Interdisciplinary Studies in Human Rights 12

Michael Krennerich

Human Rights Politics

An introduction

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Foreword by Dr. Michaela Lissowsky, Director, Friedrich Naumann Foundation for Freedom, Human Rights Hub

In 1948, the Universal Declaration of Human Rights was proclaimed. It was a milestone for the protection of human rights worldwide. And yet, more than 75 years later the world faces wars, terrorist attacks, disinformation, climate change, and populist threats to democracies. As a result, human rights are ignored and restricted—again and again.

We must stand up to this and defend the achievements of liberal democracy and the rule of law. They are the only political and legal frameworks that ensure the realization of human rights. But how can this urgently needed defense of human rights succeed? How can human rights be implemented and promoted around the globe?

A targeted and effective human rights approach to politics is one answer: one that is pursued at various political levels to combat inequalities, achieve gender equality, and empower women, that guarantees access to justice, promotes inclusive societies and sustainable development, and builds accountable institutions at all political levels.

Policymakers, human rights defenders, activists, and academics worldwide need to read "Human Rights Politics—An Introduction" by Professor Michael Krennerich.

The Friedrich Naumann Foundation for Freedom's Human Rights Hub in Geneva is pleased to support the publication and the dissemination of this important guide to human rights politics. It demonstrates the Foundation's unwavering commitment to human rights, from challenging oppression to empowering marginalized groups and fostering a world where universal human rights really do apply to all.

Geneva, December 2023

Preface: Why This Book?

This study book came about through my teaching activities as a professor of political science at the Chair of Human Rights and Human Rights Policy at the Friedrich-Alexander-Universität Erlangen-Nürnberg and decades of practical experience gained as chairman of the Nuremberg Human Rights Center (NMRZ) and within the framework of the German human rights network *Forum Menschenrechte*. The book is based on the observation that many students are very committed in their approach to human rights issues. However, they sometimes find it difficult to structure the topic area in corresponding empirical studies and to apply social science terms, concepts, and analytical approaches and relate them to human rights political practice. This introduction aims to provide stimulation and support in this regard. It introduces the diversity of topics, actors, and institutions involved in human rights politics and shows how political science and related disciplines can help to organize the field of research and (more) systematically describe and examine the complex reality of human rights politics. To this end, some selected social science approaches that have not yet been applied to human rights politics will also be presented.

The book is based on the fundamental conviction that the implementation of human rights is (or at least can be) a highly demanding, critical, and emancipatory political project that is directed against the political, economic, social, and cultural oppression of people worldwide:[1] a project that is worth standing up for and that despite resistance must be constantly fought for, defended, and further developed. In doing so, it is important to be aware of the theoretical and practical criticism of

[1] In saying this, I am not denying that there are also less sophisticated interpretations of human rights. For example, the neoliberal view of human rights (and sometimes also the criticism of it) in its one-sided emphasis on negative economic freedoms of action is based on a very reductionist understanding of human rights and one which should be rejected.

human rights and human rights politics (even if it is presented polemically),[2] for example to illuminate blind spots in human rights protection; to identify and address neglected human rights concerns; to listen carefully to all those who are denied recognition of their human dignity and who have suffered injustices; to bring civic human rights engagement and institutional human rights protection more closely together; in short, to make human rights politics inclusive and practically relevant. In this context, the implementation of human rights—as long as one does not lightly join in the chorus proclaiming their demise—is most likely a never-ending project.

Thus, the great hope of the late twentieth century that human rights would become established worldwide was exaggerated from the very beginning; the manifold obstacles that made it difficult to effectively enforce and implement civil and political human rights, let alone economic, social, and cultural rights, were already all too apparent at the time. Some of the human rights successes achieved in the past decades on a large scale are not entirely reassuring either. Too great are the existing and emerging human rights problems and challenges that have not been and are not being consistently addressed. On the other hand, the numerous human rights setbacks of the early twenty-first century, such as the resurgence of illiberal, autocratic regimes, as well as possible difficulties in implementing human rights, should not discourage. On the contrary, the persistence of power structures in politics, economy, and society that are in violation of human rights illustrates just how necessary the political project of human rights is and remains.

Having started with this "political creed," this book is not so much concerned with how important human rights and human rights politics are. It focuses more on questions of how human rights politics presents itself empirically and how it can be described, examined, and possibly also evaluated from a political science perspective.

Acknowledgment

Before that, however, I would like to thank the Friedrich Naumann Foundation for funding the book, as well as Springer-Verlag for the uncomplicated cooperation. Many thanks also go to Francis Henry, who translated the book from German.

Erlangen-Nürnberg, Germany
10th December 2023

Michael Krennerich

[2] For example, important impulses for the human rights discourse came from feminist, anti-neoliberal, and postcolonial human rights critique. The climate crisis also presents challenges for the understanding of human rights in that the rights of future generations and the rights of nature are becoming a focus of attention and being discussed.

Contents

About the Author

Michael Krennerich is a Professor of Political Science and the Scientific Director of the *Center for Human Rights Erlangen-Nürnberg* (CHREN) at the Friedrich-Alexander-University Erlangen-Nürnberg (FAU). He holds a doctorate in Political Science, Philosophy, and Public Law from Heidelberg University and a post-doctoral Habilitation from the FAU. Besides his academic work, he is the chairperson of the non-governmental organization *Nuremberg Human Rights Center* (NMRZ) and one of the coordinators of the German NGO network on human rights *Forum Menschenrechte*. Michael Krennerich is also co-founder and chief-editor of the academic journal *Zeitschrift für Menschenrechte—Journal for Human Rights* (zfmr), founded in 2007.

Chapter 1
Human Rights and Human Rights Politics

1.1 What Are Human Rights?

Human rights are a topical issue. But what are human rights and what are their characteristics? Without a doubt, they are particularly *fundamental* rights. They aim to protect the dignity of every individual and to enable everyone to live a *free, self-determined and dignified life in community with others,* "free from fear and want" (as the preamble to the Universal Declaration of Human Rights of 1948 puts it). In this context, "self-determined" does not mean isolated from others, but rather in a responsible manner, also towards others. Human rights are indeed rights to which every individual is entitled, and which are to be respected; in this regard they are individual rights. However, they are not purely "individualistic" rights. Rather, human rights are exercised collectively[1] and are oriented towards living together and towards a political order in which all people are not (any longer) excluded and oppressed but can develop together with others. In this sense, they are not "egoistic", but demonstrate a "communitarian dimension" and as such are oriented towards the community.

A characteristic of human rights is that they should apply to every human being without exception, i.e. *universally.* Going beyond specific contexts, they describe a basic set of rights to which *every* individual human being is fundamentally entitled on the basis of his or her humanity, and that *in equal measure*. The strict postulate of human rights equality in the sense of a fundamental equivalence and equality of all human beings is inherent in human rights.[2] It takes the form of a "conceptual axiom"

[1] This is particularly clear, for example, in the case of freedom of association and assembly, freedom of expression and the press, and freedom of religion and belief. Even the right to privacy is an important prerequisite for participation in the community, as it allows individuals to seclude themselves and exchange views in a safe private environment before engaging in public discourse; cf. Bielefeldt (2022), pp. 43 ff.

[2] This should be taken into account when, for example, right-wing extremist politicians speak of "human rights" despite the unequal and excluding ideology they represent.

M. Krennerich, *Human Rights Politics*, Interdisciplinary Studies in Human Rights 12, https://doi.org/10.1007/978-3-031-57026-1_1

(Pollmann 2022, p. 102) that can no longer be justified itself but also cannot be abandoned when speaking about human rights. However, the idea of equality first had to (and still has to) assert itself within the human rights discourse against persistent forms of legal and de facto inequality,

> . . . and this in the course of political struggles for progressive 'non-discrimination', which is thus not merely to be understood as the inclusion of more and more people in the circle of those to whom human rights apply, but also as their successive equality (Pollmann 2022, p. 101, own translation).

