

Federal College for Security Studies
Publication: "Security Policy in New Dimensions"

**The Concept of Universally Valid Human Rights and its Implementation:
Opportunities and Challenges**

Günter Nooke

- 1. Introduction and Problem Outline**
- 2. Three Pillars of International Peace Policy: Security, Development and Human Rights**
- 3. On the Definition of Human Rights**
- 4. Institutions of the Worldwide Protection of Human Rights**
- 5. Three Objections to a Concept of Universally Valid Human Rights**
 - 5.1. No Compelling Reason**
 - 5.2. Emergence of Human Rights in the Context of Western Culture and Politics**
 - 5.3. Group Rights as a Third Generation of Human Rights**
- 6. Political Assessment of Objections and Provocative Comments**
- 7. Maxims as Conclusions for Practical Implementation**

1. Introduction and Problem Outline

Last year, we celebrated the 60th anniversary of the 1948 Universal Declaration of Human Rights. The Federal Government very much welcomed the debate surrounding the question of its universal validity, for this is the central topic that must be addressed if the essence of the human rights idea is to be preserved.

These days hardly anybody dares to openly or publicly take a stance against human rights, or to justify their violation. However, this is not to say that under the guise of human rights, many violations are not taking place, even today. Our understanding of the term human rights is still unclear and disputed – perhaps even more so than was the case in 1948, when the United Nations adopted the Universal Declaration of Human Rights in Paris. There are various reasons for this, some of which are very understandable. Some disputes help widen the gap between what we deem possible in terms of realpolitik and what we would ideally like to see achieved.

One reason why the concept of human rights is being challenged can be found in its success over the past 60 years. Partly out of a fear of jeopardizing this success, many political stakeholders, but also scholars and lawyers, would rather not speak openly on the topic. For if it were to become too evident that there is disagreement within the United Nations regarding what in the eyes of many has become customary international law, then more would be on the line than merely human rights policy.

But in the long term this will not work out. A good human rights policy, in order to be successful in the long run, must shed false justifications and inconsistencies. Certain allegations are raised more or less openly: namely, that we are dealing with a liberal-western concept which is inconsistent with community-oriented societies in many parts of the world, or that the "West" is engaged in cultural imperialism and is not being honest because the debate on human rights is marked by so-called double standards. Of course it can often be conducive to political success to leave deeper conceptual questions unanswered, if such an approach leads to acceptable results. And the discussion should not take place on a purely academic level. What is paramount is to make the idea of universally valid human rights prevail worldwide even in the face of power politics!

The time is ripe to finally speak honestly about human rights, so that together we do not constantly make or support decisions in the United Nations and its Human Rights Council in

Geneva which undermine this wonderful notion of inherent rights for each individual human being. Moreover, it does not help to merely parade around the idea of human rights and the Universal Declaration of Human Rights; in the long run, this is only gist to the mills of those who never thought much of the idea in the first place, or those whose current political agenda it no longer suits. These people use the pretence of the fight against terrorism, or they cite the difficult circumstances of their country's development, the securing of a country's stability, rampant poverty or cultural diversity – all as a justification for violating human rights. Nevertheless, it does not seem to help in terms of problem analysis and problem solving that on the political level, certain human rights activists in particular continually dispute the fact that the rigid protection of human rights often does not frequently contradict the above-mentioned goals of fighting terrorism and poverty, of securing stability or preserving cultural diversity. No one should play off other political objectives against human rights, but even for governmental and non-governmental actors on the international stage, there is no avoiding the kind of weighing out issues that inevitably takes place in a functioning constitutional state with competing basic rights.

The following text will outline a few of the problems and contradictions that exist when talking about human rights and their implementation. At issue, above all, is credibility and consistency. Germany and the European Union must redouble their present efforts to further the worldwide protection of human rights, and at the same time, they must be more resolute in defending the idea of universally valid human rights. The debate will take place with more honesty, and yield more successful results, if it is not left to "human rights activists" alone, but rather if other political stakeholders participate as well. A division of labour between idealists and realists does not work in politics. Anyone who attains security by violating the human dignity of others, or who fights poverty with dictatorial means, is not politically credible, because he permanently betrays the aspired or stated ends by employing such means. Even the protection of human rights is a hard topic of realpolitik.

