

Certain Issues of Human Rights' International Legal Regulation and Ways of Their Solution

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Abstract

Nowadays, the universal nature of main international treaties on human rights is being called into question by certain countries with increasing frequency. At present time, representatives of some Asian, African and Near Eastern countries state that the contemporary international law of human rights is more oriented to Western countries, which had accepted Christian religion values and extensively fell under the influence of Roman law. This point of view is worth noticing, despite the fact that Western scholars and experts permanently assert that the international law as a whole and the law of human rights in particular are not a product of the West only, but are a global one.

This paper is devoted to searching for an answer to the question of to what extent positions of the both parties have been proved and what the international community should do to find a common ground between the opposite camps in this issue. It also determines the nature and peculiarities of the International Law of Human Rights as part of the universal international legal system, reveals the merits and defects of "Universalism" and "Cultural Relativism" conceptions and shows that the effective implementation of international legal norms on human rights is impossible without taking into consideration the peculiarities of historical and cultural development as well as ethnical structure of different countries, which determine specific character and content of national archetypes of the attitude to the law.

Keywords: human rights, international law, universalism, cultural relativism, legal consciousness

1. Introduction

For the first time in the centuries-old history of civilization, at the end of XX – the beginning of XXI century, the world community realized that to conduct the policy that stimulates split of the humanity into antagonistic parties means to invite a global catastrophe. The majority of states refused to engage in political and ideological confrontation, which allowed to change the state of "cold war" between the countries into the joint search for ways and means of effective solutions to global problems, including maintenance and further realization of human rights and freedoms.

As it was noted in the Final Outcome of the World Conference on Human Rights 1993, "the promotion and protection of human rights is a matter of priority for the international community" (Vienna Declaration, 1993). The international community "must treat human rights globally, in a fair and equal manner, on the same footing and with the same emphasis" (Vienna Declaration, 1993). Later the world community once more reaffirmed that "all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis" (2005 World Summit Outcome, 2005).

The beginning of an era of international relations' post-confrontation development gave unprecedented opportunities for the further development of inter-state cooperation in humanitarian field. In recent years the number of international treaties has increased; their content illustrates that more and more problems concerning the legal status of a person, which have always been within the scope of each country's internal affairs, are to be regarded as an object of international regulation. The role and meaning of supervising bodies designed for the proper and timely implementation of human rights acts have been consistently increasing.

At the same time, due to the fact that changes taking place in the present-day world are fast-moving and widespread, they are followed by the increase of political instability and of local and regional conflicts, by the occurrence of new problems and aggravation of old ones. These problems have deconstructive influence on the process of universal recognition and proper implementation of international standards in the field of human rights worked out at the universal level. The universal nature of principal international treaties on human rights is frequently disputed, and at the same time countries offer their own individual ways in this field. In this paper, we shall try to illustrate whether such statements are well-grounded or not.

2. Human Rights and International Law: Nature and Problems of Regulation

A human being is not just a part of nature. He/She is a social creature and communication with other people constitutes an integral component of his/her everyday life. All human communities interact with one another. In our time, no group is hermetically secluded from the outside world (Tomuschat, 2011, p. 231). Society dictates a person's way of behavior, defines his/her position in it. These aspects are determined mainly by means of legal norms that define rights that shall be granted to a human being, things to which he/she may lay claim and make a list of his/her do's and don'ts.

Together such permits, possibilities and guarantees, enshrined in regulatory legal acts, form the content of human rights and freedoms in their legal sense. Human rights belong to an individual as a consequence of being human and depend on a level of social development, economic system and political regime of a state, its historical conditions and other characteristics.

The problem of nature and content of human rights, their origin, legal recognition and enforcement are deeply rooted in the history of all humanity. Being initially presented only in a form of moral and political concepts and views of outstanding antique thinkers, this problem has gradually obtained political and further legal recognition in the period of bourgeois revolutions in USA, England and France. In this regard, the well-known Declaration of the Rights of Man and of the Citizen (August 26, 1789) had great significance, for, as opposed to the feudal arbitrariness, it declared the equality and freedom of all people in respect of their rights, along with their protection by the state. It has also established a number of specific rights of a citizen, including the right of personal security, presumption of innocence, freedom of speech and of the press.

