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**THE RIGHTS OF THE CHILD IN THE UNIVERSAL DECLARATION OF HUMAN
RIGHTS (1948): THE HISTORY OF CREATION AND THE ROLE OF THE UKRAINIAN
SSR IN THAT PROCESS**

Abstract

The Universal Declaration of Human Rights 1948 is one of the main documents, which laid a foundation for all other international documents on human rights, including child's rights. The paper will explore the contribution of the Ukrainian SSR to the drafting of the Universal Declaration of Human Rights 1948 as they relate to child's rights.

This article is especially relevant, considering the Russia-Ukraine war and the fact that Russia propagates that Ukraine is not a subject of international relations and the state in the meaning of international law and never was. However, our analysis proves, that Ukraine, even being one of the union republics of the USSR, acted as an independent subject of international law to a certain extent. Ukraine is a charter member of the UN from inception and, as such, took part in the drafting process along with other countries' representatives. Features of this activity by the Ukrainian SSR during the drafting process of the Declaration will be revealed. The paper concludes with a statement about the active participation of the Ukrainian SSR in the drafting of provisions concerning the right to life, the existence of rights and freedoms regardless of any distinctions, the right to education, and religious education.

Key Words: *Right to life, Equality of persons, Prohibition of discrimination, Right to education, Protection of childhood.*

Introduction

The adoption of any conventional international act is the result of lengthy discussions and coordination of the positions of international law subjects, primarily states.

After all, states differ in their cultural characteristics, religious traditions and moral foundations. It is because of these differences that the development and adoption of some

documents can take decades. International legal standards are the result of a long work of a large number of states to establish agreed positions in the field of human rights.¹ With the establishment of the UN in 1945, with the Ukrainian SSR as a founding member, Ukraine became an active participant in international relations and, in particular, a participant in the development and adoption of international legal acts. As Oleksandr Zadorozhnyi rightly noted, membership in the UN and the status of the original founding member of the UN was key in establishing Ukraine's international legal status.² However, it should be noted here that the activities of the Ukrainian SSR delegation within the UN were subordinated to the goals and objectives of the USSR delegation. Ukraine has always aspired to be closer to European nations, but the Russian full-scale invasion has made it challenging for the country to gradually transform into a European state.³ The Russian narrative has always claimed that Ukraine is not an independent subject of international legal relations and nowadays it is even questioning the very legitimacy of the existence of such a state as Ukraine. However, Ukraine, even when it was part of the USSR, acted as an independent subject of international law to a certain extent. It would be wrong to view the participation of the Ukrainian SSR delegation in the UN as a mere repetition of the political actions of the all-Union leadership. Oleksandr Zadorozhnyi defines the period of 1945-1953 as the period of insufficient representation of the Ukrainian SSR in the UN⁴, and this is due, among other things, to its qualitative involvement in the discussions.

The novelty of this article is the examination the contribution of the Ukrainian SSR to the drafting of child-related provisions in the Universal Declaration of Human Rights.

Debates about the nature of the document

¹ Oleh Nalyvaiko and Natalia Bratishko, "Concepts and Features of International Legal Standards of Human Rights," *Analytical and Comparative Jurisprudence*, no. 2 (2023): 412, <https://app-journal.in.ua/wp-content/uploads/2023/05/73.pdf>.

² Oleksandr Zadorozhnyi, *Mizhnarodne pravo u vidnosynakh Ukrayiny ta Rostiskoi Federatsii* [International Law in the Relations between Ukraine and the Russian Federation] (Doctor of Legal Sciences diss., Taras Shevchenko National University of Kyiv, 2016), 89.

This aspect has not been widely explored. This article provides a detailed legal analysis that challenges the perception of Ukraine as merely a passive actor within the Soviet Union.

This article addresses the following research questions. What role did the Ukrainian SSR play in the drafting of the Universal Declaration of Human Rights, particularly in relation to provisions concerning children's rights? How did the Ukrainian SSR's participation in the drafting process reflect its status as a subject of international law within the United Nations? In the current context, there is a growing interest in the history of Ukraine's international legal personality, in particular, its participation in the activities of the UN in the twentieth century. This article addresses the gap in legal history regarding the participation of the Ukrainian SSR in the development of provisions on the rights of the child in the Universal Declaration of Human Rights 1948. An objective analysis of the Ukrainian SSR's activities at the UN will be presented in this article.

