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**К ПРОБЛЕМЕ КОНЦЕПТУАЛИЗАЦИИ ПРАВ ЧЕЛОВЕКА: МИРОПОЛИТИЧЕСКОЕ ИЗМЕРЕНИЕ**

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**TOWARDS THE PROBLEM OF HUMAN RIGHTS CONCEPTUALIZATION: THE DIMENSION OF WORLD POLITICS**

International relations and world politics in the postwar era have been characterized by the emergence and profound influence of such processes and events as the cold war and the advent of nuclear weapons posing a significant threat of a nuclear war and the destruction of a substantial part of the planet with a pacifist, anti-nuclear movement subsequently arising; decolonization that stipulated the necessity to voice socio-economic problems in the newly emerged developing states and facilitate their integration into the international system; the intensification of local, predominantly ethnic-religious conflicts, comprising mass torture, child labor, and violence against civilians resulting on the premise of the latter’s vulnerability in the need for international humanitarian law reformation and the emergence of humanitarian interventions concept. These and numerous other factors have determined the current state of humanity where emphasis is increasingly shifting towards the individual with the role of social and humanitarian issues and the human rights agenda in world politics constantly expanding. It thus confers the research on the issue of human rights, their role, functions and applicability in world politics and notably in states’ foreign policy with utmost importance and relevance.

The question irreversibly arising when studying constituent components of human rights in the modern system of world politics can be formulated as follows: “What are human rights?” Note that this work does not claim (and nor does it aspire to) to provide a comprehensive and all-encompassing definition of human rights – on the contrary, it is the multiplicity of the phenomenon that seems to be of greatest interest. To identify this multiplicity and its implications, one requires to first highlight the key existing approaches to the definition of human rights and their conceptual framework.

The analysis of existing literature on human rights theory allows several groups of factors stipulating the ramification of approaches to be outlined:

1) Source of origin: moral, political, legal;

2) Conceptual substance (content): “first generation” rights (civil and political rights); “second generation” rights (economic, social, cultural rights, right to self-determination); “third generation” rights (right to safety: traditional, military, and the "soft" one comprising protection against non-military threats: information security, environmental and social stability; the recognition of the universal right to equitable international order, a healthy environment, the protection of personal privacy)[[1]](#footnote-1)

3) The norm-setter: "universalists" (the supremacy in determining the standards and content of human rights is assigned to international norms obligatory to be integrated into national legislation without distortion) and "sovereigntists" (the decisive role in determining human rights and the instruments for their protection is played by sovereign states, national legislation which of is not subject to any external obtrusion.

Thus, socio-economic, civilizational, cultural, and political diversity in states across the globe helps envisage heterogeneity of human rights interpretations: on the one hand, rights are inalienable with all the people, but which rights and what is the extent to which the state should participate in their implementation? Is it appropriate to allocate certain social strata for granting them particular rights? states give different answers to all these questions. This explains why it is necessary to not only study the main points of divergence in the understanding of human rights, but to additionally contour their direct implementation in various theoretical concepts and their practical execution.

***Western concepts of human rights***

Western concepts of human rights are based on liberal philosophy, which implies, above all, the superiority of the individual. The major value of liberalism is that of the individual whose private well-being can only be achieved through the implementation of personal rights and freedoms. Note that within the framework of the "Western" human rights concept, two branches of liberalism can be distinguished: the school of natural law (St. Thomas Aquinas; T. Jefferson, H. Asterpatch etc.)[[2]](#footnote-2), emphasizing the inviolability of human rights, given to all people at birth; utilitarianism (J. S. Mill et al.)[[3]](#footnote-3), the main postulate of which is the attainment of superior human happiness by means of law, freedom and equality. Thus, the fundamental values from the point of view of Western concepts of human rights are: freedom; respect for others; non-discrimination; tolerance; justice; responsibility.

