

## I. ARTYKUŁY

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### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 70 YEARS ON—HISTORICAL MONUMENT OR LIVING DOCUMENT?\*

There is no doubt that the Universal Declaration of Human Rights, enacted by the General Assembly of the United Nations seventy years ago, is not only a historical but, primarily, a historic document. Its impact has definitively exceeded the hopes it aroused at the time of its birth.<sup>1</sup> The Declaration has become a foundation stone for the international system of the protection of human rights and guided the development of the respective systems of protection at the national and regional levels. Together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), it creates the International Bill of Rights.

The 70th anniversary of the Declaration provides an opportunity to raise some questions concerning its contemporary significance. They are particularly important in the light of the recently often repeated comments on the ‘shrinking space’ for human rights in international relations or human rights being ‘under attack’.

#### I. THE DECLARATION TAKES ROOT

On 10 December 1948 when the UN General Assembly, gathered at the Palais de Chaillot in Paris, adopted the Declaration, from among 58 countries present 48 voted yes, 8 abstained (USSR and its allies, including Poland, as well as Saudi Arabia and South Africa), and 2 (Honduras and Yemen) did not participate in the vote. It is necessary to recall these facts, at least because they allow for a better understanding of the evolution of this instrument’s significance.

Despite the passage of 70 years, the Declaration cannot simply be placed on a shelf or in an online archive. Shortly after its adoption, the process of the universal internalisation of its moral, legal and political dimensions had

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<sup>1</sup> H. Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, *The Georgia Journal of International and Comparative Law* 25(1), 1996: 289.

begun. This has been reflected in numerous international and regional documents, as well as in domestic laws and policies.

The Proclamation of the First World Conference on Human Rights in Teheran in 1968 underscored that 'The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.'<sup>2</sup> The General Assembly supported this Proclamation as a confirmation of the principles embodied in the Universal Declaration and other international instruments in the area of the human rights (115 votes in favour and one abstaining).<sup>3</sup>

The Second World Conference of Human Rights, in which all the existing countries took part (171), confirmed 25 years ago in its Vienna Declaration and Programme of Action (VDPA) the 'commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights'. It also reiterated that the Universal Declaration as a common standard of achievement for all nations and all countries is a source of inspiration and constitutes the basis for the development of legal standards contained in international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>4</sup> In five other provisions the Declaration is explicitly mentioned as a source of human rights.<sup>5</sup> However, the picture would be incomplete if it were not for mentioning that, in fact, the entire VDPA, which still remains the main international UN policy document in the field of human rights, originates from the Declaration. Importantly, it has received unanimous support from the UN General Assembly.<sup>6</sup>

The last World Summit with general agenda (2005), unanimously and solemnly confirmed the will of the states 'to fulfil their obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter, the Universal Declaration of Human Rights and other instruments relating to human rights and international law'.<sup>7</sup> The importance of this step comes to a full expression if one realises that it was this summit which, for the first time in UN history, proclaimed the triad of peace and security, development and human rights as interlinked and mutually supportive pillars of the United Nations system and foundations of collective security and well-being.<sup>8</sup>

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<sup>2</sup> U.N. Doc. A/CONF. 32/41 (1968).

<sup>3</sup> UN Doc. GA res. 2442 (XXIII) § 5.

<sup>4</sup> VDPA, Preamble.

<sup>5</sup> Cf. §§ 23, 31, 33, 38 part I VDPA and § 57 part II.

<sup>6</sup> UN Doc. A/RES/49/208.

<sup>7</sup> Cf. § 120 *General Assembly World Summit Outcome* 2005, UN Doc. A/RES/60/1, published in Polish by UNIC Warszawa, <[http://www.unic.un.org.pl/szczyt2005/dokument\\_koncowy\\_4.php](http://www.unic.un.org.pl/szczyt2005/dokument_koncowy_4.php)>.

<sup>8</sup> *Ibidem*, § 9; previously there was a concentration first and foremost on the relations between peace and security on the one hand and growth on the other.

As a consequence, it can be said that support of states for the Declaration expressed in their official positions taken within the UN is significantly more powerful today than at the time of its adoption. This is not only due to the fact that all countries recognize it as a source of their own commitments. The geopolitical map of the world now looks completely different from what it was in 1948. The list of the UN members counts today 193 states instead 58. This means that the number of societies represented by their own states is three times higher than it was seventy years ago. In this situation, the unanimity of states has a greater weight in terms of political representation. With due caution as regards the representativeness of governments and the purity of their intentions when expressing their support for the Declaration, and with due regard for the corrective power of the *noblesse oblige* principle when it comes to taking a position in international fora, it must be said that the formal legitimacy of the Declaration has not been diluted over time. It has actually become much stronger.

## II. MESSAGE OF THE UNIVERSALITY OF HUMAN RIGHTS

The Declaration was accepted as if in spite of all political, intellectual, cultural and religious differences that were visible during *travaux préparatoires*, conducted in the period 1946–1948 mainly by the UN Commission on Human Rights. The use of well known clichés such as reducing the occurring tensions purely to relations between the East and West in the context of ideological differences and the beginnings of the Cold War would offer only a limited help in understanding all the challenges faced by the drafters. Moreover, it might lead to simplifications overshadowing the actually existing problems. Nevertheless, following the meanders of these negotiations is both fascinating and highly informative, also from the point of view of today's discussions about the universality of human rights.<sup>9</sup>

Deep disputes concerned the issue of referring to God or nature as a source of reason and conscience that every individual is furnished with, which was seen as one of the basic arguments for the universality of human rights. Such a reference was viewed in a direct association with debate on the origin of human rights and, in this context, with the choice between a natural law and a positivist justification of these rights. Finally, as a compromise in the negotiations, both references (i.e. to godly inspiration and to nature) were rejected. This, however, was not a hurdle in ascribing human rights a natural-law character through the recognition that human dignity, reason and conscience are innate to every individual.<sup>10</sup>

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<sup>9</sup> A comprehensive analysis of this process was given by J. Morsink in his monograph: *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press, Philadelphia, 1999.

