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Soviet Union and the Universal Declaration of Human Rights

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Abstract

This essay examines the Soviet role in the creation of the Universal Declaration of Human Rights, drawing distinctions between the Soviet and the Western models of fundamental rights up to 1948, with the Soviet context put into perspective via a comprehensive historical review of its origins and development. Furthermore, the supposed characteristics of the Soviet concept of fundamental rights are applied to the 1948 debate, with Soviet speeches and proposals thoroughly examined from that standpoint. It is argued that the disagreement displayed between both sides of the negotiation stemmed from the Soviet understanding of human rights being more collectivist and focused on economic and social rights. Hence, the essay intends to challenge the common perception of the USSR as only being hostile to human rights and opens a conversation about firstly fundamental, and then human rights as diplomatic devices.

¹ This article-in-progress was written as a reaction paper to the 5th Martens Summer School on International Law. I am grateful to organizing committee and Dr Jarna Petman, a lecturer on the topic “Social Rights as Human Rights: Do They Make a Difference?”

«<...> Whereas a **common understanding** of these rights and freedoms is of the greatest importance for the full realization of this pledge,
Now, therefore,
The General Assembly,
Proclaims this Universal Declaration of Human Rights as a **common standard of achievement** for all peoples and all nations <...>»
From the Preamble of the Universal Declaration of Human Rights (1948)

“The striking fact is that in the protection of human rights, the Soviet system is strong where ours is weak, just as it is weak where ours is strong.”
Harold Berman, Human Rights in the Soviet Union (1965)

Introduction

Every year on the 10th of December the world celebrates Human Rights Day to recognise the adoption and proclamation of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly in 1948. This development was historic as it marked the creation of a new international legal framework – a modern human rights canon. While previously human rights values were scattered across specific and distinct legal systems and cultures, the Declaration aimed to unite them while creating a “common standard”, as the Preamble stated, of such rights transcending national boundaries. Right from the very creation, however, this universalist outreach of the new document has faced a major obstacle – while no countries voted against adopting the Declaration, several abstained, including the Soviet Union, Ukrainian SSR, Byelorussian SSR, and some of the socialist nations – Yugoslavia, Poland, and Czechoslovakia.

In the present, this outward rejection of the Declaration is often viewed as an obvious indicator of Soviet disregard for basic rights, manifested in political purges, restrictions on individual freedoms, and expansionist foreign policies. Even Russia, known for its generally non-reflexive and uncritical attitude to the past, follows this line of argument – in its 2015 brief, the Russian press-centre in the UN stated that “[the Declaration] contradicted the principles that formed the foundation of the Stalinist regime”². However, this conclusion lies on the presumption that the Declaration was an effective and truly universal tool for protecting said human rights, as well on the broader understanding of human rights as homogeneous and politically neutral values. In this paper the two presumptions will be challenged by analysing both the Soviet concept of human rights and the Soviet criticism of the Declaration, which, arguably, represent a nuanced perspective on the current human rights canon.

² «Странитсь історії: по чому СРСР не підтримав проєкт Декларації о правах людини?», <http://www.unmultimedia.org/radio/russian/archives/203965/#.V587WiOyOko>.

More importantly, this analysis will center on the major modern criticism of the original (and contemporary) human right developments – the sidelining of social rights to the status of “second generation” or subsidiary issues which fall out of the scope of the human rights protection. For the purposes of this paper, social rights (often grouped with economic and cultural rights) are defined as human rights to socio-economic values, such as the right to education, right to housing, right to adequate standard of living, right to health and the right to science and culture³. It will be argued that the Soviet approach to rights, as well as the Soviet objections to the Declaration represented a reverse problem, prioritising social rights over “first generation” freedoms, falling under the values promoted through the Marxist-Leninist ideology. “Protesting” the Declaration, therefore, played a dual role – emphasising the difference between the Western and the Socialist ideological and legal orders (and the superiority of the latter over the former), and promotion of values genuinely regarded as more important by both the society and the establishment.

Historical Context: Fundamental Rights in the Socialist World

As stated, the first part of this paper will focus on the development of fundamental rights (as a concept that can be regarded a predecessor of human rights) in the Socialist states, focusing on the experience of the Soviet Union as a more representative case and a leading actor in the negotiations concerning the UDHR. While the history of the rights framework is rather lengthy and complex, further analysis will focus on the following socio-political and legal aspects of the fundamental rights development: their ideological origins in the Soviet state (coupled with the description of this framework in its formation); the impact of Stalin’s Constitution (1936) – the main source of fundamental rights in the Soviet Union by the time of the adoption of the UDHR; and, lastly, the effect of the Second World War, since its aftermath is widely regarded as a catalyst for the emergence of a global perspective on human rights.

