitution writing, the usage of preambles has slowly started spreading again. Attaching preambles to constitutions can be traced back to a British habit, according to which royal decrees and laws were prefaced with a brief statement describing the purpose of the document. This has presumably served for royals to be able to address their subjects outside the operational legal text.²⁶ In my opinion, this aspect is present in the Preamble of the United Nations Charter too. When it comes to the Charter, the general public tends to be more familiar with the text of the Preamble (and Chapter I) than the other chapters.

Within the constitutional context, we find the first preambles in the constitutions of the former U.S. states (preceding 1787, 11 states had separate constitutions). These preambles often refer to Great Britain or to the Declaration of Independence. The

²⁰ The Project Gutenberg EBook of *Laws*, by Plato <http://www.gutenberg.org/files/1750/1750-h/1750-h.htm>

²¹ Fogen, Marie T. [1995]: *The Legislator’s Monologue – Notes on the History of Preambles*. Chicago-Kent Law Review, 70., January <http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3002&context=cklawreview>

²² Fogen [1995].

²³ Fogen [1995].

²⁴ Foti, Ginsburg, Rockmore [2013].

²⁵ Fogen [1995].

²⁶ Foti, Ginsburg, Rockmore [2013].

preamble of the United States Declaration of Independence has been particularly inspiring for European liberals and the U.S. Constitution's preamble was the first one to start with the famous words „*We the People*”.²⁷

One dark period in the history of preamble-writing should be mentioned: The boundary between legislature and politics, which had been formed with so much suffering in the nineteenth century, has been abolished in XX. century Nazi Germany. Preambles were used as a substitute for a non-existent national socialist constitution. As Silagi remarked, „*a number of laws adopted during the Nazi period literally contradicted their preamble*”, and „*at times, preambles were longer than the legislative parts*”²⁸. They were not banned after the Second World War, but from this point on, preambles – among them the U.N. Charter's Preamble – focused primarily on past mistakes, and on how to follow the right path in the future.²⁹

II.3. The content of preambles

According to the contemporary jurist Liav Orgad, preambles can contain references to sovereignty, to history, to the goals to be achieved, to national identity and/or religious elements.

Most of the preambles name the origin of sovereignty in their texts. In the case of national constitutions, we can call these *authorization clauses*³⁰. Sometimes, sovereignty stems from the people themselves („*We the people of...*”), which the majority of the society can identify with. I will explain in Chapter IV, why this causes complications in the case of the U.N. Charter's Preamble. Sometimes, sovereignty can stem from the nation, especially in national constitutions, and this is a less neutral specification of the origin of sovereignty. Sovereignty can further be originated from representative bodies, or states, e.g. in the case of confederations. If we speak of a preamble to the constitution of a federation or confederation, the listing of states is a separate element of the preamble.³¹ The identification of the source of sovereignty cannot always be distinguished from self-identification,³² which is also an important starting-element of preambles.

Historical references may be stories related to the language, heritage or traditions of the nation. These provide and shape the common identity. The South-African preamble³³ for instance highlights past injustices and respects those who suffered for justice and freedom. Concerning the United Nations, president Harry S Truman had a similar statement, in the opening speech of the San Francisco conference³⁴: „*They gave their lives, so that others might live in security. They died to insure justice.*”

²⁷ Foti, Ginsburg, Rockmore [2013].

²⁸ Silagi [2011], own translation from Hungarian.

²⁹ Fogen [1995].

³⁰ Kukorelli, István; Máthé, Gábor: *Közjogi értékeink a preambulumban. (Our values of public law in preambles)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

³¹ Antal [2011].

³² Antal [2011].

³³ The Preamble to the Constitution of the Republic of South Africa <http://www.thepresidency.gov.za/docs/reports/annual/2008/preamble.pdf>

³⁴ Truman, Harry S: „*Address to the United Nations Conference in San Francisco*” April 25, 1945 <http://www.presidency.ucsb.edu/ws/?pid=12391>

Another example is the constitution of China³⁵, in the preamble of which their long history is being praised („*China is one of the countries with the longest histories in the world*”), and explicated in detail. In the preambles of the constitutions to the states of Central – and Eastern Europe it is usual to emphasize the national efforts made for independence.

We can apply another categorization within the group of historical elements: preambles may contain premodern and modern historical references, or references by year. They are means of illustration, of separation (from the near past) or of continuity.³⁶ The historical reference in the Preamble of the U.N. Charter is to be linked to two events of world history, the beforementioned world wars („*to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind*”). This is the strongest ever separation from the near past in a preamble.

As for the references to the common goals, they are most emphasized in international treaties’ or other international documents’ preambles, as we can see in the Preamble of the U.N. Charter. These frequently mentioned common goals are fundamental for society’s functioning. They can be general principles (like justice or human rights), economic objectives, or other further goals, like happiness and well-being. A few preambles, like that of the Philippines³⁷, even mention the concept of love. In the preambles to the constitutions of the EU Member States it appears positive if they contain a so-called „*European clause*”³⁸, in which the states declare, that they share the values and goals of the European Union. In national constitutions we may find the preamble under the name „*National Creed*” or „*National Avowal*”, such as in the preamble of the Fundamental Law of Hungary³⁹, which is a good example of preambles containing a European clause⁴⁰. As for the Preamble of the U.N. Charter, the goals enlisted in the text overlap largely with the values unfolding in the last main chapter of this study.

Preambles may have a reference to God. Such preambles are those of the Canadian Charter of Rights and Freedoms⁴¹ and the Federal Constitution of the Swiss Confederation⁴². Some preambles (as those in the constitutions of Greece⁴³ and Ireland⁴⁴) refer to further elements of religion, i.e. to the Holy Trinity. All these

³⁵ The Preamble to the Constitution of the People's Republic of China http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm

³⁶ Fekete, Balázs: *Történeti elemek az EU-tagállamok alkotmány-preambulumaiban. (Historical elements in the preambles to the constitutions of the EU-member states.)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

³⁷ The Preamble to the Constitution of the Republic of the Philippines <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-preamble/>

³⁸ Vörös, Imre: *Preambulumot az Alkotmányhoz – de milyet? (Preamble to the Constitution – but what kind of preamble?)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

³⁹ The Preamble of the Fundamental Law of Hungary <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

⁴⁰ „*We believe that our national culture is a rich contribution to the diversity of European unity.*”

⁴¹ The Canadian Charter of Rights and Freedoms <http://laws-lois.justice.gc.ca/eng/const/page-15.html>

⁴² The Federal Constitution of the Swiss Confederation http://www.wipo.int/wipolex/en/text.jsp?file_id=179791

⁴³ The Constitution of Greece <http://www.cecl.gr/RigasNetwork/databank/Constitutions/Greece.html>

⁴⁴ Constitution of Ireland https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf

preambles invoke the transcendent sources of power.⁴⁵ The Preamble of the U.N. Charter does not contain any such references, despite the pressure of the Dutch delegation to mention God.⁴⁶ According to data from 2008, about 74% of the world's national constitutions contain a preamble, and a relatively high percentage of these, about 45% has some reference to God, despite the fact that these paragraphs do not have any legal connotations.⁴⁷ It is possible to introduce another sub-categorization at this point: a reference to God is either declarative-pragmatic, respects the non-believers, or is prayerful.⁴⁸

In conclusion about the content of preambles we can say that despite the presence of the aforementioned content elements, every preamble has its own special features of content.⁴⁹

II.4. The functions of preambles

In his study⁵⁰, Fekete outlines the functions of preambles on a scale. On one end we have the view of the preamble as an ornament, on the other attributing a binding legal force to the preamble. In between is the viewpoint from where we say that we use the preamble as an interpretive tool. This is a relatively simple functional categorization, and I will introduce a more complex one hereinafter.

According to Makane Moïse Mbengue's categorization, preambles may have four main functions: interpretative, supplementary, incorporative, and binding. Preambles can play these roles all at once, or separately.

As for the interpretative function, it is widely accepted that the motives and goals mentioned in a preamble can be used at a later stage, at the interpretation of the rest of the document (treaty, convention, constitution, etc.). This principle had been laid down in the 1969 Vienna Convention on the Law of Treaties. For this reason, a preamble must be precise, and it has to describe the aim of the document and the intent of the contracting parties, just as the definitions read in a previous subchapter. Preambles are implemented in practice by international dispute resolution bodies, by the International Court of Justice for instance. The supplementary role means that preambles may fill legal gaps in treaties' texts. Incorporative preambles connect the treaty with other documents or parts of them by recalling these. They are implemented to avoid clashes between different bodies, organisations or regimes. As for the binding function, preambles in general do not have the power in the international legal system to impose obligations on the contracting parties. For this reason, they are usually formulated in general wording and do not create substantive stipulations. Rather, they are intended to express the goodwill of the parties, to explain their intentions and possibly to refer to natural law. Thus they gain more of a political importance.⁵¹

One more function can be added to Mbengue's categorization, namely that of the integrating preamble.⁵² This function concerns not the treaty or other documents, but those named in the preamble as the holders of sovereignty. The shared past and shared values can forge different nations or ethnic groups into one people.

⁴⁵ Fekete [2011].

⁴⁶ Spijkers [2011] p. 99. footnote 228.

⁴⁷ Silagi [2011].

⁴⁸ Antal [2011].

⁴⁹ Orgad [2010].

⁵⁰ Antal [2011].

⁵¹ Mbengue [2006].

⁵² Fekete [2011].

From the above functions the one most fitting the U.N. Charter's Preamble is the interpretative, as the focus is on formulating the common goals. The Preamble sets the tone and context of the Charter. The first two paragraphs give the organization a *raison d'Être*. The Preamble does not aim to impose obligations, but in a bigger context it has the same weight and importance as other parts of the Charter.⁵³

II.5. Types of preambles

First of all, it is impossible to draw up a general model of a preamble.⁵⁴ However, the above categorizations can be appended by Orgad's preamble-types. He distinguishes between ceremonial-symbolic, interpretive and substantive preambles. Just as we have seen at the functional description, preamble-types are not separated sharply from each other either. Nonetheless, they can be of great help when we describe the Preamble of the U.N. Charter.