Human rights are *indivisible* and *interdependent*: they form a complex of interrelated rights. Civil, political, economic, social and cultural human rights are mutually dependent and inseparable. The times when social human rights were dismissed as only political declarations of intent and not "real" human rights are over, at the latest since the 1993 Vienna World Conference on Human Rights and the subsequent increased importance of these rights[3] (see Krennerich 2013). The Table 1.1 lists the human rights of the two basic UN human rights conventions of 1966 (in force since 1976). With few exceptions (right to property, right to seek asylum), they transposed the rights of the 1948 Universal Declaration of Human Rights into two international treaties. The other UN human rights conventions are based on the UDHR and the two covenants (see Chap. 5).

Human rights are *complex* rights that have legal, moral and political dimensions. From a *moral* point of view, human rights are, in principle, addressed at all human beings, as a mutual moral obligation of all and as a moral aspiration of every human being to respect human rights in living together. The rich philosophical debate in this regard shows that human rights, as particularly fundamental moral aspirations, can be accessible to different derivations, determinations and justifications, for example of a theological, natural law, anthropological or contractualist nature, or as a demand of practical reason. These can also be examined to see whether and to what extent they can justify the universal, egalitarian and categorical aspiration of human rights being a "morality of universal respect for all" (Lohmann 2010, p. 138).

As purely moral aspirations, human rights remain dependent on being recognised and observed as binding for moral reasons. In terms of enforceability, they are therefore rather "weak rights" for the time being. The respective method of assertion is appellative. By means of moral suasion, corresponding obligations and entitlements can be demanded and asserted—and their non-observance can be morally sanctioned, for example by means of shaming (Lohmann 2010, pp. 141–142).

The *legal* dimension of human rights, on the other hand, is visibly expressed primarily in the form of human rights treaties that are binding under public international law. With the positive legal enshrinement of human rights, the focus shifts to the states as the primary duty bearers. This makes sense insofar as the state can be both a threat to and a guarantor of human rights. Formally, the state-centredness also results from the fact that international law is primarily a law of states. In the form of

[3] Krennerich (2013); see also e.g. Langford (2008). Langford et al. (2018), Ssenyonjo (2009), Riedel et al. (2014), Saul et al. (2014).

Table 1.1 Rights of the basis Human Rights Covenants

International Covenant on Civil and Political rights (ICCPR)	International Covenant on: Economic, Social and Cultural rights (ICESCR)
Right of all peoples to self-determination	Right of all peoples to self-determination
Prohibition of discrimination (in general and ancillary)[a]	Prohibition of discrimination (ancillary)[a]
Right to life	Right to work
Prohibition of torture and cruel, inhuman or degrading treatment or punishment	Right to just and favourable conditions of work (fair wages, equal pay for equal work, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours, paid holidays, compensation for public holidays, etc.)
Prohibition of slavery, servitude, forced labour	
Right to personal liberty and security	
Right to freedom of movement	
Equality before the lawcourt, presumption of innocence, fair trial, minimum standard of procedural safeguards, prohibition of double jeopardy etc.	Right to form and join trade unions
	Right to social security
	Protection of families (establishment, voluntary marriage), mothers (maternity leave) and children (from economic and social exploitation)
Prohibition of retroactivity	
Recognition before the law	
Protection against interference with privacy	Right to an adequate standard of living (adequate food, clothing, housing, water and sanitation**) and right to protection from hunger
Right to freedom of thought, conscience and religion	
Right to freedom of opinion and expression	Right to the highest attainable standard of physical and mental health
Prohibition of propaganda for war and incitement to hatred	
Right to freedom of assembly	Right to education (compulsory primary education, open access to higher education institutions, etc.)
Right to freedom of association	
Right to marry and to found a family; protection of the family	Right to participate in cultural life and to enjoy the benefits of scientific progress, protection of intellectual property rights, freedom of scientific research and creative activity
Children's rights to protection	
Right of citizens to participate in public affairs, to free elections, and to access public services	
Right of ethnic, religious or linguistic minorities to their own cultural life, religion and language	

Source: own compilation, based on the ICCPR and the ICESCR
[a]Ancillary prohibitions of discrimination refer to the rights guaranteed in the treaty
[b]The right(s) to water and sanitation is not explicitly mentioned but is derived from the right to an adequate standard of living and the right to health

international human rights treaties, states within the framework of international organisations mutually undertake to respect, protect and guarantee the human rights of all those people who live in their sovereign territory or are subject to their jurisdiction. In addition, there are "extraterritorial" human rights obligations.[4] If human rights are also incorporated into national constitutions as fundamental rights, they directly bind the state authorities and the exercise of state authority.

[4]See Gibney et al. (2022), specifically for ESC rights also: Coomans and Kamminga (2004), Coomans and Künnemann (2012).

Fundamental rights primarily affect the relationship between the state and individuals (and indirectly also between private individuals).

As juridical rights, in general human rights are gaining in binding force and assertive power. However, the international community has equipped international human rights protection with only weak legal enforcement instruments. International law is essentially a coordinating law that depends on the cooperation of states. Effective means of coercion and enforcement comparable to national law do not even exist where regional human rights courts pronounce binding legal judgements. It is therefore all the more important that international human rights conventions are enforced in national law and that human rights, where they are not yet enshrined, are adopted or transformed into national law, preferably in the form of fundamental rights in national constitutions. Under the terms of functioning constitutional states, the rights can then be enforced in court. However, it is precisely when constitutional states fail or there are gaps in national human rights protection that the institutions and procedures of regional and international human rights protection come into play.

The moral and legal dimensions of human rights are closely interwoven. On the one hand, morally derived and justified human rights are ideally respected and protected by the state in the form of positive law, i.e. they are subject to safeguarding through legal institutions. On the other hand, human rights also have an "intrinsic authority" (Bielefeldt 2022, p. 6) that precedes the legal standard setting. At the same time, juridical rights also require normative justifications that go beyond the mere reference to the validity of legal documents. Precisely because human rights enshrined in international law are supposed to be universal rights that apply equally to all people, there is a particular need for their acceptance and justification. The moral and juridical dimensions of human rights can also complement and correct each other. Thus, justified and well-founded moral demands can affect the enshrinement of new human rights or the (re)interpretation and implementation of already codified human rights. Conversely, positively enshrined fundamental and human rights can constitute a protection against invasive moral aspirations.

1.2 The Political Nature of Human Rights

Human rights are political in particular because politics and the state are the primary addressees of human rights entitlements and obligations. In contrast to the moral addressing of all people (as is typical in human rights education), political conceptions of human rights primarily place responsibility on state authorities and state officials. Human rights go hand in hand with the requirement that the political establishment allows and enables individuals to access the freedoms and resources formulated in human rights law (Kreide 2013, p. 93). In this sense, "(h)uman rights law is inherently political, and takes place in processes of struggle to achieve, control and distribute resources in society" (Andreassen 2023, p. 24).

Human rights are political precisely because they emerged from publicly articulated experiences of injustice (Bielefeldt 2006) and as such are the result of political

struggles in reaction to oppression, humiliation and arbitrary state power. At the same time, human rights are subject to change and must be continually politically readopted and defended against sceptics. Empirically, the establishment, (re)-interpretation and implementation of human rights are embedded in often conflictual political processes.

Thus, the legal *enshrinement* of human rights is already an intrinsically political process. The current "human rights catalogues", as found in the Universal Declaration of Human Rights (UDHR) and the international human rights treaties based on it, were developed within the framework of the United Nations and negotiated between state representatives—influenced to a greater or lesser extent by individual persons, affected groups, civil society organisations and the specialist and public discourse of the time.[5] The elaboration and further development of human rights has been and continues to be influenced by ideological and constitutional traditions as well as by concrete historical experiences of oppression and hardship and the emancipation efforts of disadvantaged groups. At the same time, however, the human rights treaties also reflect social and inter-state power relations as well as nation-state interests that influenced which human rights were included and how they were formulated. The historical contingency of individual human rights formulations is undeniable.