Still, it must be recognized that such a discussion brings with it not only the chance of preserving the idea of universally valid human rights, but also the risk of falling behind already attained international standards and conventions in the area of human rights. But the goal of securing minimum worldwide standards would benefit everyone far more than the sophisticated and at times ideologically charged discussion about which new human rights could still be invented and how everything that seems sensible and appealing from a German or European perspective could be anchored in international legal texts.

2. Three Pillars of International Peace Policy: Security, Development and Human Rights

Let us begin with the political reality. Speaking in mathematical terms, what are the political boundary conditions that ultimately determine the possible, stable (or at least locally stable) solutions of the complex system of human rights policy?

The United Nations was founded in 1945, as a reaction to World War Two, with three main objectives: securing world peace, promoting development and protecting human rights. These three objectives are closely interrelated. Kofi Annan introduced an image which depicts world peace resting on three pillars: security, development and human rights. He aptly stated that there is no security without development, no development without security, and neither security nor development without human rights.¹ One might also say: The worldwide achievement of human rights is the most important prerequisite for human development (freedom from hardship and poverty) and human security (freedom from fear and violence).

In response to Hume's question of how predictions can be justified when that which is predicted lies in the future – in other words, why nature should follow our mathematical-physical models at all – Immanuel Kant answered that it is because these models define the conditions of possible experience.² Without further elaborating on this, one might say that human rights define the necessary conditions for the possibility of a peaceful and dignified coexistence in the world.³ This entails the conviction that there must be something like human rights according to which our coexistence as human beings within the various states and cultural areas should be organized, not only without fear of bodily harm, but also with respect for the dignity of every individual.

Most states have recognized the major human rights, through a variety of global and regional treaties, as legally binding responsibilities, and have voluntarily submitted to the respective international mechanisms that monitor the implementation of such conventions. In general, we can draw the positive conclusion that human rights are the only universally recognized value system that exists in the present day. But thanks to a variety of monitoring mechanisms,

¹ Kofi Annan: "Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights." Report: In larger Freedom, Towards Development, Security and Human Rights for All, 2005, Para 17.

² See: Carl Friedrich von Weizsäcker, *Zum Aufbau der Physik*, München 1985, p. 24. For general information, see: Carl Friedrich von Weizsäcker, *Wer ist das Subjekt in der Physik?* in: *Ibid.*, *Der Garten des Menschlichen*, München, 1977, pp. 169-186.

³ Günter Nooke, *Universalität der Menschenrechte – Zur Rettung einer Idee*, in: Günter Nooke, Georg Lohmann, Gerhard Wahlers (eds.), *Gelten Menschenrechte universal?* Freiburg i. B. 2008, pp. 16-46.

and in particular to the many vibrant non-governmental organizations, we also know what the human rights situation in countries around the world really looks like.

The real measure of a successful protection of human rights can only be seen in the improvement of the situation of those affected by human rights abuses on the ground. Neither the authors of country reports nor members of non-governmental organizations can supply authentic information; this can only be done by the individuals affected, within the context of their own concrete situation, and only if they can report freely and uninfluenced, which is often enough not the case. This must be the standard and not, for example, the degree of satisfaction expressed by governments or by a majority in the United Nations. In other words: It is not sufficient to draft lofty papers, conventions and resolutions, or even to adopt laws on a national level, if they do not actually improve the situation of those affected on the ground.

For human rights policy, as for every policy area, it is especially important to be credible in one's own words and deeds. The challenge is to ensure an improved protection of human rights for the people on the ground, while at the same time not jeopardizing one's own credibility in the realization of that goal. Both of these aspects are essential boundary conditions of applied human rights policy. Maintaining this credibility often brings with it great difficulties, particularly in the areas of security and development policy, but also in economic, energy and financial policy.

It should be a policy objective to achieve the same minimum standards for everyone around the world. A class system of human rights standards, in which everyone can pick and choose what suits his purpose, cannot be what is intended. Furthermore, people should not be held responsible for their birthplace, i.e. whether they were born in a country which respects or spurns human rights.

3. On the Definition of Human Rights

Although everyone talks about human rights, we cannot by any means assume that everyone knows or agrees on what is meant by the term. Many people have a vague notion of human rights, in spite of the substantial contradictions inherent therein.

One general and popular description goes something like this: Human rights are inalienable rights which an individual is entitled to and which protect him from interference by the state.

