

# АКТУАЛЬНЫЕ ВОПРОСЫ МЕЖДУНАРОДНОГО ПРАВА

## HUMAN RIGHTS AND TRADITIONAL VALUES OF HUMANKIND\*

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The its article the author considers such traditional values of humankind as dignity, freedom and responsibility which are fundamental international norms and standards enshrined in universal and regional human rights agreements. The traditional values of humankind can and must be used to promote and protect human rights towards their universal application.

**Key words:** traditional values, dignity, freedom, responsibility, human rights, democracy, universal.

Since its creation in 2006 the Human Rights Council has discussed the problem of how a better understanding of such traditional values of humankind as dignity, freedom and responsibility can contribute to the promotion and protection of human rights and fundamental freedoms [8]. The complexity of the problem consists in its different interpretations by scientists and diplomats [7]. There is no agreed legal definition of the term «traditional values of humankind».

### **Traditions and traditional**

These terms have many meanings. They can be traced back to the Latin word, *traditio* (delivering up). The term «tradition» may be defined as all the elements of social and cultural heritage handed down from generation to generation and preserved within States, societies and population groups over long periods. Traditions include certain social conventions, behavioural norms, ideas, customs and ceremonies. Some traditions exist in all social systems and, to a certain degree, are necessary conditions for their existence. Traditions are specific to very different areas of public life (the economy, politics, law), but not to the same extent. They are particularly important in religion.

Traditions are often associated with the past, an absence of anything new and thus with what runs counter to development and renewal, with the unchanging, symbols of stability or even stagnation that avoid the need to comprehend a situation or take a decision.

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The length of a tradition's existence alone does not determine its importance. A tradition will survive if it develops over time down the generations in new historical conditions. While a State, a society or a group of people will embrace some elements of social heritage, it will reject others.

Traditional society is often regarded as an archaic, rudimentary type of social organization, radically different from modern society, and characterized by the slow pace, or even complete absence, of change. It is seen as making specific demands on its members, the most important being that they subordinate their intellectual and social initiative to the authority of tradition.

This results in tradition being closely linked to stereotype. Following tradition often implies stereotyped social and individual behaviour, and the dominance of stereotype over individual will, personal traits and aspirations.

Tradition does not always mean stagnation or the retention of negative trends from the past. In many cases, the term «tradition» has a positive connotation, meaning the preservation or resurrection of everything positive achieved by the State and society over its long historical development.

Such dualism in the understanding of the term «tradition» is used not only in discussions on human rights, but also in the international legal practice of States.

The term «tradition» is used with an especially positive connotation in, for instance, the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). The Convention speaks of the need to preserve and respect the customs and traditions of tribal populations in independent countries (art. 1); and the realization of the rights of those peoples with respect for their customs and traditions and their institutions (art. 2). The Convention on the Rights of the Child, in its preamble, mentions the importance of the traditions and cultural values of each people. However, it also obliges States Parties to take «all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children» (art. 24, para. 3).

In its negative interpretation, tradition is incompatible with the universally recognized human rights norms. One example of such an interpretation can be found in the Convention on the Elimination of All Forms of Discrimination against Women, which speaks of the need for a change in the traditional roles of both men and women in society and in the family, these being based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (preamble and art. 5).

Particularly negative traditions include the various types of customs that maim or degrade, such as the binding of women's feet, stoning, female genital mutilation and many others. As the Human Rights Council stresses that «traditions shall not be invoked to justify harmful practices violating universal human rights norms and standards» [10].

Clearly, some traditions may help to strengthen respect for and observance of human rights, while others may violate them. There are also many family and societal traditions that are in no way related to respect for human rights. Such diversity in the

existence, understanding and interpretation of traditions and the traditional means that they may be seen as categories with no single unambiguous definition in terms of human rights. Whether they are interpreted positively or negatively depends each time on the specific circumstances.

