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INTERVENTION AT THE OSCE/RPO COMMEMORATION
OF THE 70TH ANNIVERSARY
OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
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Ladies and Gentlemen,

I am deeply honoured by this opportunity to address this distinguished audience and equally grateful to the organizers for inviting me to speak on the 70th Anniversary of the Universal Declaration of Human Rights.

‘Shrinking space for human rights’ – ‘Human rights under attack’ –these warnings are heard from various corners of the world. They are largely justified, I am afraid. But, they have also started to sound like a mantra and “mantras” are likely to trigger impatient responses. It was not surprising, therefore, that several prominent speakers, from the EU, UN and regional organizations, including our today’s host, Ms Katarzyna Gardapkhadze, taking the floor on the occasion of the Declaration’s anniversary at the EU Parliament, four weeks ago, placed a lot of emphasis not only on the current challenges to human rights, but also on these rights unique heritage and future role.

The Declaration evidently lies at the heart of this legacy. It is not only a historical but, primarily, it is a historic document. Its impact definitively exceeds the hopes shared 70 years ago. The Declaration has become a cornerstone of the protection of human rights, of the protection of people at both the international and national levels. Since 1966, together with the Human Rights Covenants, the Declaration creates the International Bill of Rights.

In my comments, I would like to address two messages of the Declaration, namely:

- the universality of human rights, and
- the need for a holistic protection of an individual.

Universality

On 10 December 1948, in Palais Chaillot, 48 members of the UN General Assembly voted in favour of the adoption of the Declaration, 8 abstained (the USSR and its allies, including unfortunately Poland, as well as Saudi Arabia and South Africa). Honduras and Yemen decided not to participate in the vote.

It was symbolic that two abstaining countries, Poland and South Africa, decided to jointly organize a UN Conference in Warsaw in 1998 to commemorate the golden 50th anniversary of the Universal Declaration. In a letter to this conference, Nelson Mandela wrote:

Although South Africa did not vote for the Declaration when it was adopted, “the document had served as a shining beacon and an inspiration to many millions of South

Africans. [...] This noble creed has inspired us during the darkness of despair. It will continue to be our guide in the years to come.”

Let's add – hopefully, it will remain a silver lining and guide for all!

25 years ago, at the Second World Conference on Human Rights in 1993 in Vienna all states, unanimously, confirmed their attachment to the Universal Declaration and reiterated that it constitutes a common standard of achievement for all peoples and all states. Moreover, the 2005 Summit, also invoking the Declaration, unanimously decided, for the first time in the UN history, to proclaim the triad: peace and security, development and, as a new element, human rights as interlinked and mutually supportive pillars of the United Nations system.

Moving from a political to a substantive dimension, the situation is becoming more complicated. The Declaration was adopted notwithstanding the political, cultural, intellectual and religious divisions that were clearly visible in the negotiations conducted in 1946-1948.

At that time, UNESCO has asked 150 specialists from all over the world to share their views on axiological sources of human rights. Their responses bared witness to a great diversity of positions and the lack of a philosophical common denominator. The findings of this review embarrassed the Commission on Human Rights so much that it eventually decided to shelve them without wider distribution.

QUESTION: What enabled the adoption of the Declaration under these conditions?

Undoubtedly, the recent tragic experiences of the Second World War and dictatorial regimes prompted the drafters to seek in the natural human rights a tool to protect humanity from "acts of barbarism" and to build a world "in which people will enjoy freedom of speech and belief and freedom from fear and misery". But, at least three other important factors paved the way: firstly, a determined leadership offered by eminent diplomats, thinkers, politicians, including the Chairperson Eleanor Roosevelt and the Head of the UN human rights secretariat John Humphrey, the future Nobel Prize Laureate Rene Cassin, Ambassador Malik from Lebanon, to mention only a few; secondly, the readiness to take a pragmatic approach rather than focus on philosophically or ideologically controversial contents, and thirdly, the agreement that the Declaration would not be legally binding.