The makeup of human rights is dependent upon cultural and social developments. Today, human rights are understood as *a priori* rights which the state is required to respect.⁴

The idea of human rights is not as old as one might think, and certainly not as old as humanity itself. It wasn't until the 16th century that Christians in North America recognized the injustice of discriminating against fellow Christians and other human beings solely on the grounds of their believing differently or believing in something different. After all, it was their own historical experience of persecution in post-Reformation Europe, i.e. their own exposure to injustice, which motivated their flight to the New World. This is one of the reasons why freedom of religion and belief is such a fundamental and original human right. It is not only about private faith, but also about the possibility of practising this faith in a public or collective context. Now the question of whether the idea of human rights was discovered or whether, as some prefer to say in this context, it emerged at that time, need not be examined here. Even without invoking rationality, Immanuel Kant and the Enlightenment, however, we can state the fundamental fact that the idea of human rights has its roots in the Western cultural tradition. This holds true even for the injustices of Stalinism, the Holocaust and war, all of which contributed to the formulation and adoption of the 1948 Universal Declaration of Human Rights.

In essence, the idea of universally recognized human rights is a political concept.⁵ But the human rights discussion touches upon many other areas besides politics, including morality, philosophy, law, culture, religion or ethnology. Above all, it is the normative definition of the concept of universally recognized human rights which, in the United Nations, notably in the pertinent Human Rights Council in Geneva and the Third Committee in New York, proves to be so highly controversial and – like so many things in politics – is exploited by all sides for good or for bad.

For many, defining precisely what is meant by human rights brings with it the risk of jeopardizing the good intentions and achievements of the past 60 years. Both an overly broad and an overly narrow framing of the concept poses a risk for human rights.⁶ In the fields of politics and law, however, it is my opinion that the risk of an inflationary expansion is far greater than

⁴ See: Das neue Taschenlexikon in 20 Bänden, Vol. 10 M, Gütersloh 1992.

⁵ See: Christoph Menke, Arnd Pollmann: Philosophie der Menschenrechte, Hamburg 2007, pp. 33 ff.

⁶ Heiner Bielefeldt, Arnd Pollmann, Workshop "Grenzen der Menschenrechte", Deutsches Institut für Menschenrechte, Berlin, 14 January 2009.

that of a reduction. Human rights should secure a dignified life, not secure the good life.⁷ Human rights are not national objectives which, like other aspirations, are written into constitutional texts and can be pursued in a court of law. Human rights are moral rights that are anterior to the state, which each individual possesses indefeasibly, irrespective of descent, physical and mental capability, his achievements or living conditions. Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights." Every individual human being, simply by virtue of being human, is entitled to human rights. The rights are subjective and, as a rule, are invoked against the state or the public order.

It has become commonplace to differentiate between three generations of human rights. The first generation refers to the civil liberties and the right to participation in political life, as expressed in the International Covenant on Civil and Political Rights of 1966, which took effect in 1976 and binds all ratifying countries under international law. The second generation refers to economic, social and cultural rights. The International Covenant on Economic, Social and Cultural Rights also was adopted as a UN convention in 1966 and took effect in 1976. In addition, there is the so-called third generation of "human rights", which refers to collective or group rights; examples of this are the right to development, the right to peace, environmental protection or, say, the rights of indigenous groups or peoples. A conclusive catalogue listing human rights seems problematic with regard to future developments. The 30 articles of the Universal Declaration of Human Rights mention at least as many different rights.

Discussions frequently revolve not only around universality, but also around the notions of indivisibility, equivalence and interdependence of all human rights. Indivisibility means: Different human rights must not be played off against each other. Civil liberties, according to this principle, do not take precedence over social rights. This is all very well as long as only the basic and individual rights of the first and second generations are at issue. But to conclude that all human rights are of equal significance is, in my opinion, wrong. Upon rational consideration, it quickly becomes clear that even within the Universal Declaration of Human Rights itself, there are differences in the ranking of various rights. One cannot really speak of equality between, on the one hand, the right to life, the absolute prohibition of torture and

⁷ Arnd Pollmann, Die Menschenrechte: teilbar und ungleichgewichtig! In Georg Lohmann et al, Die Menschenrechte: unteilbar und gleichgewichtig? Potsdam 2005, pp. 29-37.

slavery, freedom of opinion and religion, or the right to food, education and health care, and on the other hand, for example, the right to regular, paid vacation.⁸

4. Institutions for the Worldwide Protection of Human Rights

To better understand the dimension that the international system for the protection of human rights has now reached, and to appreciate how important it is to concentrate on the core idea, the following section will provide a list of the key human rights institutions.