### **Values**

Values are a characteristic of human life. Over many centuries, people have developed the capacity to identify objects and phenomena in the world around them that answer their needs and towards which they behave in a particular way: they value and worship them, they are guided by them in their daily lives. The question of values is of fundamental importance today. This is because the process of renewal in all areas of social life has brought many positive phenomena, but also many negative ones. Scientific and technological progress, industrialization and computerization in all areas of modern society have generated increasingly negative attitudes to history, culture and traditions, and are leading to values losing their importance in the world today. At such times in history, certain values in fact serve to maintain society's stability, and initiate mutual understanding and collaboration between people. As one of the key concepts in modern social thought, «values» is used to designate objects and phenomena, their properties and the abstract ideas that embody social ideals and thus form a necessary point of reference [1. P. 59–93].

The United Nations Millennium Declaration, adopted by General Assembly resolution 55/2 of 8 September 2000, asserts «certain fundamental values to be essential to international relations in the twenty-first century» (section I, Values and principles, para. 6). These values include freedom, equality, solidarity, tolerance, respect for nature and shared responsibility by the nations of the world for managing worldwide economic and social development, as well as threats to international peace and security. The 2005 World Summit Outcome speaks of «the value of different initiatives on dialogue among cultures and civilizations» (para. 144), also underlining that «common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations» (para. 4).

The concept of «values» has an especially positive connotation. Phenomena that play a negative role in international relations must be interpreted as harmful but anything that serves mutual interests and furthers development of the individual, the State and society is of value.

The difference must be established between values and preferences. For example, in a given situation, society might support the election of a party whose electoral campaign is based on slogans advocating racism, xenophobia and intolerance. A leader might come to power through democratic elections but establish a dictatorship in the country. In such cases, we may speak of negative preferences rather than of negative values.

Clearly, not only are human rights based on specific values, they of themselves represent values. This is shown, for instance, by the United Nations Declaration on Human Rights Education and Training, adopted by the Human Rights Council in

resolution 16/1 at its sixteenth session on 23 March 2011, which notes that human rights education «includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection» (art. 2, para. 2 (a)).

Many regional documents evoke the concept of «traditional values». For instance, the African Charter on Human and People's Rights notes that «the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State» (art. 17, para. 3). Article 18, paragraph 2, of the Charter speaks of the State's duty «to assist the family, which is the custodian of morals and traditional values recognized by the community». All civilizations, cultures and religions contribute to the formation of values and determine the development of human rights principles, norms and standards.

### **Humankind**

The concept of mankind or humankind is used in various international instruments, including the Charter of the United Nations, the Universal Declaration of Human Rights and the World Summit Outcome. It denotes the world's population in a collective sense, the community of all the people living there. The preamble to the Charter of the United Nations speaks of the need to «save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind». The Universal Declaration of Human Rights, in its preamble, stresses that «disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind». The World Summit Outcome, recognizing the diversity that exists in the world, states that «all cultures and civilizations contribute to the enrichment of humankind» (para. 14).

Human Rights Council mentions «traditional values of humankind» and «common set of values that belong to humankind in its entirety» [9; 10]. These expressions have the same meaning. The concept of «universal values» could also be added.

The preamble to the resolutions 12/21 and 16/3 of the Human Rights Council resolutions notes that «all cultures and civilizations in their traditions, customs, religions and beliefs share a common set of values that belong to humankind in its entirety, and that those values have made an important contribution to the development of human rights norms and standards». They furthermore speak of «the important role of family, community, society and educational institutions in upholding and transmitting these values, which contributes to promoting respect for human rights and increasing their acceptance at the grass roots».

Universal human values belong to the whole of humankind, to all persons, regardless of their civilization, culture or religion. The characteristics of traditional values of humankind are historical sustainability, universal recognition and acceptance throughout the world, and positive meaning. It may thus be concluded that traditional values include those historically sustainable, positive and intangible categories that are universally recognized and generally accepted by all civilizations, which characterize social relations at specific stages of social development. Clearly, there can be no definitive list of traditional values of humankind. They differ at different stages of

historical development. They must not include practices that conflict with human dignity or violate human rights, even where these are rooted in tradition, or values that may be typical of one or a few peoples or civilizations, but are not accepted throughout the world [1. P. 59–93].

### **Dignity and freedom**

Dignity and freedom are the most important traditional values of humankind; they determine the development both of the individual and of society as a whole [2]. They are very broad concepts and are defined in different ways. The complicating factor in this approach is that perceptions of freedom and dignity are frequently based on not only objective but also subjective assessments. Clearly, subjective perceptions can be mistaken, as they may depend on raised or lowered self-esteem or be based on mistaken values [3. P. 72–86].

