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RIGHT TO SUSTAINABLE DEVELOPMENT AS ONE OF THE RIGHTS OF HUMANITY

1. BACKGROUND FOR RESEARCH ON THE RIGHTS OF HUMANITY

Despite existence of the numerous documents and mechanisms created to protect human rights internationally, the full protection is far from being achieved. This article provides innovative concept of rights of humanity, which is built on ideas of third generation of human rights. Current development of global interdependency allows defining humanity as a separate subject of rights, which can and should be protected. Harmonious and peaceful existence on the planet Earth for all its inhabitants and future generations looks like a utopian goal, which is not suitable for a responsible legal research. However, it is precisely the goal that the United Nations (UN) put in its Sustainable Development Goals¹, which constitutes a global guidance based on shared values of humanity.

Violation of peace, pollution or exhaustion of the environmental resources jeopardizes the development not only of people, who have suffered from these violations directly, but also that of future generations. The three global values – peace, healthy environment and sustainable development – are the principles of international cooperation. The understanding of the interdependence between these values and people marks the beginning of the search for a legal definition of ways to protect physical existence and rights of individual human beings and humanity.

In this article the right of humanity to sustainable development is discussed as one of the rights of humanity, which include the right to peace, right to healthy environment, and right to sustainable development². These rights cannot and

¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, available at: <http://www.refworld.org/docid/57b6e3e44.html> (accessed: 4.08.2018).

² For example, see: I. Sheiko-Ivankiv, *Ludzkość jako podmiot stosunków społecznych*, „AVANT. Pismo Awangardy Filozoficzno-Naukowej” 2012, pp. 132–140; I. Іванків, Відмінні ознаки прав людини третього покоління. Наукові записки НаУКМА. 2016. Том 181.

should not be considered a solution to global problems, but rather an alternative way of development of philosophy, and possibly human rights doctrine and practice. The proposed theory is one of the first attempts to combine three values into the concept of rights of humanity, therefore, unavoidably having shortcomings and limitations. However, further work on its improvement will contribute to the diversification of approaches to understanding human rights and ways to protect them. This article is part of wider research work, which is directed on developing philosophical ground and legal mechanism of defining and protecting rights of humanity. These rights are regarded as specific solidarity third-generation rights. The specific features of these rights, differentiating them from other human rights, are the following:

- 1) humanity is a subject of these rights;
- 2) there is direct co-dependency between rights of humanity and human rights;
- 3) rights of humanity protection requires their implementation for all with respect to individual rights;
- 4) extraterritoriality;
- 5) belonging to different generations of humanity.

Detailed research in this area provides grounds for arguing that the rights characterized by all these features are the right to peace, right to healthy environment, and right to sustainable development. The choice of these rights is not accidental, since legal research has repeatedly attempted to substantiate them. P. Alston in late 1980's wrote about strengthening of ideas about several new rights, namely: the right to development, the right to clean environment, the right to peace, and the right to humanitarian assistance³.

The rights of humanity can be considered as the ground for the existence of individual human rights and “umbrella” that protects them from violations. In this regard, Alston rightfully notes that the continuation of discussions on new rights about whether they are really rights or just legal principles is a repetition of the discussions preceding the adoption of the Universal Declaration of Human Rights⁴, and therefore is a normal process of legalizing natural rights. In this regard it is important to point out Alston's statement that: “*human rights are no longer an area artificially divorced from the most urgent issues of the day such as peace, development and environmental protection*”⁵. In turn, C. G. Fernandez and D. F. Puyana emphasize that “*sustainable development cannot be realized without peace and security, and peace and security will be at risk without*

Юридичні науки, 54-47; І. Іванків, Право людства на мир як умова дотримання прав людини, Наукові записки НаУКМА. 2017. Том 200. Юридичні науки.

³ P. Alston, *Making Space for New Human Rights: The Case of the Right to Development*, “Harvard Human Rights Yearbook” 1988, p. 3.