Besides the above-mentioned International Covenants, human rights conventions cover, in binding treaties under international law, other important sets of issues related to human rights protection, such as the rights of women, children and the disabled, the prohibition of torture, and also the rights of migrant workers. Germany has ratified all of these treaties, with the exception of the Convention Concerning Migration for Employment. Around these UN conventions there has grown an extensive and complex system of so-called treaty committees and monitoring bodies.

The numerous United Nations human rights resolutions have led to the appointment of various thematically and regionally specific UN Special Rapporteurs. Within the Human Rights Council, the new UPR procedure⁹ plays a key role; all United Nations Member States are subject to this procedure, and both the states concerned, the United Nations and non-governmental organizations must submit reports. The 1993 Vienna World Conference on Human Rights also established, on the initiative of the Secretary General of the United Nations, the post of High Commissioner for Human Rights, who operates out of Geneva but independently of the Human Rights Council and runs regional offices around the world. In addition, in numerous countries, national human rights institutes or commissions have been established and so-called national plans of action adopted.

The participation of civil society and of non-governmental organizations is indispensable for any serious government-level human rights policy. Such actors operate with a regional or thematic focus and have, as in the case of amnesty international or Human Rights Watch, become powerful global players.

⁸ Universal Declaration of Human Rights, Art. 24.

⁹ Universal Periodic Review, see: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.

Of fundamental, yet often underrated significance for the protection and implementation of human rights are the international human rights and criminal courts, such as the European Court of Human Rights of the Council of Europe in Strasbourg, the Inter-American Court of Human Rights in Costa Rica or the African Court on Human and People's Rights, which is still in the process of being established. Tribunals have been established for the former Yugoslavia, Rwanda, Sierra Leone and Lebanon for the purpose of investigating and prosecuting serious human rights violations, crimes against humanity, war crimes and genocide. The International Criminal Court (ICC) in The Hague is instrumental in the fight against impunity. It does not belong to the UN system, but is governed instead by the Rome Statute of 1998, which entered into force on 1 July 2002 after ratification by 60 countries. With the support of the UN Security Council, the ICC can also become active outside of States Parties to the Statute, as the Darfur case and the warrant of arrest for the Sudanese President Al Bashir illustrate.

5. Three Objections to the Concept of Universally Valid Human Rights

Human rights are neither an ersatz religion in a secular guise nor an all-purpose reference base for cultural imperialism. Nevertheless, various objections to the notion of universally valid human rights can be raised, which show how controversial the basis of its legitimacy is. It must be explicitly pointed out that we are dealing merely with a claim to universality rather than the worldwide and early implementation of that claim.

5.1. No Compelling Reason

An initial, and at first glance simple, objection is that there is no compelling reason why a state or other institution should feel obligated to protect human rights. The theoretical justification for human rights is almost exclusively based on the concept of human dignity. The preamble to the Universal Declaration of Human Rights already states that the "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". All subsequent human rights agreements incorporate this formulation into their preambles, thereby tying human rights to the recognition of and respect for human dignity.

In an open and pluralistic society, however, the question of what precisely is meant by human dignity leads to many different answers.¹⁰ The debates on a "dignified death" or on the abortion of unborn life, in particular regarding late-term abortions, show just how open to interpretation the term dignity is, and also that it is by no means applicable exclusively to dignified *life*. It is also easily possible to envision situations in which someone's own dignity, or perhaps even more starkly, someone's own family or "honour", could be deemed more important than life.¹¹ However, that which an individual is able to decide for himself, out of free will as it were, becomes a danger with unpredictable consequences when it is used to argue against the protection of human rights in general. Both perspectives are equally unsettling – when I am forced to make an immediate decision over the lives of others, and when others decide over my life.

The contradictory nature of the term dignity is also expressed in the first sentence of our Basic Law: "Human dignity shall be inviolable." But precisely because this statement is, on the face of it, so often wrong it is so fundamentally significant for human dignity and its definition. For Christians, the justification for human dignity is rooted in man's likeness to God.¹² Without a doubt, a transcendent or religious rationale for human dignity and human rights remains meaningful even if everyone does not share this view. But the religious neutrality of the constitutional state and the neutrality of international law toward other cultures, religions and traditions requires an open definition of human rights.

