

# THE RELEVANCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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## Abstract

*The Universal Declaration of Human Rights represents wide area of its aspects. For the same reason it was (and still is) a subject of many disputes ever since it was proclaimed. Some of the main criticisms were about legal obligation of Universal Declaration of Human Rights, weather if it is binding or not, and the degree of moral authority on States or any another influence. Many scholars were arguing about addressed questions and each of them brought up different conclusion, which was based upon their diverse cognitions. The significant fact is that the Declaration had (or maybe even still has) the impact on other international treaties which were adopted many years after, especially on the European Convention on Human Rights and Fundamental Freedoms, which today represents the highest degree of international protection of human rights and freedoms. According to increasing awareness of the protection of human rights, especially on the territory of the European Union, it is necessary to start from the initiate – the Universal Declaration of Human Rights.*

**Keywords:** *the Universal Declaration of Human Rights, development of the protection of human rights, European Convention on Human Rights and Fundamental Freedoms, European Court of Human Rights*

## 1. Introduction

The historical background of the Universal Declaration of Human Rights (hereafter: the Declaration)<sup>1</sup> were horrifying happenings during the Second World War. Those events, like holocaust, divided world, “iron curtain”, and other abuse and torture of human beings and later Cold War between Communists and Western countries, where one of the main reasons

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<sup>1</sup> This document is result of activity of United Nations (UN), an international organization, which is focused on maintaining the peace and safety in the world and for expanding the promotion of human rights. See more about UN on: <http://www.un.org/en/>.

why the United Nations decided to start working on one particular international document which will gather all human rights.<sup>2</sup>

The General Assembly was working very quickly (it took less than three years to draft it) and as a result they proclaimed the Universal Declaration of Human Rights on 10<sup>th</sup> of December 1948 (just three years after the Second World War), which had preamble and 30 articles, explaining civil, political, economic, social and cultural rights.<sup>3</sup> The main aim of Universal Declaration of Human Rights<sup>4</sup> was to ensure that all human beings are born free and equal in dignity and that everyone has a right to live and that intention is well seen in Resolution 217 (III) (by which the Declaration was adopted), which says: “Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”<sup>5</sup>

In Europe, not only in the European Union (hereafter: EU), the main document for the protection of human rights is the European Convention on Human Rights and Fundamental Freedoms. This legally binding international document finds one of basis exactly in the Declaration and proceeds further.

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<sup>2</sup> More about history of the Declaration: **Nickel, James W.**, „Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights“, (California, University of California Press, 1987), pp 1-2.; **Ishay, Micheline R.**, “The Human Rights Reader”, (New York, Routledge, 2007), 2<sup>nd</sup> ed.; **O’Byrne, Darren**, “Human Rights – An Introduction”, (New York, Routledge, 2013). See also <http://www.un.org/en/documents/udhr/history.shtml>.

<sup>3</sup> See more in **Donnelly, Jack**, „Universal Human Rights in Theory and Practice“, 3<sup>rd</sup> ed, (New York, Cornell University press, 2013) , pp 24-28

<sup>4</sup> Full text of the Declaration see on: <http://www.un.org/en/documents/udhr/>.

<sup>5</sup> Resolution 217 A (III) of the General Assembly of United Nations, 10 December 1948, see on: <http://www.un-documents.net/a3r217a.htm>.

## 2. Some of the issues concerning the Declaration

The main purpose of the Declaration was to ensure basic and natural rights to every human being, rights which people can not buy, sell or inherit, because they belong to everyone without any distinctions based on race, sex, language or religion.

This idea, about creation a new world with all that guaranteed rights, has been very interesting and simple in theory, but in reality there was a lot of doubts and criticism like some of the following:

First of all this is “just” a declaration, not the international treaty, which means that parties (in this case States) do not have their rights and obligations which they would have if this, was a treaty (“only treaties can create, and define the powers or jurisdiction of, international institutions in which state parties participate and to which they may owe duties”)<sup>6</sup>. The problem is that there are no legal remedies which would be used in case of violation of the Declaration and there is no legal body which could force States to provide these human rights to their citizens. In that sense this Declaration is just proclaimed, but never implemented, which maybe was the true intention of those who wrote it.