⁴ *Ibidem*, p. 6.

⁵ *Ibidem*, p. 4.

*sustainable development*⁶”, and that “*human rights, peace and development are interdependent and mutually reinforcing*”⁷. As a matter of fact, the interdependence between the possibility of protecting human rights and the need to protect the discussed rights of humanity originates from the inability to protect human rights in the case of a violation of any of the three rights of humanity.

The idea of rights of humanity is also grounded in philosophical ethics of the ubuntu, which has been legally reflected in the African Charter on Human and Peoples’ Rights. It has become the ethical foundation for the determination of solidarity rights. The basis of this philosophy as described by B. E. Winks lies within the African humanism⁸.

It is on this fraternal solidarity that the rights of the third generation were founded by K. Vasak⁹. The scholar of the ubuntu philosophy M. F. Murove emphasizes that “ubuntu” is a system of values deeply rooted in African society. He is critical about the over individualized doctrine of human rights pointing out the need for solidarity or community aspect for the real protection of rights¹⁰, some of which cannot really be provided outside of society. The understanding of ubuntu, as described by Murove is important for sustainable development, which aims not only at economic growth, but more on equal opportunities for people all over the world¹¹. Perhaps the European-centered approach to the study of human rights indeed limits the potential development of this doctrine. Global interdependence requires responding to planetary challenges, one of which may be the rights of humanity.

2. RIGHT OF HUMANITY TO SUSTAINABLE DEVELOPMENT IN SOFT-LAW DOCUMENTS

Sustainable development is difficult to describe or define clearly, because its modern understanding is extremely broad. The complex discourse of interna-

⁶ C. G. Fernández., D. F. Puyana, *In Pursuit of Broad Agreement in the Future Development of the Declaration on the Right to Peace within the United Nations*, „Przegląd Strategiczny” 2017, issue 10, p. 387.

⁷ C. G. Fernández, D. F. Puyana (with the contribution of M. Bosé), *The Right to Peace: Past, Present and Future*, San Jose, November 2017, p. 151, <https://www.upeace.org/uploads/file/publication/Right%20to%20Peace.pdf> (accessed: 16.06.2018).

⁸ B. E. Winks, *A covenant of compassion: African humanism and the rights of solidarity in the African Charter on Human and Peoples’ Rights*, “African Human Rights Law Journal” 2011, issue 11, pp. 461–462.

⁹ See: K. Vasak, *30-Year Struggle: Sustained Efforts to give Force of Law to Universal Declaration of Human Rights*, “Unesco Courier” 1977, issue 10.

¹⁰ M. F. Murove, *L’Ubuntu, Diogène*, 2011, issue 3, p. 45.

¹¹ *Ibidem*, pp. 49–50.

tional development is reflected in a large number of declarations, conventions, as well as legal and economic studies.

The separate problem that was intentionally left behind the scope of this article is the international development law that has begun to evolve from the mechanisms of assistance to third world countries in the 1960s. Due to such origin most of the documents on the right to development refer to freedom from colonial rule and the right to self-determination of peoples and nations. Currently, the law of international development relates mainly to international aid, development projects of international organizations, as well as international co-operation. Research in such a wide area requires special attention and cannot be realized within this limited space of an article. Despite this limitation, international development law is largely correlated with international human rights law, so the analysis of certain documents in this area will be given for a more detailed discussion of the concept of development and its relationship with human rights. Moreover, the correlation is important to define sustainable development as a right of humanity.

In human rights context, sustainable development includes commensurable development opportunities for different peoples, groups, individuals, human race as a whole, as well as future generations. The concept of sustainable development can be considered in three areas: environmental, economic and social. Sustainable social development implies that the state and the public must be organized in such a way as to limit social unrest, while the conflicts must be resolved peacefully. The Nobel laureate in economics A. Sen considered development as freedom: “*Viewing development in terms of expanding substantive freedoms directs attention to the ends that make development important, rather than merely to some of the means that, inter alia, play a prominent part in the process*¹²”. This approach has definitely influenced the formation of international discourse on sustainable development. As Sen points out that achieving economic growth is one way of achieving freedom, which he understood in a broad sense. His concept of freedom is based on the protection of human rights, as well as the proper economic conditions under which development is achieved.