It must therefore be recognized: Whoever is not inclined to invoke the truth in the deeper, religio-philosophical sense of the word can still recognize in human rights one – albeit central – value system. As is always the case when values are postulated, singling out human dignity as the ultimate justification for human rights does not circumvent the problem of relativity.

5.2. Emergence of Human Rights in the Context of Western Culture and Politics

A second objection to the notion of universal human rights is the fact mentioned above that human rights emerged within the context of Western development, and that it was within this

¹⁰ For an overview, see Wilfried Härle, Bernhard Vogel (Ed.), *Begründung von Menschenwürde und Menschenrechten*, Freiburg i. B. 2008.

¹¹ Udo Di Fabio, *Kultur der Freiheit*, München 2005, p. 245 ff.

¹² See. e.g. Eberhard Jüngel, *Zur Verankerung der Menschenrechte im christlichen Glauben* in: Günter Nooke, Georg Lohmann, Gerhard Wahlers (Eds.), *Gelten Menschenrechte universal?* Freiburg i. B. 2008, pp. 166-179.

context that states first established them as a positive right. This took place as a result of the American and French Revolutions, or to be precise, with the Virginia Bill of Rights (1776), the American Declaration of Independence (1787), the United States Constitution (1789) and, in the same year, the Déclaration des droits de l'homme et du citoyen in France.¹³ Originally, they were class privileges which were only gradually expanded to apply to a broader circle of citizens. Civil liberties for women or slaves were long in coming, not only in the United States or France.

In the process of limiting state power, it was in particular the contract theories of John Locke and Jean-Jacques Rousseau which established the inalienable rights of (at least male) individuals. In terms of the political philosophy of human rights, it was Immanuel Kant who called upon people to exercise ethical self-legislation through reason. He established a categorical imperative which applies to moral action: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."¹⁴ From this Kant concludes that the freedom of each individual must be protected by the institution and force of the law. This makes freedom the apriori principle of every legal system and the fundamental right of humankind.

Various initiatives and events of the recent past show just how determined and sustained the attempts are to call universal human rights into question from a culturally relativistic position. One example to be pointed out is a non-aligned meeting which took place in Tehran on 3 and 4 September 2007. Under Cuban chairmanship, the conference featured an opening speech by the Iranian President and keynote speeches by the North Korean and Iranian foreign ministers. The topic of the conference, "Human rights and cultural diversity", was deliberately treated as a pair of opposites, despite attempts by the High Commissioner for Human Rights to set a different tone.¹⁵ Conferences on the co-existence of religions took place in 2008 in Astana in Kazakhstan and in Baku in Azerbaijan, in which the OIC was instrumental in preparing and composing the closing documents. Russia even went so far as to propose a world council of religious leaders. For his part, the Saudi King Abdullah spoke at a UN conference in New York in December 2008 under the heading "Culture of Freedom" on the improved understanding between state leaders and religions.

¹³ Siegfried Frech, Michael Haspel (Eds.), *Menschenrechte*, Schwalbach/Ts. 2005, p. 17 ff. See also K. Peter Fritzsche, *Menschenrechte, Eine Einführung mit Dokumenten*, Paderborn 2004.

¹⁴ GUYER, PAUL (1998, 2004). Kant, Immanuel. In E. Craig (Ed.), *Routledge Encyclopedia of Philosophy*. London: Routledge. Retrieved May 23, 2009, from <http://www.rep.routledge.com/article/DB047SECT9>.

¹⁵ Louise Arbour, Address of High Commissioner for Human Rights to Non-aligned Movement Ministerial Meeting, Teheran 3 September 2007, www.unhchr.org.

While dialogue and cooperation are important, we should not forget what we agree on and what we continue to disagree on. The danger lies in the cordiality of the platforms. On the surface they all express interest in understanding and cooperation. However, the conscious and strategic aim of many of these platforms is to drive a wedge between the West and the values that are so essential to its legal system. At the very least, they aim to secure the acknowledgement that these values, or so-called human rights, do not apply everywhere in equal measure.

5.3. Group Rights as Third Generation of Human Rights

The third objection is not really a direct objection, but rather a challenge that often makes surreptitious inroads into human rights protection. It consists of broadening the catalogue of human rights to include the above-mentioned third generation of group or collective rights. These rights pertain not to individuals like the civil liberties and political human rights of the first generation and the social, economic and cultural human rights of the second generation. Virtually the entire international human rights debate revolves around these – without a doubt important – rights and questions of development, protection of minorities, protection against defamation (usually for religions, and here again mostly Islam), of anti-discrimination and the effects of climate change for people living in particularly affected areas.

