

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND DEVELOPMENT OF INTERNATIONAL LAW (60th ANNIVERSARY OF ADOPTION)*

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On December 10, 1948, the UN General Assembly solemnly adopted the Universal Declaration of Human Rights. Since then this date is annually marked all over the world as the Day of human rights.

Adoption of the Universal declaration, a document which for the first time consolidated the list of fundamental human rights and freedoms, has become an important stage in the development of interstate relations. This major document has influenced and continues to influence not only the human rights sphere, but also the development of international law as a whole. Practically any branch of the contemporary international law develops under the direct influence of the Universal declaration. If such branches as the law of international security, international humanitarian law, international criminal law, international environmental law are under a direct influence the Universal declaration, many other branches experience its indirect influence. This influence in the globalizing world the XXI century does not only decrease but in many respects it becomes even deeper, having extended to various spheres of interrelations of the member states of the United Nations Organization, which as it was repeatedly underlined in various UN documents, sets an objective «to place a human being in the centre of its activity». Thereby the influence of the Universal declaration will be ever extending and getting deeper. The working out and adoption of this Declaration have shown that positions of states on various issues of the international relations can not only disagree, but also to be basically different.

However in the presence of good will and desire they are successfully overcome. It is especially important to underline today when in the modern globalizing world the mankind has faced not only with old threats, but also with new challenges for the world and universal secu-

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rity. Especially alarming are open declarations of the right to undertake unilateral preventive strikes with the use of nuclear weapon on the territories of other states. Thereby all fundamental human rights and freedoms, including the right to life are practically denied.

60 years is a rather short historical period, however it gives us sufficient grounds to review some results of states cooperation in the sphere of human rights, to think over the perspectives.

The preparation of the Universal declaration of human rights, which was carried out in the atmosphere of an uneasy diplomatic struggle, has shown the complexity of discussed problems and discrepancy of positions of various groups of states.¹

The western powers were guided by the French Declaration of the rights of man and of the citizen of 1789, Constitution of the USA of 1787 and other legislative acts which have proclaimed a natural character of fundamental human rights and freedoms which belong to everyone from the moment of birth. The named documents contained basically the list of civil and political rights. Therefore the western countries originally objected to the inclusion in the developed draft of rights of a social and economic character.

The Soviet delegation, referring to the Constitution of the USSR of 1936, insisted on inclusion in the draft of a broad list of social and economic rights, and also articles devoted to the right of each people and each nation to self-determination, to equality of the rights of each people and each nationality within a state. At the same time the Soviet Union made absolute the principle of the state sovereignty and objected to the inclusion in the Universal declaration of such civil rights as the right of everyone to freely leave the country and to come back (and some other rights).

When discussing the right of each person to property, approaches of states belonging to different political systems sharply divided. The position of the USSR was determined not only by the above mentioned Constitution of 1936 and the basic laws of the country, but also by ideological considerations, as well as by so-called «class approach» to the solution of issues under discussion. The Soviet Union attempted to caution developing countries against the capitalist way of development,

¹ For more in detail about the preparation of the Declaration see: *Movchan A. P.* International Protection of Human Rights. M., 1958. P. 41-145. (in Russian); *Ostrovsky Ya.A.* The UN and Human Rights. M., 1965. P. 40-122. (in Russian); *Kartashkin V.A.* The Universal declaration and human rights in the modern world // Soviet Year-book of International Law, 1988. M., 1989. P. 39-50. (in Russian).

to convince all nations of the world that only socialism is able to ensure fundamental human rights and freedoms, to bring the international community to peace and progress. It is necessary to note, that the position of the western countries was also in many respects determined by ideological considerations though they did not play a dominating role.

The Soviet Union opposed recognitions of natural, inherent character of human rights, denied a state duty to protect such rights. The approach of the USSR was of a positive character, based on the fact that each human being receives his rights exclusively from the state which at its own discretion fixes them in the legislation.

The Universal declaration speaks of such categories as «justice», «justice principles», «political, economic and social progress», «equal rights and equality» etc.

The Soviet Union considered that there is no freedom in general as well as equality and democracy, and the recognition of private property means exploitation and negation of freedom and equality.

Despite essentially different estimations and conception of socio-political categories, the UN member states worked out the Universal declaration of human rights, and then they adopted it. How could they manage to reach the consent on those issues? When working out and adopting the Universal declaration, as well as many other documents in the field of human rights, states with different political systems meaningfully did not specify the content of many discussed concepts and did not give them class definitions. These terms were interpreted from various positions; however their concept was filled with both all-democratic and universal sense acceptable for all. On the one hand, the West considered, that social progress, human rights and freedoms might be provided only in the conditions of market economy, its development and strengthening, and the Soviet Union proceeded from the assumption that to achieve that objective the capitalist society should be liquidated and the socialism and communism society should be built. On the other hand, the countries with different political systems recognized that fundamental laws and freedom can be provided through the development of social progress within the limits of the existing system. In many cases the contracting parties proceeded from a possibility of different interpretations of a concrete content and means of realization of a number of human rights and freedoms.

Different (and often opposing) positions of the West and the socialist countries in the course of the discussion of the Universal declaration of human rights have led to the fact that many articles of that universal document are of a general character and have no common borders.

At the same time some articles of the Universal declaration are quite concrete and remind provisions of constitutions and legislative acts of various countries of the world as formulating their proposals, many states actually used norms of national constitutions and other legislative acts.

After a careful consideration and long discussion of separate articles of the Universal declaration of human rights it was adopted on December 10, 1948 by 48 votes of the UN member states with 8 abstentions. The date of adoption of the Universal declaration of human rights is annually marked all over the world as the Day of human rights. Speaking on motives of voting, the representatives of the USSR and other socialist countries noted, that they abstained because the adopted document infringes the state sovereignty, does not contain some provisions proposed by them, and also does not guarantee realization of fundamental rights and freedoms.