Dignity and freedom are principles that determine an individual's position in society and the State. They are values that underpin all the human rights enshrined in international instruments. Their importance in promoting and protecting natural and inalienable human rights cannot be overestimated.

Human rights arise from the dignity and freedom of the individual and his or her responsible behaviour in respect of society and other people. These universal values are criteria that should be used in determining the level of respect for and protection of human rights. Depriving certain persons or groups of dignity or freedom is incompatible with respect for human rights and would lead to the negation of practically the whole range of fundamental rights. Respect for freedom and dignity requires that any restrictions on human rights that are permitted should not be arbitrary and must comply strictly with the norms embodied in international agreements. Furthermore, respect for universal human values implies the inadmissibility of any restrictions whatsoever on many human rights, as in the prohibition of torture and harsh or degrading treatment or punishment and many others. The understanding of dignity and freedom as traditional values of all humankind necessarily makes them universal in nature and promotes the universal acceptance of human rights [7].

Dignity and freedom of the individual are closely interlinked. Breaking society's laws not only detracts from a person's dignity and self-respect, but may also lead to deprivation of liberty. However, even in cases of criminal behaviour and the appropriate punishment, the State must respect the dignity of the individual, including when deprived of liberty.

The concept of freedom and dignity is formulated in the basic international human rights instruments.

The preamble to the Charter of the United Nations speaks of the peoples of the United Nations «determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person». The preamble to the Universal Declaration of Human Rights begins: «Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...» According to article 1 of the Declaration: «All human beings are born free and equal in dignity and rights. They are endowed

with reason and conscience and should act towards one another in a spirit of brotherhood.» Many international instruments conjugate personal dignity with freedom and human rights. Freedom and dignity are, as the instruments state, conditions for ensuring respect for fundamental human rights. This basic provision is expressed in the Proclamation of Teheran, adopted on 13 May 1968, paragraph 5 of which emphasizes that «the primary aim of the United Nations ... is the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country».

The Vienna Declaration and Programme of Action adopted on 25 June 1993 underlines that only by ensuring freedom and dignity on the basis of the observance of human rights can stability and well-being be achieved.

Most of the universal international instruments express the need to safeguard freedom and dignity as conditions for the observance of fundamental human rights and for stability in the world. This idea is also enshrined in the most important regional agreements: the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the American Convention on Human Rights and the African Charter of Human and Peoples' Rights.

Respect for human dignity must be observed even during emergencies. Neither society nor the State may deprive an individual of his or her dignity, regardless of the circumstances, the person's moral qualities, violations of rules of behaviour or even crimes committed. The International Covenant on Civil and Political Rights specifically underlines that «all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person» (art. 10, para. 1). This idea is also expressed in many other international instruments: the Declaration on the Protection of All Persons from Enforced Disappearance; the Standard Minimum Rules for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, etc. A person may be deprived of his or her liberty only for the most serious offences.

Dignity and freedom are universal values. They are both the source and the basis of human rights. Recognition of a person's natural and inalienable rights arises from that person's dignity and freedom. Dignity and freedom are also criteria that must be used as guidance in interpreting legal human rights norms and the extent to which they are promoted and respected.

### **Responsibility**

Promotion of and respect for human rights must accord not only with individual dignity and freedom but also with responsible behaviour in respect of the State, society and other people [3. P. 67–72; 7. P. 7–10].

Responsibility as a traditional value of humankind is fundamentally different from legal responsibility and responsibility under international law. Individual legal responsibility is usually understood as the use of State sanctions against a person who has committed an offence under the law. Responsibility under international law arises

in the case of wrongful acts by a subject of international law and is expressed in various ways. As a traditional value of humankind, responsibility is a fundamental part of a person's moral position and provides internal motivation for his or her behaviour and actions. It is a moral category, and it characterizes the relationship between the individual, the group and society in terms of the realization of the moral requirements imposed on them.

The particularity of responsibility as a value is that it serves as a kind of social reference, guiding not only the activities of one or another individual, but the actions of groups of people and society. The promotion of and respect for human rights must be accompanied not only by freedom and dignity but also by individual responsibility, and the fulfilment of obligations, towards other people.