Marxist-Leninist Origins

From the very start, Marxism opposed the (at that time) mainstream conception of human rights as it was expressed in national human rights documents such as the 1791 Declaration of the Rights of Man and Citizen. The criticism was made on two levels. Firstly, Marx did not believe in the possibility of creating a universal framework of rights and freedoms (the cor-

³ There is no all-encompassing definition of social rights in the primary or secondary sources, and such category is recognised in the scholarship as a way to classify specific instances of granted rights. Arguably, the lack of a precise definition poses a further obstacle to recognising and solving issues related to inadequate protection of social rights compared to other categories of human rights.

nerstone of the natural rights theory), as rights, to him, represented relationships of economic production in a certain given time frame. Secondly, and most importantly, he condemned the 1791 Declaration as promoting the rights of an egoistic man separated from and opposed to society⁴. Therefore, it can be concluded that at its making Marxism focused on collectivism (hence the emphasis on the classes rather than the individuals as the driving forces of history) while the usual approach to fundamental rights – on individualism. Moreover, as stated by Marx and Lenin, as well as early Soviet legal scholars, law and politics were not regarded as important as the very “basis” of the functioning society – economic system. Hence, original rights – personal and political guarantees – were sidelined, while economic and social rights were more important in the context of exploitation dynamic in the class struggle.

The theoretical / ideological foundation of the early Soviet legal system was mirrored in the Constitutions produced by the new Communist leadership. The 1918 Constitution of the RSFSR contained the Article 1 titled “Declaration of Rights of the Laboring and Exploited People”, which was hardly a statement of fundamental rights universality – an assumption placed in the centre of the former canon, confirmed by Vyshinskii’s later admission that “[the Constitution] frankly and openly declared that [these rights were] granted only to the toilers”⁵. Moreover, the named Article contained no “classic” rights, with a large part of it – Chapter 2 – focusing on urgent economic and social matters: land ownership, emancipation of workers through arming them, abolition of private property, and an obligation to work. These were direct responses to the injustices of the past (according to Marxist philosophy, rooted in the property relations) that the fundamental rights canon could not provide. However, some more traditional guarantees like gender and race equality were also embedded in the Constitution, yet stated separately⁶ (for example, principles regarding the equality between the man and the woman were implied in all provisions regarding the status of the citizens, and Article 64 specifically emphasized the right to universal suffrage).

The 1924 Constitution of the USSR contained no provisions on rights whatsoever, however, according to Towe, it could be because they were already enshrined in the Constitutions of individual Republics⁷. Still, the very fact that these values were not taken up at the federal level could mean that they were not regarded as the key priority, unlike the other provisions concerning the structure of the state and federalism guarantees (since the Treaty on the Creation of the USSR was signed 2 years earlier). Interestingly enough, Vyshinskii reflected on it later as a guarantee of “legal equality of citizens” via granting more autonomy to the individual republics⁸ – therefore, even if rights were not separated from the rest of the provisions, they might have been supported by rules, which, at first sight, were purely administrative and had nothing to do with freedoms. However, as Marx emphasised, fundamental rights were not a perpetual, but rather a temporary concept, and at the time prevailing needs

⁴ MARX, KARL (1843).

⁵ VYSHINSKII, ANDREI (trans. BABB, HUGH) (1948), 557.

⁶ CHISTIakov, OLEG (2015), 47.

⁷ TOWE (1967), 1251.

⁸ op.cit., note 5, 556.

almost eliminated it as a constitutional phenomenon. To some extent, this lack of focus can be attributed to the theories of the state “withering away” on the communism stage that were very popular among the 1920 jurists. This was, however, not a consistent position of the Soviet leadership, especially in the late 1920s-early 1930s when the idea of withering away of the state was regarded as too idealistic, and law was viewed as a useful tool of advancing socialism.

Stalin’s Constitution at the Forefront

The 1930s brought a new understanding of the legal system – the so-called re-fetishisation of law. The law was now viewed not as a useless bourgeois construct that was soon to be abolished, but rather an effective tool for promotion of new “Socialism in one country” politics. Hence, the philosophy of “socialist legality”, extreme legal formalism, and importance of legal institutions (like the revived Soviet Procuracy) were promoted. These values were enshrined in the new Soviet Constitution of 1936 (a “genuine charter of the rights of emancipated humanity”⁹, with emancipation meaning collective (class) rather than individual advancement) – a part of the overall project of building a new legal order. As the developments made Soviet legal order formally more comparable with mainstream legal systems of the West, the conventional understanding of fundamental rights was revived. For example, Vyshinskii, quoting Stalin, emphasized the importance of an individual rights in socialism¹⁰. However, as the new legal philosophy preserved strong links with Marxist-Leninist understanding of law, the extent and focus of rights guarantees was affected by the prevailing emphasis on collective (rather than individual) values and social (rather than political) rights. Moreover, it can be argued that the notion of individualism was significantly connected with the premise of equality (hence the contrast with “exploiting societies” in which such equality, and thus individualism, were absent¹¹), and hence positive social guarantees were considered important for furthering one’s individual potential as well – a notion somewhat sometimes disregarded by capitalist societies.

Unlike the 1918 Constitution, Stalin’s Constitution placed fundamental rights (and – *sic* – duties) of Soviet citizens at the very end – Chapter 10, thus symbolically retaining the 1924’ philosophy of putting the state first and the citizens second. The Chapter was structured in the following way (although this was not identified by any subheadings or other markers): socio-economic rights (right to work, right to leisure, right to social services, right to education); equality guarantees (for women specifically and for citizens in general); political and personal freedoms (freedom of conscience, freedom of speech, freedom of association, and personal inviolability); and duties (to abide by the law, to respect *public* property, and to defend their fatherland in the event of war). Therefore, while the new Constitution was more

⁹ op.cit., note 5, 559.