***Non-Western concepts of human rights***

Western concepts of human rights have incontestably played a significant role in shaping modern perceptions of the term and its content. This does not allow, however, that the entire conceptual specter of human rights be narrowed down to exclusively western theories which, in the words of some, “are unacceptable” whilst the general Western concept "is inapplicable and inappropriate"[[4]](#footnote-4).

*The Soviet concept of human rights*. The Soviet approach originated from the communal theory (and Marxism as its offshoot), its gist being that it is the right and welfare of the group, not the individual, that has the upper hand. Utilizing previously mentioned generations of human rights appears applicable when illustrating the divergencies between Western and Soviet concepts with the promotion and protection of the "first generation" and "second generation" rights being the niche of the former and the latter respectively. In the international legal dimension, this confrontation witnessed its manifestation in the drafting of the International Bill of Rights, which due to irreconcilable differences in American and Soviet stance ultimately comprised two separate covenants: the Covenant on civil and political rights deemed upon as the “product” of American (and generally Western) advent, and the Covenant on economic, social and cultural rights considered to have become the “brainchild” of the USSR.

The human rights situation in Asia is rather intricate since substantial discrepancies along several key tracks may be outlined within communities: 1) Is there a place for Western concepts of human rights in Asia? 2) What are the ways to protect human rights when neither the state nor the individual alone plays a decisive role in creating and shaping the institutional framework for human rights development in Asia? (According philosophical trend of Confucianism, prevalent in Asia, morality and moral obligations rather than social institutions are predominant when considering the international protection of human rights) 3) How to overcome the incongruity between the perception of human rights among elites (generally more conservative) and local population (ostensibly shifting more and more towards liberal, “progressive” values)[[5]](#footnote-5).

The Islamic concept of human rights is perhaps the most doctrinal of all those presented, but even within Islamic society there is now a noticeable split between adherents of the "Islamic Renaissance", claiming the Islamic concept and norms to be compatible with those agreed upon by the international community, and “fundamentalists”, considering modern standards of human rights, enshrined at the international level, unacceptable as opposed to those exalted in traditional Islam[[6]](#footnote-6).

K. Vasak writes: "In actual fact, human rights by no means reflect the historical conditions of a particular society, for the values which they express are to be found, in one form or another, in all political, social and religious doctrines."[[7]](#footnote-7)

Universality of human rights is indeed undeniable, for it resulted, under the influence of certain factors, in the “spill-over” of national and civilizational human rights concepts onto international level in the form of global human rights legislation. However, numerous contradictions, both -inter- and intrasocietal, hitherto outlined provide that human rights defense practices and legal implementation is substantially branched across the world.

***Protection of human rights: the dimension of international politics***

When trying to define the most influential factors having shaped human rights foreign policy doctrines of states and a number of regional associations the following factors spring to mind:

1) the end of the Second World war and the creation of the United Nations with its Charter established and the initial foundation for the subsequent internationalization of human rights laid;

2) the beginning of the Cold war between the USSR and the USA, which had made human rights agenda both a sticking point in reciprocal relations and an important tool utilized by the American diplomacy to tarnish the image of the Soviet Union as the violator of human rights and simultaneously promote its own international image of the “defender of human rights and democracy” in the world;

3) the active build-up of nuclear weapons, which at a certain stage of the Cold war brought about understanding of the real threat posed by the possible nuclear war leading in prospect to a global catastrophe. This awareness determined the emergence and intensification of anti-nuclear, human rights, and pacifist movements, including those in Western Europe;

4) the construction of a collective European identity aimed at finding an alternative to being the “junior ally” of the US bound by the “nuclear umbrella”. A new collective European identity was based on the triptych: “human rights, democracy, development”[[8]](#footnote-8)

5) in the last third of the XX – beginning of the XXI century – a surge of technological innovations that accelerated dissemination of information and provided universal access to it, leading to blurred borders between different levels of politics and an increased interdependence of various elements in the international system. Such shifts paralleled by considerable aggravation of intra-state ethno-religious conflicts caused the “hegemons” and “guarantors” of the new international system to rethink the concepts of non-interference in the internal affairs of states and national sovereignty on the premise of substantial danger to regional and, therefore, international stability, generated by such conflicts.

