

Human Rights Between Western Claims and Universality

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Ladies and Gentlemen,

The history of modern human rights begins in 1948, when the United Nations proclaimed the Universal Declaration of Human Rights. This charter presented a new, almost revolutionary political idea: A number of fundamental rights should figure not only in national constitutions but become binding for all states under international law. Universal human rights postulate that all human beings are born free and equal in rights and dignity, regardless of their race, gender, language or religion. In addition to the rights of freedom of every person, human rights provide guarantees against arbitrary state power and tyranny, such as the prohibition of arbitrary arrest and detention, or the prohibition of slavery or torture. The catalogue of human rights, as defined by the UN since 1948, also includes social, economic and cultural rights, e.g. the right to work, food and health or education. Quite essential are the procedures for enforcement. They allow human rights violations to be brought not only before national courts, but also before international tribunals in Europe, Latin America and Africa.

The positive effects of human rights are unmistakable. In many countries, they shape national legislation and its practical implementation, as well as jurisprudence at the national and international levels. Numerous human rights organisations observe violations of individual rights, initiate court cases, influence public opinion and successfully exert political pressure on authorities. Therefore, many speak of a "triumph of human rights". So today, on International Human Rights Day, we have good reason to celebrate these rights.

However, we should not merely celebrate. We should also reflect, think critically about the development of human rights. I would like to comment on a single but important question, namely the question of their universality: To what extent are human rights recognized everywhere in the world? I address it on four points.

One: Today we have to live with the fact that many important countries - Russia and China, for example - have different concepts of human rights than, say, the UN High Commissioner for Human Rights. Moreover, many non-European societies attach much less importance to personal, individual rights than do European countries or the United States.

Two: In contrast, African states attach far greater importance to human duties than is expressed, for example, in Article 29 of the Universal Declaration of Human Rights.

Three: In our world of economic inequality, we still find poor regions in which a majority of the population struggles for bare survival. For them, social human rights are unattainable today.

Four: My last question is particularly explosive: Does "humanitarian intervention" fulfil its actual purpose of deterring states from committing serious human rights violations, or does it rather serve as a pretext for powerful states to intervene in their particular geopolitical interests?

All four points indicate the tragic circumstance that the great ideal of "universality" - revolutionary in the Universal Declaration of Human Rights of 1946 - has so far been realized only to a modest extent. How and why this is so, I would like to discuss from the perspective of a political scientist.

I begin with a review of some historic events.

The "Universal Declaration of Human Rights" of the United Nations in 1948 was a reaction to the inhuman crimes committed during the Second World War. But it was also shaped by the Western states, and this in several respects. It was mainly representatives of Western and former colonial countries who drew up the Charter. They understood human rights as individual rights, which - according to pre-state or natural law - had absolute priority. The advent of the Cold War led to conflict with the communist states. In their view, human rights were not to be derived from the rights of the individual under natural law. Rather, they should develop continuously in accordance with the economic and social progress of society. This view was rejected by a large majority: At the 1948 vote, 48 of the 56 UN members present approved the Charter. Six of the eight abstentions were from communist countries. The African states were largely absent, as they hardly existed yet. The 37 Third World states, voted in a coalition with the West. They agreed to the charter because they expected human rights to give greater legitimacy to their independence movements. The Declaration of Human Rights thus reflects the constitutional tradition of the American and European liberal democracies.

This can be described as a birth defect of the Charter that has not been healed to this day. For even later it became apparent that many non-European societies have different views on the concept and scope of individual rights. This can be seen, for example, in the fact that a considerable number of the later conventions are by no means supported by all UN members. China is particularly worthy of mention here. The country is regularly accused of serious human rights violations. However, it is not recognized that China also has human rights. However, they are embedded in the country's socio-political strategy, which gives the highest priority to the participation of the broad population in the benefits of economic progress. China's authoritarian leadership attaches little importance to the rights of the individual compared to the demands of society, as defined by the Communist Party. Experts of Chinese social culture and politics therefore suspect that attempts by Western states to link trade policies to their own ideas of human rights are doomed to failure. At least as long as attempts at an institutionalized dialogue between the Far East and the West on their opposing concepts of human rights fail. According to a Swiss expert, they regularly resemble a "dialogue de sourds".