¹⁰ op.cit., note 5, 540.

¹¹ *ibid.*

balanced than the previous ones, socio-economic rights still remained the top priority and were placed before everything else. Moreover, the Constitution did not only proclaim the rights, but provided specific guarantees – the duties conferred on both the citizens and the state (the latter expanded in the individual articles, *e.g.*, “universal, compulsory elementary education” in the Article 121) – in order to facilitate them. The Constitution was therefore really a policy tool as much as a propaganda document. As for the latter purpose, according to Towe¹², the defined provisions were aimed to convince three groups of people – Soviet citizens, the rest of the world, and future generations – that Stalin’s legal order effectively preserves and protects fundamental rights. This narrative, in my view, explained the inclusion (or, rather “transplantation”) of certain individualistic political rights in the Constitution, contrary to the stance of Marxism-Leninism.

One may argue that the Constitution had little connection to the actual legal practice, however, paradoxically, prioritized rights – social and economic guarantees – were almost never challenged on both policy and execution levels, since they formed the logical consequence of the Soviet understanding of the state and a new economic order. Personal and political freedoms, however, were infringed a lot of times, especially in the period of the Great Terror. Apart from the usual notion of prioritizing the state and the Party over the individual expressly communicated in official instructions from the NKVD and the Procuracy, it can be argued that these fundamental rights violations had a deeper, more subtle, ideological and psychological basis. Since these political and personal freedoms, unlike social rights, were alien to Marxist-Leninist philosophy and Soviet system from the very start, they were more likely to be sidelined and disregarded (especially since, as clearly indicated in Vyshinskii’s writings¹³, political freedoms were a feature of “bourgeois” rights philosophy). In the 1936 Constitution, they too represented an empty promise, a foreign legal transplant aimed to create a narrative rather than a very practical utilitarian instruction that social rights communicated. Therefore, although a disparity in treatment of personal and social rights was not that visible in the text of the Constitution, the legal practice revealed the change in focus – it can even be argued that this misunderstanding of the original fundamental rights framework was what unleashed the terror of late 1930s, but this thesis should probably form a basis for another investigation.

Post-War Order

It is commonly understood that the 1948 Declaration owes the philosophy behind it to the aftermath of the Second World War. The War reshaped the global order and created a need for a new international body (UN) in order to maintain peace and represent all nations in collective decision-making. Therefore, while the constitutional basis for the Soviet position on human rights had not really changed since 1936, the USSR’s reaction to the Second

¹² *op.cit.*, note 7.

¹³ *op.cit.*, note 5.

World War in the light of its approach to human rights is worthy of separate analysis. One of the main pieces of Soviet legal scholarship of that period, “Criminal Responsibility of the Hitlerites” by Trainin¹⁴, significantly influenced international relations and international law, arguably laying down a foundation for the Nuremberg trials¹⁵. Surprisingly, even while the paper refers to, among other doings, crimes committed against individuals (describing them in great detail and emphasising their severity), the language of specific violations of rights is almost completely absent from it (although the manuscript refers to the rights of nations such as self-determination and sovereignty¹⁶). On the one hand, it can be explained by the fact that the work focused on the international criminal law (the aspect which was less prevalent in Soviet negotiations as such) rather than the international human rights law, and hence the violation of pre-existing international obligations rather than divergence from an abstract notion of individual rights was seen as a more powerful and convincing argument. After all, the re-invention of criminal law in the language of rights entered the academic and public discourse much later, although Trainin tried to define every crime as a “punishable attempt against certain property rights”¹⁷ as defined by a specific economic system, therefore centering the discourse on the traditionally Marxist approach to social relations and hence on the economic aspect of rights. On the other hand, however, this paradox can be viewed as a result of the aforementioned Soviet focus on fundamental rights as positive rather than negative concepts and socio-economic rather than personal/political matters. Hence, even in the light of events that exposed the need for a human rights framework in its breach, the Soviets furthered their own, distinct understanding of individual rights.

Human Rights in International Law: Soviet View

The new human rights framework developed after Second World War introduced the concept of human rights on an international stage. Therefore, Soviet approach to international law by that time should be relevant to mapping down the understanding of human rights in the Soviet period. In 1946, Sergey Krylov, the Soviet member of the International Court of Justice, defined it as follows: “[i]nternational law is an aggregate of norms regulating the relationships between states in the process of their competition, their struggle, and their co-operation, expressing the will of the dominant classes within these states and guaranteeing the coercion exercised by states individually or collectively”¹⁸. Therefore, he simply transplanted the Marxist-Leninist concept of law as a representation of class struggle onto the international plane. Other than that, the understanding of international law seems to be not different from the approach adopted by most Western states. More interestingly, in this definition Krylov expressed the view (along with previous Soviet scholars, like Korovin, who

¹⁴ TRAININ, ARON (1944).

¹⁵ HIRSCH, FRANCINE (2008), 701.