This study applies a historical-legal and document-based methodology. The analysis is grounded in primary sources, including summary records and official reports of the UN Commission on Human Rights and its Drafting Committee sessions. The research adopts a chronological approach to trace the evolution of draft provisions related to children's rights within the Universal Declaration of Human Rights. Legal comparison is employed to examine how various proposals, including those by the Ukrainian SSR, influenced the final wording of the relevant articles. This method allows for both contextual and textual analysis of the drafting process and its legal implications.

³ Mykhaylo Shepitko, "Criminal Policy of the European Union and Ukraine: Issues and Prospects of Rapprochement," *Archives of Criminology and Forensic Sciences* 1, no. 5 (2022): 45, <https://doi.org/10.32353/acfss.5.2022.02>.

⁴ Oleksandr Zadorozhnyi, *Heneza mizhnarodnoi pravosubiektnosti Ukrayiny* [The Genesis of Ukraine's International Legal Personality]: Monograph (Kyiv: K.I.S., 2014), 577.

The Universal Declaration of Human Rights 1948 is the first international legal document to proclaim the fundamental rights and freedoms of an individual regardless of his/her legal status in the state and society.⁵ Although all the provisions of this Declaration are related to the rights of the child in one way or another, there are several that in our opinion directly relate to the rights of the child: Article 1 – equality of persons from birth, Article 2 – prohibition of any discrimination in the exercise of rights and freedoms, Article 3 – right to life, liberty and security of person, para. 2, Article 25 – special protection of motherhood and childhood; equal social protection for all children; para. 1, Article 26 – right to education; free and compulsory primary education, access to technical and professional education; para. 3 Article 26 – priority right of parents to choose education for their minor children.

Johannes Morsink pointed out the significant role of the Ukrainian SSR in the development of the Universal Declaration of Human Rights 1948.⁶ Yulia Bilenkova notes that participation in the development and adoption of the Universal Declaration of Human Rights was the most important contribution of Ukrainian delegates during the work of the Commission on Human Rights.⁷ It was the representative of the Ukrainian SSR, M. Klekovkin, who, at the 27th meeting⁸ of the UN Commission on Human Rights, proposed that the Commission begin work on the draft Declaration and postpone the development of a convention (which would become covenants in the future) for the time being. The discussion of this proposal was continued at the 29th meeting⁹ of the Commission with the active

participation of the Ukrainian SSR. Thus, efforts were focused on the draft declaration, and work on the draft covenant intensified after the adoption of the Declaration.

The question in the air was whether delegations from different countries, cultures and traditions would be able to reach a compromise on the provisions of the future document that would enshrine universal human rights. The main author of the Declaration, John Humphrey, noted that it was the result of the work of hundreds, thousands of people and a synthesis of the ideas and beliefs of millions of people of different races and nationalities who spoke through them.¹⁰ At the beginning of the discussions, countries could not even reach a compromise on the form of the document itself: a convention or a declaration. Since nations can derogate from the provisions of a declaration much more easily than from those of a convention, most of the smaller states that were members of the UN in 1948 wanted the document to be adopted in the form of a convention, which would bind both small and large nations, rather than a mere declaration. The wishes of these smaller nations were thwarted, as at crucial moments during the debate either the US or the USSR, or both, delayed or blocked progress on the convention. The most persistent opponents of a simple declaration were the delegates of Great Britain and Australia.¹¹ Chile, Egypt, France and Uruguay took an intermediate position. They did not oppose a binding convention, but believed that a declaration would be more realistic at this stage. And in fact, their strategy of 'declaration first, convention second' won out, and at the second session of the Commission on Human Rights

⁵ Oleksandr Lysoded, "Zahalna deklaratsiia prav liudyny i mizhnarodni standarty povodzhennia iz zasudzhenymy," [The Universal Declaration of Human Rights and International Standards for the Treatment of Convicted Persons] in *Problems of Legality*, no 99 (1999): 140, https://library.nlu.edu.ua/POLN_TEXT/PROBLEM/Pr_zak99.pdf.

⁶ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 2.

⁷ Yulia Bilenkova, *Uchast polityko-pravovykh subiectiv Ukrainskoi RSR v rozrobtsi ta utverdzhenni osnovnykh instytutiv novoho mizhnarodnoho prava (1944–1991 rr.): Istoryko-pravove doslidzhennia* [Participation of Political and Legal Entities of the Ukrainian SSR in the Development and Consolidation of the Main Institutions of the New International Law (1944–1991): A Historical and Legal Study] (PhD diss., Lviv, 2019), 127.

⁸ United Nations, *Summary Record of the Twenty-Seventh Meeting of the Second Session of the Commission on Human Rights*, E/CN.4/SR.27, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.27&Language=E&DeviceType=Desktop&LangRequested=False>.