There is a tendency to interpret the concept of «responsibility» in the same way as that of «obligation». This should not be considered valid. Legal obligation means that an individual must, in his or her behaviour, be guided by legal norms and forbear from action prohibited by the law. Responsibility as a traditional value of humankind should be interpreted not as a form of obligation but, rather, as motivation for individual behaviour. Responsibility supposes an individual's capacity for moral behaviour. Only a free and responsible individual can fully realize him- or herself in social behaviour and thus exploit his or her potential to the maximum.

The realization of human rights must be accompanied by responsible behaviour by other individuals. Article 30 of the Universal Declaration of Human Rights, which prohibits «any State, group or person ... [from engaging] in any activity or [performing] any act aimed at the destruction of any of the rights and freedoms set forth herein» is particularly important in that regard.

Although responsibility, a traditional value of humankind, is not the same as the concept of «obligation», the two are closely linked and interdependent [4]. Any society or State has a system of «law — obligation — responsibility», without which the fundamental rights and freedoms of the individual cannot be guaranteed. This close link is underlined in article 29 of the Universal Declaration of Human Rights, which states:

«(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.»

This idea is also expressed in the preamble to the International Covenant on Civil and Political Rights and the preamble to the International Covenant on Economic, Social and Cultural Rights, which emphasize that «the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights» recognized in the Covenants. The idea of the inseparability of rights, obligations and responsibilities is also underlined in many other international instruments.

The traditional values of humankind do not remain unchanged with time. Freedom, dignity and responsibility underwent much development before becoming traditional values of humankind. Now democracy is an increasingly important value for all

States and peoples. Its universal value is recognized by most States in the international community and all civilizations in the world today.

Paragraph 8 of the Vienna Declaration and Programme of Action states that «democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing». Paragraph 135 of the 2005 World Summit Outcome highlights that «democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives».

The traditional values of humankind, shared by all States and peoples, determine and will continue to determine development and the vital activities of the international community of nations.

### **Traditional values of humankind and respect for universal human rights standards**

Realization of the rights proclaimed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international instruments has not been an easy process, particularly for those States that have lived through the difficult history of colonialism and experienced the effect of other cultures. Nor has it been easy for civilizations with millennia-old histories, their own mentalities and cultures. At the beginning, it was hard to imagine that achieving agreement between different traditions, customs, legal cultures would be such a long and complex process. It was not possible to solve the problem simply by enshrining in law the standards that the United States' Declaration of Independence calls self-evident truths, specifically that «all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness». Most States in the world, from different civilizations, adopted the standards of human rights and freedoms proclaimed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights either immediately or after a certain time. However, the practical realization of those rights in countries belonging to different civilizations has frequently been met with resentment and alienation, especially in rural areas, where the population continues to live according to centuries-old traditions and customs [5. P. 22–98].

References to regional specificities and adherence to the traditions and values of particular civilizations do not prevent States cooperating at universal level or the United Nations adopting many resolutions and agreements on human rights. There is a growing understanding and reflection of universal human rights standards in the activities of regional organizations. Many of the instruments adopted in the framework of the African Union, the League of Arab States and the Organization of American States reproduce the norms and standards of the Universal Declaration of Human Rights, the Covenants and other universal instruments. The Covenants and many other key human rights instruments have been ratified by the overwhelming majority of States Members of the United Nations.



Furthermore, the regional organizations have adopted universal mechanisms for the protection of human rights, establishing not only commissions, but also courts, and thus making it possible to consider reports from States parties as well as individual communications, while still taking the distinctive nature of their countries' civilizations and their cultural traditions into account [6].

However, aligning universal and regional human rights standards is not a simple process and it does bring disagreements and arguments. These clashes are often caused by regional specificities or features of particular civilizations, local traditions and particularities.