<sup>10</sup> In this case the reference to the Enlightenment declarations of rights is clearly visible.

Another area of controversy was determined by the attitude towards economic and social rights which will be discussed later in more detail. Among others in this context, diverging views about the role of the state in relation to the individual divided the negotiation table. Some wished to clearly recognise the state as an actor against whom human rights should protect the individual and who under international law is obliged to respect and implement these rights. Others focused on a vision of the state as a creator of social life, including the conditions under which individuals and groups function. Lastly, polemics concerned the setup of international mechanisms empowered to scrutinize the observance and protection of human rights by sovereign states.<sup>11</sup> Reservations in this case, based on Article 2(7) of the UN Charter, were finally dismissed only 45 years later by the VDPA, which speaks in a rather Delphic language (costs of a compromise): 'In the framework of these purposes and principles [of the United Nations], the promotion and protection of all human rights is a legitimate concern of the international community'.<sup>12</sup>

Such differences should not come as a surprise. At the Second General Conference of UNESCO, which took place in the spring of 1948 (i.e. in parallel with the preparatory work for the Declaration), Jacques Maritain, renowned French philosopher and advocate of this document asked: 'How can we imagine an agreement of minds between men who are gathered to precisely accomplish a common intellectual task, men who come from the four corners of the world and who do not only belong to different cultures and civilizations, but are of antagonistic spiritual associations and schools of thought...?'<sup>13</sup>

UNESCO conducted a review of philosophical justifications of human rights. Some 150 specialists from all over the world were invited and their contributions revealed such a great variety of positions that one could reasonably question the existence a common philosophical basis for the future Declaration. A widespread fear that the results of the review might be a dysfunctional rather than a constructive element in the ongoing negotiations prompted the Commission to abandon sharing the review report with UN members.<sup>14</sup>

Despite all these differences the drafters of the Declaration agreed that not only its content but also the title itself should reflect the principle of universality of human rights, which meant that an individual as a member of the human community should enjoy these rights regardless of residence and jurisdiction he or she may be subject to. Various reasons helped to reach such an agreement and, as a consequence, also to draw a list of rights that should

<sup>11</sup> J. Morsink, op. cit.: 11ff.

<sup>12</sup> According to the 'domestic jurisdiction clause' laid down in Article 2(7) of the UN Charter: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction...' Arguments referring to this clause with a view to questioning the powers of the international human rights bodies unfortunately continue to be used, although exceptionally, despite the quoted settlement of the Vienna World Conference on Human Rights.

<sup>13</sup> J. Maritain, Introduction, in: *United Nations Educational, Scientific and Cultural Organization, Human Rights. Comments and Interpretations*. A symposium edited by UNESCO, Paris, 25 July 1948, UNESCO/PHS/ (rev.): II.

<sup>14</sup> J. Morsink, op. cit.: 301–302.

be protected. Undoubtedly, the recent tragic experiences of the Second World War and the dictatorial regimes of that time were conducive to the view that an effective form of defence against their repetition would be to base the international order and national constitutional systems on respect for universal human rights. In this context, the adoption of the Declaration proclaiming these rights was seen as one of the fundamental steps to protect humanity from 'acts of barbarity' and to build a world in which the exercise of 'freedom of expression and opinion and freedom from fear and want' would be 'the highest aspiration of ordinary people'.<sup>15</sup>

The Declaration was also intended to interpret the notion of human rights which was not well established in international law. Since promoting and encouraging respect for these rights had been included in the Charter of the United Nations, together with conflict prevention, peacekeeping and development as one of the objectives of the Organisation, the drawing up of a general human rights instrument became a condition for the functioning of the UN itself.

The preparation of a universal catalogue of rights in a form that was basically analogous to similar acts published at national level since the eighteenth century did not cause much controversy. The method of achieving compromise solutions was the assumption (arising more from practice than general negotiated points) that the individual priorities if not reconcilable with the opinions of others should be rather put aside than pursued in a way that might have threatened the drafting process in general. This proved possible when without controversial formulations the Declaration could still fulfil its basic functions (see comments above on the material sources of human rights).

The above formula of negotiations that meant in practice the avoidance of matters with strong axiological or philosophical connotations had nonetheless significant consequences. Maritain in this context emphasised that: 'As long as minds are not united in faith or philosophy, there will be mutual conflicts between interpretations and justifications. However, it is possible to agree on a joint declaration in practical terms'.<sup>16</sup>

The subsequent course of events confirmed this observation. Controversies over the philosophical and cultural foundations of human rights continue to occur and it should not be expected that they shall disappear in the foreseeable future. Moreover, they undoubtedly fuel the international dialogue and decision-making process with tensions that can easily be exploited not only in the field of human rights itself but also in other areas of international relations (e.g. development, trade, etc.). Sometimes one might even get the impression that, for example, disputes over the origins and justification of human rights are a sort of substitutes. They are seen as a relatively safe field for diplomatic play, including building and cementing alliances and embarrassing political competition, without posing a direct risk to the measurable interests of states, for example in the field of economics. All this, however, does not constitute an

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<sup>15</sup> Preamble to UDHR.

<sup>16</sup> J. Maritain, Introduction, *op. cit.*: III.

insurmountable obstacle for the international community to achieving practical agreements on human rights standards and mechanisms for their implementation and protection. According to Maritain, one of the participants in a discussion in the French UNESCO National Commission concerning the drafting of the Declaration laconically elucidated the sources of agreement among the representatives of opposing ideologies and school of thoughts by saying: 'Yes, we agree on rights, but on condition that no one asks us "why"'.<sup>17</sup> Today, it can be said that this pragmatic approach has helped repeatedly in the negotiations on human rights instruments and will most likely continue to do so in the future.