The entrenchment and development of human rights in international law are thus the result of political processes at specific points in time in history, though the development is still ongoing. Even when *norm-setting processes* are far advanced, the "catalogue" of human rights can be amended and expanded. For example, numerous human rights treaties have been drafted that differentiate the rights enshrined in the UDHR and make them more specific to particular population groups (women, children, people with disabilities, migrant workers) and human rights problems (racism, torture, forced disappearances). In principle, it can be assumed that new experiences of injustice and changes in human living conditions and social relations—for example through climate change, global refugee and migration movements, genetic engineering, digitalisation and artificial intelligence—can also give rise to new human rights in the future. This is especially true if it is accompanied by criticism of the inadequacies of existing human rights protection. For example, a legally binding document to strengthen the human rights of older persons, a UN Convention on the Rights of Older Persons, has been the subject of controversial discussions in an open UN working group since 2011. Also, in 2018, the UN Human Rights Council instructed the existing Open-ended Working Group on the Right to Development to begin consultations on drafting an international legal agreement on the right to development, which has been discussed for many decades.[6]

It should also be noted that human rights declarations and agreements are "living instruments". Even though these human rights documents are recognisably "children

[5] With regard to the UDHR, see for instance: Morsink (1999), Ramcharan and Ramcharan (2019), and Huhle (2023).

[6] A/HRC/RES/39/9, 27 September 2018.

of their time", human rights were formulated in such a general way that their validity goes far beyond the historical contexts of their origin and is fundamentally open to changing *interpretations*.[7] Thus, many international legal and political debates currently revolve less around the establishment of new human rights than around a contemporary, context-sensitive interpretation of existing legal norms. This is clearly visible, for example, in the interpretation of economic, social and cultural human rights, which has changed considerably over the past 30 years (Krennerich 2013). The prohibition of discrimination has also seen considerable change. Despite all the persecution and counter-movements in some parts of the world, there has been significant progress in the legal situation of lesbian, gay, bisexual, trans*, inter* and queer (LGBTIQ+) persons in recent decades, for example. There is also now greater sensitivity to complex forms of intersectional discrimination (Crenshaw 1989). At the same time, voids in the postcolonial discourse have been brought to light regarding the treatment of colonial crimes and their consequences.

Thus, the interpretation of human rights is not a purely legal undertaking, but always part of socio-political debates about *what* can legitimately be demanded in terms of human rights, *who* is bound by human rights and *in what way*. This is also where discussions about "extraterritorial obligation" of states or about the human rights responsibility of non-state actors[8] such as business enterprises[9] come in. The political discourse on human rights thus no longer only focuses on the politics of nation states, but also deals with structures of power, dependency and oppression at the non-state and transnational levels that prevent or impede the use of human rights.

Against the backdrop of the climate crisis, there is even a new discussion about who the subjects, i.e. the holders of human rights, are. Here, we not only need to address the now virulent question to what extent all those people who irreversibly lose their national territory due to climate change (e.g. Tuvalu), or whose territory is temporarily uninhabitable, can assert their human rights and against whom. In view of the climate crisis, it must also be clarified above all whether future generations will be recognised as legal subjects and what the relationship is between their rights and the human rights of the present generations. The Maastricht Principles of Human Rights for Future Generations (2023) seek to clarify the present state of international law as it applies to the human rights of future generations.[10] In the face of environmental degradation and climate change, the question as to whether human rights should only apply to human beings has also been raised. What about the rights of other living beings? And, as has been successfully argued in court in the case of some strategic lawsuits, should the rights of nature also be recognised? So, do the

[7] This is also the view of the UN treaty bodies. A representative example is the Committee on the Elimination of Racial Discrimination, which described the International Convention on the Elimination of All Forms of Racial Discriminationas a "living instrument" whose interpretation must be adapted to the prevailing conditions; Thornberry (2020), p. 323.

[8] Fundamental: Alston (2005), Claphan (2006), Gibney et al. (2022).

[9] Cf. Letnar Černič and Carrillo-Santarelli (2018), Curzi 2020, Deva and Birchall (2020), Krajewski (2023). From a gender perspective: Bourke Martignoni and Umlas (2018), among others.

[10] https://www.rightsoffuturegenerations.org/ (accessed: 15 Nov 2023).

existing human rights constitute an undue privileging of the human species to the detriment of other living beings, as some critics claim?

At the same time, already established human rights entitlements, such as the non-discrimination of LGBTIQ+ persons, repeatedly encounter resistance between and within the respective states. Therefore, no matter how much a basic understanding of the content of individual human rights may have developed, it is not sufficient for international human rights monitoring bodies to provide interpretation guidelines. Precisely because human rights, in the sense of universality, should apply to every human being, it is necessary to repeatedly substantiate human rights and ensure their plausibility in intercultural political dialogue, so that over and above their binding force under international law they are granted actual political and social recognition in individual states.

Such recognition is ultimately also the prerequisite for the *implementation* of human rights in the respective states. These are highly political, often conflict-laden processes. International human rights law

> . . . requires struggles by civic and political actors for holding governments to account for their human rights commitments and opposing and criticizing authoritian rule as a political act that challenges power, ideology and state conduct (Andreassen 2023, p. 1).

Human rights are not only obtained through legal means. Despite the importance of judicial protection and strategic litigation, fundamental reforms aimed at better and more comprehensive protection of human rights are always politically contested, decided and implemented, since they involve power, distribution questions, changes in attitudes and mind maps, and ideally political recognition and learning processes. Collective action by social and political actors is always needed so that experiences of injustice and emancipation efforts are expressed in human rights policy demands and, if necessary, lead to norm setting, norm interpretation and norm implementation. At the same time, the political commitment to human rights also requires institutional support through codified law as well as through institutions and procedures for the protection and implementation of human rights. No less necessary are the foundation and practising of human rights in politics and society.

The focus of this book is now on the *political* processes of demanding, interpreting and implementing the human rights enshrined in international law. It should be remembered, however, that it is precisely through their moral and legal foundations that they gain persuasive and assertive power.

1.3 What Is Human Rights Politics? A Conceptual Approach

While human rights are the subject of countless attempts to define them, there are hardly any definitions of *human rights politics*. Broadly speaking, human rights politics can be understood as political action at the local, national, regional and global levels aimed at enshrining, interpreting, implementing, protecting and

promoting human rights. At the centre of current human rights politics are the civil, political, economic, social and cultural human rights guaranteed in international human rights conventions, which must be respected, protected and fulfilled. Human rights politics refers both to the shaping, further development and interpretation of universal human rights norms and to their enforcement and implementation.

Included are all three political dimensions, which are semantically distinguished in political science with the terms *polity*, *politics* and *policy,* but which are intertwined in political practice: the legal-institutional foundations of human rights politics (*polity*); the often conflict-ridden process of political decision-making, i.e. the shaping of human rights policy, in which a multitude of (collective) actors participate (*politics)*; finally, the human rights policy content and policy outcomes, for example legislative, administrative, educational and other measures that serve the protection and promotion of human rights in the individual branches (*policies*).

Political action is by no means limited to state actors. It is true that states have the main legal responsibility for the implementation and promotion of human rights, and that the international human rights system is primarily based on the political cooperation between states under international law. However, it is widely recognised that non-governmental human rights organisations, networks and movements are an essential driving force behind national and transnational human rights protection. However, assessments of their importance in relation to the human rights politics of states and international organisations differ considerably, and also depend on basic theoretical assumptions. Liberal and social constructivist approaches in the field of international relations, for example, tend to assign greater importance to non-state actors than (neo)institutionalist and certainly realpolitik approaches. Ultimately, however, the question which actors particularly drive forward human rights political processes at which stage is one that needs to be empirically examined. In this context, it is important to recognise that it is precisely the *interaction* of non-state actors, governments committed to human rights and international organisations that is significant for human rights protection.