It should be pointed out at this juncture that the universal nature of human rights standards is not questioned in the United Nations. The difficulties and disagreements arise in their use and interpretation by countries with different cultures, religions and traditions. The fact that the United Nations officially recognizes the universal nature of international human rights standards and their mandatory application in all countries of the world should not obscure the complications that arise in their implementation in many regions. Practically all States have transposed the international standards into their domestic legislation, made them mandatory and declared their intention to implement them. However, thousand-year-old faiths, religious and moral teachings, traditions and customs have frequently proved stronger than official laws. It cannot be ignored that many States, swayed by the political situation and selfish interpretations of interests, have refused to respect fundamental rights and freedoms. It cannot be ignored that the realization of many universal human rights depends on the level of economic development in a country and the level of well-being of its peoples. It is thus not surprising that the realization of universal human rights comes up against problems and obstacles. This means that there must be constant dialogue between States, on an equal footing; it must be accepted that the appropriation and perception of many universal human rights norms and standards is a continuous and lengthy process. The universal human values of dignity, freedom and responsibility can and must play an important role in this complex process.

Recognition of dignity, freedom and responsibility as traditional values of humankind certainly makes them universal in nature and promotes the universal acceptance of human rights. All international human rights agreements, whether universal or regional, must be based on, and not contradict, the traditional values of humankind. If this is not the case, they cannot be considered valid. Under article 53 of the Vienna Convention on the Law of Treaties, «a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law».

Dignity, freedom and responsibility are fundamental international norms and standards enshrined in universal and regional human rights agreements. Any violation of them therefore goes against the imperative norms of modern international law and renders a universal or regional agreement invalid. As stated above, the traditional values of humankind are universal and underpin all human rights.

Although human rights are enshrined in universal international agreements and recognized throughout the world, in many regions their practical implementation is

seriously limited. Moreover, in some societies and communities, human rights are considered a foreign concept, forced upon them by other civilizations. Overcoming this stereotype will promote recognition of the indissociable link between traditional values and human rights. All people have inalienable rights from birth. They are endowed with dignity, freedom and responsibility. There is thus, as stated above, an indissociable link between traditional values and human rights, which promotes their recognition as both obligatory and universal.

At this point, it is especially important to note that no single approach to implementing human rights can be applied in all countries or to all peoples. Attempts to impose a single standard system for their implementation, under the pretext of the universal application of human rights, will lead to disagreements and conflict, and will undermine the inalienable nature of those rights. Efforts should thus be focused on developing and adopting common approaches to promote respect for and observance of human rights, taking account of the specific features of development in different regions of the world.

Human rights must serve as an instrument to unite all countries and peoples, not to divide them. In determining the common elements, we must acknowledge the moral significance of human rights norms and standards, recognizing that they are underpinned by the traditional values of humankind. Human rights should not be explained solely in terms of their legal interpretation, with mention only of violations and the resultant sanctions. To achieve universal observance of human rights, it is particularly important to promote a culture of respect for human dignity, freedom and human rights at all levels.

The traditional values of humankind — freedom, dignity and responsibility — can and must be used to promote and protect human rights towards their universal application. It is important to recognize and safeguard the links between traditional values and human rights and so help to strengthen universal respect for human rights and recognition of their universal nature. It cannot be considered justified to state that universal human rights standards are unacceptable to or invalid for certain countries and peoples. Such a position in fact highlights the futility of trying to force the application of international human rights norms by all countries and peoples in all areas of life.

The process of perception and assimilation of universal human rights standards, as noted above, does not depend only on the socio-economic system and the religious, cultural and other traditions of the countries concerned, but also on the well-being of the peoples living there. A conscious choice to adopt universal international human rights standards will be made only where the distinctive features of different civilizations, religions and cultures are accorded respect. To that end, there must be a constant dialogue between different countries and peoples, and respect shown for their customs and individual paths of development. Such an approach is the only way of preserving the diversity of our world, preventing conflict and ensuring the universal application of human rights.

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## ПРАВА ЧЕЛОВЕКА И ТРАДИЦИОННЫЕ ЦЕННОСТИ ЧЕЛОВЕЧЕСТВА

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В статье автор рассматривает такие традиционные ценности человечества, как свобода, достоинство и ответственность, которые являются также фундаментальными международными стандартами и нормами, закрепленными в универсальных и региональных соглашениях по правам человека. Эти нормы могут и должны быть использованы для поощрения и защиты прав человека и универсального применения.

**Ключевые слова:** традиционные ценности человечества, достоинство, свобода, ответственность, права человека, демократия, универсализм.