Later on, questions concerning the regulation of an individual's legal status obtained "civilized" formulation, having become the principles of law and developed legal forms; therefore, they became more formalized. Nevertheless, till the middle of the XX century, legal regulation in this field developed almost exclusively at the national level.

The problem of human rights' regulation reached the level of international law in its full only after the establishment of the United Nations. Flagrant disregard of basic human rights and freedoms as well as mass extermination of people during the Second World War encouraged the world community to search for new organizational, political and legal methods for the maintenance of fundamental human rights and freedoms by virtue of joint actions of states. Provisions concerning the necessity for the international cooperation, which were included into the Charter of the United Nations as a universal international organization for the maintenance of international peace and security, speak about the need for "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Charter of the United Nations, 1945). A special mechanism for the realization of this goal has been created within the UN.

Thereby it was admitted that the effective international protection of human rights and freedoms is one of the most important conditions of guaranteeing peace and progress, and the international community should undertake a new function — the function to support the democratic state system and idea of supremacy of human rights in certain countries. In turn, such actions as apartheid, genocide, racism, propaganda and incitement of national conflicts were recognized as unlawful and as following with the international legal liability.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, became one of the first international normative documents to regulate relations that influence the determination of an individual's legal status. With the adoption of this Declaration, certain issues that had been in the scope of each country's internal affairs for a long time were included into traditional spheres of international legal regulation, along with the list of an individual's basic rights and freedoms, which all peoples and all nations should try to ensure. Many researchers consider that this document has built a basis for a new freestanding branch of international law – international law of human rights.

Now, more than 60 years later, the maintenance of human rights is still a supreme principle of the international legal system, while the most dangerous international crimes are still crimes against humanity, which cause

humanitarian catastrophes and threaten not only local, but global security as well. Nowadays, the number of universally recognized human rights has extremely increased. Currently, human rights and freedoms are divided into the following large groups: civil, political, social and economic, and cultural. Scientific and technical progress and civilization development created new rights and freedoms, e.g. the right to a healthy environment, certain quality of life, information security, collective rights of nations and peoples, etc.

Despite the possibility of making gradations among human rights, all of them are equally important and constitute one system. They are indivisible, interdependent and interrelated. That is why it is inadmissible to oppose one right or freedom to another. Otherwise, striving to achieve the observance of one group of rights and freedoms can be used to infringe another one. In just the same way, the principle of universal respect for human rights, as one of the basic principles of the modern international law, should not be set against its other principles but rather harmonize with them.

Nowadays, the international law of human rights finally took the shape of a freestanding branch of the international public law. From the legalistic point of view, it represents a complex of international legal principles and norms that determine universal standards and limits of states' behavior in recognizing, protecting and exercising control over the observance of individuals' socially determined rights and freedoms and their associations on a particular territory, and also for the international cooperation in this sphere. As well as any other branch of international law, the international law of human rights has its own specific sources, special principles and self-standing subject of legal regulation. That is why it should be distinguished, for example, from the international humanitarian law the norms of which are directed exclusively to protect participants and victims of armed conflicts and, in this regard, to the limitation of means and methods of warfare.

Analyzing the nature and mission of the international human rights law, it is important to take into account the fact that intensive influence of its norms on the internal competence of states does not mean that it is possible to completely replace the national regulation of corresponding issues with the international legal regulation. Due to the differences in points of view of states regarding the determination human rights' nature and content, it is impossible nowadays to provide an exhaustive and exclusive regulation at the level of international relations arising in the sphere of human rights.

Furthermore, the international law, generally, due to its interstate nature, is not designed for the direct regulation of individuals' rights and freedoms, and its mechanisms of functioning on their own cannot provide their enforcement in the everyday life. International law of human rights directs and supplements the national law by promoting the correction of weaknesses of states' constitutions and laws, but it does not replace and in reality cannot replace the corresponding national legislation. It should be noted that in all these cases we must tell about the interaction and adjustment of international and national legal norms but not about converting them into each other or joining each other. International and national legal systems have different nature, playground and mission. That is why international treaty or custom on human rights will never become a part of any national legislation (Gavrilov, 2005, p. 155). In this regard, very illustrative is the statement of the Chinese Professor Le Zhaojie, who noted that "there is no such thing as 'Chinese international law' any more than there is such a thing as 'Chinese mathematics', there can only be a Chinese theory and practice of international law" (Zhaojie, 2001, p. 326).