The ceremonial-symbolic preamble type had first been developed in Plato's *Laws*. According to Plato, preambles have to be persuasive, they have to be the „soul” of the law and let people know of the law's morality. Plato's preamble concept is bound to verify the laws. It further aims to soften the law, and does so with abstractions and poetic ideals. A good example of this type is the preamble to the U.S. Constitution⁵⁵, which is symbolic and without binding legal force. The Preamble of the U.N. Charter is very close to this group, as it is highly ceremonial. Its most ceremonial-symbolic parts are in my opinion the solemn verbs and their narrow context, such as „*to save succeeding generations*” and „*to reaffirm faith in fundamental human rights*”. In fact, almost every predicate of the Preamble carries such a level of determination and firmness that may rightly be called ceremonial. Regarding values, it is peace that has most of the ceremonial nature, because of its historical topicality in 1945 and its suitability for rhetoric. The text mentions „*the scourge of war*”, and thus the Preamble is not only ceremonial, but also symbolic. Neighbourhood („*live together in peace with one another as good neighbours*”) can just as well be interpreted as symbolic, but its meaning depends on the breadth of sense we read it in.⁵⁶

The second group is that of the interpretive preambles, which is overlapping Mbengue's functional categorization. The interpretive character of the Preamble of the U.N. Charter shows through its values, which are starting points for further chapters in the Charter. I will analyze this relationship – between the Preamble and the Charter's main body – in subchapter IV.3. of this paper.

Substantive preambles form the third group. These are the preambles which – by their content – have a binding legal force on their own. They are independent sources of laws and obligations. This is the case in the constitutional preambles of France⁵⁷, India⁵⁸, Nepal⁵⁹ and Bosnia and Herzegovina⁶⁰ as well.⁶¹ The characteristics of this third group

⁵³ Cot, Jean-Pierre: *United Nations Charter*, 2011. April, Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e539?rskey=nhuGUG&result=4&q=&prd=EPIL>

⁵⁴ Fekete [2011].

⁵⁵ Preamble to the United States Constitution <http://constitutioncenter.org/constitution/preamble/preamble>

⁵⁶ More on this line in Chapter IV.3. of this paper.

⁵⁷ Preamble to the French Constitution of 1946 <http://www.equalrightstrust.org/ertdocumentbank/Preamble%201946%20ENG.pdf>

⁵⁸ Preamble to the Constitution of India http://india.gov.in/sites/upload_files/npi/files/coi_preface.pdf

⁵⁹ Preamble to the Constitution of Nepal <http://berkleycenter.georgetown.edu/resources/quotes/constitution-of-nepal-preamble>

could hardly fit the Preamble of the U.N. Charter, as that one has no binding force in itself, only when read together with Chapter I of the Charter.⁶² There are opinions contrary to this,⁶³ but even their holders refer only to some parts of the Preamble, when writing that it has binding force.

All three preamble-types have their strengths, their emphases and a beauty. They show us that the historic, artistic and other intrinsic values of treaties and laws are usually carried primarily in their preambles. There is more to preambles than to a general preface, and we need to look upon them accordingly. No matter what preamble we are talking about, its importance in a constitution or in an international treaty is to be valued. Preambles as *mission statements* have a strong motivating force.⁶⁴

II.6. The constitutional role

The above functions and types show that preambles can take different roles in the constitutional process, varying from nation to nation. In the case of the U.N. Charter's Preamble we can observe that although it is not a constitution of the world – and to believe that would certainly be utopistic – it gains an important role in constitutionalizing international law. It declares that nations will „*establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”. This line made it to the Preamble because the founders wanted to establish a new legal system, the „United Nations' legal system”, instead of the system based on traditional international law.⁶⁵ So even if the U.N. Charter cannot be considered as the world's constitution, it can be that of the international community.⁶⁶ However, it is worth noting that the interpretation of the Charter, and thus that of the Preamble is changing over time. The founders themselves wrote the text with this intention.⁶⁷

III. Historical background

The central theme of my paper are the Preamble of the U.N. Charter and the values formulated in it, thus I examine those steps of history which have contributed to the development of the United Nations' value system. The title *External factors* marks historical milestones, first in a philosophical, then in a historical approach. The subsection *Internal factors* concentrates on the main characters of the 1945 San Francisco conference and their ideas, philosophies. In the subsection *External factors* I take a look at the past from today's viewpoint, whereas in *Internal factors* I switch perspective and examine how the founders and drafters may have looked into the future, i.e. our present.

⁶⁰ Preamble to the Constitution of Bosnia and Herzegovina
<http://www1.umn.edu/humanrts/icty/dayton/daytonannex4.html>

⁶¹ Orgad [2010].

⁶² Orgad [2010].

⁶³ See Chapter IV.3. of this paper, and within that Bruno Simma's standpoint.

⁶⁴ Foti, Ginsburg, Rockmore [2013].

⁶⁵ Spijkers [2011] p. 72.

⁶⁶ Kunig, Philip: *United Nations Charter, Interpretation of*, 2006. September, Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e542?rskey=UcSOdA&result=9&q=contract%20interpretation&prd=EPIL>

⁶⁷ Spijkers [2011] p. 131.

III.1. External factors

When researching what led to the value system of the United Nations, I'm researching the history of the U.N. itself. In the value aspect, however, steps which lead to the foundation of the U.N. date further back, further even than the very idea of the organization.

III.1.1. History of philosophy

*„Since ancient times cosmopolitan philosophers have advocated a world based on common interests and values.”*⁶⁸ Cosmopolitanism can be traced back to ancient Greece. It had two branches: Stoic and Cynic. Stoic cosmopolitan thinkers believed in a solid global community, while Cynics in the world of free individuals, who do not belong to any community. The most prominent philosopher from the latter group, Diogenes of Sinope, was a contemporary of Plato. However, political philosophers were inspired rather by the positive, Stoic branch, according to which the citizens of the world share a common rationality, common values and a common fate, despite the different cultural backgrounds. Many people see Immanuel Kant as such a cosmopolitan philosopher, i.e. in the positive, Stoic sense. Kant's philosophy dictates solidarity and a kind of reciprocity: you should treat others as you want to be treated yourself.⁶⁹ This reciprocity appears in many philosophies and religions, for example in Taoism.⁷⁰ From the Bible it is known as Jesus' *Golden Rule*: *„So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.”*⁷¹

Humanism has reconciled the solidarity and reciprocity of the Stoic branch with the Cynics' freedom-concept. Humanists refer to a „world community” and „world law”.⁷² From this group of thinkers, it is worth to mention Erasmus of Rotterdam. Similarly to the ancient philosophers, he emphasized the unity of humanity in contrast to national and religious dividedness, arguing that humans are naturally social creatures and destined to live in harmony.

The early modern philosophy of natural law has bent towards cosmopolitanism as well, and this direction lead to laying down the basics for international law. It was Hugo Grotius who pictured a „*great society of states*”, bound by the „*law of nations*”.

*„The historical context of the philosophical resurgence of cosmopolitanism during the Enlightenment is made up of many factors: The increasing rise of capitalism and world-wide trade and its theoretical reflections; the reality of ever expanding empires whose reach extended across the globe; the voyages around the world and the anthropological so-called ‘discoveries’ facilitated through these; the renewed interest in Hellenistic philosophy; and the emergence of a notion of human rights and a philosophical focus on human reason.”*⁷³ Cosmopolitanism received its strongest impulse during the American and the French Revolutions. Meanwhile, it was Immanuel Kant, who

⁶⁸ Spijkers [2011] p. 5.

⁶⁹ Spijkers [2011] pp. 21-24.

⁷⁰ Lecture of Csaba Nahoczky [2014], China-studies: *Chinese philosophy* (at the Corvinus University of Budapest).

⁷¹ *Holy Bible, Matthew 7:12*, New International Version [2011] by Biblica, Inc. <https://www.biblegateway.com/passage/?search=Matthew+7:12>

⁷² Spijkers [2011] pp. 25-26.

⁷³ Stanford Encyclopedia of Philosophy, Cosmopolitanism <http://plato.stanford.edu/entries/cosmopolitanism/>

introduced the concept of *cosmopolitan law*, „suggesting a third sphere of public law — in addition to constitutional law and international law — in which both states and individuals have rights, and where individuals have these rights as “citizens of the earth” rather than as citizens of particular states.”⁷⁴

The cosmopolitan worldview does exist in practice, and nowadays, as the world is getting „smaller”, it is becoming more convincing. The revolution in communications has „flattened out” the world. Cosmopolitanism is being transformed from a concept into a fact: global cooperation exceeds the level of coexistence.⁷⁵

III.1.2. History

When examining the founding of the U.N. from a historical perspective, I am going back to the Peace of Westphalia (1648). This treaty means the date for when the international cooperation based on diplomatic relations and contracts was established. The international order was born, showing a community of sovereign nation-states, i.e. international politics took for the first time the form in which we know them today.⁷⁶

The aim of the countries was, despite the fact that they often formed alliances with each other, to keep their sovereignty, under all circumstances. With the Peace Treaty of 1648, following the Thirty Years’ War (1618-1648), the modern system of states has come into existence. „In 1795, nearly 150 years later, the philosopher Immanuel Kant wrote *Toward Perpetual Peace*, an essay that set forth more broadly the intellectual reasoning for global federations. His treatise analyzed the ethical and moral basis for a broad union of free states cooperating to maintain peace.”⁷⁷ A similar idea was William Penn’s, who in the late seventeenth century suggested the creation of a world parliament.⁷⁸ Bolstered by the kantian logic, the major lands of Europe held four conferences between 1815 and 1822 (beginning with the Congress of Vienna).

The nineteenth century was marked by the *Concert of Europe*, i.e. the coordinated actions of the European powers and their leaders. „By the twentieth century, the idea of a worldwide assemblage had taken hold. Nations from around the globe, including the United States, met twice in so-called international peace conferences in the Hague”⁷⁹ (in 1899 and 1907). However, World War I broke down the Concert of Europe, and ruined the balance that has been kept up for a century. This „redefined the nature of national sovereignty and noninvolvement for all countries – especially the United States”, „which had tried with increasing difficulty to maintain the semblance of neutrality toward the European conflict”⁸⁰. When the United States entered the war, president Woodrow Wilson replaced „the Founding Fathers’ credo of independence with a new credo of interdependence” and started to emphasize the global role of the U.S. He was the initiator of the process, which he managed to accomplish with his

⁷⁴ Stanford Encyclopedia of Philosophy, Cosmopolitanism <http://plato.stanford.edu/entries/cosmopolitanism/>

⁷⁵ Spijkers [2011] pp. 26-27.

⁷⁶ Arató, Krisztina; Koller, Boglárka [2009]: *Európa Utazása. (The Journey of Europe)* Gondolat Kiadó (Gondolat Publisher), Budapest; p. 16.

⁷⁷ Schlesinger [2003] p. 18.

⁷⁸ Tams, Christian J.: *League of Nations*, September 2006., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e519?rskey=nhuGUG&result=1&q=&prd=EPIL>

⁷⁹ Schlesinger [2003] p. 18.