¹⁶ op.cit., note 14, 10.

¹⁷ ibid., 45.

¹⁸ KRYLOV, SERGEY (1947), 420.

stated that states and international organisations of states should be subjects of international law¹⁹) that international law should be concerned with states, which can be seen as problematic in relation to human rights – matters that involve individuals as well as states. According to Kelsen, this “implies that there can be no effective protection of the rights of individuals against violations of these rights by their own state”²⁰, because the Soviet international law doctrine, and in particular the understanding of state sovereignty does not allow this to happen. Therefore, while the notion of fundamental rights was not alien to the Soviet Union, enforcement of these rights through international law mechanisms proved a novelty and caused understandable confusion and even distrust of new framework from the Soviet side – in particular, Soviet writers argued that, in Kelsen’s restatement, “a treaty conferring rights directly upon individuals and offering them access to an international court would aggravate international relations and undermine the foundations of peace”²¹.

Therefore, the Soviet individual rights framework can be defined as follows (as demonstrated by a brief analysis of three historical periods). Firstly, it initially (through its Marxist origins) expressed preference for collective rather than individual interests. Secondly, even individual rights were viewed as enabled by collective obligations and public policies. Therefore, especially considering the self-demarcation of the Soviet system from the “bourgeois societies”, unlike the latter, the Soviets, throughout the history till the 1948, preferred social rights to individual and political rights. Consequently, as these rights were different in nature (positive and negative respectively), law and public policy aimed to enable the provision of conditions for fulfilling rights rather than prevent their abuses. Moreover, the support of fundamental rights (or, more correctly, human rights), by the mechanisms of international law was new to the Soviet legal scholars and treated as a threat to international relations rather than something beneficial. With this in mind, Soviet response to the 1948 Declaration should be evaluated.

Soviet Approach as Applied to the UDHR: an Analysis

Soviet criticism of the UDHR was expressed, first and foremost, in two speeches of Vyshinskii on the 3rd Session of the General Assembly (1948) – of 9th and 10th December respectively²². In these speeches, the jurist and Soviet representative, who had (as it was demonstrated before) already addressed questions associated with fundamental rights in his writings (as well as in his role as an architect of the 1936 Soviet Constitution), continues to further Soviet (rather than Western or conventional) understanding of human rights. Therefore, he treats

¹⁹ KOROVIN, EVGENY (1924).

²⁰ KELSEN, HANS (1955), 179.

²¹ *ibid.*

²² VYSHINSKII, ANDREI (1950), 367, 379.

socio-economic rights differently from political and personal rights, although this distinction is not expressly stated in the text of his speeches. Rather than offering a general conceptualized criticism, he addressed specific provisions of the Declaration, touching on a wide variety of rights: “life, liberty and security of person” (Article 3)²³; “social security” (Article 22)²⁴; “freedom of opinion and expression” (Article 19)²⁵; “freedom of peaceful assembly and association” (Article 20)²⁶; “national culture and identity” (not included in the Declaration)²⁷; equality in the enjoyment of rights (Article 2)²⁸; “self-determination of nations” (not included in the Declaration)²⁹; and *etc.* On this basis, it can be concluded that any further disparity between the treatment of social rights and other rights is not a voluntary attempt at taxonomy, but rather a subconscious phenomenon, a result of Soviet approach to both fundamental and human rights as conceptualized in the constitutional law and academic literature. As a result, not only the content of human rights, but also the understanding of their guarantees and limitations placed on them, in Soviet concepts, deviated from the view expressed in the project of the Declaration (which was, however, consequently adopted).

The Content of Human Rights

The first question that should be asked is what rights should constitute human rights protected and elevated by the Declaration? In this sense, as demonstrated before, there were almost no major objections to the list of rights according to the initial project, apart from the rights to “national culture and identity” and “self-determination of nations” as suggested by the Soviet delegation, which will be described below. Overall, there was no call for adding new social rights to the UDHR – as we will see, the change proposed by the Soviets happened on a more subtle level – provision of specific guarantees to back up already existing rights. On the face of its approach to human rights, however, the USSR expressed global, political, public interests rather than private ones.

The first attempt to address such interests appeared in Vyshinskii’s reference to the right of every person to “[their] national culture” (such as the ability to learn their national language or use it in court)³⁰. Interestingly enough, as he notes, a comparable provision was contained in the initial project of the Declaration – so-called Geneva project, however, that article was rejected on the later stages of the drafting process. The emphasis put on this right by the Soviet delegation can be explained by the importance of Stalin’s nationalities policy, or rather the narrative aimed to promote it. For example, in “The Law of the Soviet State,” Vyshinskii

²³ *ibid.*, 368.

²⁴ *ibid.*, 368.

²⁵ *ibid.*, 370.

²⁶ *ibid.*, 373.

²⁷ *ibid.*, 376.

²⁸ *ibid.*, 377.

²⁹ *ibid.*, 383.

³⁰ *ibid.*, 376.

references Stalin's "Marxism and the National Question"³¹, with the provisions described as a new human right being described as a "necessary point in the solution of the national question". While in practice the policy was tainted with forced "centralism and conformity", brutal suppression of nationalities (such as deportations), and exploitation of Russian nationalism by the official discourse³², it did not stop Soviet representatives from using a more favourable narrative on the international arena.