⁹ United Nations, *Summary Record of the Twenty-Ninth Meeting of the Second Session of the Commission on Human Rights*, E/CN.4/SR.29, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.29&Language=E&DeviceType=Desktop&LangRequested=False>.

¹⁰ John P. Humphrey, "The Universal Declaration of Human Rights," *International Journal* 4, no. 4 (Autumn 1949): 356.

¹¹ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 15.

in December 1947, they emphasized parallel work on three documents: a declaration, a convention (which would later become covenants) and implementation measures.¹² Of course, John Humphrey drew attention to these confrontations in his article, noting that whatever the legal force of the Declaration, there is now a jurisprudence on human rights and fundamental freedoms within the UN.¹³ The result of these confrontations was the decision to formalize an international document on universal human rights in the form of a declaration.

However, even in this form, the Soviet bloc of UN member states ultimately did not

endorse the Universal Declaration of Human Rights, and in the USSR its text was first published only in 1958 in the UNESCO Courier magazine and in a brochure by A.P. Movchan for official use. In Ukraine, the text of the Declaration was distributed through the so-called *samizdat*, and it was possible to go to jail for keeping the text.

Only in independent Ukraine can one truly appreciate the role of Ukrainian diplomats in the development of this great document, which, among other things, became the basis for the formation of international child rights law.

Article 1 — equality of persons from birth and Article 3 — right to life

At the beginning of the discussion of the draft, Article 1 of the Declaration had the following wording: 'All men are brothers. Being endowed with reason, members of one family, they are free and possess equal dignity and rights.'¹⁴ The word 'men' has become the most controversial word in this article of the Declaration. From the very beginning, the representative of India defended the position of a separate mention of women in this article, but the word 'men' still remained in the text of the draft Declaration and in the report of the second session of the Commission on Human Rights in 1947.¹⁵ However, the change of the word 'men' to 'human beings' was proposed by the representative of Belgium at the 50th meeting of the third session of the Commission on Human Rights in 1948.¹⁶

On December 12, 1947, at a meeting of the working group¹⁷, the issue of abortion sparked a lively discussion. The representative of Chile disagreed with the proposal to establish a rule to prevent the birth of children

to mentally ill parents. With regard to pregnancy as a result of rape, he cited his experience that most women who sought abortion used rape as a pretext. In response to the Chilean representative's remarks on therapeutic abortion to prevent the birth of a mentally ill child, the representative of the United Kingdom stated that this was still a very controversial issue. With regard to children born to parents with mental disorders, it was found that the parents' condition affected many such children, and while there may have been exceptions where these children became geniuses, these exceptions did not prove the rule. He also noted that the argument that women used rape as an excuse did not prove that all such claims are false. In other words, even if someone abuses this argument, it does not mean that there are no genuine cases of rape that lead to pregnancy. The representative of the United Kingdom emphasized that the working group did not try to define cases where abortion could be permitted, but left this

¹² Åsbild Samnøy, "The Origins of the Universal Declaration of Human Rights," in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Gudmundur S. Alfredsson and Asbjørn Eide (The Hague: Martinus Nijhoff Publishers, 1999), 10, https://archive.org/details/universaldeclara0000unse_m5y0/page/10/mode/2up.

¹³ John P. Humphrey, "The Universal Declaration of Human Rights," *International Journal* 4, no. 4 (Autumn 1949): 359.

¹⁴ United Nations, *Revised Suggestions Submitted by the Representative of France for Articles of the International Declaration of Rights*, E/CN.4/AC.1/W.2, <https://digitallibrary.un.org/record/628788?ln=en&v=pdf>.

¹⁵ United Nations, *Report to the Economic and Social Council on the Second Session of the Commission on Human Rights*, E/600, [https://undocs.org/Home/Mobile?FinalSymbol=E%2F600\(SUPP\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=E%2F600(SUPP)&Language=E&DeviceType=Desktop&LangRequested=False).

¹⁶ United Nations, *Summary Record of the Fiftieth Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.50, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.50&Language=E&DeviceType=Desktop&LangRequested=False>.