Related to this is a second birth defect. Human rights are conceived as personal, individual rights. Yet, at least from a sociological point of view, it is clear that a social order cannot consist only of rights but must also include duties of the individual. In other words: Every

social order needs a balance between the claims of the individual and those of the legal community. Mahatma Gandhi had already pointed this out in vain in 1947. It is understandable that the Declaration of Human Rights, which came into being after the inconceivable crimes against humanity in World War II, placed the protection of individuals against state tyranny in the foreground. But, up to now, the UN have neglected the issue of individual duties or responsibilities. This is in contrast to the tradition of many African societies, where the duties of the individual in the community play an important role. Such duties are even explicitly codified in the African Convention on Human Rights. The Banjul Charter of 1981, signed by 54 African states, postulates individual duties toward the family and the community. Moreover, the charter defines also basic duties to the state, such as those to make one's mental and physical abilities available to the national community and to pay the legal taxes. In 1997, a worldwide committee of former statesmen led by Helmut Schmidt tried to bring the idea of social responsibility to the United Nations. Unfortunately, their proposal, including a catalogue of 18 principles for human duties, was unsuccessful; the proposal was shelved.

The two birth defects – a western-liberal, individual-centred orientation and the extensive lack of basic duties - are a first reason why human rights can only partially claim universality. Even so, universality is recognized to the extent that human rights represent protective rights and guarantees against state arbitrariness and violence. To a certain extent, this core of human rights is the counterpart to the fact that the international community grants states a whole range of sovereign rights.

But what about social human rights, e.g. the right to work, to housing and education, to equal treatment of men and women? Can they be realized in Zimbabwe, India or Algeria in a similar way as they are here? At this point, human rights come up against the well-known economic inequality between rich and poor countries. Moreover, we find fundamental differences in social culture and social structure that are often overlooked. Let me shed some light on this.

First of all, it is obvious that many poor countries simply lack the means to provide work, education or housing to all people and to guarantee it at a level such as the West- European welfare state tries to do. Except in the "pensioner states" with their income from oil or other natural resources, welfare services are only possible where there is a state with sufficient tax revenues, provided by a majority of people with gainful employment.

Thus, the majority of the world's population does profit neither from a welfare state nor its benefits, and for half of all people there is not even basic health care. In many poor countries, pre-industrial working environments and traditional social orders still dominate. In other words, the family or clan arranges employment, distributes the fruits of labour, provides security for dependents, is responsible for solidarity and assigns individuals their role in the community. This is probably the fundamental difference with our modernized industrial society. Western societies have gained worldwide access to resources; their development is based on technology, on capitalist interest of growth and profit, and on the productivity of enterprises through competition on the market. Gainful employment for all has overcome poverty and created prosperity for the many. We often refer to this as the opposition of "tradition" and "modernity". Today, these two worlds often collide within the same country.

Consider the fate of young women in Afghanistan. In the capital Kabul, first foreign aid and later war money, have driven an urban service economy. Upper- and middle-class women received training, education and jobs there. They had the freedom to dress in Western fashions, freely choose their relationships with men and assert equal rights. All this passed the rural regions by. There, to this day, men do the most physically demanding work and secure the remote village. Women there have no access to things that allow many urban women to emancipate themselves: running water, electricity, household machines, medical care, even the contraceptive pill. In rural areas, there were and still are no gainful jobs for which better education and training are worthwhile. Finally, it is not the state that provides for old age, but the family. In this context, arranged marriages, like the different roles of men and women, have economic and social and reasons.

Now that the Taliban are in power after the end of the war, many women in Kabul are losing those modern achievements that were financed by aid and war funds. Western human rights organisations are trying to help them in this tragic situation. But what would a human rights initiative in Afghanistan achieve? If money continues to flow, some women in Kabul and other cities could profit, but hardly all the women and men in the rural periphery. For the latter, our notions of human rights begin to make sense only when a government in Afghanistan could provide security, when education would bring higher yields to farmers, and when gainful employment would allow access to mechanization, electricity, and medical care. This is a real dilemma.

In short: The meaning and effectiveness of human rights are contextual, that is, they depend on the economic and social structure of a society. And where we find high contrasts between traditional and modernized life-environments within the same country, any human rights policy faces contradictions that can hardly be resolved.

What role does religion play? In this issue, Islam is often cited as a major obstacle to the spread of human rights. I do not share this argument. First, there are several official documents (such as the "Universal Islamic Declaration of Human Rights" (1981), the "Cairo Declaration on Human Rights in Islam" (1990), or the "Arab Charter on Human Rights" (2004). These attempt to come closer to the Universal Declaration of Human Rights without abandoning traditional legal concepts in Islam. Second, interference of Human rights and religion is a rather general phenomenon. Where so ever religion is a dominant social force, it influences a country's human rights policy. For example, the current governments of Hungary and Poland oppose, among other things, the equality of homosexuals and lesbians as pushed by human rights activists. In doing so, both governments benefit from the approval of Catholic-traditional segments of the population. The main reason for these actions, however, is hardly the religion itself, because it is instrumentalized for the political power of the governments. I see something similar with Islam, or rather with the many manifestations of Islam that appear different and malleable in the various countries. At any rate, this was the result of the dissertation of one of my doctoral students. Based on a comparison of four countries (Turkey, Saudi Arabia, Malaysia, and Algeria), he concluded that the sovereign interpretation of the Qur'an and its political imperatives depends very much on the profane interest of maintaining power of the respective government. It is important to consider, however, the difference between "law in use" and "law in form." Where religious communities provide social solidarity between rich and poor and solidarity

between generations, people everywhere will put their religious rules (i.e. law in use) above state law (law in form).