Indeed, the relationship between human rights and human development is also expressed as follows: “*human development is necessary for the realization of human rights, and human rights are necessary for full human development*¹³”. As R. Scharfenberg stresses, understanding of human rights from the perspective of human development and vice versa, as well as a policy based on this perspective, requires not only the appropriate reflection in legislation at the state level, but also the creation of appropriate institutions and favorable conditions worldwide¹⁴.

¹² A. K. Sen., *Development as freedom*, Oxford 2001, p. 3.

¹³ *Ibidem*, p. 2.

¹⁴ R. Scharfenberg, *Prawo do rozwoju* (version: 16.05.2004), p. 6, <http://rszarf.ips.uw.edu.pl/pdf/pdr.pdf> (accessed: 6.04.2014).

Some scholars believe that the right to development, although not mentioned directly, was reflected in art. 28 of the Universal Declaration of Human Rights, which provides for the right of every person to a social and international order where the rights and freedoms can be fully implemented¹⁵. Although in the absence of a clear recognition it was difficult to talk about the content and subjects of this right.

Despite the criticism of the concept, the right to development was recognized as an inalienable human right in art. 1 of the Declaration on the Right to Development, adopted by the UN General Assembly on December 4, 1986¹⁶. In accordance with this Declaration, States are obliged to pursue their national development policy considering the continuous improvement of the well-being of the public and of all people; improvement based on a fair sharing of benefits. The right to development is defined in art. 1 of the Declaration as “*an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*”.

The right to development in art. 1 is simultaneously an individual and a collective one that clearly establishes its connection with the human rights and fundamental freedoms. The right to development is a cumulative right, its content derives from other legal instruments used to implement human rights and freedoms. Researchers sometimes call it *sui generis* “*umbrella concept*”, not a human right¹⁷. The purpose of this concept is to emphasize the coherent nature of human rights (individual and collective, social and political, etc.), as well as human rights in the process of development.

One of the important features of the right to development as described in art. 2 of the Declaration, is the responsibility of all people to care for development, both individually and collectively. The states also have responsibility to develop appropriate national development policies, as well as to continually improve the living standards of the population through free development and the equitable distribution of benefits derived from it. The Declaration is permeated with the spirit of peoples’ equality, the denial of discriminatory practices, and the promotion of international peace. According to art. 3, the primary responsibility of the states is to create national and international conditions conducive to the realization of the right to development. It can be concluded that such an understanding of the

¹⁵ D. Turk, P. J. de Waart, *The Right to Development, from Lege Ferenda to Lex Lata*, SIM Newsletter 1985, issue 10, p. 13.

¹⁶ UN General Assembly, Declaration on the Right to Development: resolution, 4 December 1986, A/RES/41/128, <http://www.refworld.org/docid/3b00f22544.html> (accessed: 20.08.2018).

¹⁷ For example, see: B. A. Andreassen, S. P. Marks (eds), *Development as a Human Right*, Harvard 2006; U. Baxi, *The Development of the Right to Development*, (in:) J. Symonides (ed.), *Human Rights: New Dimensions and Challenges*, Paris 1998; A. Rosas, *The Right to Development*, (in:) E. Asbjørn, C. Krause, A. Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht–Boston 1995, p. 247.

right to development confirms the thesis that this right is the right of humanity. One of the most distinctive features of rights of humanity is extraterritoriality. It is inherent to the right to development, since impossibility to protect this right in only one state or to restrict within certain boundaries is obvious.

