Human Rights

1. Human Rights and International Politics

Human Rights and the question how to effectively protect human rights have been on the international political agenda for quite some time. Considering the frequent and never ending serious violations of basic human rights in many countries and regions of the world, all efforts to protect human rights seem an impossible task. War zones and conflict regions stretching from Syria to South Sudan, autocratic regimes but also democratic countries that have reduced their human rights standards allegedly due to security reasons demonstrate that human rights in the early 21st century are very difficult to enforce.

The above is due to the difficulties inherent in developing a universal understanding of the legal and political implications of human rights that could transcend nations, religions and traditions. What are those basic human rights that need to be protected not only by individual states but also by the international community? Here we see another significant obstacle come into play: most states still adhere to traditional beliefs about sovereignty and consider relations between the government and the citizens as well as between social groups and individuals as part of a classic set of “internal issues” that should defy external control.

The incredible violations of human rights that took place in the 20th century - be it the genocide of the European Jews committed by Nazi Germany during the Second World War or the tragedies in Cambodia, Rwanda, the former Yugoslavia, and Sierra Leone - have made it clear that the fate of human beings must not be subjected to the capriciousness and despotism of (tyrannical) authorities. From this point of view protecting humanitarian standards is seen as a common cause of mankind, which determines internal policies and limits the legitimate claim of states to sovereignty.

When human rights were (rather programmatically) established in the Charter of the United Nations, a process came into being which is still continuing and which has led to many declarations, conventions and internationally legally binding contracts obliging states to protect human rights. These increasing obligations are also due to the increasing pressure from civil society groups that demand from states to respect and protect a comprehensive body of human rights norms.

In 1993 a World Conference on Human Rights was held in Vienna. This conference helped accelerate the implementation of collective mechanisms to protect and enforce basic human rights. These mechanisms comprise a spectrum of measures starting from raising international awareness about reporting duties, to investigations and legal procedures, to enforcement measures and even the use of force (as was the case in Libya in 2011) to prevent severe crimes against humanity. Human rights are no longer seen as an “internal issue” of individual states but as an important benchmark for assessing a nation’s international reputation. Human rights, after all, form the basis of Human Security, a concept which considers the well-being of individuals, ethnic groups and societies to be seminal. Since the early 1990s the Human Security concept has served as an important paradigm in international politics, next to the classic concept of security that refers to security relations between states.
Although progress has been made in implementing and protecting human rights, a whole series of significant questions still remain unanswered. Who is authorized to establish human rights standards or demand international recognition of human rights? What mechanisms will ensure effective oversight? How can the international community enforce compliance with human rights legislation? What measures can be taken by the international community in case of grave violations of human rights if the government at fault is incapable or not willing to do anything about it? This paper intends to deal with these problems by first examining the notional and conceptual understanding of human rights.


It is difficult to define human rights in a way that would trigger universal acceptance and understanding. The term itself does suggest substantive unambiguosity, which however is not the case on closer examination. Rather, human rights are subject to a vast number of political, social, cultural and religious interpretations that not only limit their universal acceptance but also the willingness of many states to act in unison for the benefit of this common good. These categorial differences in understanding are also expressed in different sets of rights which have come to be described in terms of a generations model that follows the historic development of the human rights discourse.

- The first generation of human rights comprises the classic liberal rights to protection of the individual against social or state despotism and/or violence as expressed in the right to life, to freedom of opinion, to freedom of speech, to freedom of religion and to the rule of law.
- The second generation of human rights comprises the rights and entitlements of the individual to participate in the economic, social and cultural life of the state as expressed in the right to work, to humane working conditions, to a materially secure existence and to health.
- The third generation of human rights, however, envisions collective objectives. The right to development, the right to a clean environment and the right to peace are based rather on solidarity rights then on individual rights with the actual bearer of these rights, the individual, being taken into consideration in an indirect way.

These different categories can potentially lead to ideological and political exploitation of human rights. While western industrial nations traditionally demand compliance with the first generation of civil rights and liberties, developing countries see the implementation of participation rights and collective rights as the precondition for granting more advanced individual rights. Market-based democracies tend to criticize human rights practices of many developing countries and see any explanation of human rights in terms of cultural heritage (for instance “Asian values”) as legitimization to stabilize authoritarian regimes. At the same time, industrial nations are being blamed for double standards when development aid is tied to complying with human rights demands whereas grave violations of human rights in economically strong or politically relevant countries are being ignored.