Disputes over the universality of human rights reached their climax four decades after the adoption of the Declaration, in the early 1990s, in the run-up to the Second World Human Rights Conference in Vienna. Despite the fact that the Conference took place in a generally favourable international climate created by the end of the Cold War and the fall of apartheid in South Africa, the intention to solemnly reaffirm the universal nature and strengthen the international protection of these rights provoked relatively strong opposition coming from intellectual and political circles. It is difficult to say whether, or to what extent, these tensions prompted Samuel Huntington to publish his famous 1993 study 'The Clash of Civilisations?', which in any case symbolises a pessimistic side of what at that time could be described as the *Zeitgeist*. He wrote: 'It is my hypothesis that the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics.'<sup>18</sup> It is probably difficult to find a place in this vision for the idea of a universally accepted catalogue of human rights.

At the political level, the most emphatic were the comments of Singaporean politicians. In particular, the speech by Foreign Minister Wong Kan Seng at the Vienna conference was perceived by many as expressing opposition to a uniform interpretation of human rights on a global scale. He stressed that cultural and traditional differences divide not only regions of the world, but also often countries belonging to the same hemisphere.<sup>19</sup> But his stance was not entirely radical. He pointed out that in some cases, such as the ban on torture, an international agreement had already been reached, while in others further discussion and gradual convergence of positions was required. In such an approach, one can see a distinction between the universality of human rights as a principle and their universalisation as a process. Perhaps today

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<sup>17</sup> *Ibidem*: II.

<sup>18</sup> S.P. Huntington, *The Clash of Civilizations?*, *Foreign Affairs*, Summer 1993: 22.

<sup>19</sup> Statement by Mr. Wong Kang Sen, Minister for Foreign Affairs of the Republic of Singapore, World Conference on Human Rights, Vienna, 16 June 1993, Singapore Government Press Release, No: 20/JUN, 09-1/93/06/16, at the National Archives of Singapore webpage: <<http://www.nas.gov.sg/archivesonline/speeches/record-details/7b65bcf8-115d-11e3-83d5-0050568939ad>>.



the supporters of universality would be inclined to look at this, by the way, perfectly constructed speech with a more favourable eye, including in the light of the discussion on the ‘margin of appreciation’ doctrine adopted for example in the jurisprudence of the European Court of Human Rights.

However, doubts about the universality of human rights were even stronger in the texts of the legendary Singapore Prime Minister Lee Kwan Yew, who contrasted regional approaches, especially Asian provenance, to the ‘state-individual’ relationship and liberal doctrine. According to him, in the latter, focused on the individual and the common good relegating to the background, the claims of the individual outweigh the responsibility towards society. Such a concept is a source of conflict. The Asian perspective, on the other hand, promotes order and harmony instead of individual freedom, cooperation instead of individualism.<sup>20</sup> He also emphasised that: ‘Seeing the ancient, complex cultural map of this part of the world, can we all of a sudden accept universal values of democracy and human rights as defined by America? I don’t think that it is possible. Values are formed out of the history and experience of a people. One absorbs these notions through the mother’s milk.’<sup>21</sup>

In these polemics the Universal Declaration was viewed as an expression of the Western liberal vision of human rights. It was emphasised that South-east Asia did not take part in its formulation. Nevertheless, at the political level, after highly laborious and tense negotiations, it had become possible to reach an agreement on the unequivocal provision of VDPA that proclaimed: ‘The universal nature of these rights and freedoms is beyond question’. Moreover, ‘Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments’.<sup>22</sup> The correlation of these general principles with the voices of those who favourably spoke about distinctiveness in the approaches to human rights was expressed with the aid of the following stipulation: ‘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 and fundamental freedoms’.<sup>23</sup>

A significant test for political intentions and level of interest in putting an end to disputes about the universality of human rights was the initiative taken in the late 1990s by the InterAction Council, an association of former Heads of State and Government. On the eve of the 50th anniversary of the Declaration, the proposal was made to elaborate and adopt a Universal Dec-

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<sup>20</sup> Cf. E. Brems, *Human Rights: Universality and Diversity*, Martinus Nijhoff Publishers 2001, in particular 36ff. W. Osiatyński, *Human Rights and their Limits*, Cambridge University Press 2009: 150ff.

<sup>21</sup> Fragments of interviews by Nathan Gardel with Lee Kuan Yew, *The Sage of Singapore: Remembering Lee Kuan Yew through His own Words*, <[https://www.huffingtonpost.com/nathan-gardels/lee-kuan-yew-remembered\\_b\\_6920292.html?guccounter=1](https://www.huffingtonpost.com/nathan-gardels/lee-kuan-yew-remembered_b_6920292.html?guccounter=1)>.

<sup>22</sup> The Vienna Declaration and Programme of Action, part I, § 1.

<sup>23</sup> *Ibidem*: § 5.

laration of Human Responsibilities.<sup>24</sup> The inspiration for this step came from two interconnected observations. Firstly, it became apparent that the globalisation process in a culturally diverse world required a proper ethical order. Secondly, the relationship between human freedom and responsibility was recognised as essential in this respect.

In the explanation of this project it was underscored that ‘Globalization of the world economy is matched by global problems, and global problems demand global solutions on the basis of ideas, values and norms respected by all cultures and societies. Recognition of the equal and inalienable rights of all the people requires a foundation of freedom, justice and peace – but this also demands that rights and responsibilities be given equal importance to establish an ethical base so that all men and women can live peacefully together and fulfil their potential’.<sup>25</sup>

To some extent, this approach referred to Mahatma Gandhi’s brief response to the questions itemised in the framework of the aforementioned UNESCO review concerning the foundations of the Universal Declaration where one can read ‘I learnt from my illiterate but wise mother that all the rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship to the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for’.<sup>26</sup>

There is no place here for a detailed analysis of the otherwise interesting question of whether the allegations against the liberal concept of human rights, that it separates freedom from responsibility, are at all justified.<sup>27</sup> Here, it is enough to mention that, as early as the eighteenth century, the liberals rejected identifying freedom with arbitrariness and irresponsibility. This does not mean, however, that the approach to the classic dilemma of ‘individual interests versus community interests’ did not differ between those in favour of universal human rights rooted in the dignity of the individual, putting the individual at the forefront, and those in favour of the doctrine of individual responsibility as the foundation of the community, giving priority to its interests. The second option, rooted in Asian tradition, though not only, is undoubtedly illustrated by Mahatma Gandhi’s commentary.

