



Do you want to know more about the legal framework underpinning a rights-based approach to care and support?

This document provides an overview of the legal framework which underpins a human rights-based approach to care and support in Ireland. This document also describes key human rights set out in the European Convention on Human Rights Act (ECHR) 2003 and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2006 which are applicable to health and social care services.

What is the legal framework?

The legal framework is the set of key pieces of legislation that are most applicable to health and social care services. The framework places a responsibility on Irish health and social care providers at an organisational and individual practitioner level to uphold the human rights of people using their services.

How can health and social care staff apply the legal framework in their day-to-day work?

This resource links the key human rights set out in the ECHR and the UNCRPD to the FREDA principles (Fairness, Respect, Equality, Dignity, and Autonomy), as FREDA is an internationally recognised approach to considering what human rights-based care means in practice.⁽¹⁾ The *Guidance on a Human Rights-based Approach in Health and Social Care Services* is structured using the FREDA principles and focuses on the ECHR and the UNCRPD as they are the most often cited and applicable to health and social care services. However, Ireland is signatory to a number of international human rights treaties, all of which are important in international human rights law. For further information see:

<https://www.ohchr.org/EN/countries/ENACARegion/Pages/IEIndex.aspx>

What pieces of legislation in Ireland are relevant to a human rights-based approach to care and support?

Key legal sources of human rights and equality obligations in health and social care in Ireland include:

The Constitution (1937)

The Irish Constitution is the fundamental legal document that sets out how Ireland should be governed and the rights of Irish citizens. All legislation passed by the Irish

Government must be compatible with the Irish Constitution. The Constitution sets out a number of fundamental rights, including the right to life, equality before the law, the right to a fair trial, the right to liberty, the right to freedom of expression, assembly and association, and the right to protection of the family.⁽²⁾

The Equal Status Acts 2000-2015

The Equal Status Acts 2000-2015 ('the Acts')* outline 10 grounds of discrimination, which are:

- age
- civil status
- disability
- family status
- gender
- being in receipt of rent supplement, housing assistance, or social welfare payments
- membership of the Traveller community
- race, colour or nationality
- religion
- sexual orientation.

Subject to certain exemptions, the Acts prohibit discrimination in access to and use of goods and services, including indirect discrimination and discrimination by association, sexual harassment and harassment, and victimisation. The Acts allow positive action to promote equality for disadvantaged persons or to cater for the special needs of persons. Services provided by the State (such as the Health Service Executive [HSE] and local authorities) are covered by the Acts.⁽³⁻⁶⁾ Appendix 1 of this document includes definitions of the different types of discrimination that are set out in the ECHR.

The Irish Human Rights and Equality Commission Act 2014

The Irish Human Rights and Equality Commission Act 2014 (IHREC Act 2014)⁽⁷⁾ provides for the establishment of the Irish Human Rights and Equality Commission.

* The Equal Status Acts 2000-2015 includes:

- Equal Status Act, 2000
- Equality Act, 2004
- Equal Status (Amendment) Act 2012
- Equality (Miscellaneous Provisions) Act 2015.

The Commission has a broad statutory remit in relation to the protection and promotion of human rights and equality under the IHREC Act 2014.

The Public Sector Equality and Human Rights Duty is set out in Section 42 of the IHREC Act 2014. This imposes a statutory obligation on public bodies in performing their functions to have regard for the need to:

- eliminate discrimination
- promote equality of opportunity and treatment for staff and persons to whom it provides services
- protect the human rights of those to whom they provide services, and staff when carrying out their daily work.

The Assisted Decision-Making (Capacity) Act 2015

The Assisted Decision-Making (Capacity) Act 2015 ('the 2015 Act')⁽⁸⁾ provides a modern statutory framework to support decision-making by adults whose capacity is in question or may be called into question. It reforms Ireland's existing capacity legislation, some of which had been in place since the 19th century.

The 2015 Act allows adults to enter into legally binding arrangements to be assisted and supported in making decisions about their personal welfare and their property and affairs. The 2015 Act also provides for advance planning by adults who have capacity, by way of expanded enduring powers of attorney and advance healthcare directives.