As long as the statehood and institute of citizenship exist, the protection of human rights will create legal relations between the state and a person. That is why in the nearest decades changes will hardly take place in the situation where the majority of international legal norms sounding the impact on a person's legal status are addressed to states and oblige them to guarantee a particular complex of rights and freedoms to their individuals via domestic legislation.

Main objectives of the international law "consist not in the submission to the internal life of a state, but in the creation of optimal international conditions for its comprehensive development". In this view, the main aim of treaties and other international acts on human rights is not to substitute national legislation, but to establish well-defined universal standards for states' activity and to ensure their universal recognition and uniform application. It is another matter that the limits of freedom of states' discretion concerning such standards are getting narrower with each year, while the control of the international community over their practical application and proper fixation in the national legislation is becoming more rigid.

However, we should ask ourselves: can we obtain much by increasing the obligatory force of international human rights acts and by strengthening international control over their enforcement (including the enforcement within international courts and tribunals of different levels)? It is unlikely.

The thing is that the effectiveness of legal norms' impact on public relations, including the sphere of human rights, is determined not only by the content of relevant legal prescriptions, but by the equivalence of other elements of legal validity, structurally and functionally necessary for the normal functioning of legal control mechanism, and such norms. The balance of the idea of human rights and the national archetype of the attitude towards the law, actual for a particular society, along with the status of its legal culture, which differs greatly in various parts of the world, is of particular importance among such elements.

The above-mentioned circumstances foreshadow the tendencies for the further development of the international human rights law. The main tendency among them, to our opinion, lies in the formation, on the basis of pan-democratic ideas on an individual's place and role in the present-day world, of a global inter-civilizational conception concerning the essence and content of human rights and freedoms, collective rights of peoples and nations and, consequently, in step-by-step resolution of conflicts between universal and regional acts on human rights as well as in comprehensive and practicable implementation of their provisions into states' practices.

3. National Differences in Perception and Understanding of Human Rights Conception

It is generally known that one of the main principles that underlies the modern system of human rights and determines its essence is that all rights and freedoms are equally important, indivisible and interrelated. But, at the same time, it should be mentioned that universal nature of human rights is being disputed more and more frequently nowadays, and some countries offer their own ways in this field.

In our opinion, there are two main reasons explaining such state of things. The first one is determined by the specifics of human rights' legal regulation at the international level. Obviously, as it was mentioned above, the international law, due to its interstate nature, is not designed for direct regulation of rights and freedoms of certain individuals. In this view, the main purpose of international instruments on human rights consists not in the substitution of national legislation, but in the creation of general standards for states' activity and in the maintenance of their universal recognition and uniform application.

But the last task is difficult to achieve because these standards often include only general description of the required status of humans, and, therefore, they can be interpreted by different countries in different ways. Thereby international norms create legal possibilities for a "special perception" of human rights' content from the side of states that have cultural, religious, historical and other peculiarities. It is another reason for the universal character of human rights to be disputed and even for some of them not to be recognized.

Both the international and national legal systems have "human" filling and function due to human activity. "The law not only goes through an individual's mind, it is also implemented in a social sphere, and an individual (as a psychological creature) is always engaged in joint psychological exchanges. Such interaction is considered to be the realization of law apprehension. Although apprehension of law is individual, groups of people and different communities may have similar ideas concerning the law" (Isaeva, 2004, pp. 107-108).

This statement is true with respect to both national and international law. Therefore, the effectiveness of their norms' implementation in a certain state or in state-to-state relations to a large extent depends on a level of individual or collective legal consciousness and legal culture as a whole existing in this or that community. It also depends on the intensity and direction of external cultural and value-orientated influence on this community as well.

Since ancient times a cross-cultural interaction has been one of the most important means of state and legal institutions' development. Nowadays a pure national legal culture or a national archetype without any outside influence can hardly be found. "All of them represent a symbiosis of local, native categories and external, extra-national ones or those that have gained international recognition" (Martyshin, 2005, p. 9). In this regard, it should be noted that the role of international law is extremely significant because its influence on individual and collective legal consciousness is steadily increasing. As famous Russian professor I. Lukashuk puts it, "the international law gradually goes far beyond the limits of diplomacy and begins to influence mass consciousness and public opinion formation. The effectiveness of international law and, consequently, success of world problems' solving depends a lot on a sanction of public opinion" (Lukashuk, 2004, p. 61).