⁸⁰ Schlesinger [2003] p. 19.

presidential successors in under thirty years: the establishment of a functioning global organization.⁸¹

Among the Fourteen Points issued on January 8, 1918, Wilson wrote this as the last: „XIV. *A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.*”⁸² This general association was the League of Nations, established shortly after. It meant the first attempt of the international community to institutionalize international cooperation, and to create an international organization that holds main bodies for the protection of world peace. There was no precedent in the history of international relations for anything similar to it. Regarding international peace, the League of Nations could build on the experiences of the Concert of Europe and the Hague Conferences, but it also aimed to establish a collective security system. The first public statement on the League of Nations was a pamphlet of the South African general Jan Smuts. It widely popularized the idea, and included a description of the organization's structure. The League of Nations started officially to function on January 10, 1920, at the same time with the Treaty of Versailles' entry into force. The organization had to face a number of issues. Perhaps the most significant problem was that it never got the support of all major powers, and had thus no power over their aggressive actions. It proved to be inadequate for maintaining international peace, and several states quit the League of Nations. Nevertheless, its results should not be ignored either. Even the idea itself has brought hope and faith in international progress. At least for fifteen years it functioned as the general and permanent forum for international cooperation, and its foundation has brought a huge positive change in the conduct of international affairs.⁸³

Eventually, as the League of Nations could not effectively act against the aggressions of the 1930's, a need has emerged during World War II, for a comprehensive, universal organization, which is able to function avoiding the mistakes of the League of Nations system.⁸⁴ The circumstances of the League of Nations' failure played a significant role in forming the negotiations about the creation of an international organization after the war. From the beginning until signing the Charter, it was the United States who put most energy into the U.N.'s foundation.⁸⁵ This was not surprising, because in 1945 the U.S. was the only superpower, whose forces were still intact, and its economy was virtually untouched. Thus they paved the way for the creation of the new international organization.⁸⁶ Beside them, there were other nations as well with significant contributions, who brought ideas and proposed modifications. Different people played important roles in the process: Sir Alexander Cadogan (the British Deputy Under-Secretary), Andrej Gromiko (Soviet statesman), Jan Smuts (South African general), Herbert Vere Evatt (Australian politician), Leo Pasvolosky (state department official), Edward Stettinius (the U.S. Secretary of State), and president Franklin Delano Roosevelt, just to mention the few most important of them. Roosevelt, in contrast to

⁸¹ Schlesinger [2003] p. 19.

⁸² President Woodrow Wilson's Fourteen Points, Yale Law School, Avalon Project http://avalon.law.yale.edu/20th_century/wilson14.asp

⁸³ Tams [2006].

⁸⁴ Székely, Andrea [2011]: *Az ENSZ, mint a béke záloga? (The United Nations as the pledge of peace?)* MA thesis, CUB Social Sciences Faculty, Institute for International Studies; p. 10.

⁸⁵ Cot, Jean-Pierre: *United Nations Charter, History of*, April 2011., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e541?rskey=nhuGUG&result=5&q=&prd=EPIL>

⁸⁶ Schlesinger [2003] p. 8.

Stalin and Churchill, was always present when events around the U.N.'s creation unfolded, and was convinced that a new and stronger international organization than the League of Nations needs to be created to maintain peace. Basically, he believed that the support of all four great powers (the U.S., China, Great-Britain and Russia) was needed for efficiency.⁸⁷

In early 1941 Roosevelt's *Four Freedoms* speech has opened up new perspectives. (The four fundamental freedoms mentioned are: freedom of speech, freedom of worship, freedom from want and freedom from fear.)⁸⁸ On August 14, 1941, Churchill and Roosevelt signed the Atlantic Charter, which referred inter alia to the „*establishment of a wider and permanent system of general security*“. On January 1, 1942, the Declaration of the United Nations was signed by 26 countries, which, determined to conquer the Axis powers⁸⁹ wished to follow the principles of the Atlantic Charter. The term „United Nations“ was borrowed from Lord Byron's poem *Childe Harold's Pilgrimage*. From 1942 on, Deputy Secretary of State Sumner Welles chaired several committees, with regard to international relations after the war, where they began the planning of the United Nations. At some points, the planning gave rise to conflicts between Welles and other state officials, Pasvolsky for example. In August 1943 Welles resigned. Pasvolsky gathered a group of experts, and composed a preparatory Charter based on Welles' draft and other foreign suggestions.

To take the next steps in the establishment of the international organization, the consent of the great powers was needed. The subsequent conferences in Moscow and Teheran served this cause. Returning from Teheran, Roosevelt himself has worked on the draft of the Charter. In 1944, the United States announced to the other great powers that they want to hold an international conference on the case, and these accepted the draft as a basis for discussion. They gathered at Dumbarton Oaks, near Washington, on August 21, 1944. The conference was prepared and chaired by Stettinius, the other two main participants were Cadogan and Gromiko. The sessions were closed, but already then problems arose with leakings to the press. At the end, the Dumbarton Oaks proposals, i.e. the *Proposals for the Establishment of a General International Organization* gave a fairly complete draft of the Charter. So much so that Roosevelt had decided to publish the document, and thus put public pressure on the Congress.

Stalin still had to be convinced about the founding of the United Nations, for which the Yalta conference offered an opportunity. It took place in February 1945, and the leaders reached decisions important from many aspects. Roosevelt, Churchill and Stalin agreed on the basic principles of the organization to be established.⁹⁰ Although Stalin has mentioned the 1939 expulsion of the Soviet Union from the League of Nations on the third day of the conference, the next day Molotov (the Soviet Foreign Minister) announced – to Stettinius' relief – that the draft is acceptable to them. It has been decided to open the conference for the 26 countries who signed the Declaration of the United Nations, as well as to those who cut their diplomatic relations with the Axis powers, and declared war on at least one of them by March 1, 1945. Here the first problems with smaller states arose, such as the case of Argentina's former pro-Nazi neutrality. There were further difficulties with the Poles, regarding Japan, and in

⁸⁷ Cot, Jean-Pierre: *United Nations Charter, History of*, April 2011., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e541?rskey=nhuGUG&result=5&q=&prd=EPIL>

⁸⁸ Schlesinger [2003] p. 31.

⁸⁹ Schlesinger [2011] p. 38.

⁹⁰ Arató-Koller [2009] p. 54.

connection with the political processes of Latin American States. France felt slightly offended, de Gaulle previously not having received an invitation to Yalta, but the French government has decided to go to the conference, where they received the great-power status. Roosevelt's decision was to hold the conference in San Francisco, starting from April 25, 1945. The president died two weeks before the opening of the conference, whilst preparing its opening speech.⁹¹ He was even considering resigning from the U.S. presidency after the conference, to become the United Nations' first Secretary-General. Had he not been there as a driving force, the United Nations would not have been created right then, in that form, as we know it.

President Harry S Truman's – Roosevelt's successor's – first decision was to confirm the starting date of the conference announced previously by Roosevelt.⁹² „*When the San Francisco Conference started in 1945, the Second World War was nearly over. The main challenge of the United Nations was to find something better than a common enemy to keep the nations of the world united.*”⁹³ These were the global values, as Spijkers' study suggests.

Concerning the structure of the conference, there were four committees (in addition to the Assembly), who were responsible for different parts of the Charter (among them one for the Preamble as well). The texts went through several stages, several committee levels before they reached their final shape. The working languages were English and French.

The conference was hampered by the Argentinean and Polish issues, regionalism, the situation of colonies and areas still at war, among others, but at the end, consensus were reached, with cautious wording and the introduction of new concepts to the texts. Despite all this, several conflicts were left palpable. The impending Cold War could be felt, and there was a divide between large and small states, namely over the question of the veto.⁹⁴ Nonetheless, a healthy balance has been established, the „Little Forty-Five” focusing on idealism, whilst the „Big Five” focused on realism.⁹⁵

The Preamble's case was the last one requiring action. In Dumbarton Oaks, the Charter had no preamble yet. It was general Smuts to propose shortly before San Francisco that the Charter should be introduced by a preamble „*setting forth, in language which should appeal to the heart as well as mind of men, the purposes which the United Nations were setting themselves to achieve*”. Smuts has even submitted a preamble-text, but the final adaptation was Virginia Gildersleeve's – a former professor of literature – shorter version, accepted on May 29.⁹⁶ The first line („*We the peoples of the United Nations...*”) patterns the U.S. Constitution, as per Congressman Sol Bloom's wish.

The Charter was unanimously accepted on June 25, 1945. The next day it was signed by representatives of the fifty participant states.⁹⁷ „The U.N. Charter was signed on the 150th anniversary of the publication of Kant's *Zum Ewigen Frieden*.”⁹⁸ It is

⁹¹ Schlesinger [2003] p. 2.

⁹² Cot, Jean-Pierre: *United Nations Charter, History of*, April 2011., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e541?rskey=nhuGUG&result=5&q=&prd=EPIL>

⁹³ Spijkers [2011] p. 10.

⁹⁴ Cot [2011].

⁹⁵ Spijkers [2011] p. 65.

⁹⁶ Schlesinger [2003] p. 237.

⁹⁷ Cot [2011].

⁹⁸ Spijkers [2011] p. 60.

questionable whether this was intentional, but Kant's philosophy most likely has had an influence on the founders.⁹⁹

III.2. Internal factors

III.2.1. *The imprint of 1945's spirit on the text of the Preamble*

The wording of the Preamble has reached the goal set by Jan Smuts, affecting the reader both emotionally and on an intellectual level. „*Global conscience*”¹⁰⁰ has come into existence after the darkest period of human history in a document that reflects not only the founders', but also the peoples' feelings in its lines.

Before spring 1945 the world was dominated by the horrors of war. The shuddered nations started to appreciate global values. Experiencing the devastations of war encouraged people to value peace and security, the way individuals were treated during the war encouraged them to respect human dignity, the colonial oppression – to promote the self-determination of peoples, and the general economic downturn – to support progress and development. These efforts appeared in the Preamble too, through which the concept of the United Nations was linked to global values. Towards the end of the Second World War, the world awoke to the hope of a new beginning, and „*it is clear that a change in the hearts and minds of the powerful also played a role.*”¹⁰¹

The central emotion of the first lines in the Preamble is fear. Determination („*determined to*”), responsibility („*save succeeding generations*”), pain („*from the scourge of war*”), regret („*which twice in our lifetime*”) and grief („*untold sorrow to mankind*”) were present at the same time. The main reason for these feelings are the crime of genocide committed in the Second World War, and other terrible violations of fundamental human rights.¹⁰²

That desire and that quest for security, which comes from the above, was one of the promoting forces of the United Nation's creation, but the positive feelings related to the founding only unfold in the next lines.

