

The Universal Declaration of Human Rights: The Worldwide Humanism Manifesto*

The history of mankind knows very few documents that would significantly affect the development of world civilization. The *Universal Declaration of Human Rights* is one such document. More than 60 years have passed since the date of its adoption, a period that is very negligible in historical terms; however, few can deny the eminence of this brief international document. Similarly, it is doubtful whether anyone can name any other legal instrument, adopted in the last 63 years, that would come close to the *Universal Declaration of Human Rights* in terms of its significance. Circumstances were such that it became a unique political and legal guide for the future of mankind, which could have lost it and placed itself on the verge of destruction during World War II, and later – during the cold war. Unfortunately, as often happens, human civilizations only gained experience, having gone through victims and bloodshed.

The significance of the *Universal Declaration of Human Rights* for modern human civilization cannot be realized without understanding of the worth of human rights for the future development of mankind. Comprehension of such worth on the level of the world community took place during World War II. This war was the first and last armed attempt of totalitarian states to reshape the world map. This war was also the one with the most bloodshed in the entire history of mankind. The extent of human losses was such that to date, updated calculations number tens of millions. The development of new types of weapons also reached an unprecedented scale at that time, and nuclear weapons were already used towards the end of the war.

World War II forced mankind to search for reliable and predictable political and legal safety devices so that no new world-scale armed conflict could be unleashed. At that time, the most experienced intellectuals were searching for an acceptable solution. Hence, the Declaration has become the product of the thoughts, hopes and expectations of mankind. As everybody knows, the war was a result of the totalitarian nature of the states that unleashed it. Therefore, for politicians from Western democracies, who participated in establishing the United Nations, the essence and political priorities of totalitarianism were clear, and these concepts only strengthened during World War II.

Hence, the *Universal Declaration of Human Rights* was to become an instrument of the self-preservation of mankind from fascism, totalitarianism, and dictatorship. It is a call to living in a society, in which human rights are complied with that the *Universal Declaration* should be regarded, which is primarily a call for people to live in under conditions of democracy, under democratic laws and developing democracy. Therefore, compliance with the *Declaration* is a qualitatively new dimension of dignity, new quality of life, and a new dimension of human consciousness and being in the world, that had to make a conscious choice after a horrific world war. The history of the preparation and

* Doctor of Legal Sciences, Professor, Member of the National Academy of Sciences of Ukraine, Rector of Yaroslav Mudryi National Law University, President of the National Academy of Legal Sciences of Ukraine.

adoption of the *Universal Declaration* was not easy. It is doubtful whether it would have come into existence if the rule about the worth of human rights was not included in the UN Charter first. One can only guess how delicate at that time was the very attempt to raise human rights issues at negotiations with a totalitarian superpower – the Soviet Union. This subject was also dangerous for both the U.S.A. and the United Kingdom, where the problem of observing human rights was somewhat acute at that time. Nevertheless, very difficult talks in 1944 and 1945 ended up in including the Organization's human rights protection powers in the UN Charter and identifying UN bodies in charge of their exercise. One of the main objectives of the UN was 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». The UN was expected to attain these objectives by coordinating «international co-operation... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion» (Article 1(3)) and assisting the «universal observance of human rights and fundamental freedoms» (Article 55). This was the wording about human rights in the Charter that has enabled the United Nations to adopt one of its most significant instruments, the *Universal Declaration of Human Rights* (hereinafter, the «*Declaration*»).

Work on the preparation of the *Declaration* commenced on February 16, 1946 almost immediately after the establishment of the UN in the autumn of 1945. This fact alone is sufficient to assess how seriously the drafting of the *Declaration* was taken then. A *Commission on Human Rights* was specially established, comprised of representatives from 18 states, including Ukraine. An ad-hoc working group was set up to prepare the *Declaration*, and its members were *Ms. Eleanor Roosevelt* (U.S.A.), *Mr. René Cassin* (France), who was entrusted with preparing the initial text of the *Declaration*, and *Mr. Charles Malik* (Lebanon) who later replaced *Ms. Eleanor Roosevelt*. The *Commission* completed its work in June 1948, and the text of the *Declaration* was submitted to the *UN General Assembly* for discussion and approval in December of the same year.