The 2015 Act establishes a statutory presumption of capacity and sets out a functional test for the assessment of a person's capacity where concern exists. A person is determined to lack capacity to make a decision if they are unable to:

- understand the information relevant to the decision
- retain that information long enough to make a voluntary choice
- use or weigh that information as part of the process of making the decision
- communicate their decision in whatever way they communicate (this may include using any assistive measures, for example talking, writing, using sign language, assistive technology or any other means).

What pieces of international legislation are relevant to a human rights-based approach to care and support?

Key legal sources of human rights and equality obligations in health and social care internationally include:

The European Convention on Human Rights Act 2003

The European Convention on Human Rights (ECHR) is an international treaty, drafted in 1950, to protect human rights and political freedoms in Europe.⁽⁹⁾ States which have signed up to the ECHR are bound by international law to secure for everyone within their jurisdiction the rights and freedoms that it sets out. The Convention consists of three parts. The main rights and freedoms are contained in Section I, which consists of Articles 2 to 18. Section II (Articles 19 to 51) sets up the European Court of Human Rights and its rules of operation. Section III contains various concluding provisions.

Up to 2003, any individuals in Ireland who felt their human rights had been breached had to seek redress in the European Court of Human Rights in Strasbourg. In 2003, the European Convention on Human Rights Act removed that process by incorporating the main provisions of the ECHR and making them enforceable in Irish law, allowing these rights to be considered by Irish courts. The ECHR Act 2003 means that, subject to certain conditions, Irish courts are obliged to interpret any law in a way that is compatible with the ECHR.

The Charter of Fundamental Rights of the European Union 2000

The Charter of Fundamental Rights of the European Union brings together the fundamental rights of everyone living in the European Union.⁽¹⁰⁾ It was introduced to bring consistency and clarity to the rights established at different times and in different ways in individual EU Member States. The Charter contains 54 Articles on rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. The Charter sets out the full range of civil, political, economic and social rights based on:

- all the rights found in the case law of the Court of Justice of the EU;
- the rights and freedoms enshrined in the European Convention on Human Rights; and
- other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments.

The United Nations Convention on the Rights of Persons with Disabilities

International treaties that have evolved from the Universal Declaration of Human Rights include the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This was adopted in 2006 at the United Nations Headquarters in New York, and was opened for signature in 2007. It was ratified in Ireland in 2018. The UNCRPD is closely related to a broader human rights agenda, for example:

- involvement in advocacy endeavours striving for access to justice for people with disabilities (Article 13 UNCRPD)
- equal recognition before the law (Article 12 UNCRPD)
- freedom of expression and opinion, and access to information (Article 21 CRPD), work and employment (Article 27 UNCRPD)
- participation in political and public life (Article 29 UNCRPD).⁽¹¹⁾

What are the key human rights relevant to health and social care services in the ECHR and the UNCRPD and how are the rights linked to the FREDA principles?

The key human rights relevant to health and social care services in the ECHR and the UNCRPD are set out below. These rights have been linked to the FREDA principles which can be used to help staff consider what a human rights-based approach means in practice. Figure 1 includes a description of each FREDA principle and Figure 2 specifically links each principle to the key human rights in the ECHR and the UNCRPD.

Right to life

This relates to Article 2 of the ECHR and Article 10 of the UNCRPD. This means that health and social care services will fulfil their obligation to protect the right to life and to refrain from unlawfully interfering with the right to life. It covers situations where a person's life may be at risk and decisions are being made to withdraw life-sustaining treatments or not to resuscitate a person. It can also relate to a person experiencing suicidal thoughts or posing a risk to other people's lives.

Prohibition of and freedom from torture or inhuman or degrading treatment or punishment

This relates to Article 3 of the ECHR and Articles 15 and 16 of the UNCRPD. This is relevant where a person is at risk of serious harm including where a person is neglected or cared for in a way that causes serious harm, suffering or humiliation. It

can be relevant where someone receives continuing treatment that causes serious harm and suffering or where a person's need for pain relief is not assessed and responded to.

Right to liberty and security

This relates to Article 5 of the ECHR and Article 14 of the UNCRPD. This means that a person's liberty may not be interfered with without the legal power to do so based on a capacity assessment or risk of immediate harm to self or others.