The words „*reaffirm*”, „*establish*” and „*promote*” show the hopeful side of their determination. The lines containing these words, and those after, unite the feelings of recognition and faith. And although we cannot read them directly in the lines, the emotions of forgiveness and mercy were also present those months, as feelings associated with the end of the war.

These feelings form a framework for the values examined in the fourth part of this study, and these make the Preamble the type of „composition” which is almost to be viewed as a piece of art. In the book *Anthologia Humana – Wisdom of five thousand years*¹⁰³ written by Béla Hamvas, a Hungarian writer and philosopher, he differentiates between the „*damned*” and the „*blessed*” history of humankind. Comparing the history to a composition, he recalls motifs for the „*damned*” part („*wars, famines, revolutions, extinctions*”) and the „*blessed*” („*fine arts, religions, philosophies, poetry*”). In my

⁹⁹ Spijkers [2011] p. 61. footnote 8.

¹⁰⁰ Spijkers [2011] p. 10.

¹⁰¹ Spijkers [2011] p. 51.

¹⁰² Cot, Jean-Pierre: *United Nations Charter*, April 2011., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e539?rskey=nhuGUG&result=4&q=&prd=EPIL>

¹⁰³ Hamvas, Béla [1990]: *Anthologia Humana – Ötezer Év Bölcsessége. (Wisdom of five thousand years)* Életünk Könyvek, Szombathely.

opinion, we can „hear” both the deeper and the higher sounds of the „composition” in the Preamble.

III.2.2. The founding fathers and the Preamble’s drafters

*„In 1945, representatives of nearly fifty states came together to draft the blueprint of the post-war legal order. The horrors of the Second World War made them aware of the urgency of their work. All cultural and political differences faded into the background.”*¹⁰⁴

The aim of this subchapter is to get closer to the past, through examining what was going on in the minds of the Preamble’s drafters and the founders of the United Nations. The expression „founding fathers” can not only be used when we speak of the United States, but can also be applied to the U.N. These founding fathers and mothers have had an idealism – perhaps even more honest than their predecessors’.¹⁰⁵

When Harry Truman opened the conference in San Francisco, his very first sentences stressed the importance of the event and its significance in history: *„At no time in history has there been a more important Conference, or a more necessary meeting, than this one in San Francisco, which you are opening today.”* He reminded the assembly on Roosevelt and his aspirations, and encouraged them to rise above their personal interests, and serve the principles which benefit the whole of humankind. Just like the Preamble reminds its readers on the horrors of the two world wars, Truman reminded his audience on them. He highlighted the sacrifices made for security and justice, and called the participants of the conference the *„architects of a better world”*, who hold the future of humankind in their hands. Truman’s opening speech shows that he took over the responsibility carried by Roosevelt, and that he supported the founding of the United Nations fully.¹⁰⁶

As Truman had emphasized: despite not being able to attend the conference, his predecessor, Roosevelt had had an enormous role in the creation of U.N. Roosevelt’s condition had begun to deteriorate years before San Francisco. He took the trip to Yalta, which was hard and perhaps fatal, mainly for the United Nations’ sake.¹⁰⁷ Roosevelt’s passion for the organization was one of the reasons for why the conference was hosted by the United States. The president wished to *„link the U.N. more directly to Americans, as well as to gain better control of the proceedings”*.¹⁰⁸ It turned out from the last interview taken with him that he dreamed a New World Order, and would have considered conducting the San Francisco conference the peak of his career.¹⁰⁹

Now it is just as important to know the intentions of the drafters as those of the founders, in order to fully comprehend the Preamble and its context:

Smuts, *„a hero of the Boer War”*, had had his role already at the drafting for the League of Nations.¹¹⁰ In 1934, during his speech as the rector of the University of St. Andrews, he focused on freedom. Already then he highlighted the importance of small nations sticking together, and the common moral values (*„We small ones of the earth feel mutually drawn to each other in a world which has largely gone crazy with the*

¹⁰⁴ Spijkers [2011] p. 145.

¹⁰⁵ Schlesinger [2003] p. xvii.

¹⁰⁶ Truman, Harry S: *„Address to the United Nations Conference in San Francisco”* April 25, 1945 <http://www.presidency.ucsb.edu/ws/?pid=12391>

¹⁰⁷ Schlesinger [2003] p. 57.

¹⁰⁸ Schlesinger [2003] p. 61.

¹⁰⁹ Schlesinger [2003] p. 72.

¹¹⁰ Schlesinger [2003] p. 22.

problems of size and scale”). The text of his speech shows that Smuts possessed in-depth knowledge of history, law and religion, and that he was aware of the importance of peace. He spoke of South Africa as one of the founders of a young nation. This kind of enthusiasm is observable in the Preamble too. He strongly condemned and feared war: he saw it in the international context as well. The most important statement he wanted to get through to the students was that „*The world is good.*” He saw fears as justifiable, but not so pessimism. He mentioned human rights, progress, cooperation, justice and happiness.¹¹¹ Having read the text of his St. Andrews speech, the eloquence in the Preamble’s text is more familiar to me. Jan Smuts’ philosophical work in the field of holism parallels with the creation of the United Nations. In his 1926 book with the title *Holism and Evolution* he writes that holism is a trend in nature: through a creative evolution, parts form a whole that is greater than the sum of its parts.¹¹² However, his personality has had a dark side. In San Francisco, he stood up for the ideas and ideals, yet „*when he returned to South Africa he continued to support the policies of racial segregation*”.¹¹³

When Smuts submitted his Preamble proposal, the US delegation was not particularly interested in revising it. „*Virginia Gildersleeve, the most retiring member of the US delegation, however, came afire over the preamble. As a former professor in literature and a long-time admirer of the United States Constitution, she cared deeply about the phraseology of the charter preamble.*”¹¹⁴ Gildersleeve, who put the Preamble in its final form, once suggested that it „*should be hung up in every peasant’s cottage throughout the world.*”¹¹⁵

IV. The Preamble as a legal document

Constitutional preambles have both legal and political content.¹¹⁶ In the case of the Preamble of the United Nations Charter this means international legal and international political content.

Adopting the Preamble was a result of the international political consensus. Unlike in the case of national constitutional preambles, which spark political debates with a high potential, no significant (international) political debates have arisen around this particular Preamble. Another aspect to measure a preamble’s politicalness is its impact on the development of the political system. Preambles of constitutions possess a political weight in general because of their political declarations, but the power of the U.N. Charter’s Preamble is different and lies in more than politics.

Because of the statements above, in this chapter I only examine the (international) legal aspects of the U.N. Charter’s Preamble.

IV.1. Hans Kelsen’s criticism

„*The Preamble had an ideological rather than a legal importance. It was not intended to legally bind the signatory States. It served as a guideline for the interpretation of the Charter, and to explain ambiguous statements in the articles which do impose*

¹¹¹ Smuts, Jan C. [1934]: *Freedom*. A. MacLehose & Company, London; pp. 11-36.

¹¹² Smuts, Jan C. [1926]: *Holism and Evolution*. Macmillan and Co., London.

¹¹³ Spijkers [2011] p. 71. footnote 69.

¹¹⁴ Schlesinger [2003] p. 236.

¹¹⁵ Spijkers [2011] p. 71.

¹¹⁶ Antal [2011].

obligations."¹¹⁷ – writes Spijkers. I find that it is still worth examining the Preamble from legal aspects, what many indeed did. The earliest commentary to mention is from Hans Kelsen, published in 1951. In his more than a thousand pages long book *The Law of the United Nations – A Critical Analysis of Its Fundamental Problems*¹¹⁸, he is extensively examining both the Charter and the structure of the organization.

In the first paragraph, Kelsen points out that the Preamble does refer to some, but not all the purposes of the organization. The purposes are not properly listed even when the Preamble is read together with Chapter I. His examples are „the registration of treaties and the protection of the peoples of non-self-governing territories”, which are only mentioned later. The response to this critique is that we should not object to this practice in the U.N. Charter, as in modern constitutional law, drafters tend to fit basic values and principles into the main chapters.¹¹⁹

The Preamble consists of merely two sentences. Kelsen criticizes both, or how the two relate to each other, to be more specific. The first sentence refers to the peoples („*We the peoples of the United Nations...*”), while the second to the governments („*... our respective Governments, through representatives...*”). Kelsen saw this as to be problematic for states which were represented in the form of a monarchy for example and not a republic, like the Netherlands, where „*the Crown, not the people conducted treaties.*” This critique is justifiable, yet such a small mistake does not have practical consequences in terms of interpreting the Charter. The resolutions of the General Assembly and the Security Council were regarded binding by monarchies just as well as by republics, ever since.

The member states they meant by „*We the peoples of the United Nations*” were not exactly the states represented at the conference (Poland was not represented for example), and not even the countries having signed the 1942 Declaration of the United Nations, because not even there have all the official members been present (Argentina for example, was not). They understood the future U.N. member states by the expression, which would mean another inaccuracy in the Preamble. However, the reference to the peoples of the United Nations has proved to be appropriate, namely in the case of Articles 1 and 55 (about the self-determination of peoples), furthermore, it has had positive consequences in the areas of decolonization, human rights, democracy, and the United Nations’ relationship with civil society.¹²⁰

Kelsen mentions it as an additional error that from the text, the U.N. seems to have been founded by signing the Charter on June 25, 1945, however, the organization has officially only been created on October 24, 1945, after ratifications. October 24 is the official United Nations Day since.

According to Kelsen, the second sentence of the Preamble is virtually useless. International treaties often include similar statements, unnecessarily – he writes. This is contradicted by the fact that it was the second sentence, i.e. the last paragraph of the Preamble which ratified the intergovernmental nature of the organization.¹²¹ The tension

¹¹⁷ Spijkers [2011] p. 72.

¹¹⁸ Kelsen, Hans [1951]: *The Law of the United Nations – A Critical Analysis of Its Fundamental Problems*. Stevens & Sons Limited, London.

¹¹⁹ Kukorelli, Máthé [2011].

¹²⁰ Cot [2011].

¹²¹ Cot [2011].

between the initial words and the last paragraph reflects the controversial situation of the international community, from 1945 until the present¹²².

The sharpest criticism used by Kelsen against the Preamble is related to its interpretation. According to him, the Preamble cannot be used as an interpretive tool, firstly because the political ideas it contains are not guaranteed, and secondly because the reader cannot clearly distinguish the means from the ends (i.e. the goals).¹²³ Regarding the latter concern, I made an experiment:

IV.1.1. The „Kelsen-experiment“

I conducted the so-called Kelsen-experiment in the spring of 2013, as a sophomore, when I was still just forming my idea of writing about the Preamble. I read Hans Kelsen's critics when preparing for a presentation and I found it interesting how he drew up the indistinguishability of means and ends in the Preamble. I was curious how this would work in practice. I printed the lines of the Preamble separately, in large-size fonts on A4 sheets each. I mixed up the papers of the lines about means and ends on the board, and the students' task was to decide one by one to which group the lines belong to. In the end result, only three of the eight papers have been identified correctly as means or ends. Kelsen's critique seemed to have been justified by our seminar group. (I should add that the experiment was carried out only once, so it is not representative, rather just a one-time illustration.)