Several major groups of legal-institutional outcomes resulting from the “spill-over” of national concepts onto the regional level may be distinguished:

1. *Adopting regional agreements on the protection of human rights.*

The European region tends to take the lead in this regard. We reiterate that the end of the Second World war initiated the process of constructing a new European identity which was to be based on close cooperation, partnership between countries and their equality, and at the domestic level – on respect for human rights and freedoms, adherence to the ideals of democracy and political pluralism, etc.

The European Convention on human rights (hereinafter – the ECHR), adopted in Rome in 1950, was an important milestone in the elaboration of the European legislative corpus on human rights. Over time, several protocols supplementing and expanding the main articles of the Convention were added to the main text of the document, which was a response to the evolution of human rights philosophy during the XX century and a clear confirmation of the flexibility and adaptability of the European human rights system to changing realities.

While the ECHR main purpose was to establish a normative framework for the protection of "negative" rights ("first generation"), the European social Charter aimed at protecting "positive" rights (“second generation”), i.e. those that require state intervention for their implementation to be ensured. The additional Protocol adopted in 1995 established a system of complaints designed to protect workers’ rights, and the revised version of the Charter of 1996 introduced additional provisions on non-discrimination[[9]](#footnote-9). Other legal instruments in the corpus of European law include the Charter of fundamental rights of the European Union (today – the main human rights document in the EU law); the European Convention for the prevention of torture and inhuman or degrading treatment or punishment; the Framework Convention for the protection of National minorities; and the European Charter for regional and minority languages.

The Final Act of the Conference on security and cooperation in Europe, signed in 1975 at the time representing the peak of inter-bloc compromise and a tipping point for further cooperation, occupies a special place in the documentary and legal dimension of the European human rights policy. The so-called “Basket III”, established by the Declaration on Principles Guiding Relations between Participating states, proclaimed “respect for human rights and fundamental freedoms: the freedom of exchange of thoughts; the freedom of conscience and religion, and the freedom of movement”[[10]](#footnote-10).

Notably, the United States, initially under the administration of D. Eisenhower and the elevation of “McCarthyism” to the rank of official ideology, entered the path of isolationism in regards to the international legal regulation of human rights protection, with their human rights ideology gradually having acquired an anti-Communist character. Several events creating a regional legal body in relation to human rights with the participation of the United States may, nonetheless, be mentioned: 1) the conclusion in May of 1948 of the American Declaration of the Rights and Duties of Man 2) in 1975 - signing the Helsinki Agreements which allowed, in the words of H. Kissinger, “to glaze the pie of anti-communism.”[[11]](#footnote-11)

The Russian Federation, as the legal successor of the USSR, belongs alongside the US to the group of states that actively promote the idea of the superiority of national sovereignty in the definition, institutionalization and practical demarches aimed at protection of human rights. The very name of Russia’s modern doctrine of human rights, the concept of “sovereign democracy”[[12]](#footnote-12) clearly reflects these characteristics.

*2. Establishment of regional human rights institutions*

Within this group, the following institutions can be outlined: the European Court of Human Rights; the African Commission on Human and Peoples’ rights and the African Court on Human and Peoples’ rights; the Arab Human Rights Committee; the ASEAN Intergovernmental Commission on Human Rights; the Inter-American Court of human Rights and others. Additionally, one must note the creation of separate departments and divisions in intergovernmental organizations: Commissioner for Human Rights in the Council of Europe; the European Commission against racism and intolerance, etc.