Since its existence, there were disputes whether this Declaration is legally binding or not! Even today a large number of lawyers, theoreticians, scholars and other experts suppose that the Declaration has a legal binding character, although there are statements which are telling that the Declaration is not legally binding. Even General Assembly once said: “It was not intended to impose legal obligations on States, but rather to establish goals for States to work towards.”<sup>7</sup> In this point, it would be necessary to say that however the Declaration is not legal document, it has a great legal value and in some way it might have an indirect legal effect.<sup>8</sup> By this I mean that there was left a space for the Declaration to be important and to be valid in legal system and legal sense.

Questions like “*How much universal human rights are?*” or “*Is the Declaration universal at all?*” or “*Is the Declaration really acceptable for everybody?*” are often

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<sup>6</sup> Steiner, Henry J., Alston, Philip, Goodman, Ryan, “International Human Rights in Context: Law, Politics, Morals, Text and Materials”, 3<sup>rd</sup> ed, (Oxford: Oxford University Press, 2008), pp 107

<sup>7</sup> Robertson, A. H., Merrills J. G., “Human Rights in the World”, 3<sup>rd</sup> ed, (Manchester, Manchester University Press, 1989), pp 26

<sup>8</sup> Steiner, Henry J., Alston, Philip; Goodman, Ryan, *o. c.* pp 146

mentioned topics in discussions. Some people (especially laymen) would say that there is no doubt about its universality, but majority of scholars and experts would not agree with their statements. Those scholars assume that mentioned human rights are product of Western politics, philosophy and history. “The Universal Declaration is, therefore, very much a Western construct. It does not mention self-determination, or need for the support for poorer countries, to ensure that human rights stand the best chance possible of becoming ingrained in the psyche of the world economic as well as legal and political, order.”<sup>9</sup> Great number of theoreticians and scholars from non-Western nations, which were not included or represented in working commission of the Declaration, were claiming that Western history and conscience was imposed through human rights, and also that the Christian view of life was imposed to all nations and religions, especially to Muslims to whom that were unacceptable.<sup>10</sup> The main problem here was that even the Commission had members chosen from different States; majorities of world population were “left a side”. “As for the Third World, it was at this stage to a large extent made up of Latin American countries with a Western outlook; the remaining countries simply did not have the strength or authority to stand up to the Western powers,...”<sup>11</sup> We can not make universal human rights or any another rights if we forget the fact that there are many different nations, cultures, religions, languages etc where something might be allow which is not allow in another place and that is not a reason for non respecting someone’s tradition, culture or religion. “The dignity of the human person exists and should be recognized without distinction of any kind.”<sup>12</sup> If we do forget that fact about cultural and other differences, we will always be in situation that someone is oppress and unequal, that people are still violating rights of each other, that same tortures are happening all over again. In that sense, we will be going forever in the same, wrong direction, which will take us to another disaster.

Here we can make a relation between the Declaration and sovereignty of States which it involves. “Traditional international law was based on a set of rules protecting the sovereignty of States and establishing their formal equality in law.”<sup>13</sup> Supplementing this

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<sup>9</sup> **Hegarty, Angela, Leonard Siobhan**, “Human Rights-An Agenda for the 21st Century”, (London, Cavendish Publishing Limited, 1999), 2<sup>nd</sup> ed., pp 22 – 23

<sup>10</sup> **Steiner, Henry J., Alston, Philip, Goodman, Ryan**, *o. c.* pp 140

<sup>11</sup> **Cassese, Antonio**, “International Law”, 2<sup>nd</sup> ed, (Oxford, Oxford University Press, 2005), pp 381

<sup>12</sup> The United Nations, Blue Books Series, Volume VII, “The United Nations and Human Rights 1945 – 1995”, United Nations, New York, 1995, pp 24 – 25

<sup>13</sup> **Cassese, Antonio**, *o. c.* pp 48

statement and considering that the Declaration is a part of international law, it had been normal to expect its impact on sovereignty of States. One of the definitions of sovereignty is: “The power to wield authority over all the individuals living in the territory.”<sup>14</sup> First problem which had arisen on this ground was legal degree of the Declaration, which was for majority very low, but primary proposition was the degree of permitting of States to ‘offer’ their sovereignty in favor of the Declaration. Although every State which had been involved in creation of it was ready to ‘offer’, at least saying that aloud, that had never happened. Knowing the power of sovereignty, this was not unexpected. If the Declaration had been created in a form of international treaty, it would have been necessary for States to give part of their power, because there would be a legal body above them. Many lawyers and scholars believe that States were enviously keeping sovereignty for themselves, even that was disturbed development of human rights, and for them this is one of the main reasons why States permitted to create document without actual legal effect, although the text of the Declaration might be too broad; in that time, circumstances of these acts disabled signing international treaty. “A legally binding document was not in the interest of the two emerging superpowers.”<sup>15</sup> (Meaning USA and USSR)