Back in 1988 P. Alston emphasized the complex nature of the right to development, which was and still is criticized by many Western scholars for its non-individualistic nature¹⁸. He argues in favor of the need to protect the right to development, as well as the right to peace and a safe environment.

The Brundtland Report of the World Commission on Environment and Development “Our Common Future”¹⁹ issued in 1987 added intergenerational angle to understanding of the sustainable development: “*Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs*”²⁰. This document refers to the interdependence of the environment and opportunities for sustainable development, which has only intensified since then.

Since the adoption of the Declaration on the Right to Development in 1986, the understanding of development has changed substantially and now the prevailing concept is “sustainable development”. Issue to be pointed out is that within the discourse of the goals of humanity, sustainable development is used. However, within the human rights discussion development loses its adjective – sustainable.

At the UN conference in Johannesburg in 2002 the global environmental crisis was discussed, including environmental, social, economic and health issues. Two important final documents were adopted: “Action Plan” and Johannesburg Declaration on Sustainable Development²¹. This declaration recognizes the continuation of the purpose of the Stockholm Declaration²², which was the first document to explicitly recognize the right to a healthy environment, the declaration places great emphasis on protecting both species and their habitat²³. In the preamble one of the goals of the world community is determined as the need to save our planet, promote human development and achieve universal prosperity and peace.

¹⁸ P. Alston, *Making Space for New Human Rights...*, p. 26.

¹⁹ Our Common Future. Brundtland Report of the World Commission on Environment and Development (1987), http://www.urv.cat/media/upload/arxiu/catedra-desenvolupament-sostenible/Declaracions%20VIP/1987_-_brundtland_report.pdf (accessed: 6 April 2014).

²⁰ *Ibidem*, p. 13.

²¹ UN General Assembly, Declaration on the Right to Development: resolution, 4 December 1986, A/RES/41/128, <http://www.refworld.org/docid/3b00f22544.html> (accessed: 20.08.2018).

²² UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994, available at: <http://www.refworld.org/docid/3b00f1c840.html> (accessed: 4.07.2018).

²³ Sustainable development 2015. Advocacy Toolkit Mini-Site, <https://www.sustainabledevelopment2015.org/AdvocacyToolkit/index.php/earth-summit-history/historical-documents/91-stockholm-declaration> (accessed: 2.09.2018).

The Johannesburg Declaration confirms the task of global society to achieve sustainable development (paragraph 16). Paragraph 21 contains a reference to the recipient and beneficiary of sustainable development, which is humanity: “*We recognize the reality that global society has the means and is endowed with the resources to address the challenges of poverty eradication and sustainable development confronting all humanity. Together, we will take extra steps to ensure that these available resources are used to the benefit of humanity.*”

The analysis of the Johannesburg Declaration allows identifying sustainable development as a new philosophy of global, regional and local development, which is opposed to economic growth understood in the narrow sense. It also emphasizes another distinctive feature of the right to sustainable development, namely importance to different generations of humankind. This philosophy, emerging in response to the global nature of environmental hazards, formulates the vision and ways to reduce or eliminate them by implementing the concept of respectful public attitude to the environment.

According to this philosophy, the features of sustainable development are the following:

- socio-economic development, harmonized with environmental protection;
- permanent, but limited socio-economic development with respect to the natural resources;
- the pursuit of any economic activity should be conducted in harmony with nature in such a way as not to cause the irreversible changes.

It can be argued that development facilitates the use of all human rights. However, one cannot rely on a lack of development and thus justify human rights violations, since the universal nature of these rights is beyond doubt²⁴. The topics of human rights dependence on sustainable development were also devoted to the Human Development Report 2000, entitled “Human Rights and Human Development²⁵”. It states that human rights and human development have the same purpose: “*to secure the freedom, well-being and dignity of all people everywhere*²⁶”.