¹⁷ United Nations, *Summary Record of the Thirty-Fifth Meeting of the Second Session of the Commission on Human Rights*, E/CN.4/SR.35, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.35&Language=E&DeviceType=Desktop&LangRequested=False>.

issue to national legislation. That is why the representative of Uruguay proposed to add to the text a provision on the inviolability of human life (*note: the wording “human life is inviolable” was proposed*) and state protection of all people born or suffering from incurable diseases, as well as people with physical or mental disabilities. These proposals were prompted by the horrific practice of killing the elderly, insane, and incurable in Nazi Germany.¹⁸ However, in the report of the second session of the Commission on Human Rights in 1947, both documents retained the wording that everyone has the right to life (Art. 4 of the Draft Declaration) and that deprivation

of life of any person is unlawful except in pursuance of a court sentence finding him guilty of a crime for which such punishment is prescribed by law (Art. 5 of the Draft Covenant).¹⁹ Article 3 of the Declaration (the right to life, liberty and security of person) did not cause much discussion during the third session of the UN Commission on Human Rights in 1948 and the wording that is in the final version of the Declaration was left.²⁰ As Lars Adam Reboff notes²¹, the right to life in Art. 3 of the Declaration has two meanings, namely biological (*inter alia* the right and ability to survive) and in a broader human sense (protection from inhuman conditions).

Article 2 — prohibition of any discrimination in the exercise of rights and freedoms

An analysis of Art. 2 of the Declaration makes it clear that its intention is purely to condemn any legal system that does not meet the standards set out in the Declaration,²² which can be seen quite well in the discussion of this article. For example, the meaning of the word “birth” in the list of anti-discrimination grounds in Art. 2 means the prohibition of discrimination on the basis of inherited legal, social and economic differences. The discussion of Art. 2 of the Declaration took place at the 52nd meeting of the 3rd session of the UN Commission on Human Rights in 1948.²³ During the discussion of the provision that everyone is entitled to all the rights and freedoms set forth in the present Declaration without distinction of any kind, M. Klekovkin (the representative of the Ukrainian SSR) proposed to add to the list of distinctions the *soslovnyi* status of the person, but no equivalent was found in English. That is why he proposed to add the words ‘or other’ after

the words ‘property’ and ‘status’ and this addition was adopted. As for part two of the article, the phrase ‘arbitrary discrimination’ was actively discussed. M. Klekovkin proposed to delete the word ‘arbitrary’. This proposal was supported by the representatives of Chile, France and the USSR. The representative of the Philippines proposed to use the phrase ‘without any discrimination’, which was supported by many representatives of countries, including the representative of the Ukrainian SSR. This article was actively discussed at the next meeting of the UN Commission on Human Rights.²⁴ The representative of Australia proposed to replace the word ‘discrimination’ with ‘distinction’. Opinions on this proposal were divided. The representative of the Ukrainian SSR noted that this substitution is a change in the essence of the article. Johannes Morsink highlighted that ‘...the inclusion of anti-discrimination provisions in the text of the Declaration was

¹⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 40.

¹⁹ United Nations, *Report to the Economic and Social Council on the Second Session of the Commission on Human Rights*, E/600, [https://undocs.org/Home/Mobile?FinalSymbol=E%2F600\(SUPP\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=E%2F600(SUPP)&Language=E&DeviceType=Desktop&LangRequested=False).

²⁰ United Nations, *Summary Record of the Fifty-Third Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.53, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.53&Language=E&DeviceType=Desktop&LangRequested=False>.

²¹ Lars Adam Reboff, “Article 3,” in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Guðmundur S. Alfreðsson and Asbjørn Eide (The Hague: Martinus Nijhoff Publishers, 1999), 89.

https://archive.org/details/universaldeclara0000unse_m5y0/page/10/mode/2up.

²² Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 92.

²³ United Nations, *Summary Record of the Fifty-Second Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.52, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.52&Language=E&DeviceType=Desktop&LangRequested=False>.

²⁴ United Nations, *Summary Record of the Fifty-Third Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.53, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.53&Language=E&DeviceType=Desktop&LangRequested=False>.

largely due to the persistence of the Soviet delegation, which is such a prominent feature of the document. More than any other voting bloc, the Communists insisted from the outset on the inclusion of explicit anti-discrimination language in the Declaration. This non-discrimination stamp is their mark on the document.²⁵ Thus, analyzing the discussion of Article 2 of the Declaration, we can conclude that the provisions of this article are the achievement of the fruitful work of the Ukrainian SSR in the first place.

However, it should be noted here that despite the progressive nature of Art. 2, it was still too early to talk about full compliance with the principles laid down in it. In this case, we are talking about discrimination against

minorities, persons on the basis of race, women, religious minorities, poor people, etc., which is all too common in the modern world, as well as preventing the revival of racist movements in the industrialized world.²⁶ That is why we can say that the foundation laid during the development of the Declaration and later developed in the relevant conventions (e.g., the International Convention on the Elimination of All Forms of Racial Discrimination 1965, the Convention on the Elimination of All Forms of Discrimination Against Women 1979, etc.) still needs to be further consolidated and implemented, as it was with the complete elimination of the apartheid system.