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<sup>24</sup> Cf. InterAction Council, *A Universal Declaration of Human Responsibilities* (proposed by InterAction Council), 1 September 1997 text and documentation available at: <<https://www.interactioncouncil.org/publications/universal-declaration-human-responsibilities>>.

<sup>25</sup> Ibidem, Introductory Comment: 1.

<sup>26</sup> Mahatma Ghandi, A letter addressed to the Director-General of UNESCO, 25 May 1947, in: *United Nations Educational, Scientific and Cultural Organization, Human Rights. Comments and Interpretations*. A symposium edited by UNESCO, Paris, 25 July 1948, UNESCO/PHS/(rev.): 3.

<sup>27</sup> Cf. Z. Kędzia, Is there a need for changes in the constitutional charter of rights?, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 80(1), 2018: 69ff where one can find some brief comments on this issue.



The initiative of the InterAction Council has so far been perhaps the most serious attempt to build a bridge over differences stemming from specific historical experiences, cultures and traditions. Many important personalities have been involved in its implementation, including former German Chancellor Helmut Schmidt, former French President Valéry Giscard d'Estaing and former Singapore Prime Minister Lee Kwan Yew. This is why we can also talk about this project in terms of a test, which should have shown whether it would be realistic to look for a common axiological basis, a common justification of universal standards of the status of an individual based on his or her complementary rights and responsibility. The text of *A Universal Declaration of Human Responsibilities* was published in 1997 by the InterAction Council and signed by some European intellectuals. It was not, however, subject to an extensive debate at the UN General Assembly or the UN Commission on Human Rights.

One can wonder to what extent the fears prevailed that, despite the undoubtedly valuable intentions behind this project, the adoption of such a declaration could lead to abuse by authoritarian regimes by making enjoyment of rights dependent on an individual's arbitrarily judged performance of his or her extensive duties turned out to be too strong.<sup>28</sup> It also does not seem that the project has triggered a greater resonance outside Europe, including in Asia. Nowadays, the debate on the relationship between rights and responsibilities is not conducted at a doctrinal level in international forums, but rather accompanies negotiations on specific human rights policy documents or instruments. It takes place, for example, in the framework of discussions on the strategies of implementing Sustainable Development Goals or the right to development, in negotiations relating to the access to medical patents or the convention on human rights and transnational corporations.

So, the test has proved negative in a direct sense, but the InterAction Council's project itself was an important contribution to strengthening the tendency to increasingly absorb various philosophical, doctrinal and cultural sources in order to enrich human rights foundations. This is probably the desired direction in which the debate should go in order to further clarify the message of universality of human rights conveyed by the Universal Declaration.

### III. TESTIMONY TO THE TIMELESS AND HOLISTIC APPROACH TO HUMAN RIGHTS

On the seventieth anniversary of the Declaration, it seems natural to ask the question of its timely relevance and adequacy. Undoubtedly, the relatively high level of generality of its provisions, corresponding to the nature

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<sup>28</sup> In this context it is worth reminding that the authorities of the Polish People's Republic attempted to lay down in the Constitution, fortunately unsuccessfully, the principle of unity of the individual's rights and responsibilities in 1976.

of this act, was helpful in preserving these qualities. The main function of the Declaration was to proclaim human rights as universal standards and thus to define the basic content of the very notion of 'human rights' used in the United Nations Charter. Further clarification of these standards was left to other international instruments which, together with the Declaration, constitute international human rights law, embracing, as it is estimated, approximately 35 treaties binding on States Parties and several dozen instruments of soft law adopted in the form of resolutions by intergovernmental bodies of the United Nations, including, in particular, its General Assembly. The Declaration does not articulate *expressis verbis* some of the rights recognised today by the international community, which have been derived from this instrument and treaties, such as the right to water. But, the fact that during the time elapsed since the Declaration enactment the process of the creation of standards has gone beyond its literal wording does not in any way detract from its significance as the fundament of international human rights law. Rather, an analogy can be seen here between the constitution of the state and the legislative implementation of its provisions. On the other hand, it would be difficult to find in the Declaration any outdated substantive provisions.

The Declaration also avoided the potential danger of obsolescence due to the limitations of the holistic nature of its regulation. As mentioned, disputes over social and economic rights drew a lot of attention during the preparatory work. Many states, whose systems were based on liberal doctrine and a market economy, demonstrated scepticism about this category of rights, and especially about interpreting them as a source of the obligations of states. On the other side, the USSR and its allies, as well as some Latin American countries, demanded that these rights be broadly included in the Declaration.<sup>29</sup>

The Chairperson of the UN Commission on Human Rights negotiating the text, Eleonora Roosevelt, played an important role in reaching a compromise in this regard. It is claimed that she eventually persuaded the US Department of State to not object the inclusion of economic, social and cultural rights in the Declaration next to civil and political ones. Commentators see in Roosevelt's efforts, probably not without reason, a tribute to her husband's legacy.<sup>30</sup> It should be remembered that in both addresses to Congress in 1941 (Four Freedoms Speech) and 1944 (the need for a second Bill of Rights), which had a great impact on the approach to human rights at the beginning of the UN, President Roosevelt placed strong emphasis on social and material security, human development opportunities and the rights of the individual. To this day, in the doctrine of human rights, social rights are often seen as deriving from 'freedom from want' which F.D. Roosevelt proclaimed in the 1941 speech

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<sup>29</sup> On this matter cf. J. Morsink, op. cit.: 223–230.