Furthermore, non-governmental human rights organisations and networks have not only considerable influence on domestic and international human rights policics—for example through criticism, protests, lobbying and consultation. They also take independent measures to protect and promote human rights. As will be shown later, these also include the strengthening of human rights empowerment and concrete support for affected groups and human rights defenders. Non-state actors also have a significant impact on the public discourse on human rights, which in many respects forms the context in which state and non-state human rights policies unfold.

Thus, a high degree of *political discursivity* is inherent in human rights and human rights politics, which helps to determine the content, scope and limits of human rights and to provide argumentative support and legitimacy for human rights polical action. According to a broad understanding of politics, this discourse is even a fundamental component of human rights politics. Particularly from the point of view of deliberative democracy, informed, argumentative and agreement-oriented

forms of political communication between (also morally) competent citizens are fundamental for democratic human rights politics.

Ultimately, the inherent, structural characteristics of universal human rights, specifically freedom, equality and inclusion/solidarity, determine the normative requirements for the shaping of human rights politics in legal-institutional, procedural and substantive terms. Freedom-restricting, particularistic, discriminatory and exclusionary norms, practices and measures cannot be reconciled with the normative demands on human rights politics. Thus, for example, anyone who demands human rights only for a particular group but excludes other people (groups) from making use of them, cannot invoke human rights in that case. To put it bluntly: human rights are supposed to apply equally to everybody as otherwise they are not human rights. This does not exclude the possibility that universal human rights must be specifically developed for certain persons (groups), such as persons with disabilities, so that they can actually make use of them.

Authentic human rights policy is also characterised by the fact that it actually aims at the recognition and implementation of human rights. It thus distinguishes itself from policies that only pretend to protect human rights. However, the boundaries are not always easy to draw, since human rights concerns can also overlap with other interests and there are time and again (also successful) attempts to misuse human rights for purposes that deviate from or are contrary to human rights, such as, in extreme cases, for imperialistic power politics. In contrast to the narrow understanding of human rights politics that I have proposed, a broad concept of human rights politics could thus encompass any political action that has human rights as its object, even if it is not really aimed at implementing human rights. In the context of this book, however, human rights politics in a narrow, normatively discriminating sense is defined as follows:

Definition of Human Rights Politics
Human rights politics is the totality of—discursively and argumentatively supported—legal-institutional (*polity*), procedural (*politics*) and substantive (*policy)* aspects of political action by international organisations as well as governmental and non-governmental actors, which aim to enshrine, interpret, implement and promote universal human rights with their charactereristics of freedom, equality and solidarity. Human rights politics takes place at the local, national, regional and global level.

1.4 The Study of Human Rights and Human Rights Politics

The study of human rights benefits greatly from a multi- and interdisciplinary approach. Legal handbooks, commentaries and studies on human rights are still the predominant source. The focus is on the legal doctrinal interpretation of the relevant legal texts and the case law of relevant legal institutions, such as the

European, Inter-American or African Court of Human Rights, or the monitoring bodies of the United Nations. However, the philosophical debate on human rights also bears rich fruit, especially with regard to the creation, definition and interpretation of human rights. Furthermore, there are many social science studies on the subject. Human rights *politics* are particularly suitable, it can be assumed, to be studied as part of political science. Even at first glance, there are many points of reference to the traditional sub-fields of political science, which have been important for the development of this now highly differentiated subject.

Here, for example, the sub-field of *Political Theory* should be mentioned. Particularly *normative* theories of politics play a role when it comes to the meaning and interpretation of human rights and the critical, intercultural dialogue on human rights, especially when they explicitly deal with human rights. This is shown not least by the lively debate on the universality of human rights. In socio-political discourse, for example, it is necessary to counter religious and cultural relativist objections. Feminist, anti-neoliberal and postcolonial critiques of human rights must also be taken into account, and the extent to which they can challenge the traditional understanding of human rights and contribute to formulating and advancing human rights as an ambitious political project must be examined. Furthermore, theorists can provide important normative orientation for practical human rights politics, especially if they succeed in identifying the basic principles in concrete policies and problematising them in an application-oriented way.

In the sub-field of *International Relations,* on the other hand, the respective schools of theory and the diverse empirical studies on international and transnational politics can contribute to a better understanding of human rights politics. For example, do human rights, as the view of (neo-)realism suggests, only come into play internationally, if at all, when they coincide with power-political interests, or when they are linked to effective sanctions and incentives? And to what extent is *hard power* linked to *soft power*, such as the moral authority of a government or the political-cultural appeal of a country? Is an active human rights policy—in the sense of liberal schools of thought—an expression of the democratic character and the human rights *commitment* of states? It is possible that the liberal-democratic nature of state, politics and society plays an important role for the observance of human rights, not only at home, but also in foreign relations. The question then arises to what extent those groups within society that stand up for human rights also exert influence on the shaping of foreign policy. Or are human rights observed because the behavioural expectations created within the framework of international human rights regimes are met and governments have already internalised and habitualised behaviour that conforms to human rights? Then, in the sense of constructivist views, rather the "logic of appropriateness" than that of the "logic of instrumental rationality" applies.

The dual character of the state as both a guarantor of and a threat to human rights also suggests the importance of case-by-case or comparative analyses of political systems for the study of human rights and human rights politics. Despite all globalisation processes, the nation state still plays the central role in respecting, protecting and guaranteeing human rights. The sub-fields of *Political Systems* or

Comparative Politics therefore offer a variety of starting points for empirical studies, for example on the causes and consequences of human rights violations in the respective countries. At the same time, they provide analytical tools to explain the shaping of human rights politics and to record the effects. Particularly when comparing countries, it is possible to ask under which conditions human rights protection is effective or fails. How such comparisons are made depends very much on the research interest and the methodological approach. Depending on the level of analysis, it is possible, for example, to look at types of political regime, the relationship between state and society, or the behaviour of actors in the context of concrete political processes and conflicts. Moreover, *Policy Analysis* approaches can be used to study the measures undertaken and policies applied in each case.

Thanks to the cross-sectional character of human rights politics, there are also many fields of research within and outside (the traditional sub-fields) of political science that are already being academically "ploughed through". For example, comparative research on violence has been dealing with human rights for a long time. Questions of national security and counterterrorism have also been the focus of human rights studies at the latest since the attacks of 11th September 2001 in the USA. In view of the sharp increase in the number of refugees—and the deaths of thousands of refugees in the Mediterranean and elsewhere—asylum and refugee policy is also being discussed from a human rights perspective. The thematic area of "business and human rights" in turn raises questions regarding the regulation of economic globalisation processes and transnational corporations. Feminist and LGBTIQ+ perspectives as well as the socio-political debates on racism and postcolonialism have provided important impulses for theoretical and empirical studies. They may also contribute to a revival of critical political science,[11] which, in addition to *class,* now increasingly includes *race* and *gender* as points of reference for a critical analysis of society, and advocates values-based research. Last but not least, there are links to political sociology and the study of social protest movements. Particular emphasis is placed on this field in the present book insofar as it deals specifically with the significance of civil society engagement.

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[11] In the 1970s and 1980s, for example, it was common in West German political science to distinguish between normative-ontological, empirical-analytical and critical-dialectical approaches. After the reunification of Germany and the collapse of real existing socialism, critical-dialectical approaches lost much of their importance.