Therefore, the interaction of international and national legal systems in the field of human rights extends not only to legal rules themselves, enforcement and lawmaking activity of international and domestic bodies and organizations, but to the legal consciousness as an important element of these systems as well. The events of foreign policy and domestic legal reality give an impulse to the mutual interaction of legal systems. The influence of such events on the legal consciousness of people can be either positive or negative depending on the

circumstances. It can be caused by the activity or inactivity of particular states or their competent bodies, which touch peoples' legal consciousness in certain countries.

Positive influence of contemporary international law on collective and individual legal consciousness is caused, first of all, by the fact that it is a democratic normative legal system. Among its sources there are such understandable to the majority of people values as sovereign equality of states, inadmissibility of threat or use of force, non-interference in domestic affairs, respect for human rights, disarmament, international cooperation, etc. It is also important that with the help of international legal norms "independent, actually equal states form a sustainable international system, become dependent not on the discretion of a strong one, but on agreed norms of international dialog" (Rybackov, Skotnickov, & Zmeevsky, 1989, pp. 61-62). This is the basis of international legal order and stability.

Nothing else stimulates every person's or nation's perception of their belonging to a united human race so effectively as providing them by the international community with specific technical, financial, military or material assistance in cases of economic crisis, armed conflicts, natural or man-made disasters. The more rapidly the process of globalization is developing in the world, the more advanced means of information exchange and modes of individuals' and capitals' moving become, the deeper the cross-cultural interaction becomes and the more inevitable is the elaboration of common standards of individuals' attitude towards each other and surrounding reality, including the law. This process is greatly facilitated by global tasks concerning environmental conservation; climate change prevention; search for alternative sources of energy; Space exploration and study of the World Ocean; struggle with new diseases, demographic and social anomalies, extremism and terrorism. The necessity of these tasks' quick solution is getting more and more obvious every year, and it can be reached only by the joint efforts of all the mankind based on the rules of conduct applicable to all.

Having accepted the idea of a united human civilization as a basis, we can state that the international law is one of the most important factors that enable its existence. Unprecedented interrelation of states and nations, which should more often be treated as mutual dependence, is a characteristic feature of our time. Together with the aggravation of local conflicts and common problems, there arises the universal awareness of the necessity for a dialogue and joint search for the ways of overcoming contradictions. In such situation, international legal mechanisms are proved to be the most preferable because they mean concurrence of actions among the subjects and quest for compromise in reaching decisions. Besides that, declarations, conventions, pacts and resolutions created as a result of different countries' joint efforts contain a ready system of progressive ideas and values. These ideas and values have been tested by many states and are recognized to be universal and panhuman due to their progressivism and prevalence.

But, there is another side to this problem. Nowadays the world community still remains divided in regard to many topics, and not all of its subjects encourage changes occurring in the world. We should not forget about the movement of antiglobalists, who are strongly against the integration process in some areas. The process of "reverse" globalization has recently spread and represents a movement of significant masses of population from their habitual geographic, climate, economic, social and cultural areas to the conditions completely new for them. This fact causes a serious problem for migrants' adaptation and the system of social values they profess. In opinion of many researchers, "direct" and "reverse" globalization, which is typical for the present stage of the world development and has different directions, create a new basis for social conflicts under which racial, ethnical, religious and other contradictions largely take multicultural form" (Polenina, 2005, pp. 70-71).

Existing differences between the Western and Eastern ways of thinking, ways of life and national legal systems of relevant states are the most significant in this sense. For example, M. Sornarajah considers that "prescribes democracy and a value system of human rights that favors highly individual rights will be opposed by many Asian states. Again, the freedom should be saved for the Asian people to decide which way they will go rather than to have that way prescribed for them or forced upon them by others. Asian problems relating to the development and ethnicity are different from those that the Europe faced. The solutions to these problems must be fashioned by the Asian people" (Sornarajah, 2001, p. 312). Russian researcher V. Khizhnyak also claims that "while unforced limiting of rights inherent in sovereignty is occurring in the West, struggle for separation from the West is taking place in the East. The East does not accept Western way of life which shakes its own foundations, and no solutions have been found for this obstacle yet" (Khizhnyak, 2004, p. 210).