<sup>30</sup> M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House 2001; O. de Schutter, *Economic, Social and Cultural Rights as Human Rights: An Introduction*, Cellule de rechercheinterdisciplinaire en droits de l'homme, Université catholique de Louvain, Faculté de droit, Centre de philosophie du droit, CRIDHO Working Paper 2013/2: 2.

alongside freedom of expression, freedom of religion and freedom from fear as the basis for post-war order.<sup>31</sup>

The agreement on the holistic content of the Declaration was largely facilitated by the fact that the discussed instrument was not supposed to be legally binding. This assessment is illustrated by the negotiations on the human rights treaty that started shortly afterwards. Very soon it became clear that the discrepancies regarding the recognition of economic, social and cultural rights as human rights, and in particular the recognition of their legal nature, were too deep to include in a legally binding treaty a list of rights similar to that contained in the Declaration. As a corollary, on the basis of a compromise proposal by Chairperson Roosevelt, the substance of human rights was eventually divided in two international treaties, the International Covenant on Economic, Social and Cultural Rights (ICCPR) and the International Covenant on Personal and Political Rights (ICCPR), drawn up in parallel and adopted in 1966.<sup>32</sup> Both Covenants also established two separate implementation mechanisms.<sup>33</sup>

The solemn return of the holistic message of the declaration was reaffirmed only in the Vienna Declaration and the Action Programme (VDPA), which states in paragraph 5 that: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.'<sup>34</sup> After the establishment of the Committee on Economic, Social and Cultural Rights in the mid-1980s as an implementation mechanism of the ICESCR, following the example of the Human Rights Committee and other treaty bodies, the final 'equalization' in the institutional and procedural sense of all categories of rights brought the Optional Protocol to the ICESCR, adopted in 2008. It established *among others* complaint procedures against violations of the rights enshrined in the Covenant, which had been known to the ICCPR since 1966.

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<sup>31</sup> *State of the Union Message to Congress*, January 6, 1941—<<http://www.fdrlibrary.marist.edu/fourfreedoms>> and *State of the Union Message to Congress*, January 11, 1944—<[http://www.fdrlibrary.marist.edu/archives/address\\_text.html](http://www.fdrlibrary.marist.edu/archives/address_text.html)>. Cf. also Z. Kędzia, Wprowadzenie do Międzynarodowego Paktu Praw Gospodarczych, Socjalnych i Kulturalnych [Introduction to the International Covenant on Economic, Social and Cultural Rights], in: Z. Kędzia, A. Hernandez-Polczyńska (eds.), *Międzynarodowy pakt gospodarczych, socjalnych i kulturalnych. Komentarz [International Covenant on Economic, Social and Cultural Rights. Commentary]*, Warsaw, 2018: 4–5.

<sup>32</sup> UN Doc. A/2929, Annotations on the text of the draft International Covenants on Human Rights. Prepared by the Secretary-General, §§ 1–50; cf. also Z. Kędzia, op. cit.: 5–11 and cited literature.

<sup>33</sup> Cf. Z. Kędzia, Komitet Praw Gospodarczych, Socjalnych i Kulturalnych [Committee on Economic, Social and Cultural Rights], in: R. Wieruszewski (ed.), *Mechanizmy Ochrony Praw Człowieka w ramach ONZ [UN Human Rights Protection Mechanisms]*, Warsaw, 2017: 90–95.

<sup>34</sup> The Vienna Declaration and Programme of Action, part I, § 5.

#### IV. BOUND BY THE DECLARATION

The Universal Declaration of Human Rights was enacted as a resolution by the General Assembly of the UN. Chairwoman Roosevelt when introducing the draft to the General Assembly on 9 December 1948, stated: 'In giving our approval to the Declaration today it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a Declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations'.<sup>35</sup>

Such understanding of the status and expected impact of the Declaration made it possible to adopt it in a relatively short period of time. If it were to be a legally binding instrument, it would probably be impossible. There was also no doubt that, like other resolutions of the General Assembly containing normative content, the Declaration set out moral and political obligations of UN member states, which by joining this Organisation assumed the obligation to act for the achievement of its goals, respecting its decisions and taking actions leading to their implementation.<sup>36</sup>

On the other hand, because of its substance, from the very beginning the Declaration was treated as an act of particular importance for determining the responsibilities of the members of the international community. Gradually, however, the firm assessment of the legal status of the Declaration presented by Chairwoman Roosevelt, if not outdated, became in any case significantly relativised. On the eve of the 60th anniversary of the Declaration, R.S. Bedi wrote that similar opinions today appear to be 'foregone dismal conclusions'.<sup>37</sup> In 1990 the renowned authority on human rights, Louis Henkin, averred that 'With time, the Universal Declaration has acquired significant legal status. Some see it as having given content to the Charter pledges, partaking therefore of the binding character of the Charter as an international treaty. Others see both the Charter and the Declaration as contributing to the development of customary law of human rights binding on all states. Few claim that any state that violates any provisions of

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<sup>35</sup> E. Roosevelt, On the adoption of the Universal Declaration of Human Rights. December 9, 1948, in: *Great Speeches by American Women*, ed. J. Daley, Dover Publications 2008: 128. The Polish delegate stated in discussions that 'the declaration as presented was only an expression of principles, with no provisions for implementation and with only moral value' citation following J. Morsinck, op. cit.: 295.

<sup>36</sup> Cf. also K. Skubiszewski, Rola niewiążących uchwał normatywnych w prawotwórstwie międzynarodowym [The role of non-binding resolutions in the international law-making], *Państwo i Prawo* 41(1), 1986: 34–45.

<sup>37</sup> S.R.S. Bedi, *The Development of Human Rights Law by the Judges of the International Court of Justice*, Hart Publishing, Oxford–Portland Oregon, 2007: 166.

the Declaration has violated international law. Almost all would agree that some violations of the Declaration are violations of international law'.<sup>38</sup>

It does not seem that much has changed on the map of views on the legal meaning of the Declaration since Henkin's publication. If so, the changes have gone in the direction of recognising the legally binding character of the Declaration.