Did this document come easy to the world community? Of course not. Work on the text of the *Declaration* continued for two years. Its text was prepared under conditions of a persistent and fierce diplomatic struggle between representatives of different philosophical, ideological, and religious views. It is worth simply recalling the activity of the *Third Committee* of the *UN General Assembly* (consisting of 58 UN member-states) which held 85 meetings related to the draft *Declaration* from September to December 1948, and voted 1400 times, or actually on each word and each correction. However, following its three-month activity, the *Third Committee* of the *UN General Assembly* was able to agree the text of the *Universal Declaration of Human Rights*. At its 183rd plenary meeting, the *UN General Assembly* adopted the *Universal Declaration* by an absolute majority of votes: of the 56 states that took part in the voting, 48 voted «for», and only 8 states abstained. They included the *Byelorussian SSR*, *Poland*, *Saudi Arabia*, *the US*, *the Ukrainian SSR*, *Yugoslavia*, and *the Union of South Africa*.

What are the reasons behind the special importance of the *Declaration* in more than 60 years after its adoption?

In terms of its volume, the *Declaration* is a brief document. There are only 30 articles listing civil, political, economic, social, and cultural human rights. From the present-day heights, one can assess this document and the essence and scope of the rights and

freedoms formulated in it objectively and comprehensively. Generally, in spite of different points of view, strong ideological antagonisms, and particularities of cultural and religious system, the developers of the *Universal Declaration*, were finally able to formulate such text that met with the international community's approval.

In general, the legal essence of the *Declaration* is multifaceted. However, several main ideas, lying in the basis of the document, can be singled out.

First of all, the *Declaration* cannot be viewed as an ordinary, though authoritative, list of human rights. It is an anti-totalitarianism code, compliance with the norms of which is incompatible with the existence of any model of totalitarian or fascist regime. This was the idea that was laid in the basis of the UN *Charter*, and the struggle against totalitarianism or fascism is the accomplishment of this aim, for the purpose of which the UN was established – «to save succeeding generations from the scourge of war». The Organization, which considers gross and massive violations of human rights to be a threat to peace, has reaffirmed this connection on numerous occasions. Hence, human rights are the common value with which the preservation of international peace under the UN *Charter* is associated. Recognizing man as the highest social value, the *Declaration* calls to the mankind for self-preservation, search for the future, improvement of the quality of life, and greater freedom.

The *Declaration* lays down the fundamental principles of the international understanding of human rights that have become the foundation of international law. The *Declaration* specifies the equality of all human beings in dignity and rights as a key element of recognizing human rights and freedoms: «All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood» (Article 1). Another integral element of understanding human rights is the commonality of rights, that is, the appurtenance of all rights set forth in the *Declaration* to everyone; a person should be entitled to them regardless of their race, sex, language, religion, political opinion, social origin, nationality, residence on the territory of an independent state or one subject to it, or one that is not self-governing (Article 2). The third integral element of the international understanding of human rights is the unlimited scope of rights set forth in the *Declaration*. The *Declaration* affirms and sets forth the minimum level of human rights and fundamental freedoms. The interrelation of all human rights is another important element (Article 28). Therefore, the violation of one right may trigger a breach of the entire system of human rights with tragic effects for mankind in its netirety. It is no coincidence that *Eleanor Roosevelt* called the *Declaration* «The Magna Carta for all the mankind» (thus, the *Declaration* is sometimes called the Charter of Human Rights). Finally, the *Declaration* recognizes the general possibility to legally limit human rights which was subsequently reflected in all international treaties on human rights. Interpreting human rights as the integral property of an individual, the *Declaration* sets forth their predominance. Thereby, the traditionally exclusive role of the state in determining an individual's status is undoubtedly limited by the obligation to fix human rights in the law and guarantee them in a due manner.

For the first time ever, the *Declaration* offered the classification of human rights and fundamental freedoms by dividing them into civil and political rights on the one hand and social and economic rights on the other. In this respect, Articles 3 and 22 are key ones. Article 3 provides a general concept of civil and political rights that include the

right to life, liberty and personal inviolability. Moreover, civil rights are not linked to one's citizenship: they are human rights that a person has regardless of his/her whereabouts. Article 22 is introductory and generalizing with respect to social and economic and cultural rights.