While the formerly described right concerned the interests of national minorities, "self-determination of nations" reflected the impact of the rights of the Soviet Republics, the foundation of the federal system as laid down by the 1924 Soviet constitution (the two interests, however, were considered to be linked, unlike in other "bourgeois" societies³³). The self-determination question was therefore, like in the Soviet legal order, considered "essential" for the Declaration³⁴. While, traditionally, the question of self-determination can hardly be seen as a matter of human rights law, Vyshinskii successfully linked it (as well as previously discussed cultural policies) to the notion of equality as seen in the Article 2 of the Declaration.

Therefore, while the first point of analysis does not directly reflect on social rights in Soviet understanding, it demonstrates Soviet willingness to use the features of their system and the Constitution as model for international legal order, and thus preserve their own, distinct approach to human rights. Consequently, even on the broadest level, certain rules and guarantees in the amendments proposed by the USSR mirrored those in the Soviet constitutional legislation, preserving the same attitude to "nations" as adopted by Soviet leadership.

Human Rights Guarantees

The 10th of December speech laid down the following components (limbs) of the Soviet vision regarding the international human rights order³⁵. Firstly, the Declaration should have promoted respect for the universal rights and freedoms for everyone regardless of their characteristics (such as, as already noted, nationality or religion). Secondly, the Declaration should have not only stated (or declared) rights, but also *guarantee their implementation*. The latter notion was inseparable from the former: each right promoted should have been backed up by certain practical measures – or positive obligations on behalf of the state (of course with a caveat that "economic, social, and national features" of individual countries should be taken into account), as it was already noted in the analysis of fundamental rights in Soviet constitutionalism. As Patenaude noted, "Western legal theory emphasized the so-called "negative" rights: that is, rights of individuals against the government. The Soviet system, on the other hand, emphasized that society as a whole, rather than individuals, were the benefi-

³¹ op.cit., note 5, 599.

³² "Chapter 4: Nationalities and Religions", in: Soviet Union Country Studies (1989), 133.

³³ op.cit., note 5, 598.

³⁴ op.cit., note 22, 385.

³⁵ ibid., 382.

ciaries of “positive” rights: that is, rights from the government.”³⁶ Therefore, Soviet criticism largely centered on the absence of such practical, tangible guarantees in the actual project of the Declaration, which, as I will argue, highlighted the USSR’s strong understanding of and commitment to socio-economic positive rights.

There were two relevant examples in Vyshinskii’s speech – “life, liberty and security of person”³⁷ and “social security”³⁸. While the first right can be regarded as a more personal right and the second – as social right, the criticism leveled at both provisions was strikingly similar. For the first right, the Soviet delegation tried to pass an amendment saying that the state “should provide every human with protection against crimes, make sure that the risk of death out of hunger is prevented, and *etc.*”³⁹ Therefore, the Soviets argued that the original personal right should have been supported by additional positive guarantees from the state, which, by themselves, could be regarded as separate social rights analogous to right to nutrition (in case of the guarantees related to natural causes of death). The second right was initially a social right – entitlement of everyone to realize their own, personal, rights through the measures provided by social security, however, the Soviet delegation intended to take it further with more specific measures, and, most importantly, recognizing the obligation the state and society have regarding the development of the discussed social security mechanisms⁴⁰. Both the state and the individual businesses, according to Vyshinskii, should take the costs of fulfilling this obligation upon themselves and provide pensions and other methods of social security⁴¹. Therefore, the gist of the Soviet criticism was in more concrete, specific provisions regarding social rights (and associated individual rights). The very same reasoning, however, transcended into some political rights – for example, Vyshinskii argued that freedom of press should be supported by provision of all necessary equipment and resources for creating new mediums of information⁴². It was motivated by the fact that the formal freedom to publish was not enough since everyone did not possess the same amount of resources – with large business enterprises, as it was explained in “The Law of the Soviet State”, controlling the press in capitalist countries⁴³. It can be stated, therefore, that the Soviet human rights doctrine reflected on root causes underpinning inequalities regarding the enjoyment of rights and thus more focused on social measures aimed to correct this rather than principles themselves, which will be demonstrated later in the way in which the Soviets easily called for putting limitations on some personal and political negative rights.

This proposal has been reflected on in the response speech of Eleanor Roosevelt of the US delegation, which is rather clear-cut and simple: the US government “does not consider that

³⁶ PATENAUDE, RICHARD.

³⁷ *op.cit.*, note 22, 368.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*, 369.

⁴¹ *ibid.*

⁴² *ibid.*, 373.

⁴³ *op.cit.*, note 5, 612.

the economic and social and cultural rights stated in the Declaration imply an obligation on governments to assure the enjoyment of these rights by direct governmental action”⁴⁴. The language of this passage suggests that the US, unlike the USSR, exercised positive rather than normative inquiry into the said proposal and simply denied the existence of positive duties associated with social rights regardless of any moral, ideological, or other reasons for their existence. Although it was stated that this outlook “in no way affect[ed] our [the US] whole-hearted support for the basic principles of economic and social rights”⁴⁵, the Soviet delegation clearly exercised more effort in trying to back them up with policy guarantees. The failure of this attempt and the lack of detailed discussion provided in this response confirms the previous thesis about different approaches to social rights attributed to the clash between socialist and capitalist systems.