However, the link between human rights and development is not simple. For example, W. Vandenhole, analyzing the relationship between human rights and development, points out that before the introduction of a human rights-based approach, in times of exclusively economic development, the latter contradicted the idea of protecting human rights in many cases²⁷. In this context, it would

²⁴ *Prawa człowieka trzeciej generacji*, http://www.unic.un.org.pl/prawa_czlowieka/pcz_trzecia_generacja.php (accessed: 6.04.2014).

²⁵ Human Development Report 2000, Oxford, 2000, p. 1, http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf (accessed: 2.09.2018).

²⁶ *Ibidem*.

²⁷ W. Vandenhole, *Interplay between Human Rights Law and Development Law: Potential, Ambiguities and Tensions.*, “Human Rights and International Legal Discourse” 2008, issue 2, pp. 10–11.

be inappropriate to ignore the Millennium Development Goals in the United Nations Millennium Declaration 2000–2015, adopted in 2000, and the Sustainable Development Goals 2016–2030, adopted in September 2015, within the framework of the 70th session of the UN General Assembly New York in the Declaration “Transforming our world: the 2030 Agenda for Sustainable Development”²⁸. The document approved 17 Sustainable Development Goals and 169 tasks.

Both documents describe the global goals of humanity, the achievement of which is a condition not only for sustainable development, but also for the very existence of humankind on the planet. R. Pavoni and D. Piselli define the transition from the Millennium Development Goals to Sustainable Development Goals as an important stage in human development, considering that the approach of regarding the sustainable development as a mechanism for international cooperation “*playing an important role in the advancement and further specification of the concept of sustainable development as a (legal) principle of integration*”²⁹. Researchers also point out that integration itself is one of the key elements for the success of sustainable development goals and reflects the planetary scale of long-term cooperation³⁰.

Therefore, the sustainable development goals can be considered a procedural aspect of the right to sustainable development, since both documents refer to the right to development among the goals of humanity. Accordingly, it can be argued that securing the right to development is possible only if sustainable development mechanisms are used, which are aimed not only at the survival of humankind, but also in ensuring balanced development in different parts of the planet, avoiding drastic differences in opportunities and living conditions.

The Millennium Development Goals also contain provisions on the right to development, but in the context of the goals of poverty eradication and on human rights, democracy and good governance³¹. Paragraph 35 of the declaration “Transforming our world: the 2030 Agenda for Sustainable Development” also contains provisions that combine peace, environment, sustainable development and the right to development into one human right, stressing that “*sustainable*

²⁸ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, <http://www.refworld.org/docid/57b6e3e44.html> (accessed: 2.09.2018).

²⁹ Pavoni R., Piselli D., *The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation*, “Veredas do Direito” 2016, issue 13, p. 17.

³⁰ *Ibidem*, p. 27.

³¹ UN General Assembly, *United Nations Millennium Declaration, Resolution Adopted by the General Assembly*, 18 September 2000, A/RES/55/2, <http://www.refworld.org/docid/3b-00f4ea3.html> (accessed: 4.08.2018).

*development cannot be realized without peace and security; and peace and security will be at risk without sustainable development*³²”.

Obviously, such an approach to understanding the right to development and sustainable development may raise some doubts about the effectiveness of their differentiation and the need for a separate right to development, if sustainable development constitutes *de facto* procedural rules of international cooperation and politics. The UN Sustainable Development Goals Report 2018³³ states that possibility to achieve some of the goals by 2030 is questionable. Such situation puts in vulnerable position not only those countries where problems exist, but also humanity in its entirety³⁴. The interrelated nature of the goals of sustainable development is also emphasized. Therefore, the international community, together with the national governments should work both independently and together to make societies more sustainable to resist the global challenges.

The gradual transition to more resilient and sustainable societies requires an integrated approach that recognizes that common challenges and their solutions are interconnected³⁵. In addition, the adoption of national development strategies based on the UN Sustainable Development goals and the activities of the United Nations Development Program (UNDP) in different countries shows the dual nature of the sustainable development goals, as they operate simultaneously at the international and national levels.