Despite certain categoricalness of the last-mentioned thesis, topics raised in it are really up-to-date. Cultural, ethnical, religious and historical specifics should be taken into consideration while estimating the possibilities of different countries' for participation in one or another universal project or the effectiveness of their international

obligations' fulfillment. It is determined by the fact that, as it was mentioned above, the international law is a "product of mind, both mental and rational phenomenon. Its subject depends on the legal consciousness of nations and law enforcement practice – on behavioral stereotypes and psychological peculiarities of this or that ethnos" (Rogozhin, 2002, p. 20). Nevertheless, unfortunately, nowadays the achievements of judicial anthropology and comparative jurisprudence are not actively used in the international rule-making process, which directly influences the effectiveness of implementation of numerous agreements on human rights by states and nations, especially representing the non-Western legal tradition.

Representatives of some Asian, African and Near Eastern countries consider the contemporary international law of human rights to be mainly oriented to Western countries, which had accepted the values of Christian religion and to a considerable degree fell under the influence of Roman law. This point of view is worth noticing, despite the fact that Western scholars and experts constantly assert that the international law as a whole and the law of human rights in particular are not the work of the West, but are a global one, and that they represent "the product of numerous traditions and civilizations, and this fact should frustrate the antipathy towards it still existing in some regions" (Weeramantry, 2000, p. 281).

The understanding of nature of human rights' concept and mechanisms of their realization at the national level still vary vitally from country to country depending on peculiarities of historical and cultural development, religious traditions and ethnical structure.

Thus, animist African communities have their own conception of a man. A traditional African community is impregnated with community feeling. The principle of supremacy of genealogical reasoning dominates in it. In accordance with this principle, the elders have absolute authority and are held in high respect, especially in terms of inheritance and representation; women are totally dependent. Due to such situation, African states do not accept many forms of judicial or arbitration methods of dispute resolution. Extralegal and non-institutional methods of peaceful settlement are most typical for them.

In some Muslim countries, the Western conception of human rights, introduced into judicial culture by progress, often contradicts the national law based on Islamic principles. As a result, many provisions of international documents on human rights are recognized to be non-admissible. For instance, Muslim women are exposed to discrimination because they are allowed to work, as a rule, only in few government institutions. There are also some restrictions on matrimony: marriages between Muslims and non-Muslims are prohibited. As for the law of succession, a man's portion is twice larger than a woman's one, which contradicts the universal principle of equality, etc.

The state of affairs in Hindu-Confucian civilization is similar to that in African and Arabic-Muslim traditional civilizations. Their values and concepts are frequently opposite to the European Christian culture (it is subject to the philosophy of human rights as well). As it has been mentioned above, the fundamental difference consists in many Asian states' refusal to share one of basic postulates of the Western concept of democratic society; proclaiming a priority of individual rights.

Representatives of law schools from other parts of the world also emphasize the necessity of taking national peculiarities into account for the development and implementation of international legal norms. The Russian Federation is not an exception. "There is a traditionally large role of the state in the economy, which has been typical for the Russian statehood throughout its existence. It is reflected in legal psychology of the majority of population as a rejection of such forms of private property institutions that are traditional for the West-European culture and as legal nihilism expressed in indifferent, distrustful and scornful attitude towards the law and the state" (Polenina, Gavrillov, Koldaeva, Kukjanova, & Surko, 2004, p. 14).

Therefore, the idea of regionalization is being actively developed nowadays, along with the process of globalization and attempt to universalize human rights law. The standards that are recognized at the international level and should be followed always and everywhere face the opposition in certain socio-cultural systems. In this regard, the standards become comparative, losing their features of universality.

4. Conceptions of 'Universalism' and 'Cultural Relativism'

Differences between the 'Western (Northern)' and the 'Eastern (Southern)' approach to the understanding and content of the idea of human rights and its realization into legal regulations and law enforcement practice are quite clearly represented in the conceptions of 'universalism' and 'cultural relativism'.