Another doubt which is less mentioned, but not less important than previous, is the fact that the Declaration is not very accessible to population. Some applications are telling about its secret content. The purpose of these applications is to make sure that the Declaration is always in people’s conscience and that is relevant for governments to make them responsible for their acting. They even suggest that content of the Declaration should be public and display in public places.<sup>16</sup>

With this short overview I tried to explain some of the main questions and criticisms, which are usually mentioned in discussions about the Declaration. Even today, sixty one years after the proclamation of the Declaration, these issues are still interesting for experts as well as for general people and public.

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<sup>14</sup> Cassese, Antonio, *o. c.* pp 49

<sup>15</sup> Von Bernstorff, John, “The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law”, EJIL 2008 19 (903), 2008, pp 3

<sup>16</sup> See: <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>.

### 3. The impact of the Declaration

Since 1948, when the Declaration was adopted, there were lot of debates concerning its impact on many different aspects, e.g. about legal and moral authority, on human rights movement and its impact on other international documents. “Although the Universal Declaration lacks any organs of implementation and many of its provisions are drafted rather vaguely, it is unique in that no other human rights document has, as yet, been so influential.”<sup>17</sup>

When it comes about legal authority the Declaration’s impact may be related with previous critics of legal binding of the Declaration. For those who are claiming that it is not legally binding, this aspect is irrelevant, but for those who admit possibility of legal effect, although indirect, this aspect is important. As an argument for their thesis, very often it is mentioned that the Declaration became a fundamental base for other international documents and treaties, which were following the Declaration and they were added on its human rights.

But when it comes about moral authority it is possible to distinguish two directions:

a) First one is soliciting and confesses its moral authority, saying that the Declaration was and still is very useful in promotion of the human rights on international level, because “It was one of the very first international instruments to recognize the ethical and juridical value of economic, social and cultural rights and to affirm their equal and interdependent relationship with civil and political rights.”<sup>18</sup> Here we can notice how the Declaration, for the first time, gathered all rights at the same place: civil, political, economic, social and cultural, and in these circumstances, this was a huge achievement. But the most important moral influence was its true meaning for people and international organizations after the Second World War. It was important for people, since it was created for all the mankind, and has given them hope that after all horrible things that happened, which hopefully will never happen again, now they have something which they can hold on to. For international organization it was important because it pointed them the exact beginning of the way in respect of which they could continue to create and provide basic human rights and reconstruct a better world, where everyone would be equal.

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<sup>17</sup> Cassese, Antonio, *o. c.* pp 5 – 6

<sup>18</sup> The United Nations, Blue Books Series, Volume VII 2, “The United Nations and Human Rights 1945 – 1995”, United Nations, New York, 1995, pp 26

b) Second tendency in its concept has denying this moral authority and we can say that it was led by Hersch Lauterpacht. He was claiming that the Universal Declaration of Human Rights had never even had legal authority and than especially moral authority. He was confirming his point of view with statement that if the Declaration had any authority, it would be first of all legally binding and then it could have even moral authority. He once said: “Not being a legal instrument, the Declaration would appear to be outside international law... the determination to refrain from captious criticism ought not to interfere with the duty resisting upon the science of international law to abstain from infusing an artificial legal existence in a document which was never intended to have that character.”<sup>19</sup> He also mentioned that the degree of moral authority depends on States and their willing to sacrifice part of sovereignty. “The moral influence of ideas – Lauterpacht insisted – flowed from the sincerity of those who proclaim them. This sincerity had to be evidenced by the degree of sacrifice which governments were willing to bear on behalf on human rights. In the absence of any sacrifice of sovereignty ‘on the altar of the inalienable rights of man’, Lauterpacht concludes that the Declaration could have no moral force.”<sup>20</sup> His last statement was in one point correct. It is a fact that without part of sovereignty there is no given force to the Declaration or its rights, so by this criterion, degree of moral authority of the Declaration is very low, or it can be said that there is no moral authority at all.