The Universal declaration includes a broad list of both civil and political, and socio-economic and cultural rights. Recognizing the natural character of human rights, the Declaration in its first article which author was the well known French scientist Rene Kassin, proclaims, that «All human beings are born free and equal in dignity and rights».

The Universal declaration was adopted in the form of a UN General Assembly resolution and therefore it is of a recommendatory character only. At the same time when evaluating a juridical validity of its provisions it should be considered, that in international law along with the treaty a considerable role is played also by the custom which is formed as a result of the international practice of states and is gradually admitted by them as a rule of law. The rights and freedoms proclaimed in the Universal declaration are considered now by the overwhelming majority of the states as legally binding customary or contractual norms. Constitutions of many countries of the world directly refer to this document and include a number of its positions. The principles and norms stated in the Declaration are constantly developing in the course of the conclusion of new international agreements that testifies to the realness of this document and its great significance for the development of interstate relations.

Adopted in 1948 as a «standard to which all people and all states» should aspire, the Universal declaration is now one of the basic sources of law, it serves as a model which is widely used by many countries for working out of separate provisions of constitutions, various laws and documents concerning human rights. As it is underlined in one of the studies, «not less than 90 national constitutions adopted after 1948 con-

tain a list of fundamental rights which either reproduce provisions of the Declaration or are included in them under its influence».

Thus, in Belgium, the Netherlands, India, Italy, the USA, and Sri Lanka the Declaration provisions are widely used for interpretation of domestic laws concerning human rights. The courts of the named states constantly refer to them. A number of decisions of the Constitutional Court of Russia refer to the Universal declaration of human rights for the substantiation of decisions taken. The majority of states consider the Declaration as a document containing customary norms of international law, the overwhelming majority of which have become «jus cogens». Such understanding of the Declaration is especially important because some countries are not parties to the Covenant on civil and political rights, the Covenant on economic, social and cultural rights. Therefore they are obliged to be guided by provisions of the Universal declaration of human rights.

Fundamental human rights and freedoms fixed in the Universal declaration of human rights, in the Covenants on human rights and in a number of other key international documents, being universal and comprehensive, impose firm legal obligations on the state-participants of the international relations. Universalization, as professor Marchenko N.M. wrongly considers, does not at all mean «an adequate susceptibility to human rights and their identical applicability both on the global and on each of regional levels».² The UN Charter, a basic international treaty, in the chapter VIII «Regional arrangements» recognizes and fixes a specificity of regional arrangement which is appropriate for regional actions taking into account specificities of their development.

Universalization means the recognition of fundamental human rights and freedoms as compulsory and their similar, but not always identical interpretation by the participants of international relations. Universal human rights do often not coincide with the regional ones. In many regions, proceeding from the specificity of their development, the emphasis is made on individual rights and freedoms (collective rights), and some of them are exposed to those or other restrictions. It does not belittle the universalization and a general character of fundamental rights and freedoms fixed in the Universal declaration of human rights, Covenants on human rights and other key international agreements. Universalism of fundamental human rights clearly manifests itself in

² *Marchenko N.M.* Problem of universalization of human rights in the conditions of globalization // *Human rights and the modern state — legal development* / Ed. in charge A.G. Svetlanov. M., 2007. P. 40-57. (in Russian).

the fact that the most serious infringements of human rights and freedoms «of concern to the international community as a whole» are considered by the contemporary international law as crimes.³ These crimes falling under jurisdiction of the International Criminal Court are expressed in scandalous, mass and rough infringements of fundamental human rights and freedoms, which are recognized by the international community as universal, having a general character.

Thereupon it is necessary to note an inaccuracy of statements of some scientists and statesmen who deny universalism and generality of fundamental human rights and freedoms. Many of them declare, that the Universal declaration of human rights and some other international legal documents allegedly fix basically western liberal and neo-liberal views and conceptions of the rights and freedoms and they do not consider at all the practice and values of other nations.⁴ There is nothing more erroneous, than similar statements. It is enough to remind only, that the Covenants on human rights which in a contractual form consolidate rights and freedoms proclaimed in the Universal declaration were worked out and adopted by states of all regions of the world. Thus the majority of them consisted of not western states, but Muslim and other developing countries. By the way, the overwhelming majority of them became parties to those international treaties.

Therefore not only the coincidence of considerable number of rights in the international, European, Latin American and Islamic documents on human rights, but also the presence in them of many general and concrete wordings is not casual. It is impossible to deny, that both Latin American and African states have apprehended some western ideas, having founded, for example, regional courts on human rights, but they have done it meaningly and voluntary, not under compulsion of any states. Speaking about universalization and generality of human rights it is impossible to deny either certain distinctions in the approach of some countries, especially Islamic countries, to the interpretation of some rights and freedoms.

But these distinctions are gradually erased and in the globalizing world an inevitable progress in taking place and in many different countries both legal thought and position coincide with universal tendencies and approaches to human rights. This coincidence of positions

³ Article 5 of the Statute of the International criminal court.

⁴ *Shestakov L.N.* Islam and human rights // Bulletin of the Moscow State University. Series 11: Law. 1997. № 5. P. 60-68. (in Russian); *Marchenko N.M.* Problem of universalization of human rights in the conditions of globalization... Op. cit.

has given the chance to different states, often pursuing inconsistent interests, to work out during 60 years passed since the adoption of the Universal declaration, many international treaties on which basis the cooperation between states develops. Among them are 9 key treaties in the sphere of human rights according to which conventional control bodies have been created.

Progressive development of the contemporary international law would be impossible without the basis which has been laid in the Universal declaration. This major international treaty for many years ahead will influence the development of international law in the contemporary globalizing world.