4.1 Content

In accordance with the conception of 'universalism', the hierarchy of cultures and traditions of different peoples must not be taken into account in the process of evolution of human rights' conception and of their regulation at

the international and national legal levels as well as at the stage of practical realization of individuals' rights and freedoms and provision of their implementation monitoring. Universalists assert that every human being has certain human rights by virtue of being human. These human rights are meant to protect their human dignity, and all individuals should be able to equally enjoy them. In other words, this conception relies upon the opinion that human rights cannot be subject to erosion because of diverse understandings and interpretations of them in different regions of the world. Therefore, the development of national legal systems and their basic principles should go under the conditions of uniform understanding and application of universal international acts on human rights.

Unlike universalists, the supporters of 'cultural relativism' conception consider that only local traditions (religious, legal, political) can clarify what practical forms will the rules fixed in universal acts on human rights obtain within the legislation and legal practice of a particular country. From their point of view, it is impossible to work out and effectively implement international and corresponding national legal acts on human rights without taking into account the peculiarities of historic, religious, cultural development and ethnical structure of different countries because these factors determine the specific character and content of existent national archetypes of the attitude towards the law. Thus, in opinion of 'cultural relativism' supporters, the pressing attempts of Western countries to impose their own conception of human rights under the veil of universal values on the Eastern and Southern states appear to be an act of 'cultural imperialism'.

4.2 Advantages and Disadvantages

Arguments of both universalists and relativists are not doubtless. Their approaches to the understanding of human rights' nature and content require some correction.

It cannot be doubted that the universality and universal recognition are the cornerstone of the idea of human rights, without which it would not only be ineffective but would also lose the reason for its existence. From this point of view, it is necessary to agree with the supporters of 'universalism'. The question arises concerning both what rights should be regarded as universal and how imperative in matter should the drafting of international normative acts determining the content of these rights be and by what means they should be implemented. In this regard, the position of the universalists appears to be much more arguable.

The right to health protection and social security, for example, is unlikely to be implemented to an equal extent of success and effectiveness in all countries. It is caused by different levels of economic development of states and their possibilities for the full enforcement of social and economic rights. It is difficult to find real universalism in political rights' realization as well. It is quite impossible to suppose that the right to legal defense or the right to participation in governing the state by virtue of democratic election will be equally guaranteed, for example, for civilians of the European Union and for the people of countries where neither democratic traditions of Western type nor political and administrative institutions that can provide such traditions are developed.

It does not mean, of course, that the world community should make no efforts to change the situation in relevant countries for the better. However, these actions should be exclusively evolutionary and respectful, and the final result not necessarily may be a one more Western model of human rights' implementation. No country or group of countries can have monopoly to set the truth in that matter. Only authorized universal international bodies and organizations have the right to judge whether law enforcement practice of a state corresponds to the letter and spirit of the international human rights standards.

The issues we stated above are of great interest because nowadays a topical problem exists concerning the limits of expansion of universal ideas and values and the permissibility of any form of coercion in this process. In other words, how necessary and justified are the attempts to impose some ideas, way of life, ideology on a person, countries, peoples to whom these ideas can be alien? And if a state refuses to accept offered standards, is it justified to implant such standards by force while being "wiser and stronger"?

The above mentioned problem is of interest because in the recent years the international human rights law, unfortunately, has been actively used to serve national interests of particular states. If the observance of international legal instructions does not satisfy their requirements, these rules are easily ignored and replaced by doctrines and principles that are rather abstract and doubtful from the legal point of view. As a consequence of such actions, forcible implanting of a particular system of values into the countries the historical development of which greatly differs from the Western takes place, and the religious basis that determines the most important rules of social life has nothing to do with Christianity.

Such practice is inadmissible. No state is prohibited to defend its national interests at the international level or to propagandize the way of life typical for its citizens. However, it should be remembered that in conditions of

globalization there is a close connection between the national and international interests and these vital national interests can be ensured only in the context of joint interests of all countries, the importance of which is getting more significant.

On the other hand, constant appealing to national traditions and cultural peculiarities cannot be considered as a lawful and justified reason for the violation and failure to ensure individual rights and freedoms recognized by the world community. Furthermore, the specific character of national archetype of attitude towards the law that allows actions oriented to abolition or excessive limitation of human rights should not justify such interpretation of international acts on human rights.