One of the most controversial issues was the definition of the source of human rights. The debate moved between reference to God or to nature on the one hand and, on the other hand, to the society/state. In other words, the choice between the natural law and positivism was at stake. Eventually, at the price of a compromise, a pragmatic approach prevailed, and such references were removed from the draft. However, the recognition of a supra-state nature of human rights had been preserved by deriving them from human dignity, reason and conscience that are inherent to every individual.

Jacques Maritain, eminent French philosopher and one of the drafters, commented: "As long as minds are not united in faith or philosophy, there will be mutual conflicts between interpretations and justifications. However, it is possible to agree on a joint declaration in

practical terms.” A participant in the negotiations aptly grasped this: "Yes, we agree on rights, but on condition that no one asks us 'why'."

Incidentally, do we not see here an excellent example of how multilateral diplomacy can work if outcome oriented?

However, the dispute over the universality of human rights returned vigorously in the run-up to the Vienna Conference. In an essentially favourable atmosphere created by the end of the Cold War and the fall of apartheid, many actors demanded a clear affirmation of the universality of human rights. This caused considerable opposition.

At the political level, the most prominent were comments of some Asian politicians. According to the legendary Singaporean Prime Minister Lee Kwan Yew, the liberal concept shifts the common good to the background and the claims of the individual outweigh the responsibility towards society. Such a vision may be a source of conflict. On the other hand, the Asian approach promotes order and harmony instead of unlimited individual freedom; cooperation instead of individualism. The thing is about values, and these "are formulated," Lee Kwan Yew said, "by people's history and experience. They are absorbed by breast milk."

These views reflected to a large extent the tenor of the Mahatma Gandhi contribution during the drafting process of the Universal Declaration. He wrote: "I learnt from my illiterate but wise mother that all the rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship to the world. [...] Every other right can be shown to be a usurpation hardly worth fighting for."

The concept of universal rights was seen in this context as an expression of the Western liberal vision. After highly tense negotiations, however, an unambiguous language found its way to the Vienna Declaration and Programme of Action, which states that:

"The universal nature of these rights and freedoms is beyond question",

Reconciliation with the advocates of a regional distinctiveness in the approach to human rights was found in the following formula:

"While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Has this solemn political commitment put an end to the dispute over the universality of human rights? Certainly, not!

Nevertheless, I dare say that we are not in a vicious circle. The debate on universality evokes a spiral rather than a circle, and there is a lot of evidence that the world is at a higher twist of the spiral than in 1948 or even 1993.

An interesting initiative was launched shortly after the Vienna Conference. The InterAction Council, an association of former heads of state and government, proposed to work on a Universal Declaration of Human Responsibility as a complementary piece to the UDHR.

Many eminent personalities were involved in this project, including former German Chancellor Helmut Schmidt, former Prime Minister Lee Kwan Yew and former French President Valéry Giscard d'Estaing. On the one hand, it was an attempt to complete an ethical order for the globalization process. On the other hand, it was conceived as a response to the Asian concerns. From an external perspective, one could also have seen it as a test of political intentions and of the level of interest in putting an end to disputes over the justification of human rights.

The Responsibilities Declaration was published on the eve of the 50th anniversary of the Universal Declaration in 1997. However, it has never been adopted or endorsed by the UN General Assembly nor by the Commission on Human Rights. Apparently, there was too much concern that the adoption of this Declaration could have led to abuses by authoritarian regimes, making access to rights conditional on arbitrarily judged fulfilment by an individual of his or her duties.

Perhaps there was no need for such a declaration, either, because responsibility is, indeed, inscribed in the concept of universal human rights. Any declaration of rights would, in fact, be illusory if it were not based on respect for the rights of others and the legitimate interests of society. Just as a social contract, human rights should protect us from anarchy and not create it. Reflections on this link are prevalent in the background of many debates and negotiations, for example in relation to strategies for achieving sustainable development goals, access to a healthy environment, access to patents in the medical field, the right to development, or the preparation of a draft convention on human rights and international corporations.