From the above it can be drawn that the Preamble is not a perfect text. Still, the errors listed are of minimal significance, especially from the aspect of interpretation. Furthermore, there is a reasoning in the fourth part of this paper, for why the means-ends indistinguishability is not a just critique either.

IV.2. Similarities with other international documents' preambles

Differently from Chapter II, in this sub-chapter I wish to narrow the group of preambles to be compared. The preambles of international treaties and declarations form a separate set from the preambles of national constitutions. The difference is reflected at several points, for example in that symbols, feasts (related to historical events) and religious references play only a minor role when it comes to preambles of the international level. So in this section, I will compare the Preamble of the U.N. Charter to preambles of two other international legal documents: to that of the Universal Declaration of Human Rights¹²⁴ and of the Charter of Fundamental Rights of the European Union¹²⁵. Although these are legal documents of different nature in many aspects, the function of their preambles is the same.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948. Its preamble shows many similarities with that of the Charter, which might come from their temporal proximity. It refers in its first line to the values of freedom, justice and peace, which also appear in the Preamble of the UN Charter at various points. Similarly to the Preamble of the Charter, in the second paragraph it recalls the horrors of wars. The third paragraph of the Universal Declaration of Human Rights' preamble refers to the rule of law and calls our attention to its importance, which is another shared feature with the Charter's Preamble.

¹²² Cot [2011].

¹²³ Kelsen [1951] pp. 3-12.

¹²⁴ The Universal Declaration of Human Rights <http://www.un.org/en/universal-declaration-human-rights/>

¹²⁵ Charter of Fundamental Rights of the European Union http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Hereinafter the Declaration's main focus is on human rights. In the rest of its preamble it explains the views of the General Assembly regarding human rights and freedoms.

The Charter of Fundamental Rights of the European Union was proclaimed in December, 2000, by the European Parliament, the Council of Ministers and the European Commission. The difference in time and the difference in the context of states bring many new elements with themselves. These are: solidarity, democracy, the rule of law, the diversity of the cultures and traditions of the peoples, and sustainable development. However, this preamble too shows similarities with the Preamble of the U.N. Charter. Firstly, it has a positive vision of the future. The European preamble even points out that this future will be based on common values. Secondly, the values of freedom, security, justice and law, and the goal of social progress are mentioned here as well as in the U.N. Charter's Preamble.

In all three preambles, the character of natural law¹²⁶ manifests itself when they mention human rights, or the dignity of the human person to be more specific. It appears in the following sections:

- „... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person... ” (Preamble of the United Nations Charter)
- „... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... ” (Preamble to the Universal Declaration of Human Rights)
- „... the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity... ” (Preamble to the Charter of Fundamental Rights of the European Union)

Overall we can say of the preambles of international legal documents that they contain common elements, core values. But besides all these, each has specific features, aspects, current values of the given historical situation.

IV.3. The context of some of the Preamble's lines in international law

Every word in the Preamble of the U.N. Charter counts, but some lines are of particular importance in international law. In this section, I will present these lines and terms together with their international legal context.

The starting words of the Preamble („*We the peoples*”) have been mentioned already several times. The term has been borrowed under American influence from the United States Constitution, the only difference is the plural, the „s”. Its international legal significance lies in the fact that it integrates the concept of „*peoples*” into this branch of law.¹²⁷ The title of Kofi A. Annan Ex-Secretary General's 2001 book is based on the starting words of the Preamble too: *We the peoples: The Role of the United Nations in the 21st century*.

The thought „*to save succeeding generations from the scourge of war*” has been existing in a form already after the First World War, in the preamble of the League of

¹²⁶ Orakhelashvili, Alexander: *Natural Law and Justice*, August 2007., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e730?rskey=Ez05mW&result=2&q=&prd=EPIL>

¹²⁷ Cot, Jean-Pierre; Pellet, Alain: *What they had in mind – The Preamble to the Charter* <http://www.alainpellet.eu/Documents/PELLET%20-%201986%20-%20What%20they%20had%20in%20mind%20The%20preamble%20to%20the%20charter.pdf>

Nations Covenant.¹²⁸ This can be considered as the first manifestation of the responsibility that a given generation of humankind takes, not to deprive future generations of the opportunities of life and development that they themselves have had.¹²⁹

„to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”: When studying this line, we should split it into two parts: the one about human rights and the other about nations. At the time of the League of Nations it was the competence of states exclusively to respect human rights. After the Second World War, the Allies recognized that the protection of human rights is a responsibility of the international community as well. In the body of the Charter Article 1, paragraph 3 extends the concept of human rights („without distinction as to race, sex, language, or religion”), repeating that in Articles 13, 55 and 76. The U.S. delegates and Jan Smuts also urged that a human rights clause be attached to the Charter, which did not happen in 1945, but the intention „opened the door” for the Universal Declaration of Human Rights.¹³⁰ According to Bruno Simma, the reference in the Preamble to the dignity and worth of the human person, as well as that to the equal rights of men and women, can be viewed as a „mini human rights charter”¹³¹. It is worth mentioning that on the national level, France leads the way in the number of preambles containing human rights clauses, where this has a tradition since the 1789 Declaration of the Rights of Man and of the Citizen.¹³² Article 8 of the UN Charter stresses equality between women and men, and Article 68 gives an opportunity for the establishment of committees for the promotion of human rights.¹³³ Most scholars referred to in this study are of the view that the Preamble has no legal binding force, Simma however represents the opposite point of view. If Simma was right, the Preamble would not only possess a declarative, but a normative¹³⁴ part as well. This however, is contradicted by Spijkers’ and Orgad’s writings, and I incline to this latter position. If we allowed the Preamble to have binding legal force, the features and functions in the Charter would get mixed up. The other chapters could lose their power on the long term, which would be risky for the international community. In my opinion, the focus in the Preamble is not on the – questionable – obligatory character. It is rather on the values, which will be examined in Chapter V. The values are put into practice by the provisions of the nineteen chapters following the Preamble.

One last argument against the binding nature of the Preamble is this: The so-called *mini human rights charter* and further parts of the Charter mention only respect for human rights. The international community had not yet had sufficient experience to also declare the protection of human rights. And respect is much less binding than protection.

¹²⁸ Cot, Pellet

¹²⁹ Simma, Bruno [2002]: *The United Nations Charter – a commentary*. Oxford University Press, Oxford; p. 34.

¹³⁰ Cot, Pellet.

¹³¹ Simma [2002] p. 35.

¹³² Granger, Marie-Pierre: *A Francia Alkotmány Preambuluma(i): tartalom, státus, alkalmazás és módosítás. (Preamble(s) to the French Constitution: content, status, application and modifications)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

¹³³ Cot, Pellet.

¹³⁴ Vörös, Imre: *Preambulumot az Alkotmányhoz – de milyen? (Preamble to the Constitution – but what kind of preamble?)* In: Lamm, Vanda [2011]: *Preambulum az Alkotmányokban. (The preamble in Constitutions)* CompLex, Budapest.

The line „*equal rights (...) of nations large and small*” appears in other forms in Articles 1 and 55 of the Charter. Furthermore, it is present in Article 2 and 78 as the *principle of the sovereign equality*. This has a double meaning: nations are equal in the organization as well as in their international relations.¹³⁵

„*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”: This thought is continued in Article 13 and 14 of the Charter.¹³⁶ The wording, which mentions justice separately from treaties and other sources of international law, suggests that these are different concepts. It is likely that with justice the drafters refer to natural law, and to the fact that respecting treaties does not exclude the possibility of their review.¹³⁷

„*to promote social progress and better standards of life in larger freedom*”: This line is echoed in Article 13 and 55 of the Charter, as well as in its Chapters IX and X, where the founders determine the framework for economic and social progress, as well as the tasks of the Economic and Social Council.¹³⁸

„*to practice tolerance and live together in peace with one another as good neighbours*”: This line was inspired by Franklin D. Roosevelt’s inaugural address of March 4, 1933.¹³⁹ It can be interpreted in different ways. Some understand it as a narrow geographical neighborhood only, the broader interpretation in contrast applies to every nation. Chapter VI, on the peaceful settlements of disputes, gives tools needed to keep the peace between these „neighbors”.¹⁴⁰

„*to unite our strength to maintain international peace and security*”: This concept is already contained in the Atlantic Charter, referring to the principle of collective security. The principle emerges in further Articles and Chapters of the Charter (Articles 1, 2, 4, 5 and 6; and Chapters IV, VI and VII).¹⁴¹

Furthermore, there are two important documents of the General Assembly referring to several lines of the Preamble of the U.N. Charter: the *Uniting for Peace Resolution* (1950) and the *Friendly Relations Declaration* (1970).¹⁴²

Based on the above we can assume that also the legal dimension of the Preamble is of significance, and forms an integral part of the „fabric” of international law. Revealing this helps not only the better understanding of the Preamble, but also that of its environment, its international legal context.

IV.4. How the Preamble and the Charter relate to each other

Attila Antal, to whom I have been referring to earlier in this paper, deals separately with the relationship between preambles and constitutions. Based on the facts that „*preambles are laws in the formal sense*” and that „*changing them requires a modification of the constitution*” Antal notes that in any case there is a formal unity between the preamble and the main text of the constitutions or laws. This must also be true for the United Nations Charter and its Preamble.

¹³⁵ Simma [2002] p. 35.

¹³⁶ Cot, Pellet.

¹³⁷ Simma [2002] p. 36.

¹³⁸ Cot, Pellet.

¹³⁹ Simma [2002] p. 36.

¹⁴⁰ Cot, Pellet.

¹⁴¹ Simma [2002] p. 37.

¹⁴² Simma [2002] p. 37.

According to Antal, the answer to the question whether the preamble and the other chapters form one unit of content, is no. He accepts preambles only as tools of interpretation, and as he sees their content not to have the same legal weight as that of the other chapters of a constitution, he thinks that the body of a constitution and its preamble are separate parts. This – in my opinion – cannot be applied to the Preamble of the United Nations Charter. In the case of the latter, the emphasis on the history and the values is so important, that it stands closer to the Charter, than preambles to constitutions in general. In addition, the Preamble is closely related to the first Chapter, which further confirms that it forms a whole with the rest of the Charter. Let me refer here to Bruno Simma as well, who attributes legal force to the Preamble when it comes to human rights, and to Antal's claim that – contrary to his previous statements – the declaration of goals and values may be legally binding, or have at least legal relevance.