Unfortunately, there is also no consensus regarding the subject of the right to sustainable development. For example, G. Peces-Barba argues that the right to development can only have collective subject, since it deals with the social consequences of the global inequality caused by the differences in economic status between the peoples³⁶. The researcher emphasizes the moral component of this right, since the right to development also aims at overcoming the global inequality, which currently helps some states, depriving at the same time others of opportunities for development³⁷. He draws attention to the fact that any subject of the right to development will be criticized, therefore he notes that such a complex problem as international development requires additional study³⁸.

In another research D. Turk and P. J. de Waart emphasize the pluralism of the subjects of the right to development, however, in their opinion, it is the indi-

³² UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, <http://www.refworld.org/docid/57b6e3e44.html> (accessed: 4.08.2018).

³³ *The Sustainable Development Goals Report 2018*, <https://unstats.un.org/sdgs/files/report/2018/TheSustainableDevelopmentGoalsReport2018.pdf> (accessed: 16.06.2018).

³⁴ *Ibidem*, p. 3.

³⁵ *Ibidem*, p. 14.

³⁶ G. Peces-Barba, *Teoria Dei Diritti Fundamental*, Milan 1993, p. 166.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

vidual subject that causes the least problems and discussions³⁹. The researchers also question the possibility of recognizing peoples as subjects of this right, because in this case it would add confusion with the right to self-determination. On the other hand, they recognize the need to define a collective entity that more clearly corresponds to the essence of the right to development. There is an interesting point in their analysis that is recognizing states as potential subjects, although at the same time, they admit that such approach contradicts the essence of the human rights doctrine. However, if the principle of sustainable development is the principle of international relations, then states must have subjectivity for its application, and at the same time they are responsible for ensuring the human right to development. Therefore, it is important to highlight the need to differentiate the right to development, which subjects are any natural communities of people, and development as a principle of international law⁴⁰. Speaking of “any natural communities of people” as the subject of the right to development, one can assume that such a subject may as well be humanity, confirming, therefore, the legitimacy of its recognition as a subject of the right to sustainable development.

In view of the problem of the definition of the subject of the right to sustainable development, humanity may be recognized its subject. The analyzed arguments of researchers and documents indicate confusion in the understanding of the right to development. This right cannot be protected for one person or a limited group of individuals. On the other hand, the global approach to defining the goals of sustainable development for the benefit of humanity suggests that humanity itself could be recognized as the beneficiary of the right to development, which in modern terms should be called sustainable development.

3. RIGHT TO SUSTAINABLE DEVELOPMENT IN REGIONAL HUMAN RIGHTS SYSTEMS

The recognition of the human right to development in the Declaration on the Right to Development has contributed to its recognition in regional human rights systems. Of course, each system, having its own peculiarities, reflected this right in a different way. Further analyzed regional documents indicate fragmentary certainty about the subjects and understanding of the right to development.

³⁹ D. Turk, P. J. de Waart, *The Right to Development...*, p. 17.

⁴⁰ *Ibidem*.

3.1. EUROPEAN SYSTEM

In the European system of human rights protection, the right to development is not mentioned. However, the Aalborg Charter of European Cities and Towns Towards Sustainability⁴¹ defines the commitment to sustainable development at the local level and emphasizes the importance of cities as centers for the realization of sustainable development goals. According to O. Gonchar: “*The European community was one of the first to react to global transformations, adopting the concept of sustainable development as the basis for its functioning*”⁴². The Aalborg Charter deals with the obligation of cities and towns to carry out their activities in accordance with the principles of sustainable development. The document does not mention the right to development, but it thoroughly describes the responsibility of cities for maintaining the proper environmental conditions, which are essential for the health of humankind, as well as for existence of future generations and the preservation of their capacity for development and realization of their potential.