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Chapter 2
Civil Society Engagement

Human rights politics is a cross-cutting politics. This means that there is a multitude of political fields that can be worked on and a multitude of actors who more or less successfully cultivate the field. In this introduction, the diversity of actors and their actions will be highlighted with the help of social science concepts and approaches—starting with *right holders* and civil society, before we later deal with the human rights politics of states (as *duty bearers*) and the importance of regional and global human rights institutions. In doing so, we follow a somewhat different path than the extensive literature, which asks to what extent (in the sense of a top-down approach) international human rights treaties, recommendations of international human rights committees or decisions of regional human rights courts are implemented at the national level. Human rights demands are also made to national political bodies and to international human rights institutions—explicitly or substantively (in the sense of a bottom-up approach)—by those affected and by their support groups. Ideally, the top-down approach and the bottom-up approach complement each other.

2.1 Human Rights Empowerment

Individuals, as holders of human rights, are structurally in a weak position vis-à-vis those powerful actors who violate or are required to implement their human rights. In order to secure human rights freedoms and to assert human rights claims, human rights empowerment is therefore required. The iridescent concept of empowerment describes, in general terms, a development in the course of which people gain the power or "empower themselves" to take their lives into their own hands and to help shape their living environment. In this sense, empowerment thus refers to people's ability to master their often-difficult everyday lives and to lead their lives on their own. It is about successfully coping with and shaping one's life, especially in view of

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often difficult personal and social living conditions—whether without outside help or with the support of others.

In *political* terms, empowerment aims to enable people and groups who have little power and influence to emerge from a state of power inferiority and become stronger in such a way that they can help shape the community in their own interests. Against the background of power weakness and heteronomy, empowerment has a lot to do with the attainment or regaining of individual, social *and* political autonomy. Political empowerment always includes an element of *political* "self-enablement" and "self-empowerment". It is about people using or adopting existing potential, resources and opportunities to help shape the community and change (or be able to change) social conditions. "Empowerment Now: Self-representation of Refugees with Disabilities" is, for instance, the title of a handout by Handicap International (2021). Political empowerment is often dependent on a context of solidarity and support. The challenge here is to *support without patronising*.

Human rights empowerment refers to a specific form of empowerment. It refers to a process in the course of which the holders of human rights, despite their structurally weak position of power, become stronger and acquire the ability to effectively demand and assert their own human rights and the human rights of others. Human rights engagement is often preceded by experiences of injustice. Certain social and political conditions are perceived as grievances and injustices that need to be overcome.

In fact, there are countless examples of people rising up against social and political grievances and making human rights demands, even if they do not always explicitly refer to human rights. These can be people standing up for relatives and friends who have been arbitrarily arrested or convicted, or journalists and bloggers speaking out against censorship. They can be workers protesting against inhumane working conditions, or *campesinos* or *indígenas* resisting land evictions. Everywhere there are people who stand up against oppression, persecution and discrimination, either because they are affected themselves or because they stand in solidarity with those affected. In the past decades, such experiences of injustice have not always, but frequently, been expressed in human rights terms and linked to human rights demands raised by the civil society. The advantage here is that human rights are "*inherently compelling*" (Bielefeldt 2022, p. 15), regardless of philosophical discussions and legal details. Many people are aware that they are being wronged by human rights violations, and they experience them as degradation.

Human rights empowerment usually requires people whose rights are violated to organise, network and coordinate their actions. Individuals can also make a difference. However, apart from the fact that they are often supported in their efforts, collective action is usually required in order for human rights demands to be effectively asserted and enforced against powerful actors. The analysis of *collective action* lies therefore at the centre of the social science analysis of human rights politics. In civil society, collective action typically takes place within the framework of local initiatives, NGOs, ad hoc alliances, NGO networks and social movements in which affected people and their supporters organise themselves. These collective actors have an impact on society with their human rights work, but at the same time

they also make human rights policy demands on state policy and try to influence it in line with human rights.

2.2 Non-Governmental Human Rights Organisations

As part of civil society, *nongovernmental organisations* (NGOs) are important local, regional and global human rights actors. Although many NGOs working for human rights are older,[1] the number and importance of human rights NGOs has increased considerably, especially from the 1970s onwards. Today, it is impossible to imagine human rights politics without NGOs.

But what are human rights NGOs? NGOs are commonly classified as belonging to the "third sector" between businesses and the state and have two basic characteristics: they are not profit-oriented[2] and are independent of government.[3] Sham NGOs set up by the government, so-called GONGOs (*government-organised NGOs*) are not genuine NGOs. In addition, criminal and violent organisations are sometimes explicitly excluded from the definition of NGOs. Unlike political parties or liberation organisations, NGOs do not want to take over government power, even if they advocate for public causes (Saunders and Roth 2019, pp. 138 ff.).

Given the large number of organisations that can be subsumed under the heading of NGOs in this broad sense, the question of whether an organisation is a *human rights* NGO can best be determined on the basis of its self-declared goals and activities: First of all, it includes those NGOs that are explicitly, primarily and mainly committed to the protection and promotion of human rights. However, there are also a large number of NGOs that take up and promote human rights concerns within the framework of a broader mandate. These can, for example, be non-governmental and church-based aid and development organisations, or environmental organisations that explicitly advocate for human rights as *part* of their work. Although these are not human rights NGOs in the strict sense, they complete the picture of an NGO scene that is active in the interests of human rights.

[1] For example: International Alliance of Women (founded in 1902 as International Alliance of Women for Suffrage and Legal Citizenship), Women's International League for Peace and Freedom (1915), American Civil Liberties Union (1920), Fédération internationale des ligues des droits de l'Homme (1922), International League for Human Rights (1942), International Commission of Jurists (1952). Several Jewish NGOs should also be mentioned (cf. Galchninsky 2009).

[2] Whether organisations are not profit-oriented can (at least initially) be determined by the respective statutes and the question of whether funds received or generated are used exclusively for the purposes stated in the statutes. Accountability reports should provide information on this.

[3] Especially when NGOs working for human rights also receive government support, it is important to examine whether and to what extent they nevertheless act independently in terms of content. It is inciteful, for example, whether the NGOs also represent positions that are not shared by the donors, and to what extent they criticise government policy despite state support.

Originally, the term NGOs was used to refer to *international* NGOs in particular (Davies 2019, p. 2). However, in addition to the large, transnationally active NGOs, local, national and regional human rights organisations are also active.[4] In many countries and regions, there is an active "human rights scene" that is supported by local NGOs. It is important to take these into account, especially when examining how people come together locally to stand up for human rights. Sometimes, NGOs that are forced to operate from exile (such as Belarusian human rights NGOs) must also be taken into account. At the same time, large international NGOs often work with local partner organisations. They have often built up a solid organisational base in a number of countries themselves, have departments and networks there, and have long since become global NGOs. In short, there is an almost unmanageable, rapidly changing landscape of NGOs and NGO alliances working for human rights at the local, national, regional and global levels.

NGOs and NGO alliances differ in terms of the human rights issues they work on.[5] Some work on a wide range of human rights issues,[6] others focus on specific rights and problems. For example, the oldest human rights organisation still in existence today, Anti-Slavery International (originally the Anti-Slavery Society), has been campaigning since 1839 for the abolition of slavery, which still shapes the lives and work of millions and millions of people today in the form of human trafficking, forced labour, bonded labour or exploitative child labour. Other NGOs and NGO alliances, to give just a few examples, are particularly committed to the abolition of the death penalty,[7] against torture[8] and to the prevention of genocide,[9] strive for the prosecution of the most serious human rights crimes[10] and access to justice for those affected,[11] defend religious freedom[12] or freedom of expression and

[4] It is impossible here to provide a representative selection of local, national or even regional NGOs working for human rights. To name just a few examples of regionally active NGOs: Washington Office on Latin America, Comisión Andina de Juristas, Arab Organization for Human Rights, Association for Human Rights in Central Asia, Asia Centre, Commonwealth Human Rights Initiative.