One more note has to be added to the legal analysis part. The reason for why the U.N. Charter's Preamble became the focal point of our knowledge about global values is that „When it comes to realizing and promoting global values, the appropriate language is global – or international – law.”¹⁴³

V. Axioms of the United Nations philosophy: the global values

In this chapter I examine the concepts, i.e. the values in the Preamble. For this purpose, I firstly have to give a definition on the values I am operating with, and I have to specify in which context they are used.

V.1. Definition

Spijkers defines global values as follows: „*A global value is an enduring, globally shared belief that a specific state of the world, which is possible, is socially preferable, from the perspective of the life of all human beings, to the opposite state of the world.*”¹⁴⁴.

In his study, Spijkers highlights six values:

- Peace and Security
- Social Progress and Development
- Human Dignity
- and the Self-determination of peoples

My paper includes the analysis of all the values above, except for the self-determination of peoples, which was not mentioned in the Preamble. But to complete the value system I had to add more elements. These elements do not fit exactly into Spijkers' definition of global values, however, I see these „unwritten values” as the origins of other global values.

I also need to emphasize that the concepts I am operating with are much less to be used in the arena of interstate politics, than on the level of humanity as a whole. I do not differentiate sharply between society and the international order.¹⁴⁵ A further distinction

¹⁴³ Spijkers [2011] p. 9.

¹⁴⁴ Spijkers [2011] p. 9.

¹⁴⁵ Szörényi [2009].

has to be made between Spijkers' and my approach: he operates with the traditional view that values are beliefs, I take them as given, and as facts on the other hand.

Just as the U.N. itself does in legislation, I focus in my paper on the individual and on humanity at the same time. The first chart in the annex is a good illustration to the discussion in this chapter. Parts of the Preamble can clearly be identified there with the concepts. Three exceptions from this statement must be taken into account, which are the concepts I have been calling „unwritten values”. In my interpretation, unwritten values are inherent parts of the Preamble, as well as of the value system of the world organisation. These are morality, unity (the connection between the individual and community level) and the pursuit of happiness. While presenting these three, I outline the events (or milestones), through which the derived values came into existence. The process is illustrated on the second chart¹⁴⁶.

V.2. Morality

The first value is morality. This is the core concept which gives other global values the opportunity to exist. Morality is about distinguishing between *good* and *bad*. If there was no morality, value systems would be subjective and values relative. However, thanks to morality we can agree on certain common values and norms. Morality stands above humanity, but we are drawing closer to the point where we can punctually answer axiological questions concerning the nature of good and evil. Axiology deals with questions which distinguish between the subjectivity and objectivity of values („*For instance, a traditional question of axiology concerns whether the objects of value are subjective psychological states, or objective states of the world.*”¹⁴⁷).

Samuel Harris – a contemporary author, neurologist and philosopher – confirms the objectivity of values, morality first of all, in his 2010 TED talk *Science can answer moral questions*¹⁴⁸. According to Harris, there is a tight connection between science and ethical questions, it is even dangerous to separate these two. His unfaltering approach, that values are facts about the well-being of conscious creatures, is rather novel, but I will take the same approach.

A Ghanaian philosopher, Kwame Appiah, also mentions the objectivity of values: „*I want to hold on to at least one important aspect of the objectivity of values: that there are some values that are, and should be universal* (...)”¹⁴⁹.

Although it is impossible to close a philosophical debate of value theory which goes back to several thousand years in a few sentences, my paper as a whole confirms that standing up for the objectivity of values means more than an intuitive stance. In the *Global Values* book of Karin Miller¹⁵⁰ and in several articles¹⁵¹ we can encounter the same recognition.

¹⁴⁶ See annexes.

¹⁴⁷ Stanford Encyclopedia of Philosophy, Value Theory <http://plato.stanford.edu/entries/value-theory/>

¹⁴⁸ Harris, Sam: *Science can answer moral questions*, TED talk, 2010 http://www.ted.com/talks/sam_harris_science_can_show_what_s_right/transcript

¹⁴⁹ Spijkers quotes Appiah: Appiah, Kwame Anthony [2006]: *Cosmopolitanism: Ethics in a world of strangers*. W. W. Norton & Company, Inc., New York, p. xxi. In: Spijkers, Otto [2011]: *The United Nations, the Evolution of Global Values and International Law*. Intersentia Ltd, Cambridge, United Kingdom; p. 35.

¹⁵⁰ Karin Miller [2015]: *Global Values*, Amazon, Kindle edition, p. 13.

¹⁵¹ Direct arguments for the objectivity of values can also be read in the article: Moore, Adam D. [2004]: *Values, Objectivity, and Relationalism*. In: *The Journal of Value Inquiry*, 38., pp. 75-90., Kluwer

According to Spijkers, global values constitute the core of „global morality”.¹⁵² This statement – in contrary to my statement that morality is the core concept – assumes a reversed connection between morality and the other values, creating a chicken-egg problem. It is not the aim of my paper to explore the origins of morality, yet I have to point it out again, that there were delegates in San Francisco who would have preferred it if there had been an explicit reference to God in the Preamble, as the source of all principles and aims.¹⁵³

As we have seen in the historical chapter, when I was writing about the imprints of that time, the creation of the United Nations is tightly connected to morality. The positive feelings, and the turn which made leaders see human coexistence and progress in a more conscious way, and made them think in a larger system, can be called fairly moral.

V.3. The unity of humanity

At this point, I would like to explain the connection between individual and community, in this case that between individual and humanity, to be more punctual, which means the unity of humanity.

Spijkers sees the statement, that humankind makes up one community, as a kind of cosmopolitan intuitive feeling,¹⁵⁴ which cannot really be argued for or against, but which is supported in practice by globalisation.¹⁵⁵

Regarding unity, the text of the Preamble refers in its first lines in three different ways to humanity, as a whole (and in three different tenses). Taking the larger perspective reflects Jan Smuts' holistic approach:

- „*We the peoples of the United Nations*”
- „*succeeding generations*”
- „*(untold sorrow to) mankind*”

To explain the link between morality and unity I would like to outline a model. This is embedding a psychological theory into the historical and global context. Because of its clarity it does not reflect specific historical events, rather the process of value-evolution.

The psychological theory to be used is Abraham Maslow's pyramid or hierarchy of needs.¹⁵⁶ Not the whole theory, which is allegedly exceeded, and many elements often doubted,¹⁵⁷ only the assumption, that we have a certain number of needs and that they have a hierarchy. My study will not merge any deeper into the socio-psychological discipline than this.

Academic

Publishers.

<http://www.nyu.edu/projects/nissenbaum/papers/values,%20objectivity,%20and%20relationalism.pdf>

¹⁵² Spijkers [2011] p. 14.

¹⁵³ Spijkers [2011] p. 99., footnote 228.

¹⁵⁴ Spijkers [2011] p. 25.

¹⁵⁵ Spijkers [2011] p. 27.

¹⁵⁶ Maslow, A. H. [1943]: *A Theory of Human Motivation*, Psychological Review, 50, pp. 370-396.
<http://psychclassics.yorku.ca/Maslow/motivation.htm>

¹⁵⁷ Examples for its criticism:

Bridwell, Lawrence G.; Wahba, Mahmoud A. [1976]: *Maslow reconsidered: A review of research on the need hierarchy theory*. Organizational Behavior and Human Performance. 15/2, April, pp. 212-240.;

Hofstede, Geert [1984]: *The Cultural Relativity of the Quality of Life Concept*. The Academy of Management Review, 9/3, July, pp. 389-398.;

Cianci, R.; Gambrel, P. A. [2003]: *Maslow's hierarchy of needs: Does it apply in a collectivist culture*. Journal of Applied Management and Entrepreneurship. 8/2, pp. 143-161.;

Diener, Ed; Tay, Louis [2011]: *Needs and subjective well-being around the world*. Journal of Personality and Social Psychology, 101/2, August, pp. 354-365.

From one perspective, humanity consists of individuals, who – because of the scarcity of resources – fight with nature and each other to satisfy their needs. In the course of time, these individuals discovered the following: If they have satisfied one of their needs or a group of needs and secured it for a given time, they could direct their attention to new, other needs, a new group of needs. I assume that humans climbed higher and higher on their pyramids, because they wanted to be happy and discovered that this is the way they could be. In his *Nicomachean Ethics*, Aristotle writes: „*Happiness, then, is something final and self-sufficient, and is the end of action.*”¹⁵⁸ Thomas Aquinas and St. Augustine too write about happiness as the ultimate goal. The concept of happiness will be discussed in more detail in one of the next sections.

Returning to the topic of needs: Because of the tough natural conditions, no individual could climb over a certain level on their pyramid of needs, at least not alone. Here they got to another important discovery: The more cooperative they were, the more they could trust and did trust each other, the higher they had the chance to climb. And because life „rewarded” them for cooperation, they learned to cooperate. It may be right to say that the law of the jungle (as the primitive survival strategy) and civilisation parted at this „point” of human history. This is where the separation of „the way of nature” and „the way of grace” gained meaning, and behavioral patterns emerged, that we can call moral.

One of the forces that keeps people together is the need for cooperation, and this has been proven on higher and higher community levels throughout history. The foundation of the United Nations is in the political sense the coronation of this process, as the highest level is humanity itself.

The founding fathers of the U.N. could not have foreseen how the world will look in a few decades, but they knew the values that kept together the people and the peoples on different levels. Having learned a lesson from the wars, they worked towards the creation of a system, where interdependence of individual and humanity would lead not to catastrophes, but to the realization of the individuals’ potentials through the goals of the global community.

V.4. Human dignity

In the preamble it reads: „(...) *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person* (...)”.

It is possible to draw parallels between human dignity and the thought of unity. The values on the level of the individual and on community level are interoperable. These years we experience a shift towards the individual in international law, that means the trend is the human rights approach.¹⁵⁹ However, the two sides of the coin should be emphasized equally, also because of what connects them, cooperation. Global values are based on human needs, as Spijkers mentions in his study.¹⁶⁰

The preamble – mentioning the dignity and worth of the human person – is probably the first sign after the world wars, that humanity has recognised its own value, as a whole and as individuals. The worth of life, which is a greater common heritage of ours than anything else, has been recognized again.

¹⁵⁸ Aristotle [350 BC]: *Nicomachean Ethics* <http://classics.mit.edu/Aristotle/nicomachaen.html>

¹⁵⁹ Spijkers [2011] pp. 201., 280.