As an interpretation of the term 'human rights', the Declaration defines how the legal obligation of Member States under the UN Charter to cooperate in the promotion of human rights should be understood and implemented.<sup>39</sup> It seems that it was in this context that, for the first time, the UN General Assembly, in addition to the UN Charter, also referred to the Declaration as the basis for resolving the issue of human rights violations. This happened in the so-called Soviet wives case. In 1949, Chile proposed an agenda item on the violation by the USSR of fundamental human rights, traditional diplomatic practices and other principles of the United Nations Charter by refusing to allow citizens of the USSR who had married foreign nationals to leave the country to accompany husbands who had completed their diplomatic missions in the USSR. The General Assembly considered that these measures taken against the citizens of the USSR were inconsistent with the Charter of the United Nations and called on the Government of the USSR to lift the said restrictions. It has invoked Articles 1(3) and 55 of the Charter of the United Nations, as well as Articles 13 and 16 of the Universal Declaration of Human Rights, which proclaim the right of everyone to leave any country, including his or her own, and the right of men and women to marry without discrimination on grounds of race, nationality or religion.<sup>40</sup>

Another argument in favour of the legally binding nature of the Declaration is its inherent link with the two Human Rights Covenants, with which it

<sup>38</sup> L. Henkin, *The Age of Rights*, New York, Columbia University Press, 1990: 19; cf. in this context the very interesting study calling for some caution by B. Simma, Ph. Alston, *The Sources of Human Rights Law: Custom, Jus Cogens and General Principles*, *Australian Year Book of International Law* 12(1988–1989): 82–108.

<sup>39</sup> Cf. by way of title the example of ICJ judge Tanaka's view that 'Furthermore, the Universal Declaration of Human Rights adopted by the General Assembly in 1948, although not binding in itself, constitutes evidence of the interpretation and application of the relevant Charter provisions'.—Judge Tanaka, Dissenting Opinion, *South Africa Cases*, Second Phase, Judgement of 18 July 1966, I.C.J. Reports 1966: 293; J. Dugard points to the rejection of the argument voiced initially after the adoption of the Declaration, according to which the latter gives legal content to the relevant provisions of the UN Charter. Indeed, it is not possible to change the Charter through a resolution at the General Assembly. But, Dugard chooses another interesting option and argues that 'the UDHR and the Covenants together constitute a body of human rights law that gives substance to the rights enshrined in the human rights provisions—Articles 55 and 56—of the United Nations Charter'.—*The Influence of the Universal Declaration as Law*, *Maryland Journal of International Law* 24(1), 2009: 86. On the other hand, it seems that the Declaration has been attributed a function of the Charter's interpretation rather than a function of amendment.

<sup>40</sup> Resolution of the General Assembly 285 (III) Violation by the Union of Soviet Socialist Republic of fundamental human rights, traditional diplomatic practices and other principles of the Charter, enacted 25 April 1949; cf. also J. Humphrey, *The Universal Declaration of Human Rights: its history, impact and juridical character*, in: B.G. Ramcharan (ed.), *Human Rights. Thirty Years after the Universal Declaration*, Martinus Nijhoff 1979: 32–33.

forms together the normative set-up known in international doctrine and documents as the International Bill of Human Rights. According to John Dugard: ‘Today it is pointless to examine the UDHR as “law” without an examination of its legally binding offspring, the Covenants.’<sup>41</sup> In this context, the legal standing of the Declaration results from the fact that it was the basis for the preparation of these treaties. It would require, however, a separate analysis whether this assessment applies only to states parties to a given Covenant or also has a general meaning.

The Declaration, or—as more cautious commentators prefer to say—many of its provisions, is today recognised as a source of customary international law that is universally binding.<sup>42</sup> Already in the mid-sixties, the later President of the ICJ, Sir Humphrey Waldock, in his widely quoted opinion stated: ‘The constant and widespread recognition of the principles of the Universal Declaration clothes it, in my opinion, in the character of customary law.’<sup>43</sup> The continually occurring differences in views on this subject arise to a large extent from the assessment of the fulfilment of the various criteria that determine the recognition of a given standard as part of customary law.<sup>44</sup> In relation to the Declaration, most frequently the following are subject to analysis: incorporation of its provisions into the national constitutions and laws, references to it and to the obligation to respect it in UN documents, references to it in the case law of the ICJ and other international and national courts.<sup>45</sup>

Many developing countries, especially those, which emerged from the decolonisation process, have made direct reference in their first constitutions to the Declaration and/or drafted the provisions on individual rights on its basis. References to the Declaration as the foundation of human rights have been included in all relevant international and regional treaties. UN General Assembly resolutions relevant to individual rights, including those that lay down human rights standards, directly refer to the Declaration. It is also referred to in the UN’s basic programmatic documents, including those of the World Summits.<sup>46</sup> The International Court of Justice, regional human rights courts and national courts make the Declaration the reference point for the interpre-

<sup>41</sup> Cf. J. Dugard, op. cit.: 85; cf. also H. Hannum, Human rights, in: *The United Nations and International Law*, Ch.C. Joyner (ed.), *The American Society of International Law* 1999: 149ff.

<sup>42</sup> Cf. the comprehensive analysis of this issue by H. Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, *The Georgia Journal of International and Comparative Law* 25(1), 1996: 289–397; cf. in this context the very interesting study calling for some caution by B. Simma, Ph. Alston, op. cit.: 82–108.

<sup>43</sup> *Human Rights in Contemporary International Law and the Significance of the European Convention*, in: *The European Convention on Human Rights I*, 15 (1965), British Institute of International & Comparative Law, International Law Series No. 5), following: M.S. Mc Dougal, H.D. Lasswell, Lung-chu Chen, *Human rights and World Public Order. The Basic Policies of an International Law of Human Dignity*, Oxford University Press 2019: 327.

<sup>44</sup> H. Hannum, who outlines the practice and analyses the literature in this regard, op. cit.: 322ff.

<sup>45</sup> Cf. the still relevant discussion by K. Wolfke on the issue of these criteria, *Custom in Present International Law*, Wrocław, 1964.