Keeping these opposite statements about legal and moral authority, it has to be appreciated the impact of this document on human rights movement. The Declaration represents one of the first steps in approaching human rights to an international level. Even some scholars compare it with the Constitution of human rights movement, because it was the first and truly the most universal of all acts preoccupying with human rights. “Mrs. Roosevelt stated in the General Assembly that the Declaration was ‘first and foremost a declaration of the basic principles to serve as a common standard for all nations. It might well become the Magna Charta of all mankind.’”<sup>21</sup> It special significance is the fact that although it had some gaps and flaws concerning its creation and later interpretation, it still managed to achieve that high degree of influence, and somehow managed to become the fundament in human rights context, to which international documents and treaties will refer to later on. “Following adoption of the Universal Declaration of Human Rights, the General Assembly mandated the

<sup>19</sup> **Lauterpacht, Hersch**, “International law and Human Rights”, F.A. Praeger, 1950, pp 416-417

<sup>20</sup> **Von Bernstorff, Jochen**, *o. c.* pp 4

<sup>21</sup> **Robertson, A. H., Merrills, J. G.**, “Human Rights in the World”, 3<sup>rd</sup> ed, (Manchester, Manchester University Press, 1989), pp 26

drafting of a legally binding international bill of rights, which would introduce rights into positive law and provide mechanisms for supervised implementation.”<sup>22</sup>

It is also very important to mention that there are many international documents and other legal acts which were raised after, but still they have had a plenty influence of the Declaration. Like I mentioned before, it was the first international document which gathered all human rights at the same place (civil, political, social, economic and cultural). As a ‘consequence’ of that, in 1966 the International Convent on Civil and Political Rights (ICCPR)<sup>23</sup> was adopted and in 1976 the International Convent on Economic, Social and Cultural Rights<sup>24</sup> entered enforced.<sup>25</sup>

A lot of international human rights instruments emphasized the duty to implement the Declaration, like: the three great regional conventions – European Convention on Human Rights (1950)<sup>26</sup>, American Convention of Human Rights (1969)<sup>27</sup> and African Charter on Human and Peoples’ Rights (1981)<sup>28</sup> – “and the great majority if not all of the treaties in the United Nations treaty series.”<sup>29</sup>

The Conventions on genocide (1948), on racial discrimination (1965), on discrimination against women (1979), on torture (1984), on the rights of the child (1989), and on migrant worker (1990)...<sup>30</sup>

It is also frequently mentioned impact on the Vienna Declaration<sup>31</sup> from 1993

“... All in all, it has been estimated that the Declaration has inspired or served as a model for the rights provisions of some ninety constitutions...”<sup>32</sup>

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<sup>22</sup> **Hegarty, Angela, Siobhan, Leonard**, *o. c.* pp 24

<sup>23</sup> See on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>24</sup> See on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>25</sup> See more: **Ovey, Clare, White, C. A. Robin.**, „Jacobs &White: The European Convention on Human Rights“, 4<sup>th</sup> ed., (Oxford, Oxford University Press, 2006), pp 5

<sup>26</sup> See more on: <http://human-rights-convention.org/>.

<sup>27</sup> See on: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>28</sup> See on: <http://www.achpr.org/instruments/achpr/>.

<sup>29</sup> The United Nations, Blue Books Series, Volume VII, “The United Nations and Human Rights 1945 – 1995”, United Nations, New York, 1995, pp 27

<sup>30</sup> **Cassese, Antonio**, *o. c.* pp 383

<sup>31</sup> See on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

<sup>32</sup> **Steiner, Henry J., Alston, Philip, Goodman, Ryan**, *o. c.* pp142



#### 4. Relationship between the Declaration and the European Convention on Human Rights

These two very important documents have the same background. Like the Declaration, the European Convention on Human Rights and Fundamental Freedoms<sup>33</sup> (hereafter: European Convention) was a direct response to a global war and its consequences. It is a part of other international body,<sup>34</sup> but it has very similar aims.<sup>35</sup> The rights protected in the European Convention draw their inspiration from the Declaration, but do not simply duplicate the rights referred to there.<sup>36</sup> The Declaration represents “a common standard of achievement” and also an authoritative guide for the interpretation. From this, it is possible to conclude that the rights set out in the European Convention and Protocols are thus derived essentially from the Declaration.<sup>37</sup>

The importance of the European Convention is that it went few steps further in protection of human rights. The Council of Europe not only adopted such relevant document but it also established European Court of Human Rights<sup>38</sup> (hereafter: the Court) in Strasbourg where injured person could claim protection of rights and freedoms guaranteed by the European Convention against member state which is a party of the Council of Europe.<sup>39</sup> The significance of the Court is the potential for legal protection of human rights which are not, for some reasons, still possible under domestic law of party state.<sup>40</sup>

The Convention is most affecting the international protection of human rights which has been most fully and systematically developed exactly under the law of the Convention.