Finally, there remain some substantive differences between Islam and UN human rights. This applies, for example, to the question of whether women are better off with gender segregation or with integration into a male-dominated society, or to the question of the right to change religion. One cannot deny such contradictions. But such dissent on particular issues can be accepted as long as there is a basic consensus on human rights as a whole.

I now come to my last question, namely humanitarian intervention.

The latter was conceived as a last and violent means of intervention by the international community to stop a government from committing serious violations of human rights and crimes against humanity. One plausible argument for the introduction of humanitarian intervention was that the classic wars between countries had shifted to violent conflicts within societies, up to and including genocide. The international community might simply not stand by and watch such events. There would therefore be even a duty to intervene. However, this raises a fundamental question: Is it compatible with the meaning of human rights to combat the use of violence within a state with the use of international violent action? Even more questionable, however, is what human rights policy has made of the instrument of intervention.

In practice, UN humanitarian interventions require unanimity in the Security Council. A veto by one of the five permanent members can prevent action, as Russia and China demonstrated in the case of sanctions against Zimbabwe (2008) and Syria (2011). But this does not prevent military alliances such as NATO or individual major powers from intervening without Security Council approval, as did the United States and Great Britain with the help of other "willing parties" in the case of the third Gulf War against Iraq in 2003. The same applies to NATO in its air war against Serbia in 1999. Such actions violate the UN Charters' prohibition of the use of force and are therefore controversial under international law. Tragically, however, such interventions are also justified as "humanitarian intervention". By doing so, the intervening actors cover up and obfuscate their real economic-geopolitical interests. Conversely, we observe even serious human rights violations which remain without consequences despite corresponding UN resolutions, as the example of Israel's occupation policy shows.

With political instrumentalization, human rights get caught in the labyrinth of economic-geopolitical interests of powerful actors. This is to the detriment of their very humanitarian idea and reveals the weak position of international law vis-à-vis powerful global political actors.

Perhaps many expect too much from human rights. Human rights protect individuals from the state's use of force and arbitrariness. But they cannot be expected to solve fundamental social conflicts within and between individual countries.

This is well illustrated by the refugee problem. The human right to seeking asylum saves refugees from the worst and grants part of them protection and reception in many European countries. However, they cannot temper or even eliminate the underlying causes of one-way migration from the poor South to the rich North. Fighting the real causes of forced migration

requires structural policies. In the name of the human right to work, for example, the EU should stop shipping hundreds of thousands of tons of its subsidized grain surpluses to West Africa every year, where cheap wheat is depriving local millet farmers of their livelihoods every day.

I conclude with some thoughts to save the idea of human rights from going astray in the labyrinth of politics, perhaps even to develop them further.

First of all, western states should refrain from proselytizing worldwide with their own conception of human rights and democracy and from linking them to their economic interests. This not only to refute the widely used accusation of Western imperialism, but to avoid failure. Democracy and human rights as export articles regularly fail. Democracy and human rights have a better chance if they can develop autonomously, and on the basis of the own culture and the economic conditions of the respective country.

Secondly, the discussion about human duties as a complement to human rights should be revived. This first of all in respect of those non-European cultures which give greater weight to the demands of the community than we do. Moreover, our own highly individualized Western society also needs this reconsideration. In the words of Helmut Schmidt, the former Chancellor of Germany: "A public discussion of the draft of the Universal Declaration of Human Duties would help us to remember the basic insight that we cannot only enjoy the right to protect ourselves from despotism of others, but instead we have to assume responsibilities for people we live with. No democracy and no open society can endure in the long run without the dual principle of rights and duties."

Third. The idea of the universality of human rights is too valuable to give up. Unfortunately, it must remain utopia as long as the global inequalities of economic life chances increase instead of giving people worldwide the real chances to the social claims to work, housing, education etc., as they are postulated as human rights by the conventions of the United Nations. However, what is already conceivable today - in the "spirit of fraternity" according to Art. 1 of the UN Convention on Human Rights - is the promotion of respect and dialogue on the opposing views of human rights between the world regions with their economic inequality, their different cultures and histories.

Thank you.