[5] A distinction between human rights NGOs working primarily on "negative" or on "positive" human rights, such as Polizzi and Murdie (2019, p. 252), is misleading. It cannot be stressed enough that *all* human rights have to be respected, protected and fulfilled that oblige the state (as the main bearer of human rights obligations) to refrain from doing something or to do something.

[6] For example, Amnesty International and Human Rights Watch.

[7] For example, the many NGOs involved in the World Coalition Against the Death Penalty.

[8] For example, Action by Christians for Abolition of Torture, Association pour la prévention de la torture, as well as NGOs affiliated with the Organisation Mondiale contre la Torture or the International Rehabilitation Council for Torture Victims.

[9] For example, NGOs involved in the Alliance against Genocide.

[10] For example, Coalition for the International Criminal Court, International Center for Transitional Justice, TRIAL International.

[11] Such as Advocats Sans Frontières.

[12] For example, the organisation Human Rights without Frontiers, which maintains a database on prisoners based on their religion or belief, or the European Network on Religion and Belief.

of the press[13] or fight anti-Semitism,[14] anti-gypsyism, Islamophobia and Muslimophobia and racism in general.[15] Others focus on the whole spectrum of civil and political human rights.[16]

Whereas until the 1990s only a few human rights organisations had taken up the cause of economic, social and cultural human rights (ESC rights),[17] there are now a large number of NGOs and NGO networks worldwide that seek to protect and promote ESC rights. For example, an International Network for Economic, Social and Cultural Rights (ESCR-Net) was formed in the 1990s specifically to strengthen ESC rights, and in the 2000s an NGO alliance in the form of the Coalition for an Optional Protocol to the ICESCR called for a complaints procedure for the International Covenant on Economic, Social and Cultural Rights. One of the pioneers of ESC rights is FIAN International, which was founded in Heidelberg in 1986 and specifically took on the right to food. Through its departments and networks, FIAN now works on and in over 50 countries worldwide and has also taken on other ESC rights. Many NGOs working primarily on civil-political rights have also expanded their areas of work to include ESC rights. Of particular importance, for example, was that Amnesty International—after a tough internal organisational struggle and despite internal resistance—has also been demanding the implementation of (some) ESC rights since the 2000s.[18] The reports by Human Rights Watch now also deal with economic and social human rights.[19] At the same time, ESC rights have gradually found their way into the work of aid and development organisations, especially since the turn of the millennium. The topics of business and human rights and the environment and human rights have also significantly gained in importance. They were sometimes taken on by established international human rights organisations and also led to the establishing of independent NGOs and initiatives.[20]

Furthermore, the target groups of non-governmental human rights work differ. Quite a few NGOs specifically advocate for the rights of certain groups—often within the framework of broader mandates—or are their self-organisation bodies.

[13] Such as: International Press Institute, Committee to Protect Journalists, Reporters sans frontières, Article 19.

[14] Such as Simon Wiesenthal Center.

[15] For example, numerous NGOs are represented in the UNITED for Intercultural Action network or in the European Network Against Racism (ENAR).

[16] For example, the Helsinki Committees for Human Rights in various countries or the Center for Civil Liberties (Ukraine) or Viasna (from Belarus), which became known worldwide through the Nobel Peace Prize 2022. See also the NGOs mentioned later that work to protect human rights defenders.

[17] For example, FIAN International, Center for Economic, Social and Cultural Rights or also the Centre on Housing Rights and Evictions, which campaigned for the right to housing until the end of the 2000s.

[18] See for example the AI workspace “Living in Dignity”.

[19] See the listing of HRW reports at https://www.hrw.org.

[20] For example, Center for International Environmental Law, Global Witness.

These can be, to name just a few examples, relatives of "disappeared" persons,[21] women,[22] LGBTIQ+,[23] children,[24] people with disabilities[25] as well as members of religious, ethnic or indigenous minorities,[26] refugees and displaced persons,[27] trafficked persons[28] or domestic workers.[29] At the same time, human rights NGOs also specifically seek to protect and promote human rights defenders.[30]

Moreover, NGOs differ considerably not only in terms of the focus of their work and their supporter and target groups, but also in their approach. Some work primarily in a legal capacity, such as the European Center for Constitutional and Human Rights, which supports criminal charges in order to advance human rights protection through strategic litigation and judicial precedents. Such *strategic litigation (human rights litigation)*[31] is also used by other NGOs.[32] Many other organisations, on the other hand, have a stronger impact on the public and political agenda. The human rights work of NGOs thus encompasses several areas of activity. Traditionally important areas of non-governmental human rights work by NGOs are the regular *monitoring* of the human rights situation in a country or region and the *documentation* of human rights violations. Closely related to this is also *informing the public* about human rights demands, problems and concerns. Special didactic skills are required for *human rights education*, which not only imparts

[21] For example, (Asociación) Madres de la Plaza de Mayo, Federation of Associations for Relatives of the Detained-Disappeared. In Mexico, for example: AMORES, FUUNDEC/FUUNDEM, Grupo VIDA, Grupo Alas de Esperanza, Grupo Familias Unidas.

[22] Such as Association of Women's Rights in Development, Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres, European Women's Lobby, Equality Now, Global Fund for Women, International Alliance of Women.

[23] Such as OutRight Action International, Organisation Intersex International, African Human Rights Coalition.

[24] For example, Child Rights International Network and terre des hommes.

[25] Such as Disabled People's International, Disability Rights Advocates, Action on Disability and Development.

[26] Such as Survival International, Minority Rights Group International, Society for Threatened Peoples, Incomindios, Unrepresented Nations and Peoples Organization, Asia Indigenous Peoples Pact.

[27] For example, Asia Pacific Refugee Rights Network, Asyl Access, Pro Asyl or Refugees International.

[28] In Germany, for example: Bundesweiter Koordinierungskreis gegen Menschenhandel e.V. (KOK).

[29] In Germany, for example, the German Commission Justitia et Pax, which accompanied the negotiations on ILO Convention 189 on decent work for domestic workers (2011) together with trade union, church and civil society partners in Europe, Africa, Asia and Latin America.

[30] For example, Peace Brigades International, Civil Rights Defenders, International Service for Human Rights, Protection International, Front Line Defenders or the Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos and Pan-African Human Rights Defenders Network (AfricanDefender) and their member organisations. With regard to environmental defenders: e.g. Global Witness, The Environmental Defender Law Centre.

[31] On strategic litigation, see Duffy (2018), Guerrero (2020).

[32] For example, Redress, Reprive, Trial International.

knowledge about human rights, but also raises awareness of human rights and strengthens the ability to act. Some NGOs, on the other hand, devote themselves entirely to *analysis and consultation,* acting to a certain extent as human rights "think tanks". Often, non-governmental human rights organisations also specifically support the human rights empowerment of population groups whose rights are violated or threatened, so that they can assert their rights themselves. Or they support partner organisations financially or through other forms of *capacity building* and provide technical support.[33]

Public protests and campaigns attract a lot of attention. Many human rights NGOs denounce human rights violations, *name* those responsible and put them under socio-political pressure to justify and act by way of *shaming* and *blaming*. A less visible, but nevertheless immensely important field of action in human rights policy, in addition to general *advocacy work,* is the targeted *lobbying* that NGOs carry out vis-à-vis governments, parliaments and state authorities and within the framework of international organisations. This involves the targeted influencing of the shaping of national and international human rights protection and the exertion of influence on policies relevant to human rights—from political agenda-setting to the planning, implementation and evaluation of corresponding measures. If necessary, these are supplemented by *advisory activities* in which the expertise of NGOs is called on.