Therefore, the given examples can be interpreted as follows: The Soviet delegation paid a great deal of attention to social rights already existing in the declaration, and saw the reasoning behind social rights (a need to impose positive obligations on the state) as beneficial for many types of rights, whether social, political, or personal. This framework largely motivated the main criticism of the UDHR: that it only contained empty, abstract principles⁴⁶ and promises rather than tangible policy measures (which should have been, ideally, legally or at least morally binding for the member states). This very distinct, social rights-based reasoning was what represented the main cause of disagreement between the Western and the Soviet understanding of human rights in the new document. As Berman put it, while the Western concept is based on individual autonomy, Soviet approach to human rights mirrors parent-child relations and therefore combines a greater degree of control and limitation on one’s freedom with stronger social guarantees – a positive obligation levied on a “parent” state⁴⁷. In other words, the Soviets viewed an individual as not a ‘reasonable prudent man’, but an ‘immature, dependent child or youth’⁴⁸.

Human Rights Limitations

As indicated before, paternalism, central to the Soviet legal philosophy, implies putting limitations on human rights where they are needed. Moreover, with no sanctity attached to the very notion of human rights principles, constraining personal and political rights was seen as more acceptable according to the Soviet understanding. While it can nevertheless be argued that the current doctrine, following the needs of the modern world, is not a stranger to balancing different human rights and public interests and constraining them as a result, Soviet criticism based on the need of such limitations goes even further, drawing from the very moment of drafting of a human rights charter. The overall reasoning can be divided into two

⁴⁴ ROOSEVELT, ELEANOR (1948).

⁴⁵ *ibid.*

⁴⁶ *op.cit.*, note 22, 369.

⁴⁷ BERMAN, HAROLD (1965), 333.

⁴⁸ DEAN, RICHARD (1981), 63.

categories – the accentuation of state sovereignty and the appeal to the public interest. While these two propositions are interconnected, since the state, according to the “parent-child” model, furthers public interests through its exercise of sovereign powers, they represent two stages of the Soviet argument and thus should be examined separately.

a) State Sovereignty

Vyshinskii devotes a whole section of his speech to condemning the “attempts to use the Declaration [against] state sovereignty”⁴⁹. However, he does not provide any specific examples from the declaration, preferring to refer to the philosophy underpinning it, specific to the Western understanding of sovereignty. He rebuts the proposition attacking the primacy of human rights over the “absolute” sovereignty of the state, showing a rather distinct understanding of this concept: to him, human rights are inseparable from the state, since it is the state which protects human rights and stops them from becoming an “illusion”⁵⁰. It should be noted that, while describing the function of the state, Vyshinskii uses positive rather than negative language of rights again – reinforcing the need for the specific social guarantees underpinning human rights as indicated before. Moreover, the primacy of the state over the law reflects the paternalistic model and thus implies that while the state may provide conditions for the enforcement of human rights, it can also limit certain rights through the exercise of sovereign powers. It is quite peculiar how the call for creating a positive obligation on a state, according to the Soviet representative, is not undermining sovereignty, while negative obligations can be set aside by the state in exceptional circumstances (such as illustrated below). Again, it shows the primacy of the positive rights (central to social rights-based approach) in the Soviet understanding.

b) Public Interest

Attracting much controversy, Vyshinskii argued that certain rights should be curtailed because of a prevailing public interest. Most importantly, he attacked unlimited freedom of expression, stating that it should have provided exceptions for wrong, “harmful” ideas such as fascism, warmongering, and creation of hostility between the nations⁵¹. This was thus not a standard hate speech idea but rather a protection against possible tangible harm which might have been caused by that kind of speech – therefore, the Soviet delegation argued that there was an existence of strong public interest in curtailing this right in specific circumstances. However, rightly, possibly due to the Soviet propositions being rather vague and not suitable for an effective balancing exercise, this was not adopted. Interestingly, the Soviet representative did not focus on the language of public interest and balancing, but rather expressed

⁴⁹ *op.cit.*, note 22, 379.

⁵⁰ *ibid.*, 380.