To give a national example, in Ukraine, seven cities and one oblast undertook the obligations under the Aalborg Charter. Unfortunately, out of those cities Donetsk, Yevpatoria and Sevastopol currently have status of territories temporarily occupied by Russian Federation⁴³. The population of these territories is deprived of the right to sustainable development and a healthy environment due to the violation of the right to peace.

In addition, fighting in a zone adjacent to Donetsk threatens the Donetsk filtering station (DFS), whose work is constantly interrupted. According to the facts of the OSCE Special Monitoring Mission in Ukraine: “*This [situation] places the women and men maintaining the plant [...] in danger, and jeopardizes the operation of the plant itself, upon which over 300,000 civilians on both sides of the contact line depend for drinking water*”⁴⁴. In this example, the link between human rights and rights of humanity is clearly traced, since hundreds of thousands of people are deprived of their right to health due to a violation of the right

⁴¹ Aalborg Charter (Charter of European Cities & Towns towards Sustainability, Aalborg, Denmark); May 1994, http://www.urv.cat/media/upload/arxius/catedra-desenvolupament-sostenible/Declaracions%20VIP/1994_-_aalborg_charter.pdf (accessed: 12.08.2018).

⁴² О. М. Гончар, Ефективність участі міст України в європейському русі за сталий розвиток. *Науковий вісник Полтавського університету економіки і торгівлі. Сер.: Економічні науки 2014*, issue 6, p. 41.

⁴³ Закон України «Про особливості державної політики із забезпечення державного суверенітету України на тимчасово окупованих територіях у Донецькій та Луганській областях», від 18.01.2018 № 2268-VIII.

⁴⁴ Security situation around the Donetsk Filtration Station in eastern Ukraine remains critical, says OSCE Chief Monitor Apakan, 6.06.2018, <https://www.osce.org/special-monitoring-mission-to-ukraine/383592> (accessed: 15.08.2018).

to peace, their right to life, as well as collective rights to a healthy environment and sustainable development are endangered.

3.2. AFRICAN SYSTEM

Unlike the European one, the African human rights system provides for the right to development in the African Charter on Human and Peoples' Rights (African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women⁴⁵.

Paragraph 1 of the art. 22 of the African Charter provides for the right to development, namely: All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind⁴⁶.

The duty to ensure the exercise of this right is entrusted to the states, which have to carry it individually or collectively (para. 2 art. 22). The right to development is also mentioned in Art. 24 of the African Charter, which establishes the right to a generally satisfactory environment.

Art. 19 of the Protocol in the Rights of Women to the African Charter, which defines the right of women to fully enjoy the right to sustainable development is even more progressive. Among the responsibilities of the state are the use of indicators for human development in the implementation of women's rights policies, as well as to reduce the negative effects of globalization in the implementation of trade contracts and economic policies.

The right to development at the African continent is of particular importance, since its peoples were mostly affected by colonial rule. The Sustainable development report on Africa states, that this continent remains not only the poorest, but also the least developed, the most technologically backward, most indebted, and most vulnerable due to food shortages, and the most marginalized region in the world⁴⁷. Only the African continent has not been able to achieve the majority of the Millennium Development Goals by 2015⁴⁸. The report also states that peace and health are essential to sustainable development, and the constant armed conflicts in the region together with significant pollution, combined with natural disasters and recurrent epidemics, make it much more difficult to overcome the critical level of poverty.

⁴⁵ Cit. by: *Human Rights in International Law. Basic Texts*, Council of Europe Publishing, 2007.

⁴⁶ *Ibidem*.

⁴⁷ *United Nations. Economic Commission for Africa (2011-01). Sustainable development report on Africa I: managing land-based resources for sustainable development*. Addis Ababa, p. 1, <http://hdl.handle.net/10855/14946> (accessed: 16.06.2018).

⁴⁸ *Ibidem*.