It is the *Declaration* with which the origin of a fundamentally new attitude towards human rights as a matter of concern for not only separate states but also for the mankind as a whole is associated. Taking the human rights problem outside a «state's exclusive internal competence» has provided a possibility to transform the international protection of human rights into a factor of major politics and subsequently establish international bodies to monitor the observance of human rights both on the UN and regional level. The *Commission on Human Rights* started to perform such function in the UN, and after the effectiveness of the *International Covenant on Civil and Political Rights*, another body, the *Human Rights Committee*, came into being. The *European Court of Human Rights* is such an international monitoring body in *Europe*. It is currently difficult to overestimate the significance of these international bodies, with which millions of people associate their last hopes for justice.

Most modern politicians and legal experts view the *Declaration* as a document setting forth customary-law code of human rights. As to its form, the *Declaration* is, in fact, a UN *General Assembly* resolution and, as such, cannot be regarded as an international treaty or give rise to international-legal obligations. However, the extremely high humanistic contents of the *Declaration*, its standing as a document that has affected the destiny of the world, states, and mankind after World War II, and its indisputable role in the high ascent of the value of human dignity do not objectively allow viewing the *Declaration* as an ordinary international recommendation. Moreover, the very contents of the *Declaration* differ from the spirit of advisory rules. As to their nature, some of its provisions are imperatives laid down in a mandatory key. This is true not only for the content of human rights but also for the formulation of state duties as is done in Article 30, prescribing in an imperative form that no state or specific person may «perform any act aimed at the destruction of any of the rights and freedoms set forth herein.»

The general recognition of the *Declaration* has contributed to a radical change in its status. Participants of the *Tehran Human Rights Conference* (1968) formally declared it binding and invited any states that are not parties to *International Covenants on Human Rights* 1966 to be guided by the text of the *Declaration* as standard for the treatment of the population. An absolute majority of states participating in the *World Conference on Human Rights* (1993) also did not support those who opposed the concept of the universal nature of human rights as set forth in the *Declaration*. In the final document of the conference, the *Vienna Declaration and Programme of Action*, the principle of the universal nature of human rights was reaffirmed and extended. As was stressed in that document, «All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights.»

Many international treaties on human rights based on the *Declaration* were concluded thereafter. The *Universal Declaration* has become the root of international human rights

rule-making. Fundamental human rights and freedoms are set forth in universal (*International Covenant of Civil and Political Rights* 1966; *International Covenant on Economic, Social and Cultural Rights* 1966) and regional (*European Convention on Human Rights and Fundamental Freedoms* 1950, *American Convention on Human Rights* 1969, and *African Charter on Human and Peoples' Rights* 1981) international treaties. The *United Nations*, *International Labour Organization*, and UNESCO conventions that govern the rights and freedoms of specific groups of the population (UN *Convention on the Political Rights of Women* 1952, UN *Convention on the Rights of the Child* 1989, UNESCO *Convention against Discrimination in Education* 1960, ILO *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* 1975, etc) have made a major contribution to the development of the treaty regulation of international human rights protection. To date, a total of more than 70 conventions on human rights have been executed globally.

The *Declaration* has become the basis of many postwar constitutions to set forth human rights, particularly Section II of the valid *Constitution of Ukraine*.

It would be a bad mistake and injustice to only regard the *Declaration* as a document from the standpoint of human rights theory. If it were so, the *Declaration* would probably only remain in textbooks and monographs by legal experts. However, its destiny was different. It has become a powerful slogan, a banner that unites hundreds of millions of people. Regular words united in 30 articles of its text have turned into arms that both small dictators and owners of nuclear weapons have had to consider.

Society has possibly not yet finally evaluated and become aware of the significance of the *Universal Declaration of Human Rights* in the victory of freedom on the territory of the former *Soviet Union*. However, it is the existence of the *Declaration* that the formation of the dissident movement in the USSR was associated with. As a draught of fresh air, it inspired the struggle and strengthening of the persuasions of those who became political prisoners. It is no coincidence that the *Declaration* was hushed up to the maximum extent in the USSR. Its text was only printed in small circulations in specialized publications. Since the mid 1960 s, 'samizdat', the underground press, started to distribute the *Declaration* widely, and its typewritten copies were seized from dissidents during searches. Appeals to Articles of the *Declaration*, setting forth rights and freedoms (to receive and impart information regardless of frontiers, leave any country, as well as peaceful assembly and association), have become the keynote of the documents and activities of the human rights movement in the USSR. One of the most widely known Soviet dissident bulletins, the «Chronicles of Current Events» («Khroniky Tekushchykh Sobytyy»), has Article 19 of the *Declaration*, «Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,» as its epigraph. Disregarding any threats, intimidations, or arrests, human rights activists remained adherents to the ideas of the year. They were resolute in their activities and inspired others to join them and demonstrate respect for the rights of all people.