⁵¹ *ibid.*, 371.

the need to ban harmful speech (as well as association of hostile groups and organisations) as a matter of common sense, and therefore, natural extension of the state's duty and power to protect its citizens. The paternalistic character is demonstrated by the rejection of the counter-proposal of fighting immoral and wrongful speech with speech rather than banning it⁵². Here, the post-war narrative came into play, with Vyshinskii stating that a more liberal approach to free speech did not stop the rise of Nazism. His statement is obviously debatable, but it shows Soviet attitude to human rights as tangible and practical principles rather than sacrosanct values, and therefore confirms the initial hypothesis that the Soviets regarded social rights as more important than others. Understandably, this amendment was rejected, with Eleanor Roosevelt clearly explaining the need for such measures: the juxtaposition of terms "democracy" and "fascism", that were "liable to the most fragrant abuse and diverse interpretations", therefore "set[ting] up standards which would enable any state practically to deny all freedom of opinion and expression without violating the article"⁵³. As a result, the main ideological clash has been, surprisingly, not related to the possibility of curtailing harmful speech as such, but the potential implications of granting such powers. It seems plausible that here the American delegation, as represented by Mrs Roosevelt, did not adopt a different concept of free speech, but just expressed a more pragmatic view. However, the Soviet position appeared as making a different balance of interests as a whole – it recognized the danger of harmful speech spreading more than regular speech being curtailed, while the American delegation (among with the whole Western world) claimed exactly the opposite. Therefore, in this respect, the Soviets put more emphasis on shielding the subjects of human rights from harm than on enabling their autonomy.

Therefore, Soviet criticism regarding sovereignty and limitations on human rights proves the following tendencies: paternalistic rather than liberal approach, emphasis on social rights and related philosophy, and re-accentuation of sovereign Soviet powers before the West. Although it was probably the latter what motivated the Soviet delegation to make the discussed statements (as another tool to assert Soviet superiority and independence), the subconscious attitudes towards human rights – personal/political and social, distinct from the West, played a major part in formulating these proposals. This, in turn, caused the USSR to condemn the Declaration and abstain from voting.

The Soviet Approach Summed Up

The innovations of the Soviet human rights thought of 1948 as summarized above concerned diverse aspects of the Declaration: the content of human rights; human rights guarantees; and human rights limitations. However, one can argue that these rather distinct parts of the Soviet vision were motivated by the common trend, which will be evaluated and summed up below.

⁵² *ibid.*

⁵³ *op.cit.*, note 43.

Firstly, the Soviet human rights framework was, as seen from the constitutional analysis, largely focused on collective rather than individualistic values which persisted throughout the Soviet legal thought via the Marxist legal philosophy and throughout the first constitutions and theories. This value was not abandoned when it came to debating the human rights issues in the Universal Declaration of Human Rights: it obviously influenced the willingness of the Soviet representatives to push for inclusion of rights non-typical for a more individual-oriented orthodox framework: collective rights of nations (to self-determination and preserving their own culture). While this approach clearly had some merit in the wider picture of international law, the 'rights' outlined by the Soviet representatives clearly did not fit in with the already established Westernised picture – since the individual rights were designed to protect the individuals from the state, giving some rights to the states themselves seemed like an illogical and inconsistent move. Moreover, Russia's hypocritical approach to separatism within the USSR and its own national minorities did not present its claim to authority on collective rights in a good light.

Secondly, as it has been mentioned throughout this paper, the Soviet approach to human rights paid more attention to socio-economic rights. It has been developed throughout the early years of the Soviet Union, but got to its highest point in Stalin's Constitution, with state's obligation to provide its citizens with welfare and resources taken seriously and institutionalized back then. This new approach was followed by the Soviets in the UN, who did not only argue for inclusion of more social rights, but emphasized the need of obliging the states to enforce them. These proposals, facing a more individualistic negative-rights based approach of the human rights orthodoxy, did not stand in the General Assembly. However, the merit of socio-economic rights has been recognized afterwards, with them featured very prominently not only in the 1966 International Covenant on Economic, Social and Cultural Rights, but also in the law of supranational organisations such as the European Union and the Council of Europe. Still, in the history of international law, socio-economic rights are recognized largely as an afterthought, with many modern critiques (such as the one of Posner⁵⁴) mentioning the inadequate attention to socio-economic rights as a main source of modern human rights scepticism. One can argue that the Soviet approach was the right one in the first place, however, it depends on one's views on the more interventionist role the Soviets ascribed to the state (both in economic and social terms). The Soviets' appeal to the state as the source of socio-economic rights clearly conflicts with free market values, which, for all their flaws, represent a more individual rights-orientated economic model. The East-West relations in 1948, therefore, represented a kind of trade-off between personal rights and economic rights, which is impossible to resolved without resorting to some kind of economic policy view – the benefits of each one of these approaches are always followed by the costs of some type (imperfect social welfare in capitalist systems and lack of personal liberties in a Soviet-type society and economy).

⁵⁴ POSNER, RICHARD (2014).

Thirdly, the Soviets' unfamiliarity with Western international legal rules – seen in the writings of Soviet scholars such as Krylov and Korovin – and coding of it as a political tool (which, frankly speaking, was not confined to this side of the Cold War) have been expressed in their discussion of limitations of human rights. Emphasis on state sovereignty and the proposed restrictions on misuse of freedom of speech for “wrong” ideas showcase the Soviet insecurity on the international law stage – they seem to be precautions against the use (or misuse) of the human rights law against the Soviet state by its ideological rivals. This, and these ideas' incompatibility with the human rights orthodoxy – based on maximally unlimited personal freedom and protection from institutionalized oppression – has rightly caused disfavour with regards to these provisions.