<sup>46</sup> Cf. n. 7 in regard to the last World Summit convened in 2005.



tation of international or national human rights standards and for the delimitation of state obligations and responsibilities. The way in which the ICJ did this led, among others, its President Nagendra Singh to the opinion that ‘the said Declaration enunciates ‘fundamental principles’ of International Law’.<sup>47</sup>

Taking into account the development of this practice, Philip Alston wrote in 1983 on the occasion of the 35th anniversary of the Declaration that there was a growing body of evidence to support the assessment made by John Humphrey, one of the architects of the Declaration, which allows the recognition that at least the first twenty-one of its articles are part of customary law.<sup>48</sup> This meant that at that time such a status would have had only human rights principles and civil and political rights, but not social, labour and cultural rights, individual duties and the entitlement of everyone to a social and international order that should enable the realisation of the rights proclaimed in the Declaration. It seems that such a differentiation in the legal status of the provisions of the Declaration should be, at least partially, linked to the above-discussed controversies concerning economic and social rights, which at the time made it impossible to recognise the Declaration as a whole as a part of customary law.

However, after another 35 years since the adoption of the Declaration, the situation has changed. Economic, social and cultural rights, despite persistent doubts raised by some governments, have been recognised full-fledged members of the human rights family.<sup>49</sup> Noting it, Keba Mbaye, a judge at the ICJ, wrote: ‘The Universal Declaration of Human Rights, which is not a treaty but was considered at the time of its adoption as an ideal to be achieved, has become an integral part of customary law, including provisions on economic, social and cultural rights’.<sup>50</sup>

It is also not uncommon to hear opinions that some of the human rights proclaimed in the Declaration have the character of peremptory norms (*ius cogens*). Andrea Bianchi writes: ‘There is an almost intrinsic relationship between peremptory norms and human rights. Most of the case law in which

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<sup>47</sup> For example, N. Singh, *Enforcement of Human Rights in Peace & War and the Future of Humanity*, Martinus Nijhof, Calcutta 1986: 29; cf. also S.R.S. Bedi, op. cit.: 166. N. Singh refers to ICJ Judgement in the case concerning United States Diplomatic and Consular Staff in Tehran. Perhaps these were the intentions of the ICJ, but the text of the judgment itself allows for the conclusion that the Court, referring to the principles of the UN Charter and the principles of the Declaration, treated them as being separate, not necessarily with a view of giving the latter the character of ‘fundamental principles’ of international law—International Court of Justice. Reports of Judgments, Advisory Opinions and Orders, 1980, Judgment of 24 May 1980: 42.

<sup>48</sup> Ph. Alston, *The Universal Declaration at 35: Western and passé or alive and universal*, *International Commission of Jurists Review* 30, 1982: 69, following: H. Hannum, op. cit.: 324; J. Humphrey, *The Great Adventure: Human Rights and the United Nations*, Dobb’s Ferry, Transnational 1983.

<sup>49</sup> Cf. also Z. Kędzia, *Wprowadzenie...*: 10–11.

<sup>50</sup> K. Mbaye, Introduction, in: M. Bedjaoui (gen. ed.), *International Law: Achievements and Prospects*, Martinus Nijhoff Publishers, UNESCO Paris 1991: 1054. Mbaye continues: ‘Initially it had no binding force. Today, the situation has changed. The Declaration is invoked by all States, including those who abstained when it was adopted’.

the concept of *jus cogens* has been invoked is taken up with human rights'.<sup>51</sup> Judge Tanaka also, some five decades ago, stated, 'If we can introduce in the international field a category of law, namely *jus cogens*, recently examined by the International Law Commission, a kind of imperative law which constitutes the contrast to the *jus dispositivum*, capable of being changed by way of agreement between States, surely the law concerning the protection of human rights may be considered to belong to the *jus cogens*.'<sup>52</sup> Such a far-reaching conclusion is not, however, shared broadly. Peremptory norms, it is recognised as a rule, are some human rights (contextual approach) and not the human rights law as such (a systemic approach).<sup>53</sup> In this situation the portrayal of human rights as *jus cogens* is more related to the normative content of specific rights than to the legal status of the Declaration. For example, it is not contested that the prohibition of torture (Article 5) and the prohibition of slavery (Article 3) are examples of rights with the *jus cogens* status. The Inter-American Court of Human Rights has recognized two other rights, namely prohibition of discrimination and equality before the law as peremptory norms.<sup>54</sup>

In order to obtain a complete picture of the binding nature of the Declaration, one more fact needs to be taken into account. Since human rights treaty law only applies to States parties to the relevant conventions, the intergovernmental mechanisms of the United Nations needed a normative act with a universal content applicable to all members of the Organization. The Universal Declaration of Human Rights is recognised as such and underlies the work of the General Assembly, Security Council and Human Rights Council. For example, it provides the normative basis for the Universal Periodic Review conducted by the Human Rights Council, which all the Member States of the UN are subject to as well as for complaint procedures in respect to human rights abuses set up by the Human Rights Council.<sup>55</sup>

One can conclude that within the United Nations, the Declaration is accepted as an instrument binding universally, which places all states in the same situation in respect to responsibility for observing and realising human rights. As Dugard comments: 'As part of the International Charter of Rights,

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<sup>51</sup> A. Bianchi, Human rights and the magic of *jus cogens*, *The European Journal of International Law* 19(3): 491.

<sup>52</sup> Judge Tanaka, *op. cit.*: 298.

<sup>53</sup> Division according to A. Bianchi, *op. cit.*: 497–501.

<sup>54</sup> Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, September 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), § 172; cf. also a rather comprehensive list of non-derogable human rights related bans as contained in 'The Restatement (Third) of the Foreign Relations Law of the United States', The American Law Institute, 1987, vol. 1, § 702. This list embraces genocide, slavery and human trafficking, murder and kidnapping, extended arbitrary arrest, torture or other cruel inhuman or humiliating treatment or punishment, systematic racial discrimination, systematic and serious abuse of human rights recognised as such at the international level. Sometimes these bans are interpreted as peremptory norms (e.g. A. Bianchi, *op. cit.*: 495); the Restatement itself characterises them as norms of customary law.