The difficult situation on the African continent forces governments to look for new ways to solve problems. One of them is the definition of a special catalogue of human and peoples' rights. Sustainable development in the context of the philosophy of the ubuntu, mentioned above, promotes the idea of solidarity as a necessary condition for the protection of globally important rights as are the rights to peace, to healthy environment, and sustainable development. The African Charter might provide the legal and philosophical ground for development of rights of humanity, based on the value of solidarity.

3.3. ASIAN SYSTEM

Asian system of human rights is usually but undeservingly overlooked. Its problem lies in the absence of mechanisms of protection, and the declarative nature of the human rights catalogue. However, given that the Association of Southeast Asian Nations (ASEAN) adopted its Human Rights Declaration (AHRD) in 2012, this system is the most comprehensive and most reflective of the modern understanding of the right to sustainable development. Articles 35–37 describe in detail the right to development and the obligations of States with regard to its protection and enforcement:⁴⁹

The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognized human rights.

The last two sentences of the article emphasize the essential features of the right to sustainable development: belonging to present and future generations and interconnectedness with the environment. The position of J. Donnelly about the impossibility of providing a certain right due to an inadequate level of development cannot be used to justify its violation⁵⁰ was expressed in the ASEAN Declaration. This provision is an important indicator of the interdependence of development and human rights.

⁴⁹ ASEAN. *Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD*. 2013, [http://www.asean.org/storage/images/resources/ASEAN_Publication/2013_\(7_Jul\)–ASEAN_Human_Rights_Declaration_\(AHRD\)_and_Its_Translation.pdf](http://www.asean.org/storage/images/resources/ASEAN_Publication/2013_(7_Jul)–ASEAN_Human_Rights_Declaration_(AHRD)_and_Its_Translation.pdf) (accessed: 14.07.2018).

⁵⁰ See: J. Donnelly, *The relative universality of human rights*, "Human Rights Quarterly" 2007.

Article 37 of the ASEAN Declaration obliges ASEAN member states to cooperate with each other and outside the community, since sustainable development is achievable only in the case of multidimensional international cooperation. It is worth paying attention to the definition of the subject of the right to development, which is every person and people of ASEAN. The potential recognition of the right to sustainable development by the right of humanity would help identifying the subject more specifically. The characteristic features of which are neither completely individual nor collective, however protection of this right requires international co-operation.

3.4. AMERICAN SYSTEM

In the American Convention on Human Rights (the San Jose Pact) in art. 26 deals with progressive development. This article is the only one in the section on economic, social and cultural rights, but it does not refer to the right to development.

4. CONCLUSIONS

Based on the provided analysis of soft law documents and regional instruments, the following conclusions can be made:

1. Rights of humanity are independent rights, emerging from the third-generation human rights, based on solidarity.
2. The transformation of the human right to development into the right of humanity to sustainable development will contribute to a more coherent understanding of these complex legal constructs and more effective planning for its protection.
3. The sustainable development goals can be considered a procedural aspect of the right to sustainable development, which may facilitate the protection of all rights of humanity.
4. The regional peculiarities of development influence the definition of the right to development and help creating global understanding of the right to sustainable development. The modern documents on human rights reflect global trends in defining and protecting the right to sustainable development. The importance of sustainable development for the present and future generations of humanity, as well as for the protection of human rights, requires further research in this sphere.

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RIGHT TO SUSTAINABLE DEVELOPMENT AS ONE OF THE RIGHTS OF HUMANITY

Summary

Right of humanity to development is described within the global search for responses to the planetary challenges. The idea of the rights of humanity is an attempt to propose the new approach to human rights protection, based on global interdependency. The article offers analysis of soft law documents on human right to development, as well as regional instruments for protection of human and peoples' rights. It is argued that right to sustainable development viewed as a right of humanity may create a broader mechanism of protection both for individual human being and humanity in general.

KEYWORDS

rights of humanity, right to sustainable development

SŁOWA KLUCZOWE

prawa ludzkości, prawo do zrównoważonego rozwoju