¹⁶⁰ Spijkers [2011] pp. 56., 207.

The United Nations relates equality to respect for human dignity¹⁶¹, which again can strengthen our belief in the close interconnectedness of the individual and community levels.

V.5. The strive for happiness

At this point I am shortly getting back to happiness, the third unwritten value. It cannot be identified in the U.N. Charter, but the word „happiness” or words „strive for happiness” can be found in other treaties’ preambles. However, since the United Nations’ creation, happiness has gained a new role as a value and a goal. Numerous studies have been written in connection with happiness, and in July 2012, the „International Day of Happiness” has been introduced to the U.N.’s calendar, which is March 20.¹⁶²

It is difficult to define happiness. One could say that it is a subjective thing, however, we get closest when we „move together”¹⁶³ towards happiness. This suggests that there exists some kind of consensus on happiness, a goal towards which the other global values take us. And for these global values, morality is the „compass”.

The values between morality and happiness (see 1. figure) were formed as follows.

V.6. Progress

Individuals, and then groups made little steps up on their pyramids of needs. They made progress. In my opinion, it is not only the individual who has a pyramid of needs, but the community as well. Human progress and development is a climb on the „largest” pyramid.

There is a metaphor for this pyramid in U.N. history, which the Philippines used to stress the interdependence of nations in the modern world: „*[t]he mountain of man’s progress is great and terrible, and they who climb must adjust their pace to the weakest or the entire chain of climbers will go down.*”¹⁶⁴ It is reflected in this excerpt from Article 76 of the U.N. Charter as well: „*to encourage recognition of the interdependence of the peoples of the world*”.

Progress and development are characteristics of humankind. The advancement mentioned in the Preamble („*to employ international machinery for the promotion of the economic and social advancement of all peoples*”) suggests linear progress, from the founders point of view. The United Nations is the organisation which seeks to promote progress on the highest level of society.

Robert Wright, a contemporary philosopher, justifies the linearity of history and progress in his 2006 TED Talk *Progress is not a zero-sum game* with the fact that in the course of history social organization has reached higher and higher levels, and he connects all this to morality.¹⁶⁵ He associates higher levels of organization with „*moral revolutions*” which actually stem from self-interest and are thus inevitable. Wright’s idea fully parallels my reasoning, and it provides the link between morality and progress.

¹⁶¹ Spijkers [2011] p. 328.

¹⁶² International Day of Happiness <http://www.un.org/en/events/happinessday/>

¹⁶³ NATO poster for European Cooperation by I. Spreekmeester, Holland [1947] <http://www.peacepalacelibrary.nl/imagecollection/erp-whatever-the-weather-we-must-move-together/>

¹⁶⁴ Spijkers [2011] p. 221. footnote 34.

¹⁶⁵ Wright, Robert: *Progress is not a zero-sum game*, TED talk, 2006 http://www.ted.com/talks/robert_wright_on_optimism

However, not only progress was present, but growth as well. While it was possible, people were looking for and were finding new places and resources. During this process groups met each other, and sooner or later they realized that the available resources are not or will not be enough for all communities, for all the people. In the modern context it is Dennis Meadows' work *The limits to growth* which deals with this problem¹⁶⁶. However, scarcity has been occurring from earlier on, in different situations, in different ages, on different levels of society and because of different types of resources. After they met each other, groups of people could do the following: stop or slow down growth, change the way they utilized resources, find new solutions through technological and economic innovations, or integrate and unite their societies through repeating the cooperative process. Still, there existed and exists another scenario, a primitive method: the law of the jungle. This has led to wars and catastrophes. The clashes of the groups occurred on higher and higher levels (on levels of larger and better organized groups), and in 1993 Samuel P. Huntington already predicted the *Clash of Civilizations*.¹⁶⁷

V.7. Freedom and security

Frightened by the consequences of applying the law of the jungle, and recognizing the inherent danger, the setback on the pyramid, communities formed systems (legal cultural, religious and social systems). Through the systems they ensured that common interests, and possibly the relatively basic individual interests remained intact.

When people saw that their systems work, they felt safer, as numerous important needs were satisfied again for a longer term. However, they presumably realized as well that because of the scarcity of resources their growing open system had to be closed.¹⁶⁸ The price of security was: a piece of their freedom. This is where the notions of freedom and security, as we know them today, have parted. These are two concepts which are controlled by one of the most fundamental elements of social systems, i.e. the law. In my view, law has two main directions or dimensions: one is ensuring security, which is more of a common interest, the other the increase of freedom for the individual. Equality is key to both, because it fosters trust and cooperation.¹⁶⁹

The U.N. Charter associates security with peace for historical reasons, but I prefer pairing up security and freedom. There is little attention drawn to the relation of freedom and security, but it can be illustrated on recent examples. One is the EU's policy on home affairs and justice. As it reads in Ákos Kengyel's textbook about the common EU policies, „*The increasing freedom can only be enjoyed if security is guaranteed at the same time. It is obviously favorable for the citizens of the European Union – in accordance with the right to free movement – to have border controls lifted, this however results in the free movement of undesirable elements (such as criminals, terrorists, illegal immigrants, etc.) as well.*”¹⁷⁰ In this example, security had to be increased with the increase of freedom. However, an opposite process can take place as

¹⁶⁶ Meadows, Dennis [1972]: *The limits to growth*. Universe Books, New York. <http://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf>

¹⁶⁷ Huntington, Samuel P. [1993]: *The Clash of Civilizations?* Foreign Affairs, summer edition <http://www.foreignaffairs.com/articles/48950/samuel-p-huntington/the-clash-of-civilizations>

¹⁶⁸ For more about systems in social sciences see Ludwig Von Bertalanffy's works.

¹⁶⁹ At this point it is worth mentioning the social and political scientist Karl Deutsch, who introduced the concept of security communities. (Lecture of Éva Kőváriné Ignáth [2014], *European Politics: Theories of Integration*)

¹⁷⁰ Kengyel, Ákos [2010]: *Az Európai Unió közös politikái. (Common Policies of the European Union)* Akadémiai Kiadó (Publisher), Budapest; p. 243., own translation.

well, if freedom has to be reduced in order to keep the community safe, just like in the security policy of the United States after the 9/11 terror attacks. These situations may lead to conflicts („the dilemma of „security vs. freedom” has emerged with particular importance in western states, as safety measures often came with restrictions in freedom, endangering one of the fundamental values of democracy.”¹⁷¹). The security-freedom conflict is reflected in the speech of John F. Kennedy from July the 25th, 1961: „We recognize the Soviet Union's historical concern about their security in Central and Eastern Europe, after a series of ravaging invasions, and we believe arrangements can be worked out which will help to meet those concerns, and make it possible for both security and freedom to exist in this troubled area.”¹⁷². While the Soviet Union focused on security¹⁷³, the United States represented freedom – as always. The two systems confronted each other at several points during the Cold War. In my opinion the reason on the level of global values for the confrontations was that there is not always enough „space” for maximal freedom and security. The two displace each other, and progress is only possible with keeping a delicate balance.

The Preamble gives another cross-section of the freedom-security dynamics. Emphasis is clearly on security. The so called freedom-values (freedom itself, democracy, tolerance and justice), which were inspired by the Enlightenment, are only partially represented. There may have been historical and emotional reasons for this, particularly the fear of the war-threat.

Freedom-security dynamics, as mentioned before, are in connection with progress. When people discover a new technology, a tool, its negative utilization appears shortly after the positive one. One example is nuclear energy and nuclear weapons, another the internet and cyberattacks. Thus, with the increase in freedom provided by new technological means we have to increase security as well during our progress.

V.8. Law and justice

The last topic in this paper to explore is the link between morality and law, especially international law. There are three approaches to this connection. The sceptic and realistic approaches separate morality from law. Already Immanuel Kant insisted on isolating the obligations arising from the law and from morality. Hans Kelsen also belonged to the critics of "legal morality". From the second point of view, morality is a kind of possibility at the end of political processes, which depend on the legal framework. Here we can see law and morality standing closer to one another. In this paper, the third approach is used, which bases international law on universal morality, which thus determines its development and interpretation. In this view, international law rests on fundamental values, especially the value of human dignity, further, it has to protect and promote these values. This third approach is based on natural law. In the 20th century, Hersch Lauterpacht (1897-1960) and Alfred Verdross (1890-1980) were the two most influential patrons of the theoretical relationship between international law and natural law. Both were influenced by Hans Kelsen at the beginning of their careers, of whom they separated themselves later because of their conflicting views regarding morality. Verdross also advocated the unity of mankind, which he found necessary to recognize in order to explore the nature of international law. He was the first scholar of

¹⁷¹ Rostoványi, Zsolt [2011]: *A Közel-Kelet története. (History of the Middle East)* Kossuth Kiadó (Publisher), Budapest; p. 241., own translation.

¹⁷² Kennedy, F. John: „Radio and Television Report to the American People on the Berlin Crisis” July 25, 1961 <http://www.presidentialrhetoric.com/historicspeeches/kennedy/berlincrisis.html>

¹⁷³ Ferge, Zsuzsa [1996]: *Freedom and Security*. International Review of Comparative Public Policy, vol. 7., pp. 19-41. http://www.fergezszusa.hu/docs/freedom_and_security.pdf

international law to raise the idea of constitutionalizing the international legal order.¹⁷⁴ As illustrated on the 1st figure of the appendix, law has to be connected to morality in order to function on the levels of the individual and the community.

When talking about the link between law and morality, we must arrive at the concept of justice. Spijkers considers justice as an „*umbrella value, in the sense that if the international legal order is based on the values of peace and security, social progress and development, human dignity, and self-determination of peoples, it is a just order.*”¹⁷⁵

V.9. The evolution of global values

The value system of the United Nations is a global value system, and „*global values theoretically have the potential to influence global affairs*”.¹⁷⁶ The international legal order, for which the U.N. Charter provides the „constitution”, aims not only to ensure peaceful coexistence, but also to realize a set of internationally shared, fundamental values.¹⁷⁷ This realization however, seems – based on current knowledge – not to be a finite process. The goals are relatively „far”, yet global values develop, evolve, and something we call a goal today, may be looked upon in the future as a given. For many more steps on humankind’s pyramid of progress we will experience that successes of the fight for global values result in the disclosure of new challenges.

Put it in the latter perspective, values can be means and ends as well, or as Spijkers quotes Rokeach, they can be a „*mode of conduct*” and an „*end-state existence*”¹⁷⁸. This explains what Hans Kelsen criticizes wrongly in the Preamble, and why the students in 2013 could not distinguish between the means and ends of 1945.