Right to a fair trial and access to justice

This relates to Article 6 of the ECHR and Article 13 of the UNCRPD. This covers all aspects of procedural fairness. It is relevant when other rights, such as the right to liberty or the right to respect for private life, are at issue. It includes the right to participate effectively in proceedings and in some cases a public hearing, and the right to legal representation.

Right to respect for private and family life

This relates to Article 8 of the ECHR and Articles 19, 22 and 23 of the UNCRPD. Private life can be interpreted to include personal choices, relationships, physical and mental wellbeing and access to personal information. It includes confidentiality and privacy of medical information. It also relates to supporting a person to communicate and participate in community life.

Right to freedom of thought, conscience, religion, expression and opinion

This relates to Articles 9 and 10 of the ECHR and Articles 3 and 21 of the UNCRPD. This right protects everyone's right to freedom of thought, conscience, religion, expression and opinion. It includes the right of people to put thoughts and beliefs into action either alone or in a community with others. Both religious and non-religious beliefs are protected, as is the right to change religion or belief. For a belief to be protected, it must be serious, concern important aspects of human life or behaviour, be sincerely held, and be worthy of respect in a democratic society. This right also relates to the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of a person's choice.

Prohibition of discrimination

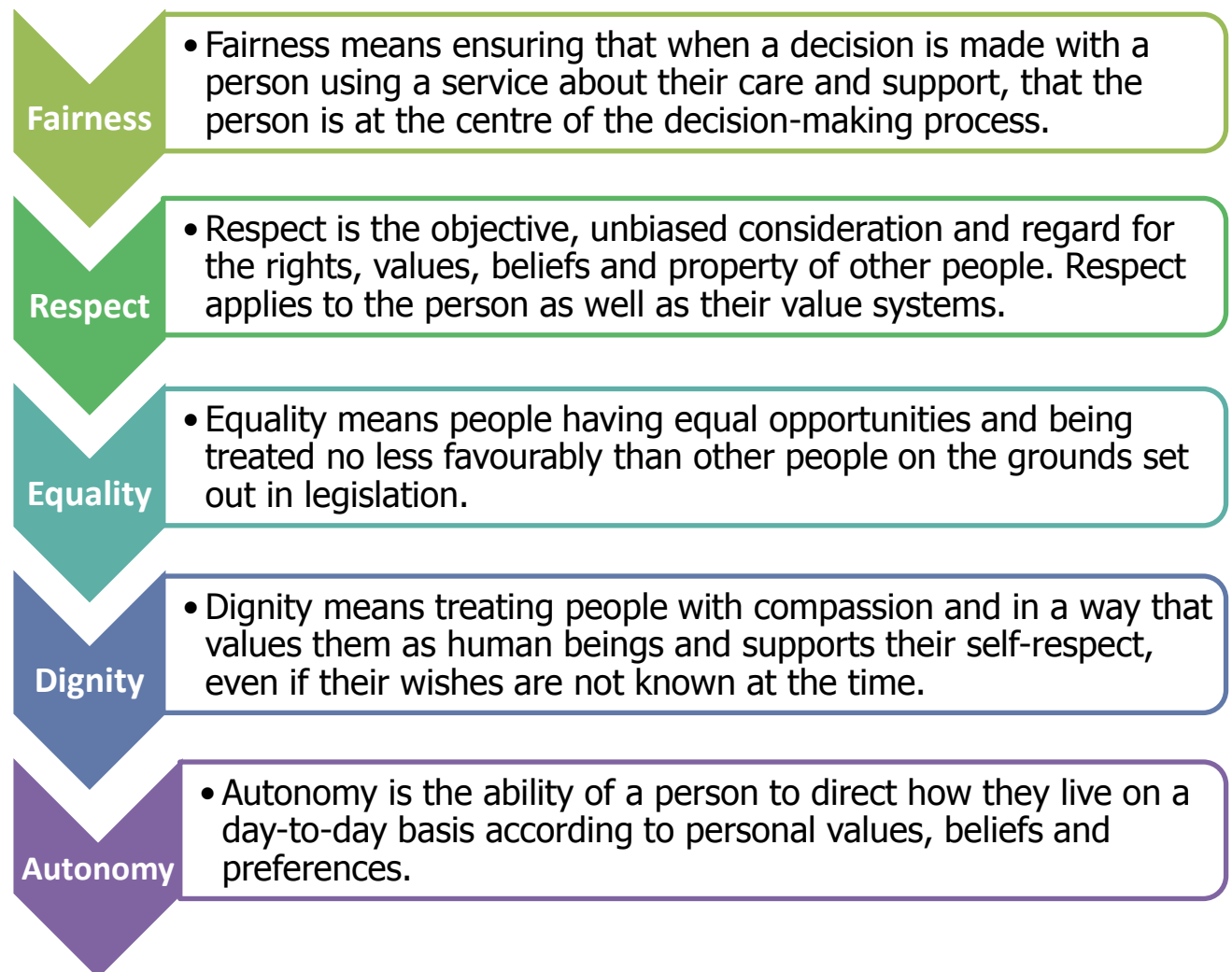
This relates to Article 14 of the ECHR and Articles 3, 5, 17 and 25 of the UNCRPD. This can relate to situations where a person is denied access to services or treatment on any ground covered by the acts such as sex, race, colour, language, religion, political or other opinion, national origin, association with a national minority, property, birth or other status. It also relates to people being treated differently to others under