Nevertheless, for the sake of intellectual clarity, a fundamental statement must be made: Human rights of this so-called third generation do not qualify as "genuine human rights".¹⁶ Even when it comes to human rights of the first and second generations, it is not easy to decide what should really be included and what it would be better to forego. With group rights, however, what is at stake is the central justification of inalienable, innate rights – in other words, the very claim to universality. It is for this reason that these rights should not be labelled human rights.

Due to disparate sets of political interests, the codification and implementation of the Universal Declaration of Human Rights in the United Nations and the debate about human rights in general have not brought about a definition of this dividing line, which in effect is quite clear, and from a legal and philosophical standpoint, completely uncontroversial; on the contrary, they have blurred it. Whoever allows collectives to function as bearers of human

¹⁶ Georg Lohmann, Zur Verständigung über die Universalität der Menschenrechte in: Günter Nooke, Georg Lohmann, Gerhard Wahlers (Eds.), *Gelten Menschenrechte universal?* Freiburg i. B. 2008, p. 54.

rights creates another class of rights, for which the crucial notion of universality becomes meaningless. For which collectives should these rights be considered universal? Should it go so far that all members of these collectives become bearers of the basic rights of the respective group rights? Who would be entitled to assert these rights in the name of the collective?

The most well-known collective right is the "right to development", which has been discussed within the United Nations since 1977. Unfortunately, as we have seen, even the compromise formula of the Vienna Human Rights Conference of 1993 was interpreted by a majority of Asian and African states to mean that the right to development supersedes civil liberties. When understood in this way, it served and still serves as justification for repression and for clinging to power. Development deficits, however, cannot justify human rights violations. There are also poor countries which manage perfectly well to uphold human rights conventions. Generally speaking, and this applies to *our* society as well, it can be said that growth – no matter on what level it occurs – does not take precedence over human rights.

To avoid the impression that these arguments pertaining to group rights constitute a Western perspective and are directed against particularly vulnerable groups in developing countries, here is another example of the danger of collective rights being abused. What would happen, for instance, if someone in our country were to cite a "right to collective public security" as a new human right in the fight against terrorism? Why should collectives outside of Europe or religions be the only entities interested in such an expansion of the concept of human rights? Whereas in the first case, concerning the right to development, the debate finds considerable understanding among German civil society and also within the Federal Government, in the second case no one would seriously dare (and rightly so) to call for a lesser degree of protection for human or basic rights in the fight against terrorism. To keep things this way, we should ensure that this backdoor towards a relativization of universal human rights stays closed by all means in Europe and for Western governments as well.

6. Political Assessment of Objections and Provocative Comments

Regardless of how we justify human rights: The only thing that counts is the preservation and strengthening of the Universal Declaration of Human Rights, this unique and in our opinion indispensable system of orientation and values which we possess in the global community. Despite all security, development and also human rights policies, it must be clearly discernible what we ourselves believe in and what we are willing to fight for. We do so because the way of life and coexistence within our society is based upon such values and principles!

Unless we want to forego stability, the rule of law and democracy, the adherence to elementary human rights remains essential for survival.

For this purpose, we must learn to argue in an intellectually candid manner with various actors and in different cultural regions. It is counterproductive to sidestep the discussion on human rights, their universal validity and the possibilities of global normative processes by referring to the terms human dignity and mutual respect. While it might be easier to agree on these notions, there would be much less clarity as to what they actually mean than is the case with the term human rights. As essential as a consistent justification of human rights may be, in the end it will not be these abstract arguments which convince others, but rather the appeal and credibility of our own way of coexistence in Germany, Europe and North America.

Acknowledging the historical fact that human rights have a Western origin is a cause of much concern for many human rights activists; they fear that the idea of human rights might lose some of its effect. But we should not, neither out of misunderstood European humility, let alone in order to curry favour with other cultures, pretend that all regions of the earth were equally involved in the emergence of the idea of human rights. The historical fact that human rights emerged within the context of "Western" culture and politics by no means excludes their universal validity. Universalism in this sense means the possibility, in principle, of recognizing and implementing human rights around the world, and not the short-term political feasibility of such a claim.