I call the values presented in my study axioms, because there is hope and chance that they will be like premises in the future, and are already to some extent, or in theory. This is best illustrated by humankind’s history itself. „*Slavery, common for millennia, has virtually disappeared. Colonialism has given way to agreement on the right of self-determination. Aggression across recognized national borders, once a standard tool of state policy, now meets with international condemnation.*”¹⁷⁹ We could go on with relatively modern values, which are now evident for most of us, such as sustainable development, the equality of men and women and democratic government. It is as if the whole work of the United Nations had an underlying directive „*to improve the world, primarily by avoiding a repetition of the evils of the past.*”¹⁸⁰ Value evolution has even appeared in popular fiction recently: the novel (and movie) *Cloud Atlas*¹⁸¹ compares different eras of history, with main stories like the fight for abolishing slavery, the freedom from discrimination based on sexual orientation, and the rights of clones in the more distant future.

¹⁷⁴ Bernstoff, Jochen von; Venzke, Ingo: *Ethos, Ethics, and Morality in International Relations*, August 2011., Max Planck Encyclopedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e936?rskey=ruKacy&result=1&q=morality&prd=EPIL>

¹⁷⁵ Spijkers [2011] p. 73.

¹⁷⁶ Spijkers [2011] p. 7.

¹⁷⁷ Spijkers [2011] p. 6.

¹⁷⁸ Spijkers [2011] p. 15.

¹⁷⁹ Spijkers quotes Florini [2011] p. 51.; Florini, Ann [1996]: *The Evolution of International Norms*, p. 363.

¹⁸⁰ Spijkers [2011] p. 149.

¹⁸¹ Mitchell, David [2004]: *Cloud Atlas*. Random House Trade Paperbacks, New York.

If we apply the linear progress approach of the United Nations to the history of humanity, it can be viewed as the history of values, as they gain validity in society, and as peoples reach their goals related to these values, making them axioms.

VI. Conclusion

The Preamble of the U.N. Charter carries several layers of meaning. I hope that my paper has contributed to unfolding these layers and to the recognition of its indisputable value content.

We can find certain connections in the value-system of the United Nations, from morality, through human dignity, international law, as well as through freedom and security, through progress, harmonizing the individual and the community levels, up until happiness. These values have a long history, but it is as if the connections mentioned had been there all along, crystallizing one after another. In the combined recognition of global values, the founding fathers of the United Nations were in lead, which is reflected in the value constellation of the Preamble.

In my study, I integrated the values represented by the United Nations into a new system, creating links and temporality between them through inserting a psychological model into historical ones. The resulting theory does not give a detailed picture of the complex reality, it rather serves to follow the birth of values and their connections. Based on the explanations in the paper, we can obtain a clearer picture of the correlations between needs, progress and values. The discourse about human needs stands close to the views of Plato and Durkheim, and the description of the relationship between individual and society to that of Hobbes and Rousseau, but it would have been wrong to refer to them. I have not used those works when writing this paper, and my hypothesis does not completely overlap with their views.

The authors I have been referring to (Samuel Harris, Robert Wright, etc., and Steven Pinker belongs to this group as well) are representing moral realism, i.e. stand up for the objectivity of values. There is no unequivocal proof of the objectivity of values in moral philosophy. Some values, especially those defined by different ideologies, are inconsistent with each other. I think though, that as my study shows, these inconsistencies will gradually dissolve with scientific and technological progress, as well as with increasing integration in the international and societal dimensions. Integration implies that the value systems of individuals converge, and this convergence stretches along the United Nation's value system, i.e. the global values.

I think that the hypothesis introduced at the beginning of the study has been proved with success through explanation and analysis. The topic is worthy of further thinking, both in depth and breadth. What I mean by depth is that in the literature of values and their history there are further opportunities to support the outlined value system. And by breadth I mean that it is possible to integrate additional values into the system through further analysis, transparency for example. And when examining progress, another discipline can be used, namely international economics.

The relationship between freedom and security is a very interesting and unexplored area. I believe that a full understanding of these and similar values together with their context and influencing factors would lead to much more efficient organizing and governance, on the national, regional and international levels. Also, we would see the advantages and disadvantages of the different economic and political systems more clearly.

I find it an interesting opportunity for research to examine value-evolution in more classic literature. One of my relevant discoveries here is C. S. Lewis's *The Abolition of Man*¹⁸², which mentions the need for faith in objective values, the connection between self-interest and the interest of the community, the war of our instincts and the hierarchy of impulses. These latter two can be associated with the theory of the hierarchy of human needs, used in this study. It is interesting that both works (*The Abolition of Man* and Maslow's article) were published in 1943. Lewis also writes about the *Golden Rule* of reciprocity, mentioned earlier in my paper, he marks natural law and morality as the source of value judgements, uses the word axiom in connection with values, and raises the idea of the evolution of our value-systems. All this shows that my hypothesis can be found in other works, either in parts or in an initial phase.

The second figure is another illustration of value evolution's unfinished process. Although my paper did not attempt to predict the possible outcomes, the readers might rightly want to think them through. One example is the idealist concept of Herbert Spencer, according to whom the conflict of egoism and altruism will cease in the future, and they will even conjugate¹⁸³. This is somewhat consistent with the theory introduced in this paper, which describes the inseparability of community and individual, and their ever closer relationship. Meanwhile, the universe of the United Nations' values is in a constant expansion, but individuals do not have the right means yet to embrace the whole value world.

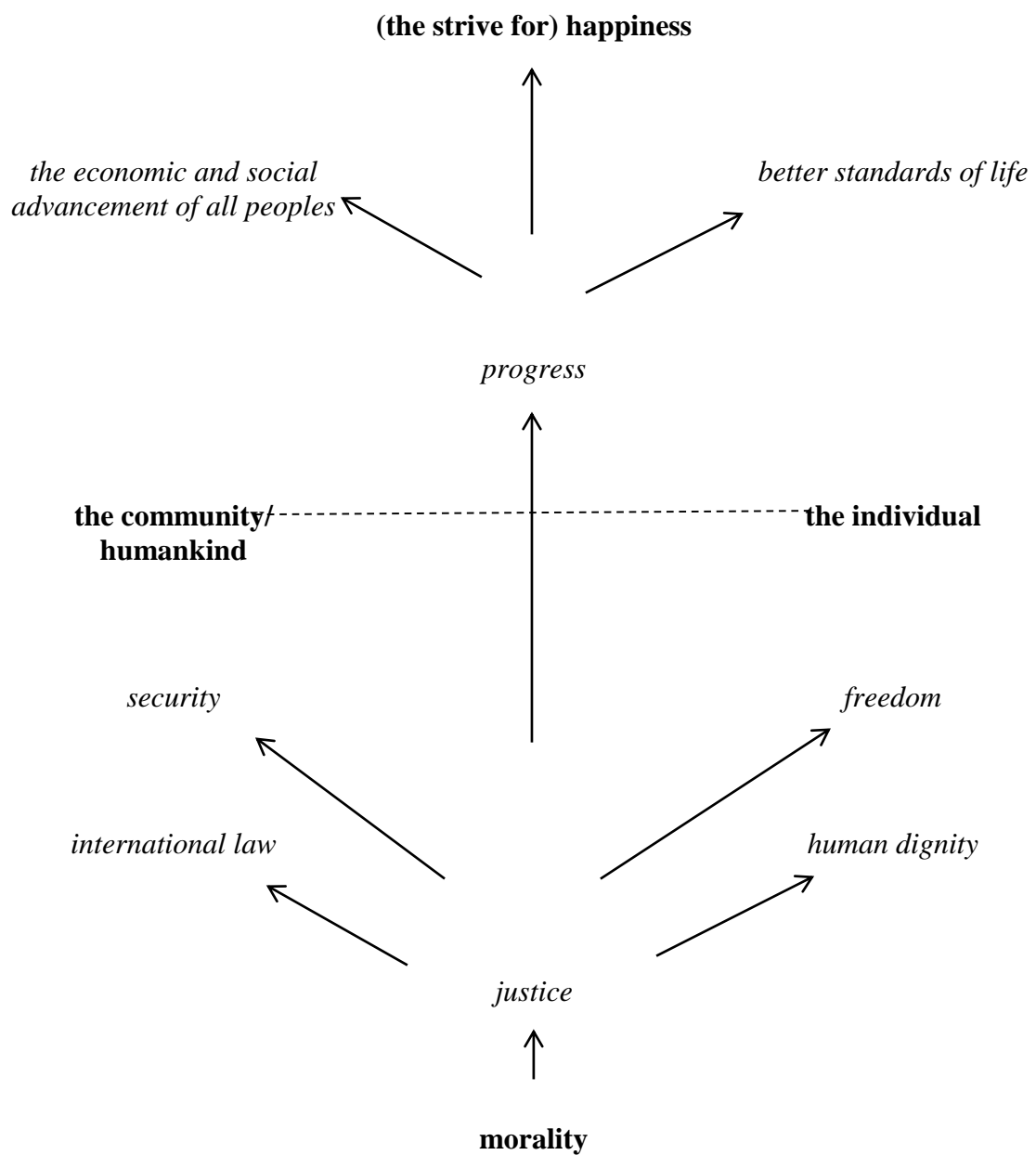
Finally, it is worth mentioning that based on my study, conclusions can not only be drawn regarding the values, but also regarding the United Nations. The study is proof that values are important, but so is the organization representing them. Although it was created after the most tragic events of humankind's history, and this has its imprint on the text of the Preamble, the United Nations – with its function, mission and philosophy – is timeless, essential and in some sense sacred.

¹⁸² Lewis, C. S. [1943]: *The abolition of man, or, Reflections on education with special reference to the teaching of English in the upper forms of schools*. HarperCollins, Glasgow
http://www.basicincome.com/bp/files/The_Abolition_of_Man-C_S_Lewis.pdf

¹⁸³ Ádám, Antal [1997]: *Értékek és értékelméletek. (Values and Value Theories)* Társadalmi szemle (Journal), 52/5; p. 6.

Appendix

1. figure: The system of global values



The figure shows, how **the main values** (morality, (the strive for) happiness, unity of the individual and humankind) enframe *the other values*.

2. figure: A simplified sketch of the historical milestones, during which the evolution of global values unfolded

1. People start the journey upwards on their pyramids.



2. They realise that without cooperation they cannot climb higher.



3. People start to cooperate, which strengthens values such as tolerance and others in connection with helping and respecting each other.



4. When people climb higher by cooperating, groups of people develop and start growing.



5. Resources get scarce, the growing communities meet each other.



6. People solve the problems of scarcity by integration and innovation or they are clashing and waging wars on one another.



7. People create closed social systems, and find balance between freedom and security for the first time.