With that said, what is the common basis of a universal notion of human rights? The main point of reference is the unique dignity of each and every human being that overrides any state or social authority. Dignity seen in terms of a preferably universal notion demands at its minimum some fundamental rights like the right to life and prohibits instrumental use of human beings. This basic assumption is reflected in the different rationales for the existence of human rights
starting with the Christian occidental notion that man is made in the image of God to the reason-based and natural law-based ideas brought forth by the Enlightenment to philosophical ideals based on Chinese Confucianism with “ren” being the notion that postulates a moral obligation to conduct virtuous interpersonal relations. The resulting claim for protecting the individual forms the prerequisite for the human rights notion which in turn leads to an understanding of human rights as being a set of inherent inalienable, individual and egalitarian rights that each person is equipped with free from discrimination and that each person can assert in his/her state and society, irrespective of personal characteristics like age, sex, ethnicity, level of education, religious beliefs, sexual orientation, physical or mental health. Human rights fundamentally regulate political, social, economic and cultural relations between individuals and groups as well as between individuals and the state.

Furthermore, a universal understanding of human rights includes the realization that the above mentioned generations of human rights cannot be seen in isolation. In their strive for propagating civil rights and liberties western industrial nations are realizing more and more that - as Johan Galtung once said - human beings cannot live by freedom alone but need to be able to participate in the social, cultural and political life of their state. After decades of debate about third generation collective solidarity rights a normative and conceptual attempt was made in the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in 1993 to recognize that various human rights generations form a closely intertwined and interdependent construct.

3. Universal Protection of Human Rights

As mentioned in the beginning, it was the experience of the Shoah and the crimes committed by Germany and its allies in the Second World War that led to progressive developments in protecting human rights. Although these catastrophic human rights violations had happened, states were not willing to give the United Nations the necessary clout with respect to protecting human rights. States were rather anxious to make sure that international human rights norms and their implementation would remain under their national sovereign control. At the same time, the United Nations and the community of nations as well as countless NGOs have worked together and have created an extensive code of protective norms which has been incorporated into international law and national legislation. The United Nations Commission on Human Rights was established in 1946 and began its work by drafting the International Bill of Human Rights.
3.1 The UN Declaration of Human Rights

To defuse the situation created by the competing principles of state sovereignty and human rights standards which were increasingly regarded as binding, the UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948, legally a non-binding document, but politically a highly effective inventory of the rights to be protected.

Once equality of the two principles was established and discrimination prohibited in the first two articles of the Universal Declaration, article 3 became the first pillar of the protection of human rights: everyone has the right to life, liberty and security of person. In the following articles this fundamental right is defined more precisely in numerous additional civil and political rights. Art. 22 is the second pillar of the declaration, because it states that everyone, as a member of society, has the right to social security and is entitled to realization of the economic, social and cultural rights indispensable for the free development of his personality. Art. 28 confirms that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

So the article confirms what the first two generations (as they were later called) state, and already contains an idea of what will later be the collective rights mentioned in the third generation of declarations. Due to its comprehensive character, this first element of the International Declaration of Human Rights continues to serve as basic point of reference for the international protection of human rights. At the same time it already reflects the enormous scope of conceptions of human beings and their rights, which makes it so difficult to create an effective legal base for the implementation of human rights.

This became evident in the two basic human rights treaties which were only adopted by the General Assembly on 16 December 1966 after lengthy negotiations made difficult by the East-West conflict: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The fact that both came into force after a ratification process of more than ten years shows how difficult it was for the states to accept international control over their human rights policies.

In spite of all its weaknesses and shortcomings, the International Declaration of Human Rights remains the foundation for the protection of human rights. With the ratification waves of the 1990ies, the human rights laid out in the covenants and the additional protocols have been globally perceived as a common good. These covenants enable states, international institutions and non-governmental organizations to protect human rights in countries violating them, and these countries can no longer refer to the principle of non-interference to stop such efforts.

3.2 Global Human Rights Treaties

Comprehensive protection of human rights has focused on supporting groups of persons who frequently fall victim to severe human rights violations. Such treaties are called “global human rights treaties”, because they were negotiated at UN level and then adopted by the General Assembly. Any country is welcome to sign and ratify them, and then deposit the documents with the Secretary-General. So these treaties are not of universal validity, but binding for the
states that sign them. Table 1 shows that states have accepted these documents to varying degrees.