<sup>55</sup> UN Doc. A/RES/60/251: Human Rights Council; UN Doc. HRC res. 5/1. Institution-building of the United Nations Human Rights Council, in particular § 1 (b) and § 87 (a).

the UDHR is a “law”. In particular, it is a UN law and as such it should guide the delegations of states in decision making at the UN. As a UN law, it is legally binding on the Secretary-General [and Under-Secretaries-General, including the High Commissioner for Human Rights – Z.K.]<sup>56</sup>

Many of the threads discussed here evidently deserve to be analysed in depth but this is not the purpose of this paper. Hannum rightly captures the discussed issue by saying: ‘The Universal Declaration remains the primary source of global human rights standards, and its recognition as a source of rights and law by states throughout the world distinguishes it from conventional obligations [binding only states parties – Z.K.]’.<sup>57</sup>

## V. HAS THE SIGNIFICANCE OF THE DECLARATION BEEN ERODED WITH THE PASSING OF TIME?

There is no simple answer to this question in the face of the emergence of a distinct branch of international human rights law with dozens of conventions and numerous acts of so-called soft law. This development has had to lead to a situation in which the Declaration is less frequently used as a point of reference than the treaties in the analysis of legal obligations of specific states, as well as in the consideration of individual claims in relation to human rights. This is because the legal force of the latter has not been and is not a matter of dispute, and the provisions of human rights standards contained in the treaties are generally more precise than the relevant provisions of the Declaration.

Returning to the question posed, however, it does not seem that the influence of the Declaration is eroding. Firstly, the Declaration cannot be isolated from the context of international human rights law, of which it is the source, foundation and binder. Secondly, the Declaration is a living document, especially because it:

- 1) is an anchor of international human rights law,
- 2) establishes the principle of the universality of human rights, deriving first and foremost from the equal dignity of all human beings,<sup>58</sup>
- 3) gives human rights a legally supra-positive status inherent to each individual, i.e. states and international institutions must respect human rights in all their activities, including legislation,<sup>59</sup>
- 4) proclaims a holistic approach to human rights, whereby they include civil and political rights as well as economic, social and cultural rights,

<sup>56</sup> J. Dugard, op. cit.: 93.

<sup>57</sup> H. Hannum, The UDHR in national and international law, *Health and Human Rights* 3(2), 1998: 146.

<sup>58</sup> Article 1: ‘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’.

<sup>59</sup> Cf. *supra* n. 58.

5) articulates the principle that the establishment of human rights guarantees, including procedural and institutional ones, embracing effective access to an independent and impartial tribunal, is an indispensable condition for the observance and protection of rights,<sup>60</sup>

6) affirms the principle that human rights can only be achieved within a society in which the rights holder has responsibilities and whose legitimate interests, objectives and principles he or she should bear in mind in the exercise of his or her own rights,<sup>61</sup>

7) prohibits restrictions on rights other than by statute and for the sole purpose of ensuring proper recognition of, and respect for, the rights and freedoms of others, or in order to satisfy the legitimate requirements of morality, public order and the universal welfare of a democratic society,

8) proclaims the need to shape the social and international order<sup>62</sup> in such a way as to promote the protection of human rights, and recognises the principles and rights set out in the Declaration as a kind of international compact, which is a fundamental element of the architecture of the global community under the auspices of the UN.

The spirit and letter of the Universal Declaration of Human Rights consistently indicate what values should be protected in every society, what individuals and groups can demand from the State in which they live, and what responsibilities rulers have in making and implementing laws and policies. This statement applies not only to distant states, but also to our country, especially now when the principles of the rule of law, the division of powers and democracy, which define the necessary framework for the protection of human rights, unfortunately happen to be called into question.

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<sup>60</sup> Article 8: 'Everyone has the right to an effective remedy by the competent national tribunals or acts violating the fundamental rights granted him by the constitution or by law.' Article 10: 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.'

<sup>61</sup> Article 29: '1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations'.

<sup>62</sup> Article 28: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'—the Declaration speaks of a social order, not a national one, but in distinction the international and therefore it would seem that a social order is meant at a country-wide level.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 70 YEARS ON—  
HISTORICAL MONUMENT OR LIVING DOCUMENT?

## S u m m a r y

The article poses a question about the current meaning of the Universal Declaration of Human Rights. The starting point is the analysis of the legitimacy of the Declaration, which leads to the conclusion that the support for it has not been eroded by the passage of time, but has indeed gained strength. The Declaration's message on the universality of human rights is taken from the perspective of the controversy surrounding this principle during the drafting process and in the light of the subsequent debates related to the Second World Conference on Human Rights in Vienna in 1993. The Vienna Declaration and Programme of Action not only stressed that the universal nature of human rights is beyond question, but also pointed to the importance of national and regional specificities, and various historical, cultural and religious conditions that, however, do not relieve states, regardless of their political, economic and cultural systems, of the obligation to promote and protect all human rights. The InterAction Council's initiative to develop a Universal Declaration of Human Responsibility is presented as an attempt to reconcile different doctrinal and political positions with regard to the universality of human rights. The conclusion of these considerations is the expectation that the already visible tendency to absorb various philosophical, doctrinal and cultural traditions in order to enrich human rights justifications will prevail over attempts to question the universality of rights in the name of regional or other distinctions. The Universal Declaration was also a testimony to the holistic approach to human rights, encompassing economic, social, cultural, as well as personal and political rights. The subsequent winding road in attitudes to the two main categories of rights at the international arena ultimately led to the return of the spirit and letter of the Declaration and the recognition of equality of all rights in the legal and institutional-procedural dimensions. Various aspects of the Declaration's binding force and related controversies have been analysed in the context of its status as a resolution of the UN General Assembly, as an interpretation of the UN Charter, as customary law and *jus cogens*, and the concept of so-called UN law. The last part attempts to justify why the Declaration should be seen as a living document.

Keywords: declaration; human rights; responsibility; legitimacy; universality; holistic; economic; social and cultural rights; civil and political rights; binding force; customary law; *jus cogens*