comparable circumstances on account of their characteristics, or where people with very different characteristics are treated the same. This can lead to unequal outcomes. In an Irish context, prohibition of discrimination also relates to the Equal Status Acts 2000-2015. The grounds for discrimination set out in the Equal Status Acts 2000-2015 are narrower than those set out in the ECHR.

Protection of property

This relates to Article 1 of Protocol 1 of the ECHR and Article 12 of the UNCRPD. A person is entitled to the peaceful enjoyment of their possessions. Possessions and property have a wide meaning, including land, houses, leases, money and personal property. A person's property or possessions and the way they use them cannot be interfered with, except in the public interest and when subject to the conditions provided for by law.

Figure 1: The FREDA principles



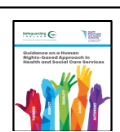
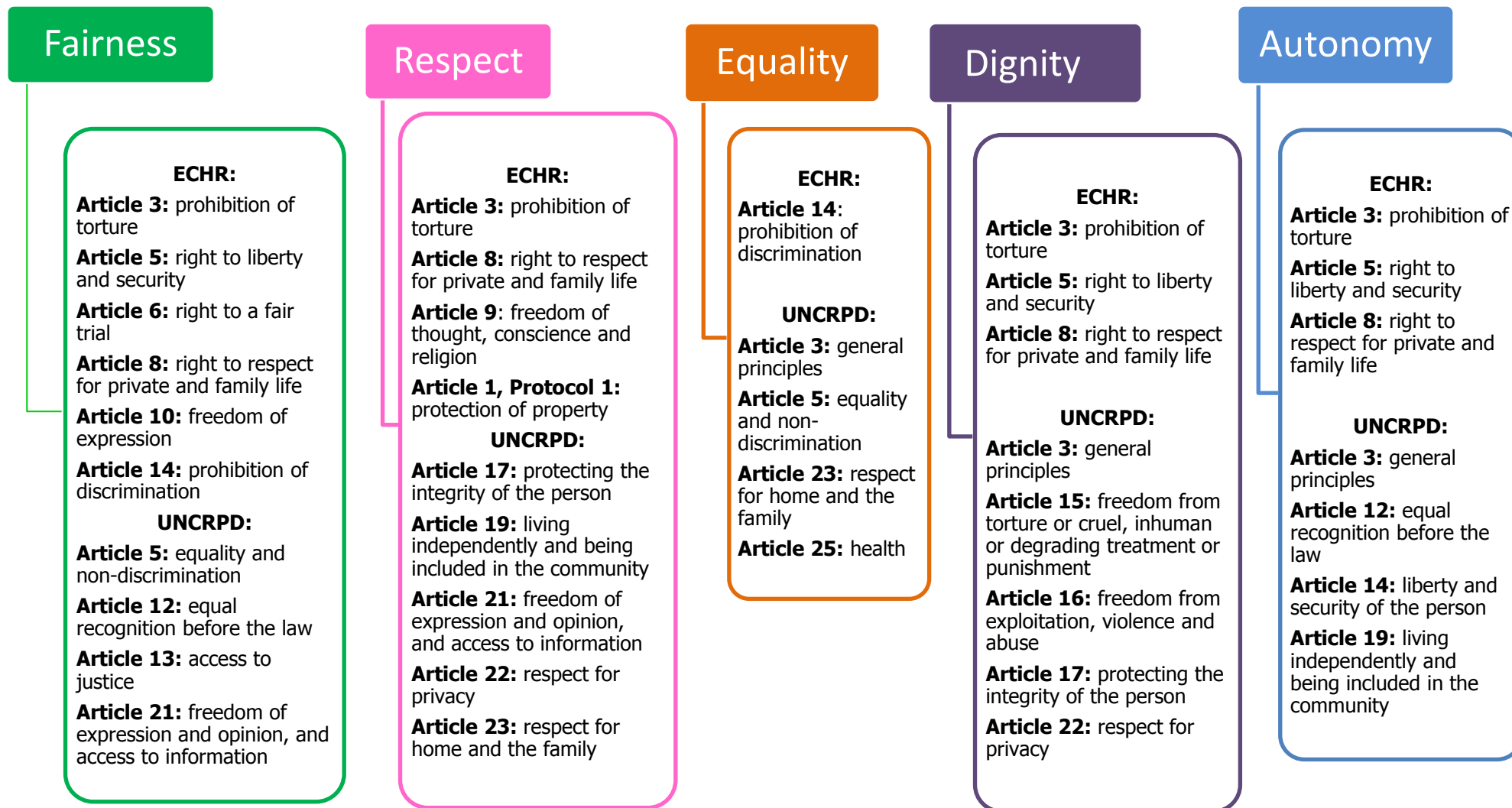