Therefore, we should not even attempt to show that other regions also had a part in the development of the concept of universal human rights. Not just because history proves otherwise, and not because we are so proud of our own discovery, but also because such an approach could be misconstrued as an invitation to introduce other viewpoints, which, as experience shows, nearly always result in strengthening state and group interests while weakening the protection of human rights for the individual. If we allowed this to happen, the door would be wide open to a reinterpretation and new interpretation of the idea of human rights from the perspective of cultural diversity.

Whoever is serious about the idea of universally valid human rights cannot turn it over to the political votes at the United Nations. All the more so in light of the fact that the majority of votes in the United Nations and in the Human Rights Council are held by authoritarian governments and associations of states such as the Organization of the Islamic Conference

(OIC) or the Non-Aligned Movement (NAM), which have in recent years been dominated by hardliners.

Many societies, as was also the case in Europe and North America not so long ago, are characterized not by individual rights, but first and foremost by an individual's obligations toward the family, the tribe or toward a group in general.¹⁷ In such cultural regions, the concept of universally valid human rights must not be put forward with offensive polemics and disregard for long-standing traditions. The independent development of cultural regions should not be disrupted any more than absolutely necessary. Instead, we should raise awareness of how important communities and in particular families are, notably when it comes to stabilizing societies and even states, including on the basis of "unwritten laws". While a legal system is indispensable, it cannot be the only system of authority.

It would also be wrong, however, to generally call into question the moral achievements we have reached after centuries of effort, and for the sake of a supposedly improved understanding to formulate our own convictions with too much humility. In the eyes of others, this comes across as an admission of weakness and a lack of conviction. In light of the successes of past decades in the field of human rights and the protests of local human rights activists against human rights abuses in their own countries, this is completely unjustified. Those affected are always best informed on the protection of their own human rights. They show little understanding when forced to sacrifice those rights in the name of a higher cause, whether good or bad. Even Islamic states, which profess a different understanding of human rights within their own state territory,¹⁸ invoke the individual rights of their citizens suspected of involvement in terrorism who were detained in Western countries. However, what is on the one hand a legitimate admonition directed at the West also amounts to the recognition of the Western understanding of human rights. It is then only fair to remind these countries to implement these rights at home as well, and not just to bring them up in the international debate when it suits their political interest.

Early on, there were serious objections, from the standpoint of intellectual history and legal philosophy, to the nature and substance of collective rights in the sense of a human right.¹⁹ If

¹⁷ A recent paper examines and compares concepts of humanity and human rights in different cultures in Africa, China and in Islamic countries: Matthias Hücke, *Der Schutz der Menschenrechte im Lichte von Guantánamo*, Saarbrücken 2008, pp. 291-454.

¹⁸ See Cairo Declaration on Human Rights in Islam, adopted by OIC states in 1990, www.soziales.fh-dortmund.de/Berger/Forschung/islam/Kairoer%20Erkl%C3%A4rung%20der%20OIC.pdf

¹⁹ Ludger Kühnhardt, *Die Universalität der Menschenrechte*, Bonn 1991, p. 251.

human rights are not enjoyed by the individual, but rather by a collective entity such as a people, a minority, a religion, tribe or clan, then the question of universalism will only be pursued in the arena of worldwide institutionalization, standardization and ratification. What is thereby given up, however, is the claim to validity of equal basic rights for each individual based on the notion human dignity. The individual, as the subject of ethical autonomy, ceases to be the ultimate goal of the political system. Instead, the collective, the state, religion, society, or the global community as an abstraction become the anonymous subjects of a claim to human rights.

It is not sufficient to polemicize against a typical reasoning such as this by simply citing the following counter-argument: "If all of this were true, then in states and cultures that derive their moral essence from the community, human rights could only be asserted by way of submitting to Western domination. Such demands, however, are not conducive to the propagation of human rights."²⁰ This example is characteristic of how an overriding political interest is simply introduced into the theoretical debate in order to avoid denying that communally based societies, i.e. in Kantian terms unenlightened cultures, are based on human rights. What might appear honourable is ultimately nothing more than the renunciation of the claim to universality, and opponents of a global protection of human rights are only too happy to exploit this for political ends.

This debate, by the way, is a repeat of one which took place in similar form during the time of the confrontation between the Eastern and Western blocs. At the time, the guarantee of civil and political liberties in the West was supposedly matched by the assurance of social rights in the East; this, however, was at best a lofty political goal. And it is often still the case that those who today press for collective rights are much less interested in the well-being of others than they are in securing their own power.