Article 25 — special protection of motherhood and childhood; equal social protection for all children

As Asbjørn Eide and Wenche Barth Eide argue, it seems that the authors of the Declaration in para. 2 Art. 25, consider motherhood and childhood as a transitional period and women and children are seen as objects rather than subjects of legal relations for whom something needs to be done.²⁷ Taking into account the vulnerable state of women during pregnancy, childbirth, breastfeeding and childcare until the child reaches the age of independence (or when someone else can provide this care), as well as the vulnerable state of children, especially at an early age, does indeed give grounds to provide them with greater protection. However, we still cannot agree that the authors viewed them exclusively as objects; rather, as

subjects who, due to certain temporal features, require special attention/protection.

Paragraph 2 of Art. 25 in the draft Declaration was shorter than it is in the final version, as it did not contain a provision on equalization of rights of children born in and out of wedlock (this provision appeared in the report of the Third Committee of December 7, 1948 on the draft Declaration²⁸ and, in fact, this provision later became a rule of customary law due to the widespread recognition by states of the binding nature of the Declaration²⁹). The actual content of this provision was as follows: 'Mother and child have the right to special care and assistance'.³⁰ In the report of the drafting committee to Commission on the Human Rights (May 21, 1948)³¹ this paragraph had the

²⁵ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 93.

²⁶ Sigrun Skogly, "Article 2," in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Gudmundur S. Alfredsson and Asbjørn Eide (The Hague: Martinus Nijhoff Publishers, 1999), 87, https://archive.org/details/universaldeclara0000unse_m5y0/page/10/mode/2up.

²⁷ Asbjørn Eide and Wenche Barth Eide, "Article 25," in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Gudmundur S. Alfredsson and Asbjørn Eide (The Hague: Martinus Nijhoff Publishers, 1999), 543–544, https://archive.org/details/universaldeclara0000unse_m5y0/page/10/mode/2up.

²⁸ United Nations General Assembly, *Draft International Declaration of Human Rights: Report of the Third Committee. Third Session*, A/777, <https://digitallibrary.un.org/record/622107?ln=ru>.

²⁹ Olena Vinglovska, *Implementatsiia mizhnarodnykh standartiv prav dytyny v natsionalnomu zakonodavstvi Ukrayiny* [Implementation of International Standards of Children's Rights in the National Legislation of Ukraine] (PhD diss., Taras Shevchenko National University of Kyiv, Institute of International Relations, 2000), 40.

³⁰ United Nations, *Report of the Third Session of the Commission on Human Rights*, E/800, <https://digitallibrary.un.org/record/600120?ln=en&v=pdf>.

³¹ United Nations, *Report of the Drafting Committee [on an International Bill of Rights] to the Commission on Human Rights*, E/CN.4/95, <https://digitallibrary.un.org/record/564246?ln=en&v=pdf>.

following wording: 'Mothers shall be granted special care and assistance. Children are similarly entitled to special care and assistance'. During the discussion of Art. 25 at the UN Commission on Human Rights on June 9, 1948³², the representative of India proposed to include in her joint statement with the representative of Great Britain the words 'Mothers and children shall be given special care and assistance'. As Geraldine Van Bueren³³ aptly points out, the Declaration does not actually recognize the role of men (fatherhood), and this combination of the exclusive role of women and children is still a narrative in international law.

The analysis of the discussion of the draft Declaration suggests that these provisions

were not controversial and there was still some unanimity among the members of the delegations regarding Art. 25. Therefore, it would be an exaggeration to speak of the special participation of the Ukrainian SSR. It is safe to say that these provisions of Art. 25 of the Declaration were the precursor to the separate protection of the rights of women and children (which manifested itself in the form of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 and the Convention on the Right of the Child 1989). These conventions further developed the provisions of the Declaration, some of which we analyzed earlier.³⁴