It has already been mentioned that non-governmental human rights organisations sometimes also provide *legal assistance* and support those affected in making use of existing national and international complaint and grievance mechanisms in order to take action against human rights violations. They often have their own legal aid fund for this purpose. Other monitoring procedures (reports, investigations, etc.) are also specifically used by NGOs to raise human rights concerns, for example in the form of "shadow reports" to international monitoring bodies. Some organisations have dedicated themselves entirely to critically observing the work of UN human rights monitoring bodies.[34]

Furthermore, the *protection of people from state persecution* is one of the "classic" areas of activity in non-governmental human rights work. In the face of repressive NGO laws and the defamation, criminalisation and persecution of people and organisations working to promote human rights, human rights NGOs and their partner organisations in many states are also forced to *protect themselves* and defend themselves against bureaucratic harassment, smear campaigns and criminal charges. Often specialised NGOs also offer *support to victims of human rights violations* (e.g. torture victims[35]). Finally, NGOs also play a role in shaping the *politics of the past.* The human rights organisation Memorial International in Russia, founded in

[33] For example, in the encryption of information, such as CryptoRightsFoundation.

[34] Such as UPR Info.

[35] For example, International Rehabilitation Council for Torture Victims with over 150 centres in 76 countries and the European Network of Rehabilitation Centres for Survivors of Torture and its member organisations.

1989, with its focus on the historical reappraisal of political tyranny, is a prominent example of this. In December 2021, however, the Russian Supreme Court ordered its dissolution. In 2022, Memorial—together with the above-mentioned Center for Civil Liberties (Ukraine) and Ales Bialiatski, the imprisoned chairman of Viasna (Belarus)—received the Nobel Peace Prize (Table 2.1).

An important part of non-governmental human rights work is networking. Some important international networks have already been mentioned or should also be mentioned,[36] and with the emergence of new human rights issues others are joining them.[37] In Germany in 1994—following the 1993 Vienna World Conference on Human Rights—numerous organisations joined forces in the nationwide human rights network *Forum Menschenrechte* to (a) critically accompany the human rights policies of the Federal Government and the German Bundestag at the national and international level; (b) undertake joint projects to improve human rights protection worldwide; (c) raise human rights awareness among the German public, draw attention to possible human rights violations in Germany and work to overcome them; (d) exchange information among member organisations on human rights issues; (e) support local, regional and national NGOs in the international aspects of their work and promote the international networking of NGOs.[38] The strength of the *Forum Menschenrechte*, however, lies less in campaigning and more in advocacy and lobbying, in influencing government and parliament—and thus in "*insider activism*" (Saunders and Roth 2019, p. 138).

2.3 Social (Protest) Movements

Social movements are more fluid and less institutionalised than NGOs or permanent NGO networks (which, of course, sometimes participate in movements as social movement organisations). They are an important form of collective, civil society action in which human rights protest can also be expressed. Among the many examples of effective social movements that have taken up human rights concerns (without always making explicit semantic reference to human rights) are workers', civil rights, anti-apartheid, dissident, women's, lesbian, gay, disability, peace and environmental movements, as well as peasant and indigenous movements. With the growing socio-political importance of human rights discourse—which was originally very much dominated by experts—human rights gained in importance as points of reference, especially from the 1970s onwards, even in those social movements that had not previously explicitly put forward their demands in the language of

[36] Such as Civil Solidarity Platform, Asian Forum for Human Rights and Development (FORUM-ASIA).

[37] In 2014, for instance, the Coalition Against Unlawful Surveillance Exports (CAUSE) was founded.

[38] See: www.forum-menschenrechte.de (accessed: 10 Dec 2023).

Table 2.1 Fields of action of human rights NGOs

What do non-governmental human rights organisations do? (selection)	
Human rights monitoring	Monitoring of the human rights situation and human rights policy, documentation of human rights violations.
Public relations, information and human rights education	Information on human rights, addressing human rights problems, imparting knowledge of human rights, strengthening a responsibility and action-oriented awareness of human rights, building a "culture of human rights", etc. through educational materials, information events, workshops, project days, seminars, etc.
Empowerment	Strengthening the capacity of affected persons and groups to organise and act through targeted counselling, training and financial support so that people can independently assert, exercise and monitor their rights—and are able to actively shape decision-making processes relevant to human rights.
Public protests and campaigns	Protests and campaigns against imminent or existing human rights violations to "wake up" the public and to put pressure on governments, parliaments or non-state actors (e.g. companies) to respect and protect human rights.
General advocacy and targeted lobbying work	Raising awareness and influencing decisions (agreements, laws, regulations, measures, etc.) of human rights significance, e.g. by national governments and parliaments or international organisations.
Consulting	Provision of expertise
Legal complaints and strategic ligitation	Legal advice and support for affected persons in lawsuits and fundamental and human rights complaints before national and regional courts.
Influencing and participating in the international protection of human rights	Influencing norm-setting, interpretation, monitoring and implementation, e.g. critical monitoring of state reports, preparation of parallel reports, support for complaints before international human rights committees and courts, etc.
Protection of human rights defenders	Individual protection for persecuted or threatened human rights defenders through appeals, urgent actions, temporary reception of persecuted persons, etc.
Help for affected persons and survivors	Care for victims of human rights violations (e.g. victims of torture, rape, human trafficking, exploitative child labour, child soldiers), trauma work, rehabilitation programmes, financial aid, etc.
Demanding and helping to shape past policies	Documentation of past crimes, culture of remembrance and commemoration, demands for compensation for those affected, punishment of perpetrators, reforms to prevent human rights crimes from being repeated.
Networking of human rights activities	Establish and expand effective human rights networks at the national, regional and global level.

Source: own compilation

human rights. The invocation of human rights proved to be politically powerful (Sen 2004, p. 7).

At the same time, state repression and arbitrariness have in many places given rise to human rights protest movements *sui generis* that were explicitly concerned with human rights. A look at Latin America, for example, shows how the idea of human rights was taken up and became a powerful movement when various countries were overrun with brutal military dictatorships.

> The human rights movement in Latin America has its origins in a particular political constellation, which can be determined quite precisely in time and place, and which covered large parts of the continent from the late 1960s onwards: the unusually brutal and systematic repression of a series of military dictatorships (Huhle 2009, p. 407, own translation).

Rainer Huhle shows that the modern human rights movement in Latin America has a double origin: on the one hand, the self-organisation of people directly affected by persecution, who together made their demands public, and on the other hand, the support of those affected by allied lawyers, politicians, members of the institutional church and other professionals. It was only from this coming together that a movement emerged that one could reasonably call a human rights movement. In this sense, he understands the emergence of the human rights movement in Latin America as "the result of the tension between direct self-organisation and professional political-legal work within the framework of traditional institutions and/or newly founded non-governmental organisations (NGOs)" (Huhle 2009, pp. 407–408, own translation). He cites the 1973 coup in Chile as both the date and place of their birth.

The extent to which recurring or prolonged protests that implicitly or explicitly refer to civil, political, economic, social and/or cultural human rights, or even to the right to a healthy environment, can now be considered a "social movement" depends largely on how the latter are defined. So, what are—beyond any self-descriptions as a "movement"—sociological characteristics of social movements? Given their diversity, it is difficult to generalise, but a basic understanding of social movements has emerged in the literature based on their *goals*, *forms of action* and *internal structures*.

A key characteristic of social movements is thus the the goal to initiate and implement, or to resist and reverse fundamental social changes (Snow et al. 2019). Based on the understanding that history can be shaped, social movements thus have the characteristic of actors, and their actions are directed towards fundamental social change—either promoting or resisting it. Social movements are not always progressive.[39] Usually there are also counter-movements as a reaction to actual or demanded social change. In Europe, for example, an anti-gender movement formed in the last decade that mobilised against gender-sensitive language, gender mainstreaming or gay marriage (see: Sauer 2019).

[39] In some cases, social movements are equated with progressive emancipation movements. However, with regard to the debate on human rights, it also makes sense to look at counter-movements.

The power basis of social movements lies primarily in the ongoing mobilisation of activists, sympathisers and supporters in the population. The active, permanent search for support, remaining constantly in motion, is therefore another characteristic of social movements. In doing so, social movements use—if not necessarily exclusively, then at least primarily—extra-institutional forms of action to present their concerns and mobilise their supporters.