The result of the test was therefore negative in a direct sense, but what is extremely important the tendency to increasingly absorb various philosophical, doctrinal and cultural sources to enrich human rights justifications fortunately continues. It can strengthen the universal dimension of human rights and help to resolve residual controversies.

Indeed, it is worth remembering what Raghunandan Pathak, Chief Justice of India and Judge at the International Court of Justice said

"[...] the skepticism expressed by cultural relativists must be contained within the narrow limits of their fears. The doctrine of cultural relativism [...] should not discourage the effort to move towards a universal system of human rights“

The Declaration's holistic approach

The Declaration entails all categories of human rights: civil, cultural, economic, political and social. The attitude to the latter deeply divided participants of the drafting process. The quality of social rights as human rights was often questioned by the political West due to their allegedly weak normative content and related lack of justiciability.

Chairperson Roosevelt brokered a compromise. It is said that she persuaded the U.S. Department of State not to object to the inclusion of these rights next to civil and political ones into the body of the Declaration. Commentators see Roosevelt's efforts, probably not without reason, as her husband's legacy. Let's recall that President Roosevelt forcefully emphasized the importance of social security and social entitlements in both his addresses to the US Congress in 1941 and 1944.

The controversies returned with full force once the work on a legally binding international human rights treaty started. This time no compromise was possible. To get out from the deadlock, Chairperson Roosevelt proposed dividing human rights between the two Covenants, with separate implementation mechanisms. The Covenants were adopted in 1966.

It took further 27 years to return to the holistic message of the Universal Declaration at the policy level in the Vienna Declaration and Programme of Action, which proclaims that

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

It goes without saying that this process without the holistic message of the Universal Declaration would have been, most probably, much more difficult and slower.

CONCLUSIONS – Three remarks:

Firstly, the Commissioner Adam Bodnar recently stated, "the Universal Declaration of Human Rights was not so much a guarantee of rights as a great promise for the future." Indeed, for a price of a swift adoption, it was drafted as morally and politically, but not legally binding instrument. Today, however, we can say that the Declaration is both a guarantee and still a promise. It is commonly recognized as an authoritative interpretation of the notion of human rights used by the Charter of the United Nations. It is widely viewed as part of customary international law, which is universally binding. Finally, it is part of so-called UN law. Unlike existing treaty law, it is a unique normative common denominator of human rights for the entire UN system.

Secondly, the analysis of the historical impact and present value of the Declaration gives generally a positive picture. With one, but a key one, exception. I am thinking, of course, of the level of human rights violations around the world, particularly grave and systematic ones. Even the reflection that, without the Declaration the situation would be much worse, gives little consolation when we look through the eyes of the victims, the millions of women and men, the millions of children. This picture should guide the international community in its decisions taken to respond to current Rwandas and Srebrenicas, particularly before they happen. The victims' perspective should also guide the international actors and state authorities when they develop their policies and decide on the allocation of resources e.g. to human rights institutions, such as the Polish Commissioner for Human Rights, and non-

governmental organizations that are crucial for assisting victims and developing a culture of human rights.

Thirdly, in international forums and in our countries, we should not forget about Article 28 of the Declaration, according to which everyone is entitled to a social and international order in which the Declaration's rights and freedoms can be fully realized. This requires more than basing international relations on the principles of justice, equity and mutual respect. As it derives from the Declaration, this also requires the establishment of a social system based on the principles of democracy and rule of law, including independent administration of justice, free of political control.

Ladies and Gentlemen

The Universal Declaration is a wonderful tool in the hands of the world's citizens and authorities. It would be truly worrying if its potential were not fully exploited for political reasons, whatever their definition. The best tribute to the Declaration on this and future anniversaries could be paid if it permeated all areas of international cooperation and home affairs, going beyond more or less isolated structures and compartments.

At the end, I cannot resist to cite the words of the mother of the Declaration, Eleanor Roosevelt, which have often been quoted, but nevertheless fully retain their power and are worth repeating:

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”