Article 26 — the right to education

As is well known from the history of the USSR, education was used as one of the means of ideological indoctrination of the population. It is not surprising that during the discussion of the draft Declaration, representatives of the Soviet bloc countries paid quite a lot of attention to the articles on the right to education. However, other countries also understood the importance of education for the formation of a personality, which resulted in an active discussion of the formulations of the right to education. The Ukrainian SSR's support for the USSR's policy in the international arena can be confirmed by the report of the third session of the Commission on Human Rights³⁵, according to which the representative of the Ukrainian SSR, together with representatives of the Byelorussian SSR, the USSR and Yugoslavia, abstained from voting in support of the draft International Declaration of Human Rights (*note – this was the name of the document at the draft stage*). It was at this

session that the representative of the USSR requested that a statement be added to this report regarding the draft of the International Declaration of Human Rights he had prepared. The statement stated as the reason for abstaining from voting that the draft was unsatisfactory, not designed to guarantee human rights and freedoms and their observance. It was noted that the declaration was to define not only the rights but also the duties of citizens towards their country, people and state. A list of USSR proposals that were not adopted by the Commission on Human Rights at its third session was attached to this statement. Of the articles analyzed in this article, this is an addition to Art. 23 'Access to education shall be open to all without any distinction as to race, sex, language, material status or party affiliation.' This statement was added as an appendix to the report of the third session of the Commission on Human Rights. Representatives of the Byelorussian SSR, the

³² United Nations, *Summary Record of the Sixty-Sixth Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.66, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FSR.66&Language=E&DeviceType=Desktop&LangRequested=False>.

³³ Geraldine Van Bueren, *Mizhnarodne pravo v haluzi praw dytyni*, trans. H. Ye. Krasnokutskyi, scientific ed. M. O. Baimuratov (Odesa: AO BAKHVA, 2006), 37.

³⁴ Aisel Omarova and Serhii Vlasenko, "International Standards of Juvenile Justice: Its Creation and Impact on Ukrainian Legislation," *Access to Justice in Eastern Europe* 1, no. 13 (2022): 116–126,

<https://doi.org/10.33327/AJEE-18-5.1-n000101>; Aisel Omarova, "Preparation of the UN Convention on the Rights of the Child and the participation of the Ukrainian delegation in it," *Law and Society*, no. 2 (2024): 38–47, <https://doi.org/10.32842/2078-3736/2024.2.5>.

³⁵ United Nations, *Report of the Second Session of the Commission on Human Rights*, E/600, <https://digitallibrary.un.org/record/220221?ln=ru&v=pdf>.

Ukrainian SSR and Yugoslavia joined this statement.

The question of education was one of the most controversial. Enshrining any provisions in the Declaration meant creating minimum international standards for the implementation of a particular subjective right. As Lyudmila Deshko rightly notes, in this case, education had to meet certain quality criteria, analyzing which in totality it is possible to conclude whether the state is fulfilling its international obligations in good faith or not, and, accordingly, any person who suffers a violation of their right to education can apply for the restoration of their violated right using the internal mechanism of legal protection and international.³⁶ In general, it can be argued that the article on education is one of the most clearly shaped by the experience of World War II, and paragraphs 2 and 3 of Art. 26 were included as a way of condemning what Hitler did to German youth and ensuring that it would never happen again. Paragraph 3 of Art. 26 is a direct reaction and counteraction to the Nazi abuse of state power, and this paragraph was especially necessary precisely because of the use in para. 1 of Art. 26 of the phrase ‘compulsory education’.³⁷ Moreover, education, especially primary and fundamental, lays the foundation for the development of the individual, his worldview, the ability to be useful to society, as well as the ability to continue the development of society in its own spirit in accordance with the traditions and customs of the development of this state. It was this circumstance that caused

heated discussions about the provisions of education in the Declaration.

During the first session of the drafting committee, the United States delegation proposed making fundamental education compulsory³⁸, which was reflected in the document of the drafting committee of June 12, 1947³⁹. Comparing the original draft of the Declaration with the proposals of the United States and Great Britain. Instead, France proposed a provision that primary education is compulsory for all children and should be free of charge⁴⁰, which was included in the draft Declaration approved by the first session of the drafting committee in 1947⁴¹. The draft Declaration of the second session of the Commission on Human Rights contained a provision that everyone has the right to education and fundamental education is free and compulsory (Art. 27)⁴². In the text of the project as revised in 1948⁴³ it was slightly different from the final version, namely, the compulsory nature of not only elementary, but also fundamental education was fixed. There was no norm regarding the right of parents to priority in choosing the type of education for their minor children. During a discussion at a meeting of the Commission on Human Rights on June 10, 1948⁴⁴ Art. 26 the representative of Lebanon noted that parents should be given the freedom to determine in what spirit they want their children to be brought up. This opinion was also supported by the representative of the International Union of Catholic Women’s Leagues, noting that this article did not indicate the fundamental right

³⁶ Lyudmila Deshko, "The Right to Education and the Principle of Equality: From an Idea in the Works of Professor Hersch Lauterpacht to Enshrining in the Universal Declaration of Human Rights," *Scientific Bulletin of Uzhhorod National University. Series: Law*, no. 77 (2023): 299, <https://visnyk-juris-uzhnu.com/wp-content/uploads/2024/01/50-1.pdf>.