***In the global dimension***

Undoubtedly it is the international and, subsequently, global level of cooperation that crowns national and regional efforts to promote and protect human rights. Several major factors that influence the regional documentation on human rights norms have to this point been identified. Note that the global dimension of human rights, too, is subject to the same trends, however, possessing certain specific features that define global tendencies in human rights legislation:

1) Systematic violations of human rights in certain regions and states of the world that run counter to accepted international norms and create a “theory-practice” dichotomy;

2) the evolution of the human rights discourse, which leads to the dissemination of key theoretical and philosophical shifts from national and regional to international level. Most notable discourse changes of this sort include the popularization and strengthening of post-positivist theories of international relations including postcolonial theories (orientalism et al.) that emerged against the background of the deconstruction of the colonial system; post-Marxism in the form of gender theories; the concept of “postmodernity”, within which humanity has reached its limit in the development of philosophical thought ; the concept of "positive freedom", which is inherent to the modern European human rights idea and implies an independent reinterpretation of social reality by an individual under the influence of a evolved discourse.

Why are such shifts in the theory of human rights at the level of national states important for the global protection of human rights? In essence, the United Nations as the principal human rights body, was created by states, which imminently leads to the projection of certain state issues (human rights being one of them) onto the UN and its institutions. Moreover, these trends for the most part are typical of those developed “Western” states which are the major donors to the UN budget whilst “the power of the purse” has been repeatedly mentioned by various researchers[[13]](#footnote-13). Thus, paired with historical, political and economic factors identified earlier, significant changes in the global human rights discourse have determined the peculiarities of international legal implementation of the changed norms.

*1. International agreements in the field of human rights*

The fundamental document that gave impetus to the development of international legislation in the field of human rights was the UN Charter. Whilst it is not an international human rights document itself, the Charter contains seven references to human rights and declares “promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion”[[14]](#footnote-14) as one of the key purposes of the organization.

The adoption of the Universal Declaration of human rights in 1948, was a major milestone in the development of global human rights legislation. However, the vulnerability of the Declaration is manifested in the absence of a legally binding character: it is advisory in nature, thus allowing possible violations of the declared principles to happen.

Documents subsequently adopted within the UN system and aimed at specifying and expanding international human rights norms in relation to the most vulnerable and discriminated segments of the population, became legally binding. These include the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the Convention on the Political Rights of Women (1952); the Standard Minimum Rules for the Treatment of Prisoners (1957); and the Convention on the Elimination of All Forms of Racial Discrimination (1965); The International Covenant on Economic, Social and Cultural rights (1966) and the International Covenant on Civil and Political Rights (1966); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989) and others.

An analysis of the content of these documents and the consequences of mapping the human rights in regards to different strata, however, reveal trends that are the opposite of those initially stated as key goals. Firstly, the goal of granting additional rights to certain segments of the population seems unfulfilled since these international agreements only specify what had previously been approved by merely taking specific societal features of certain groups into account. Secondly, singling out “discriminated” segments of the population as a separate group seems to be further deepening the discrimination whilst at the same time hindering the search for an effective solution to the dilemma of redistribution-recognition.

*2. Establishment of international human rights institutions*

The Central UN human rights bodies include the UN Commission on human rights and the sub-Commission on the promotion and protection of human rights. In addition, the UN comprises a significant number of committees, whose activities are focused on the protection of human rights: the Human Rights Committee; the Committee on Economic, Social and Cultural rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women; the Committee Against Torture; the Committee on the Rights of the Child[[15]](#footnote-15). Additionally, two organizations in the UN system have their sphere of activity include the protection of human rights: UNESCO and the ILO.

International courts of justice include the UN International Court of Justice, the International Criminal Court and others. Notably, the binding nature of the UN Court's decisions does not guarantee unequivocal enforcement by states, for that the principle of non-interference in the internal affairs of states, proclaimed by the UN Charter[[16]](#footnote-16), allows national legislation to neutralize the Court's decisions, resulting in the emergence of a significant contradiction that diminishes the effectiveness of the institution.