Table 1: The most important Global Human Rights Treaties

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Adopted</th>
<th>Valid</th>
<th>Parties</th>
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<tbody>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights, ICESCR</td>
<td>16 Dec 1966</td>
<td>03 Jan 1976</td>
<td>164</td>
</tr>
<tr>
<td>1st Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to consider complaints from individuals</td>
<td>10 Dec 2008</td>
<td>05 May 2013</td>
<td>20</td>
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<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td>16 Dec 1966</td>
<td>23 March 1976</td>
<td>168</td>
</tr>
<tr>
<td>1st Optional Protocol to the International Covenant on Civil and Political Rights establishes an individual complaints mechanism</td>
<td>16 Dec 1966</td>
<td>23 March 1976</td>
<td>115</td>
</tr>
<tr>
<td>2nd Optional Protocol to the International Covenant on Civil and Political Rights abolishes the death penalty</td>
<td>15 Dec 1989</td>
<td>15 Dec 1989</td>
<td>81</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>21 Dec 1965</td>
<td>04 Jan 1969</td>
<td>177</td>
</tr>
<tr>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
<td>18 Dec 1979</td>
<td>03 Sept 1981</td>
<td>189</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women to consider complaints from individuals</td>
<td>10 Dec 1999</td>
<td>22 Dec 2000</td>
<td>106</td>
</tr>
<tr>
<td>United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>10 Dec 1984</td>
<td>26 June 1987</td>
<td>158</td>
</tr>
<tr>
<td>Optional Protocol establishes an international inspection system</td>
<td>18 Dec 2002</td>
<td>22 June 2006</td>
<td>78</td>
</tr>
</tbody>
</table>
Quite often states have signed UN conventions subject to political, religious, cultural or other reservations. Therefore each state accepts an individual mix of obligations and exceptions. Seen from that perspective, there are more than only nine global human rights treaties with their additional protocols, there are indeed thousands of custom-made regulations whose scope and validity need to be judged on a case-by-case basis when determining whether there have been violations.

But the phase of standard setting and codification is drawing to a close. International norms have been developed for almost all areas of human rights, and the vast majority of states have accepted them. At the same time, however, the implementation of human rights is lagging behind universal acceptance on paper.

3.3 Regional Human Rights Treaties

Global human rights treaties sort of represent the international community’s consensus on rights deserving protection. They serve as a basis for the further development of human rights, enabling those states that are interested to conclude even more comprehensive, more detailed and more effective human rights treaties which, it is true, will then only be accepted by a limited number of states.
There are important regional treaties such as African Charter on Human and Peoples’ Rights (also known as the Banjul Charter, 1981, effective 1986) or the American Convention on Human Rights (1969, effective 1978), but it is the Convention for the Protection of Human Rights and Fundamental Freedoms (also European Convention on Human Rights, ECHR) which stands out. It was signed on 4 November 1950 in Rome by the members of the Council of Europe and came into force on 3 September 1953. The Federal Republic of Germany ratified the convention on 7 August 1952. Signing up to the ECHR has become a prerequisite for joining the Council of Europe. As of May 2015, the 47 signatory states are identical with the member states of the Council of Europe.

Unlike the Universal Declaration of Human Rights, the ideas and contents of which provided the basis for the ECHR, the European Convention along with the 14 additional protocols that have become effective in the meantime, is legally binding under international law. Its mandatory character is emphasized by the strong role of the European Court of Human Rights which was established by the Convention, constituted in 1959 and which has been in permanent session since 1998. While the Council of Europe monitors whether policies are in line with the human rights laid out in the Convention and its additional protocols, the Strasbourg based Court is responsible for their legal implementation in the member states. With more than 18,000 judgments pronounced since its establishment the European Court of Human Rights has been the most active and the most effective international court in the world.