³⁷ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 2000), 90.

³⁸ United Nations, *United States Suggestions for Redraft of Certain Articles in the Draft Outline*, E/CN.4/AC.1/3; E/CN.4/AC.1/8, <https://docs.un.org/en/E/CN.4/AC.1/8>.

³⁹ United Nations, *Textual Comparison of the Draft Outline of International Bill of Rights (Prepared by the Secretariat), the United Kingdom Draft Bill of Rights (Document E/CN.4/AC.1/4), United States Proposals (Document E/CN.4/AC.1/8)*, E/CN.4/AC.1/11, <https://docs.un.org/en/E/CN.4/AC.1/11>.

⁴⁰ United Nations, *Revised Suggestions Submitted by the Representative of France for Articles of the International*

Declaration of Rights, E/CN.4/AC.1/W.2/Rev.2, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2FAC.1%2FW.2%2FREV.2&Language=E&DeviceType=Desktop&LangRequested=False>.

⁴¹ United Nations, *Report of the Drafting Committee to the Commission on Human Rights*, E/CN.4/21, <https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2F21&Language=E&DeviceType=Desktop&LangRequested=False>.

⁴² United Nations, *Report to the Economic and Social Council on the Second Session of the Commission on Human Rights*, E/600, [https://undocs.org/Home/Mobile?FinalSymbol=E%2F600\(SUPP\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=E%2F600(SUPP)&Language=E&DeviceType=Desktop&LangRequested=False).

⁴³ United Nations, *Report of the Third Session of the Commission on Human Rights*, E/800, <https://digitallibrary.un.org/record/600120?ln=en&v=pdf>.

⁴⁴ United Nations, *Summary Record of the Sixty-Seventh Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.67, <https://docs.un.org/en/E/CN.4/SR.67>.

and obligation of parents to raise their children conveniently at their own discretion. The representative of the Ukrainian SSR did not support the proposal to grant the right to higher education on the basis of abilities, since, according to him, in the Ukrainian SSR everyone could get higher education and the only thing that was necessary was the student's desire to study. That is why he did not support any restrictions on higher education. During the continuation of the discussion of the right to education⁴⁵, discussions were held regarding the use of the words "elementary" and "fundamental" education in the text of the Declaration. All delegations agreed that fundamental education contained a newer and much broader concept of adult education. That is why there were lively discussions about the compulsory education, as some delegations believed that it would be a kind of coercion to education, the imposition of public education (India, Great Britain, Australia, China), others in the concept of obligation saw the child's opportunity to receive education without restrictions from the family/state, as well as the elimination of illiteracy (France, USSR, Chile, Belorussian SSR, Lebanon, Uruguay). Due to such disagreements regarding the compulsory education, the representative of Lebanon proposed a compromise amendment to the text of the project that parents have the primary right to determine the education of their children. The idea of including this amendment

was supported by the United States, the Ukrainian SSR and Belgium. The representative of the Ukrainian SSR M. Klekovkin noted that the word 'compulsory' did not exclude the right of the family to choose the school in which its children will study, and it makes sense to include the Lebanese amendment in the second part of the article under discussion. Although at the 68th meeting of the Commission on Human Rights Lebanon's proposal was rejected, in the final version of the Declaration this norm is already present. In the report of the third committee of December 7, 1948⁴⁶ regarding the draft Declaration, the article on education already contained a rule on the priority right of parents to choose the type of education for their children.

In fact, the provision for compulsory education is the only such provision in the Declaration (other than Art. 29) where a person is obliged, in this case in the form of an implicit obligation to participate in education⁴⁷. At the same time, parents are given the right to choose education for their children. However, one should not understand this right as such that parents can choose education that contradicts human rights, this right should be considered in conjunction with other provisions of Art. 26. This means that parents can choose the quality of education, including the religious direction of education.