<sup>33</sup> Act of Council of Europe, adopted on 4<sup>th</sup> of November 1950, and entered into force on 3<sup>rd</sup> of September 1953.

<sup>34</sup> This document was adopted by Council of Europe, an international organisation, which has intentions to protect human rights, democracy and legal states in the Europe. See more on: <http://www.coe.int/en/>.

<sup>35</sup> See more: **Van Dijk, Pieter, Van Hoof Fried, Van Rijn, Arjen, Zwaak, Leo, (eds.)**, „Theory and Practice of the European Convention on Human Rights“, 4<sup>th</sup> ed., (Oxford, Oxford University Press 2006).

<sup>36</sup> **Ovey, Clare, White, C. A. Robin**, *o. c.* pp 2-5

<sup>37</sup> *Ibid* pp 6

<sup>38</sup> European Court of Human Rights was established 1959, for the judicial protection of human rights and freedoms. See more on: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

<sup>39</sup> About proceedings before the court see more: **Ovey, Clare, White, C. A. Robin**, *o. c.* pp 473-525; **Mowbray, Alastair**, Cases and Materials on the EUROPEAN CONVENTION ON HUMAN RIGHTS, 2<sup>nd</sup> ed., (Oxford, Oxford University Press, 2007)

<sup>40</sup> To achieve possibility for the Court to argue and decide, some conditions have to be fulfilled (exhaustion of domestic remedies, compliance with the six-month time-limit from final decision of domestic body, non anonymous application and a victim status). See more: Practical Guide on Admissibility Criteria; Council of Europe, European Court of Human Rights (Department of the Jurisconsult of the Court; Research Division), <http://www.echr.coe.int>.

## 5. Conclusion

Every part of the Declaration can be, and probably will always be, heard and in some way people are going to discuss everything with regards to the Declaration. Everybody can claim and have their own reasons why the Declaration is or is not good, is acceptable or unacceptable, is universal, binding or not, but some statements and legal facts will always testify in favor of the Declaration.

The Declaration represents fight for better world, for people and their basic human rights, for a better future. Of course, in formulation of the Declaration some mistakes were made, but it should be taken into consideration that the ambience in which the Declaration was made was not very supporting and satisfactory, but still the UN managed to draft it in less than three years. Yes, the Declaration is not legally binding because it is not made in form of international treaty, there are no obligations and rights for involved States, there is no legal body which can direct States to provide human rights, but the Declaration has legal effect, which is seen in a way that many international treaties and documents are referring to the Declaration and its use in domestic legal system. Lauterpacht's view of the degree of Declaration's authority on States' sovereignty is in one part correct and that is why we could not expect from them to form a document which had not been written in a legal form, to have actual legal effect in reality, but I think that he should not be that much exclusive in parts referring to Declaration's legal irrelevance. On this statement he added his opinion about moral authority of the Declaration which, considering his whole judgment about the Declaration, was very low, it can be even said that there was no moral authority. I believe that we can not deny every possible impact or influence of the Declaration, because something good had to come out of all of this and it brought something good. After this Declaration, conscience of many States and international organizations were actuated in right direction, where they could easily continue the development of the human rights movement.

Today, in Europe, we have European Court and the Convention, which allows us to protect our human rights and freedoms in real judicial sense of meaning. Turkey is a member party of Council of Europe from the 9<sup>th</sup> October 1949, and it must also protect all rights which are guaranteed under the Convention. This is very important especially since Turkey became a candidate for member state of EU. It is well known that EU is very sensitive in field of human rights, and even though it is not a party state of Council of Europe, and it's not signer

of the Convention, EU recognizes the degree of protection of human rights from the Convention, Not only that, EU even have it's own relevant document for the protection of human rights – EU Charter of Fundament Rights. This is something that Turkey must take into account as a future member state of EU.

Through these sixty seven years of existing, from 1948, the Declaration managed to accomplish something that was never repeated in history of humanity. Its influence on other international documents and treaties is remarkable, and I believe that its impact is the biggest success of the Declaration.

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