4. Procedures and Instruments in Human Rights Protection

The protection of human rights means more than standard setting and ethically motivated appeals to respect them: it requires effective monitoring. One of the most important tasks in this context is awareness raising and the creation of transparency. This is what thousands of international, regional and national non-governmental organizations (NGOs) do, with Amnesty International or Human Rights Watch being the most active ones at the global level. NGOs can assess the human rights situation in a country, even denounce it if necessary, making sure that human rights violations are not simply ignored or forgotten (naming and shaming). Therefore NGOs have become a central factor in international human rights policies. But governments or institutions such as the UN High Commissioner for Refugees (OHCHR) can also make human rights violations public, remind states of their commitment and initiate the changes in behavior required. And since most states are interested in a good international reputation they will in all probability not simply ignore such publicly stated demands.

4.1 Monitoring by Treaty Bodies

Basically the states are responsible for guaranteeing basic rights and human rights and making them legally enforceable. To make sure that states are doing exactly that, both human rights covenants as well as the seven other treaties mentioned above established their own treaty bodies, the committees. Those are made up of 10 to 23 experts bound to be unbiased in exercising their functions, which is why they may not be government officials. The committees
have a variety of instruments and mechanisms at their disposal: in a reporting procedure, the state parties regularly report on their progress in the implementation of standards. The individual complaint procedure laid out in many additional protocols allows individuals and groups to directly contact a committee. The complaint procedure for state parties, however, which allows states to make the committee consider the human rights situation in other parties to the treaties, has not played any role yet. The applicability of these three instruments varies depending on the committee concerned. Reports and communications are examined by the committees and the results (depending on the committee) will be made public as either concluding remarks, reports or recommendations. Since the committees have been established by human rights treaties, their mechanisms are often called “legal procedures”.

4.2. Protection by United Nations Bodies

The highest-ranking body of the protection of human rights is the UN Human Rights Council. It was founded on 15 March 2006 by the General Assembly (UN resolution A/RES/60/251) and replaced the UN Commission on Human Rights (CHR) which had been abolished. It is made up of 47 states with 5 regional groups representing the continents based on equitable geographical distribution: Africa and Asia hold 13 seats each, Eastern Europe six, Latin America and the Caribbean States eight, Western Europe and other states seven. Members of the Council serve for a period of three years and can be re-elected after the first term. Like in the CHR, member states are represented by government delegations in sessions and consultations. Since its special procedures were adopted on 18 June 2007 (UN document A/HRC/5/21) the council functions throughout the year. Among its most important instruments are the Special Rapporteurs (who already existed under the CHR), independent experts who present reports either on countries (such as North Korea) or on subjects (such as torture) as well as an individual complaints procedure (called the 1503 procedure) which allows individuals to directly address the Council. A new element is the step-by-step assessment of the human rights situation in all UN member states under the Universal Periodic Review Procedure. It includes state reports as well as statements by the High Commissioner for Human Rights and by (international) non-governmental organizations. During special sessions the Council may focus on any subject relevant for human rights.

The role of the High Commissioner for Human Rights (Office of the High Commissioner for Human Rights, OHCHR) is quite different from that of the Human Rights Council. The office held by Prince Zeid Ra’ad Al Hussein from Jordan since 1 September 2014, was set up as an institution to reinforce UN human rights capacities after the Vienna Conference on Human Rights. The office is subject to the General Assembly and to the Secretary-General, but it enjoys a high degree of autonomy, which finds its expression in its wide-ranging right of initiative. The High Commissioner has the right to enter into a dialog with governments, to offer support, to make recommendations to UN bodies and to draw public attention to problems and deficits. The Office of UNHCHR’s field activities are of particular relevance, and their number has risen significantly over the last two decades. At the end of December 2014 there were 66 field activities, either regional or country offices, human rights components in peace missions or human rights advisors in UN member states. With OHCHR, the UN created an institution with
makes human rights concerns a matter of global publicity and attention, a partner on a par with
governments and international NGOs.

5. Recent Developments: The International Responsibility to Protect (r2p)

The end of the East-West conflict did not only give a boost to human rights development, it
also gave the UN Security Council an unprecedented capability to act. The Council started to
become active in internal conflicts for the benefit of the people. Starting in 1991 the Security
Council authorized the use of military force in Northern Iraq, Somalia, Sierra Leone, Eastern
Timor and the former Yugoslavia to alleviate human suffering. At the same time the Council
reached its limits when – as was the case in Rwanda, Srebrenica or Kosovo – there was no
unanimity among its permanent members. There were genocides committed in Rwanda and in
Srebrenica – and the world public watched. In Kosovo, NATO started a military intervention
which was not sanctioned by the Security Council.