Summary and Conclusions

Thus, the Universal Declaration of Human Rights contains articles enshrining the rights of children, and these provisions became the basis for future international legal and national instruments concerning the rights of children. Because of the international recognition of the Declaration's norms in the

constitutions of more than 120 states of the world, the list, content and permissible restrictions on the rights and freedoms contained in it have become universally recognized customary norms of international law, that is, international standards of human rights.⁴⁸ Alla Fedorova quite accurately

⁴⁵ United Nations, *Summary Record of the Sixty-Eighth Meeting of the Third Session of the Commission on Human Rights*, E/CN.4/SR.68, <https://docs.un.org/en/E/CN.4/SR.68>.

⁴⁶ United Nations General Assembly, *Draft International Declaration of Human Rights: Report of the Third Committee. Third Session*, A/777, <https://digitallibrary.un.org/record/622107?ln=ru>.

⁴⁷ Pentti Arajärvi, "Article 26," in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Guðmundur S. Alfreðsson and Asbjørn Eide (The Hague: Martinus Nijhoff Publishers, 1999), 554,

https://archive.org/details/universaldeclara0000unse_m5y0/page/10/mode/2up.

⁴⁸ Valerii Kononenko, "Rol Zahalnoi deklaratsii prav liudyny v interpretatsii Yevropeiskym Sudom Konventsii 1950 r.," [The Role of the Universal Declaration of Human Rights in the Interpretation of the 1950 Convention by the European Court] in *Problems of Legality*, no.99 (1999): 213, https://library.nlu.edu.ua/POLN_TEXT/PROBLEM/Pr_zak99.pdf.

noticed that the Declaration turned out to be a compromise between the opposite positions of the states of the Soviet-socialist camp, which demanded the inclusion and recognition of the group of socio-economic human rights, and the states of Western Europe and the USA, which, in turn, defended the priority and sufficiency of civil and political rights.⁴⁹ The debate on provisions that directly or indirectly concerned the rights of children was mainly about the right to life, equality and freedom of all people from birth, the existence of rights and freedoms independent of any signs (gender, race, color, etc.) and the right to education. The active participation of the Ukrainian SSR was at the discussions on most of these provisions, namely the right to life, the existence of rights and freedoms independent of any signs, the right to education and religious education. The delegation of the Ukrainian SSR categorically

refused to support the inclusion in the text of the Declaration of any circumstance that would make it possible to legalize the deprivation of life. Another significant contribution of the Ukrainian SSR to the debate was promoting the adoption of provisions that education should be free and accessible to all without discrimination, support for the freedom of choice of education by parents, as well as objections to restrictions on access to higher education on the basis of abilities, based on the belief that the student's desire is sufficient for learning. It was the representative of the Ukrainian SSR who proposed to leave the list of discriminatory provisions in the part that everyone has all rights and freedoms in the text of the Declaration open. From this analysis we can conclude that the priority issues for the delegation of the Ukrainian SSR and the Soviet Union as a whole.

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⁴⁹ Alla Fedorova, "Mizhnarodnyi Pakt pro ekonomichni, sotsialni ta kulturni prava yak skladova universalnoi systemy zakhystu prav liudyny." [The International Covenant on Economic, Social and Cultural Rights as a Component of the Universal Human Rights Protection System] *Actual problems of International Relations*, no.

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ПРАВА ДИТИНИ У ЗАГАЛЬНІЙ ДЕКЛАРАЦІЇ ПРАВ ЛЮДИНИ 1948 РОКУ: ІСТОРІЯ СТВОРЕННЯ ТА РОЛЬ УКРАЇНСЬКОЇ РСР У ЦЬОМУ ПРОЦЕСІ

Анотація

Загальна декларація прав людини 1948 р. є одним з основних документів, що заклав основу для всіх інших міжнародних документів з прав людини, включаючи права дитини. У статті буде розглянуто внесок Української РСР у розробку Загальної декларації прав людини 1948 р. в частині, що стосується прав дитини.

Ця стаття є особливо актуальнюю з огляду на війну між Росією та Україною і той факт, що Росія пропагує, що Україна не є суб'єктом міжнародних відносин і державою в розумінні міжнародного права і ніколи не була такою. Однак наш аналіз доводить, що Україна, навіть будучи однією з союзних республік СРСР, певною мірою діяла як незалежний суб'єкт міжнародного права. Україна є одним із засновників ООН і, як така, брала участь у процесі розробки проекту разом із представниками інших країн. У статті розкриваються особливості діяльності Української РСР під час розробки проекту Декларації. Наприкінці статті робиться висновок про активну участь Української РСР у розробці положень, що стосуються права на життя, існування прав і свобод незалежно від будь-яких відмінностей, права на освіту та релігійне виховання.

Ключові слова: право на життя, рівність осіб, заборона дискримінації, право на освіту, захист дитинства.



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