While debates between universalists and cultural universalist will exist as long as the human rights movement does, the academic attention has in recent years shifted from the realm of conceptual to more practical and empirical examinations of how exactly human rights' norms are transferred from one culture to another, under what circumstances they are accepted or rejected and under what circumstances new norms take on hybridized characteristics following the influence of receiving culture (Wolman, 2013, p. 80).

Many authors consider the fact that today's predominant political thinking falls behind time requirements to be the main obstacle on the way to the formation of a new world's order on the basis of humanity integration. It is difficult to argue with this idea. That is why the efforts should be applied in order to raise the level of such thinking and level of mass consciousness on the basis of the contemporary perception of the outside world and of the understanding of the complexity of all problems that our planet faces. The success of this deal much depends on mass media and bodies of education. Their activity, supported by the government, should be focused on the fixation of common moral norms and principles of law that determine people's attitude to each other, to the society, to other nations in their consciousness (Lukashuk, 2002, pp. 5-7).

The science of international law also should contribute to the internationalization of all-level legal consciousness, and it is necessary to increase the implementation of its research results by political and governmental bodies while exercising their functions. By means of legal doctrine and with the use of methods of legal acculturation it will be possible to figure out the factor of impact that will these or those international principles and norms make on economic, political and other social processes, on the individual and social psychology in a particular country.

5. In Searching for a Consent

The aforesaid shows that human rights are a product of historical development of the society. Therefore, their understanding and enforcement differ at different stages of development in separate societies, which have their socio-cultural peculiarities. That is why various rights and freedoms can have different meanings when applying in different societies. For instance, the right to take part in elections in a particular state, the right to a fair trial, freedom of thought and movement, freedom of association, prohibition of discrimination and other rights can be interpreted in different ways.

However, drawing a distinction between ways of life, cultures and other characteristics can serve not only as a basis for the intolerance and intrusion of one's own system of values upon another subject. Although it may seem to be strange, but exactly the understanding of the fact that such distinctions exist can entail a motive to find common features and to treat each other more tolerantly. This idea is not a discovery of the Western democracy. Ancient religions, especially Oriental ones, are permeated with this idea. Therefore, the East as well can provide the West with some of its experience to borrow. Thus, only the perception of commonness and admission of peculiarities of each other's way of development can help to discover universal pan-human values and to give an impulse to the further development of the international system.

In order to fulfill its functions, the international law should become genuinely inter-civilizational, reflect cooperation and compromise in an ideological struggle of different religions, ideologies, legal systems, values, and it should work for their synthesis. It would be logical to assume the idea of human and inter-ethnic interaction, a dialogue of civilizations, co-creation of cultures to be the basis for the international law on human rights. In case of conflict of different moral and legal doctrines and approaches to international legal regulation, only ideas that are not alien to any states or nations and accepted by all of them can serve as a basis for the harmonization of their wills and for the distinction of their interests. In this context, the overcoming of main differences between modern Western law and legal consciousness and other contemporary legal systems plays a significant role.

It is also doubtless that there are some basic human rights of an absolute meaning, and even cultural traditions cannot distort their sense. The Universal Declaration of Human Rights and other international acts on human rights contain a number of common standards that are equally acceptable for all states and nations and are

regarded and applied in the same sense. These standards include, for example, protection of life, freedom from torture, freedom of thought, the right to a trial and some others. In accordance with the international law, all people regardless of race, residence, cultural and others peculiarities are entitled to fundamental rights. International law does not release countries from their duties to observe and protect human rights only because certain human rights do not correlate with local traditions or cultural values. Therefore, despite various distinctions, the idea of human rights remains to be universal. As it was underlined in the 2005 World Summit Outcome, “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms” (2005 World Summit Outcome, 2005).

Another problem is connected with the practical implementation of human rights’ international standards: regional peculiarities cause different understandings of what human rights are, along with different methods of their enforcement. Harmonization of legal cultures, traditions, economic and political peculiarities is a solution to this problem. Undoubtedly, every culture is unique and has its own way of human rights’ expression and enforcement. But at the same time, every society should not be limited only to its concepts because human rights law goes far beyond the limits of one country. Thus, it is possible to take into account the peculiarities of every culture and to work out common standards, minimal set of universal rights that can be guaranteed to everyone without distinction of any kind, such as race, ethnic status, sex, language, religion, etc. A dialogue, exchange of ideas and experience are required in order to find a common understanding of human rights’ nature, so that the international law in this sphere would be effective and all countries be able to support it and in such a way to guarantee practical realization of elementary, universal volume of rights and freedoms. As it has fairly been noted, “universality will have to find its way through diversity” (Kobila, 2003, p. 105).