These interventions for humanitarian and human rights-related reasons rekindled the old debate
about how to balance state sovereignty with the international community’s interest in
compliance with its rules. At that point former UN Secretary-General Kofi Annan and the
Canadian government set up an expert commission (International Commission on Intervention
and State Sovereignty, ICISS) which, in 2001, presented a new approach called “responsibility
to protect” to solve the old dilemma. The concept which is also known under the abbreviation
r2p focuses on “sovereignty as responsibility” and calls upon states to protect their citizens.
If states are not able to do so, they are to receive help from the outside. If they are unwilling or
organize the violations of human rights themselves, the responsibility to protect will pass to the
international community.

The concept, which was adopted by the heads of state and government at the 2005 world summit
in a version limited to the most severe crimes such as genocide, war crimes, crimes against
humanity and ethnic cleansing, has undergone the process of becoming an international
standard. Again and again, UN Security Council resolutions have referred to the responsibility
to protect, and the UN Secretary-General has presented a series of reports on its
implementation. The most controversial issue is intervention (including intervention involving
the use of force) to prevent humanitarian catastrophes. In March 2011 the Security Council
expressly refers to the responsibility to protect when it authorizes military intervention in
Bengasi/ Libya to protect the civilian population. This military international intervention led by
NATO led to an enforced regime change and the death of Libyan dictator Muammar al-Gaddafi.
But since then, the permanent members of the Security Council have no longer been able to
agree on joint action in similar cases such as in Syria.

The greatest merit of the responsibility to protect is ensuring that large-scale human rights
violations are now seen by the international community as absolutely unacceptable. r2p has
become a globally accepted point of reference which allows the international community to
adopt measures adapted to a given situation on the basis of existing international law. But it is
not a new standard which would change the existing rules regulating the use of force in
international relations.
6. Further Challenges and Outlook

All in all, the evolution of the human rights concept has been a success story. It is, however, still confronted by the challenge of creating a universally accepted understanding on the rights to be protected. Which means in practical terms that the standards laid out in international treaties and covenants will have to become part of national legislations in more countries and in a more profound manner in order to actually fill them with life. This also means that existing instruments for the implementation of human rights will have to be improved and applied with greater determination whenever human rights are violated. The goal to be achieved is the overall acceptance of the non-hierarchical interdependency of all three generations of human rights, which requires an intercultural dialog as well as the willingness to learn among all states and cultures involved in the human rights debate.

In terms of political practice a continuous reconsideration of the classical sovereignty principle is required. The increasingly close link between human rights and peace in our globalized world leads to new obligations for states which are just as important as the peaceful settlement of conflicts and the prevention of wars.

By tradition, the democratic states will have to take the lead in this. Therefore it is somewhat alarming when standards that seemed to be rock solid in democratic states – such as the prohibition of torture, the prohibition of enforced disappearance and the right to a fair trial – are now being restricted or even abolished in the name of counter-terrorism. The de facto abolition of privacy and of all the human rights as well as civil and liberal rights associated with it – a result of overachieving secret services – raises the interesting question how seriously Western democracies actually take the much-praised standards they are asking others to observe. Liberal concepts of human rights are essentially based on the idea to protect the individual from arbitrary interference and persecution by the state and by society. This principle seems to have been turned around completely in a world where people’s everyday lives and their privacy are under constant surveillance. This means playing into the hands of those authoritarian regimes that do not tolerate any criticism of their human rights policy and, with increasing self-confidence, keep pointing out the failures of the U.S. and its partners. If Western democracies want to maintain their normative power in the area of human rights, they will have to reflect on their own standards first. Only then can the struggle for a universal acceptance of human rights go into the next round.
Literature


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Verlage, Christopher 2009: Responsibility to Protect. Tübingen: Mohr Siebeck

Weblinks:

www.ohchr.org: Website of the Office of the UN High Commissioner for Human Rights (Geneva) with comprehensive information on the situation of human rights worldwide and with links to numerous other human rights bodies.

www.institut-fuer-menschenrechte.de: Website des Deutschen Instituts für Menschenrechte (Berlin) in Berlin

www.amnesty.de: Website der deutschen Sektion von Amnesty International sowie www.blog.amnesty.de, wo UnterstützerInnen von ai über ihren Einsatz für die Menschenrechte berichten