All in all, the Soviet delegation's position on the Universal Declaration of Human Rights (mostly expressed in the Soviet representative's speech) appears to be distinct from the Western (or orthodox) one in its collectivism, emphasis on social rights and paternalism, and aversion to “stronger” conception of human rights in terms of binding the state. It is not difficult to agree with Dean's view that ‘the Soviets [had] a coherent, logically consistent legal theory that [shaped] their perspective on human rights’ and was not ‘mere sophistry’⁵⁵. Due to a combination of self-interest and ideological views developing throughout the formation of the Soviet constitutions, the USSR has pursued a distinct vision of human rights, which was, for better or for worse, not accepted in the universal consensus.

Conclusion

This paper has demonstrated that the Soviet delegation's hesitation to accept the UDHR was unlikely a result of disrespect for fundamental rights and freedoms. As Vyshinskii stated at the end of his final speech, it was wrong to suggest that the Soviet Union aimed to suppress individualism and submit the person to the state⁵⁶. Instead, the USSR had its own vision of individual-state relations – most accurately described as paternalistic – highly reliant on the state as an agent, which provides positive guarantees for the exercise of human rights (often to the detriment of individual liberties, but nevertheless in a more nuanced way than one may think – since this issue likely to be seen as a by-product of a different ideological and economic societal makeup rather than a direct oppressive effort on behalf of the state). This, along with the foundations of Marxist-Leninist philosophy, was a starting point for prioritizing social rights over other types of rights, seen throughout the Soviet constitutional history up till 1948. The various constitutional documents of the 1918, 1924, and 1936 have expressed the following characteristic of Soviet approach to human rights: emphasis on society rather than an individual; prioritization of social rights; and preference for positive

⁵⁵ op.cit., note 48, 55.

⁵⁶ op.cit., note 22, 389.

rather than negative formulas for expressing such rights. This view of fundamental rights has evolved throughout the time, coming to its final form in 1936: indeed, it was the first Soviet constitution that recognized the fundamental rights as a distinct entity and included a systematic summary of them.

As a result, this framework, different from the one in the Western world, has shaped the USSR's criticism of the UDHR in December 1948. This influence can be traced in three dimensions: the content of human rights as such, the human rights guarantees, and the limitations to human rights as envisioned by the Soviet project. From the Soviet willingness to change the list of human rights in order to include self-determination and the right to national culture (prominent features of Soviet constitutionalism) it can be concluded that the USSR transplanted its legal framework onto its projects of international human rights instruments. The way it was done, as demonstrated by the second and the third aspects of this case study, can be characterized by, on the one hand, curtailing the individual rights in favour of public interest, and, on the other hand, providing tangible, positive guarantees for the equal enjoyment of all human rights. The latter guarantees can be regarded as social rights themselves, and thus it will not be unreasonable to argue that this type of rights played a very peculiar, instrumental role in the Soviet legal framework.

Therefore, a different understanding of the state and its role to human rights lead to some powerful objections to the present human rights canon, namely regarding the practical steps to ensure human rights, especially social rights, would be respected and available to everyone. However, the Soviet view was also imperfect, and while it complimented the Western perspective, from a liberal point of view, it could not have completely replaced it. Both systems, as Berman concluded, were strong in one aspect and weak in another⁵⁷ – and it was too hasty for the UDHR and the international community to completely reject Soviet proposals, only to return to the same ideas decades later.

Bibliography

- BERMAN, HAROLD, "Human Rights in the Soviet Union", in: 11 *Howard Law Journal* (1965) 333-342
- CHISTIYAKOV, OLEG (2015), "Konstitutsia RSFSR 1918 Goda", Moscow
- DEAN, RICHARD, "Beyond Helsinki: The Soviet View of Human Rights in International Law", in: 21 *Virginia Journal of International Law* (1981) 55-95
- HIRSCH, FRANCINE, "The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order", in: 113 *American Historical Review* (2008) 701-730
- KELSEN, HANS (1955), "The Communist Theory of Law", New York
- KOROVIN, EVGENY (1924), "Mezhdunarodnoe Pravo Perekhodnogo Perioda", Moscow

⁵⁷ op.cit., note 46.

- KRYLOV, SERGEY, “Les Notions principales du Droit des Gens”, in: *Recueil des Cours de l’Académie de Droit International* (1947), I, tome 70, 420
- MARX, KARL (1843), “On the Jewish Question”
- PATENAUDE, BERTRAND, “Regional Perspectives on Human Rights: the USSR and Russia, Part One – the USSR”, SPICE Stanford Working Papers
- POSNER, RICHARD (2014), “The Twilight of Human Rights Law”, Oxford
- ROOSEVELT, ELEANOR (1948), “On the Adoption of the Universal Declaration of Human Rights”, Paris
- TOWE, THOMAS, “Fundamental Rights in the Soviet Union: A Comparative Approach”, in: 115 *University of Pennsylvania Law Review* (1967) 1251-1274
- TRAININ, ARON (1944), “The Criminal Responsibility of the Hitlerites”, NKU
- VYSHINSKII, ANDREI (translated by BABB, HUGH) (1948), “The Law of the Soviet State”, New York
- VYSHINSKII, ANDREI (1950), “Voprosy Mezhdunarodnovo Prava i Mezhdunarodnoi Politiki”, Leningrad