In addition, international justice institutions include ad hoc tribunals, such as the International Tribunal for the former Yugoslavia established to restore justice to victims of war crimes committed during military conflicts in Yugoslavia in 1991-2001. Of course, when reflecting on the conflicts in Yugoslavia, it is impossible to refrain from disputing on humanitarian interventions, a concept that had seen its consolidation in the global human rights debate after the bombing of Yugoslavia by NATO forces under the pretext of “protecting human rights”. How compatible are humanitarian interventions and the protection of human rights? How can one justify interference in the internal affairs of states? Why is the protection of the rights of some oppress the rights of others? With the emergence of humanitarian interventions another contradiction arose having become a serious blow to existing international human rights norms and practices since there are still no explicit answers to these questions.

***Conclusions***

Human rights do not lend themselves to a unified conceptualization, which results in regional and international legal documents being determined by the presence of a ‘theory – practice’ dichotomy, embodying the discrepancy between declaring human rights principles de-jure and violating them de-facto – a tendency viable due to the recommendatory nature of most international legal agreements in the field of human rights.

The multilayered and complex nature of human rights as a social phenomenon determines their mobility, which, in the context of conceptual foundations, political trends, developments in the international relations theory and the international law all reciprocally influencing each other, paves the way to deepening and modernizing the content and essence of human rights: they are fluid and do not possess permanent characteristics, while international and national legislation in the field of human rights will never be exhaustive based on the evolved societal logic. However, the gradual dissemination of the ideas and appeals to liberalize human rights and eliminate discrimination in its entirety by singling out certain segments of the population only increases the gap between the discriminated and the rest of society whilst also leading to the emergence of positive discrimination, which can later “spill-over” to the level of international protection of human rights. Provided such “spill-over” takes place protecting the rights of some will automatically infringe upon the rights of others, and at the institutional-legal level, some declared principles will come into obvious contradiction with others. Besides, the mobility of the human rights phenomenon makes it subject to a process of politicization, which can turn human rights into both a goal and an instrument of foreign policy of states guided by geopolitical, rational interests in the context of a return to *realpolitik*.

Thus, contrary to popular belief, it is not the desovereignization or threat to national independence that presents the biggest challenge to international protection of human rights, for as long as the UN and its principle of non-interference in the internal affairs of states exist, whilst the latter, in turn, continue to be the main subjects of international relations, any sanction of the international human rights institution can be reversed and neutralized through national legislation. From our point of view, the most important challenge is to identify the framework and future of human rights based on contemporary realities. Initially defined in the most general, accessible forms, human rights were subsequently subject to gradual diversification and specification, designed to make the protection of human rights more accessible owing to the presence of certain legal and intellectual-behavioral standards and tools for their implementation. However, the opposite effect appears to have been achieved, since the detailing of certain norms triggered a mechanism of irreversible changes and successive transformations of other norms, whilst the plausibility of deceleration of these processes today seems to be rather low. It appears, we are witnessing the negative consequences of this chain of changes: based on the conceptual foundations of the past, they simultaneously claim to be the voice of radical transformation on the premise of proper hegemony. Hence, there is a need for theoretical delimitation of the terms and concepts: are these trends only a temporary sign of the time, or will they be firmly entrenched in the evolution of the international community and become a long-term path for the development of the international legislation and practice in the field of human rights protection? It seems that while the first scenario implies going to back to roots (with taking contemporary peculiarities into account) that did not claim to provide an exhaustive understanding of human rights, but still created an institutional and legal space for their protection and prevented the emergence of conceptual inconsistencies between various aspects of human rights activities. In case the second scenario prevails, the outcome will, most likely, be a radical breakdown of the existing system of international protection of human rights, which will lead to the need for a conceptual and philosophical reformulation of human rights and the result in the need for a new international legal body of documents to establish new definitions, tools and institutions in the field of human rights protection, based on the new international reality. It seems that the significance of this choice cannot be overestimated: today the humanity has found itself in a transitional, interim position characterized by the inapplicability of a vast part of the old norms and ideas and the lack of the new ones with fundamental foundations only recently recognized by the majority being increasingly criticized and denied in the absence of a real alternative. In such circumstances, the protection of human rights at the national, regional, international and global levels becomes extremely difficult and ineffective. That is why it is time that the world community made its choice: slow down or go forward?

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