Figure 2: Linking the European Convention on Human Rights Act 2003 and the United Nations Convention on the Rights of Persons with Disabilities 2006 to the FREDA Principles



Appendix 1: Discrimination as set out in the ECHR

Direct discrimination happens when a person is treated less favourably than another person in the same situation under any of the grounds covered by the ECHR, for example sex, race, colour, religion, language, political or other opinion, national or social origin, association with a national minority, property, birth or any other status. For example, this would occur if a Muslim man in a home care setting did not receive halal meals but his Jewish neighbour received kosher meals from the same home care agency. The Muslim man is being discriminated against in the enjoyment of his right to practice his religion and this violates Article 9 of the ECHR.

Discrimination by association can occur when a person is treated less favourably simply because they are associated with or connected to another person. An example of this would be if a decision is made to delay the discharge of a person with a drug addiction from hospital because they associate with other people with drug addictions. This discriminates against a person's right to freedom as protected by Article 5 of the ECHR.

Indirect discrimination happens when someone is treated in the same way as others without taking into account that person's different situation. The individual or group of people are placed at a disadvantage as a result of blanket policies, conditions or rules which they might find hard to satisfy as a result. For example, indirect discrimination can occur if activities or services are unsuitable or difficult for older people to access.

References

- 1) Curtice, M, Exworthy, T. FREDA: a human rights-based approach to healthcare. *The Psychiatrist*. 2010;34(4):150-156.
- 2) The Constitution of Ireland, (1937). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/cons/en/html>
- 3) Equal Status Act, (2000). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html>
- 4) Equality Act, (2004). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2004/act/24/enacted/en/html?q=Equality+Act+2004>
- 5) Equal Status (Amendment) Act, (2012). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2012/act/41/enacted/en/html?q=Equal+Status+Amendment>
- 6) Equality (Miscellaneous Provisions) Act, (2015). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2015/act/43/enacted/en/html?q=Equality+Miscellaneous+Provisions>
- 7) Irish Human Rights and Equality Commission Act, (2014). Retrieved on 25th October 2019 from: <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>
- 8) The Assisted Decision-Making (Capacity) Act, (2015). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/html>
- 9) The European Convention on Human Rights Act, (2003). Retrieved on 17th October 2019 from <http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/html>
- 10) Charter of Fundamental Rights of the European Union, (2012). Official Journal of the European Union. Retrieved on 17th October 2019 from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
- 11) The United Nations Convention on the Rights of Persons with Disabilities, (2006). Retrieved on 17th October from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en