The *Universal Declaration of Human Rights* was never a «beloved creation» of Soviet diplomacy. The speech of Mr. A. Vyshynskiy, USSR Minister of Foreign Affairs, at the plenary meeting of the 3rd Session of the UN *General Assembly*, who described the *Declaration* as an «unsatisfactory and immature document that is unable to fulfill the

purpose it is intended to serve...» is exemplary. The *Universal Declaration of Human Rights* was never made known to the general Soviet public. It was never treated in the USSR as a model of international rule-making or national legislation development guide.

Therefore, *Ukraine's* attitude towards the *Declaration* could only finally be determined after its independence. *Ukraine* expressed its respect for this document, first and foremost, in its *Constitution*, by accepting the norms of section two of the *Universal Declaration of Human Rights* therein. Numerous decisions of the *Constitutional Court of Ukraine*, in which it refers to the *Declaration* as the most respected international document on human rights, can be quoted.

Even though the *Declaration* was adopted over 60 years ago, the rights declared therein have yet to become a full-fledged achievement of the present day. Their violations, including blatant ones, still occur in many countries of the world. Human rights organizations report such violations in *Ukraine* as well. This particularly refers to incidents of torture by prejudicial investigation bodies, human trafficking, and the violation of social rights. Ideals of the *Declaration* are still waiting for their complete implementation into legislation, as its reform has yet to be completed. More specifically, new *Code of Criminal Procedure of Ukraine* and the *Labor Code of Ukraine* still have to be adopted, judicial reform must be completed with the approval of a set of draft laws, and the reform of legislation on information remains incomplete.

Recalling the 60th anniversary of the *Universal Declaration of Human Rights*, one can be proud of the fact that history has preserved the names of prominent *Ukrainian* legal experts who forever remain in the annals of the founders of international law on human rights. One of them was academician *V. Koretsky*, *Head of the International Law Chair of the Kharkiv Law Institute* (1944 to 1948), and in time, Judge of the *UN International Court of Justice*, who participated in the drafting of Article 1 of the *Declaration* and in the final editing of its entire text. For his participation in the development of fundamental international treaties on human rights which built on the ideas of the *Declaration*, another renowned *Ukrainian* legal expert, *P. Nedbailo*, Professor of the *Lviv State University* (1946 to 1959), was awarded the *UN Golden Medal*.

KritV | CritQ | RCrit

Kritische Vierteljahresschrift
für Gesetzgebung und
Rechtswissenschaft

Critical Quarterly for
Legislation and Law

Revue critique trimestrielle
de jurisprudence et de
législation

Herausgeber

Peter-Alexis Albrecht
Stefan Braum
Thomas Duve
Klaus Günther
Marc Jaeger
Stefan Kadelbach
Vincent Lamanda
Katja Langenbucher
Guido Pfeifer
Dean Spielmann
John Thomas
Tobias Tröger
Miloš Vec
Andreas Voßkuhle
Astrid Wallrabenstein
Manfred Weiss

Aus dem Inhalt:

Vasily Tatsiy

The Universal Declaration of Human Rights: The Worldwide Humanism Manifesto

Vyacheslav Komarov

Decisions of European Court of Human Rights and Constitutional Court of Ukraine: Problem of Competition

Tetyana Komarova

The Court of Justice of the European Union and protection of private parties: the possibilities for Ukrainian business

Olesia Tragniuk

European Union and Ukraine: Some Issues of Legal Regulation of Relations – From Partnership and Cooperation Agreement to Association Agreement –

Aleksandr Nowikow

Versuche der Sicherung vor Usurpation im Rechtsstaat – Antikorruptionsbehörden und Staatstribunal am Beispiel Polens und der Ukraine –

Nikolay V. Karchevsky / Olena V. Karchevska

Ukrainian 2014/2015-Events: Practical Proof of Social Theorems

Peter-Alexis Albrecht

Rechtliche, soziale und gesellschaftliche Dimensionen von Gerechtigkeit

1 2016

Jahrgang 99
Seiten 1 bis 91
ISSN 2193-7869



Nomos