It is also necessary to keep in mind that one of the most important factors influencing the status of human rights in a particular country is the level of its social, economic and political development. In this regard the economic backwardness, poverty, corruption, absence of law and order, and other problems block up the protection of human rights. Consequently, every state can provide its population with real guarantees only within the scope of its current possibilities. This circumstance should be constantly taken into consideration in the process of execution and adoption of any international agreement and other normative documents on human rights.

The aforesaid convinces us that it will take a lot of time for the principle of universality to become a real part of the world community’s everyday life. There exist two key ways for that principle’s realization: first, we can proclaim the demand for a unified perception of human rights all over the world regardless existing national features, but in this case it will take a very long period of time for us to be able to achieve the real universality of human rights, after having overcome various obstacles and maybe even after the use of force actions; or, second, we should admit that the way towards the real universality of human rights goes via taking into account national peculiarities and that we should ensure their absolute ‘presence’ in the course of creation and implementation of relevant legal norms.

Though the second way is longer, at the same time, it has more chances to become successful in comparison with the first one. For its realization, two main groups of rights should be clearly determined, depending on their aims and mechanism of their possible implementation. The first one is the group of fundamental rights common to all the mankind (determination of a full list of these rights could be a subject of discussion at international conferences). Another group should consist of rights related only to an individual’s position in the society or conditions of his/her living.

The first group of rights can and should be equally (or almost equally) implemented around the world. Freedom of states’ discretion with respect to the implementation of such rights on their territory is to be limited. The second group of rights can be implemented into national legal systems with a certain level of states’ discretion in two ways: 1) “the way of formal choice”, in which case states will be entitled to choose rights for their further implementation in accordance with provisions of relevant international agreement (for example, the European Social Charter of 1996), but, as a rule, they will have no choice with respect to the determination of the implementation process framework; 2) “the way of essence choice”, in which case states will have obligations to recognize and enforce all rights mentioned in the sources of international law, but their possible choice with respect to the determination of the implementation process framework is much more wide (though it also depends on provisions of relevant international documents).

Using all these three ways of determination and enforcement of human rights and taking into account different states' peculiarities, the world community will be able to guarantee effective realization of the majority of rights and freedoms all over the world.

In exercising the above-mentioned procedures, existing regional competent bodies, for example, African Union or Association of South East Asian Nations, should obtain authorities to assist states in enforcing human rights by means they consider effective in their particular region. In this case, thanks to joint efforts of states and relevant regional centers, human rights will be developed and granted to population keeping in mind local peculiarities. Over time, appropriate regional structures cooperating with each other will create one global space of pan-human rights. But, as it was mentioned above, some basic rights understood and accepted by all states in the same way should be singled out. These rights will not permit regional centers to destroy the integrity of the idea of human rights by referring to regional specifics.

6. Conclusion

As a result, it is necessary to underline that the effective implementation of international legal norms is impossible without taking into account historical, cultural and ethnical peculiarities of different countries, which determine the content and specific character of national archetypes of the attitude towards the law. In other words, "the implementation of human rights must be done with due regard to the domestic ecosystem" (Menon, 2014, p. 14).

This condition should be taken into consideration while establishing and implementing statutory provisions of any level or character. This process should be accompanied by a package of measures designed to raise the level of legal culture of all law enforcement activity's subjects, on the one hand, and by the actions promoting internalization of their legal consciousness and perception of their belonging to a common world community, on the other hand. The intrusion of ideas, ways of thinking and ways of life upon any state and nation should be excluded on the way towards promoting and providing universal respect for human rights. The compulsion will not give rise to true recognition and real guarantees, but on the contrary will cause rejection of what was imposed by force. All nations on an equal basis should participate in the creation of standards and structures that will help to promote the recognition of human dignity and equality of fundamental rights of all people without exceptions: adults and children, men and women, believers and unbelievers, of all races and all societies.

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