

Summary

Human Rights Conventions as Safeguards of an International Public Order

1. Due to the significance of human rights for the protection of fundamental interests of the international community, international courts and other international organs recognize that conventions as well as customary law in the field of human rights have an objective character which may create an objective order.
2. This objective character is evidenced through the following five dimensions:
 - a) *The possibility for collective enforcement of human rights*: Such mechanisms may be provided for by treaty or they may be set up outside of a treaty context (as, for example, the procedures of the United Nations Human Rights Commission).
 - b) *The function of human rights as criteria for shaping and limiting international cooperation*: This dimension of an objective order created by international human rights is evidenced in the context of the admission of new member States to the Council of Europe or the European Communities. Also, as a consequence of corresponding statements in the CSCE process, it plays a role in the recognition of new states. On a universal level, this function of human rights has become relevant in connection with the discussion concerning the conditionality of development aid ("good governance").
 - c) *A specific priority of human rights law in relation to other international and supranational law*: This priority e.g. entitles a State to refuse extradition required by treaty in the case of imminent and serious human rights violations. It is also evidenced by the prevalence of human rights guarantees over other supranational law in the EC, even though the EC has not ratified any human rights conventions.
 - d) *The obligation of States to take positive measures not only in the area of social rights but also in the field of civil liberties*: This obligation primarily includes a duty to actively protect victims of third-party violations and to legislate in conformity with international human rights law.
 - e) *Indirect obligations of private persons*: These provide certain guarantees with so-called indirect third-party effect. They may create the possibility (or even the obligation) to punish individuals for particularly serious human rights violations.

3. The analysis of State practice and the activities of international organizations allows the conclusion that the concept of an objective order constituted by international human rights as described above (thesis 2) is not only based on the reality of international relations but also has firm roots in the theory of "international ordre public", as well as in the so called "constitutive doctrine of fundamental rights" ("konstitutive Grundrechtstheorie") as it has been developed by constitutional theory in the German speaking countries.
4. However, there is not only one public order created by human rights but a plurality of such orders. A distinction should be made between (a) universal public order established by customary human rights law, (b) orders created by universal human rights conventions, and (c) regional orders.
5. The emphasis upon the objective character of human rights is linked with certain dangers. Among other things, it has the potential to disguise the far-reaching tensions between the concept of human rights and other basic principles of international law. Furthermore, it might lead one to forget that under existing international law there is no fully developed obligation of the international community to take legal action against human rights violators. Finally, this emphasis upon the objective character of human rights is not completely immune from falling back into a notion of international law as the "law of civilized nations".
6. The concept of a human rights public order has substantial advantages: It demonstrates, *inter alia*, the necessity of realizing human rights through positive measures. The emphasis on the duty of States to actively protect victims and the obligation of individuals to observe human rights facilitate the creation of a common ground between European and non-European human rights traditions. This may, in turn, help to abate the problem of the universality of human rights. Finally, the concept enhances the awareness that human rights are not automatically realized with their adoption but must serve as goals for a just political and social order.