There is another general point to note: It is not at all necessary to elevate collective rights, which are basically political objectives, to the level of human rights. To implement the right to development, we should finally improve the efficiency of our development cooperation! Entire UN organizations have been created for species and environmental protection, as they have for development cooperation and climate protection. At UNESCO in Paris, there is even a convention for the preservation of cultural forms of expression, which if properly applied could even do more for indigenous peoples than the controversial draft resolution on

²⁰ Dieter Sienknecht, *Menschenrechte*, Hamburg 2005, p. 57.

indigenous issues currently before the Human Rights Council and the pertinent Third Committee of the UN General Assembly in New York. And to replace international law, which has by and large been functioning rather smoothly, with the right to peace would only cause confusion and does not fit the above-mentioned idea of the three pillars on which world peace should rest. And would it truly be better to use the human rights argument to prohibit every case of legitimate intervention of the Security Council under Chapter VII of the Charter of the United Nations? Concepts like "Responsibility to Protect" rightly aim at identifying and tackling problems at an early stage, but in the end it all boils down to the question: When is it permissible, even necessary, to employ violence in order to protect innocent civilians and save human lives?

What is surprising, particularly in the context of the civil society debate, is that, on the one hand, the third generation of human rights is staunchly defended; at the same time, however, the idea of human duties, as brought up early on in the discussion by Hans Küng, Helmut Schmidt and others, is vehemently rejected. As already mentioned, it seems the notion that humans not only have rights, but also have duties towards their respective community, is far more familiar to many cultures than the idea of universally valid human rights. Ultimately, however, the question must also be addressed whether individuals, if they fail to fulfil their duty toward the group, should lose their human rights. This too would mean nothing other than relinquishing the claim of universality, almost as if collective interests were to supersede or be placed alongside the human rights that apply to each individual human being.

7. Maxims as Conclusions for Practical Implementation

The above considerations lead to a series of postulates that can serve as the foundation for successful human rights policy:

Ascertain first what your convictions are and what must be defended.

Present your own positions, including those on human rights, resolutely and with self-confidence.

It is more honest to treat the three pillars for world peace – security, development, human rights – separately and admit to existing contradictions. Solutions – and the topic of human rights is no exception – can only be found in concrete cases, not by merging everything that is important into one central idea.

Discussions on the understanding of human rights are important and should not be avoided; they should not be skirted by pointing to even vaguer terms like human dignity and mutual respect.

Human rights, like all values, are not made to prevail through declarations and conventions, and even less so by armed force; instead, human rights are achieved over long periods of time through education, role models, institutional practice, but in particular through "experience in self-development and self-transcendence".²¹

Human rights are universally valid – or they are not valid at all.²² The claim to universality cannot be defended by constantly expanding the catalogue of human rights, but rather by focusing on elementary human rights. If it cannot be universally valid, it is not a human right.

Collectives and groups do not possess human rights. Functioning states based on the rule of law and with a reliable protection of basic rights for all citizens are better than a codification of minority rights. Religious communities also do not possess human rights, nor do they per se have a right to non-defamation.

A tolerant state does not grant religious freedom; rather, the state protects, among other things, the human right to freedom of belief and conscience. Religion is not a private matter. Religious freedom must be balanced, on a case-by-case basis, against other human rights, such as the freedom of opinion, freedom of the press and freedom of assembly. The responsibility lies in preserving all of these basic rights, not in a general restriction through the law.

The traditions of others must be recognized, and cultural diversity should only be curtailed if the minimum standards of human rights are breached by the state.

In order to achieve the most comprehensive global human rights protection possible, it may be sensible to select the following interim goals, both in terms of demands and implementation: the stability of the state, good governance, rule of law, development and democracy. Individual responsibility should not be underrated, but when it comes to the most severe

²¹ Hans Joas, *Die Entstehung der Werte*, Frankfurt am Main 1999, p. 10.

²² Udo Di Fabio, *Menschenrechte in unterschiedlichen Kulturräumen* in: Günter Nooke, Georg Lohmann, Gerhard Wahlers (Eds.), *Gelten Menschenrechte universal?* Freiburg i. B. 2008, p. 63.

human rights violations, and in the interest of those affected, even state sovereignty does not deserve protection.

The preservation of the individual's possibilities of coexistence in a free, democratic and social state based on the rule of law is by no means a matter of course, but must be secured and nurtured on an everyday, practical basis. International human rights policy must always bear this in mind.