> Although protests are not the exclusive preserve of movements, protest orientation is a constitutive feature of both the movements' self-understanding and their perception by the public and the audience (Rucht 1994, p. 339, own translation).

Visible expressions are a multitude of street protests and an—often wide—variety of creative forms of action. One effective example among many is the production against sexualised violence by the Chilean collective LATESIS, which was first performed in 2019 and whose protest song "*Un violador en tu camino*" (A rapist in your path) was sung by women (sometimes simultaneously) in several cities around the world (LASTESIS 2021a, 2021b).

Despite all the diversity of actors and actions, a minimum of collective identity and organisation and existence for a certain length of time is still needed to be able to speak of a social movement. This even applies to online mobilisations and online movements, which sometimes follow the logic of a "*connective action*" rather than a "*collective action*" (cf. Bennett and Segerberg 2013). The #metoo campaign is an example of successful hashtag actionism that created at least a certain sense of belonging among all those who shared personal experiences, showed solidarity with victims and protested against sexualised violence. In fact, the formation of a collective (self-)consciousness of belonging, a "feeling of togetherness", is both a characteristic and a condition of existence for social movements. This, of course, does not, however, preclude that in social movements multiple identities exist, interpretive struggles take place between moderate and radical forces, and collective identities can be questioned and reconstructed. This can also give rise to the research question of what advantages and disadvantages strong or weak, coherent or fragmented, and stable or fluid collective identities have for the existence and work of the movements. Be that as it may, despite all the informality, social movements are not just alliances which are completely free of hierarchical structures and organisation. The interaction between the movement elites, the organisations involved in the movement and the fluid parts at the grassroots level characterises the rather loose, but not completely unstructured action of social movements. By providing a certain degree of continuity, social movements distinguish themselves from one-off or spontaneous protests, for example.

To summarise it can be said that

> a social movement is a system of mobilised networks of groups and organisations that seeks to bring about, prevent or reverse social change by means of public protests, and which is set

> up for a certain duration and supported by a collective identity (Rucht and Teune 2017, p. 11, own translation).[40]

In many cases, extra-institutional forms of action seem necessary, especially from the point of view of protesters, in order to bring about (or ward off) socio-political changes. This tends to be the case in democracies whenever pressing socio-political concerns are not taken up institutionally by parties and pluralistically or corporatistically integrated interest groups and "dealt with" satisfactorily within the framework of democratic procedures and institutions. Social protests can also be intensified by waves of protest that emerge within the framework of "*contentious politics*". However, extra-institutional protest actions by social movements are not necessarily accompanied by a complete rejection of established forms of institutionalised politics; sometimes they even complement each other. In this sense, social movements and their protests have become an integral part of liberal-representative democracies and can be dismissed as extra-institutional, but no longer—as was previously the case[41]—as unconventional, let alone irrational forms of political participation. Even civil disobedience is sometimes considered to be maybe not legal but certainly legitimate in parts of the population.

However, the situation is different where, for example, the parameters for unconventional and illegal action have been shifted and dissident protesters are defamed, criminalised and persecuted. Activists then are quickly become the target of political justice. Street protests and anti-government demonstrations, which in vibrant democracies are (and should be) considered legal, legitimate and important forms of socio-political expression, are particularly often banned in autocracies, but sometimes also in democracies, and thus deliberately pushed into illegality and defamed. Typical are accusations that the protesters are in fact "criminals", "rebels", "traitors to the fatherland" or even "terrorists" and that they are being controlled by foreign powers.

If changes are to be initiated beyond the protests not only in the short term but also in the medium and long term, it is of course also important in democracies that the concerns raised by social movements outside the institutions are permanently incorporated in social discourse and fed into political decision-making processes. After all, it is not only about issue and agenda setting, but also about actually influencing politics, in our case in the interest of human rights. Often, however, social movements (at least initially) do not have established—formal or informal—access to politics, so they tend to (at first) engage in "*outsider activism*".

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[40] Similarly, the definition by Snow et al. (2019), p. 10: "Social movements can be thought of as collectivities acting with some degree of organization and continuity outside of institutional or organizational channels for the purpose of challenging or defending extant authority, whether it is institutionally or culturally based, in the group, organisation, society, culture, or world order of which they are part."

[41] In the Federal Republic of Germany, too, the view of street protests changed over time—from the manifestation of irrational or even externally controlled rioters and troublemakers to a "normal" and legitimate manifestation of representative democracies and as a rational means of collective interest representation; cf. Roth and Rucht (1987), Rucht and Teune (2017).

The situation is often different with established NGOs and NGO networks, which may be involved in the social movements as movement organisations or cooperate with them as allies. Large or strategically important NGOs sometimes have privileged access to the political decision-making centres, also in the field of human rights. This can lead to tensions between the fluid parts of social movements and professionalised NGOs. There may also be different ideas about strategies, tactics and the scope of demands. For example, especially in the field of human rights a donor-oriented, moderate orientation of NGO work can lead to a certain moderation and depoliticisation, which creates resistance. Saunders and Roth (2019, p. 141) use the term "NGOisation" of social movements here. Conversely, social movements can become radicalised and, in addition to non-violent forms of action from the outset or over time (for example, due to disappointment over the ineffectiveness of peaceful actions), also display a certain willingness to use violence against objects or people. The protest movement in Hong Kong in 2019/2020, for example, became partially radicalised over time.

Continuity and change of social movements can be characterised by some fundamental questions that are also relevant for human rights movements: What are the issues being protested about? Who is protesting, who is mobilising? How is the protesting done? How is the protest communicated? How is the protest movement perceived publicly? Which opponents appear on the scene? This also shows whether and to what extent the protest movement uses the discourse on human rights to raise its concerns—and whether it receives support or encounters resistance.

Furthermore, it is important to adequately capture the transnational character of human rights movements and their action at regional and global levels. We will come back to this later when we discuss the importance of advocacy networks and social movements for a transnational human rights policy.

2.4 References to Social Movement Research

The extensive literature on collective action and social (protest) movements offers many possible starting points for studying the civil society engagement of people campaigning for human rights. At the micro level of active protest movements, they (possibly) help to describe and explain when, how and why people collectively stand up for a cause—in our case human rights; who in local initiatives, NGOs, networks and social movements takes up, participates in and supports such (human rights) causes—and who "drops out" again and for what reasons; how local initiatives, NGOs, networks and social movements are organised; what they do and how they

interact with other actors; why they gain and lose importance; and last but not least, what they achieve.[42]

The focus is on the objectively available resources and possibilities for action as well as on the subjective perceptions, interpretations and convictions of the actors. The frames and narratives they use and communicate, as well as the emotions they evoke and are carried by, can also be looked at specifically. No less important are concrete mobilisation and action strategies as well as the interactions with all the other actors who support their concerns, are indifferent to them or even try to ward them off. At the same time, a comprehensive analysis does not look at the actors in isolation. Rather, it embeds their actions in the overarching political, socio-economic, cultural and/or ecological structures and framework conditions at the macro level. This is important as such structures—and structural changes—can be causal for the emergence and strengthening of social movements and at the same time determine whether and how concerns are raised, taken up or resisted.

In the course of a long tradition of research, a number of theories and concepts on social movements have been developed that have attempted to explain their emergence, strengthening and impact. This chapter cannot begin to do justice to the wealth and depth of research. Nor does it aim to present sophisticated theoretical drafts in detail or even to develop them itself. Rather, the aim is to loosely delineate the field of research and to address individual considerations that are helpful for the analysis of human rights movements.

2.4.1 Discontent as a Motive

People who protest are, it can be assumed, generally dissatisfied with something and want to change a situation. In many social protest movements, dissatisfaction is an important motive for "taking to the streets". This is presumably also true for people who join collective protests to resist actual or perceived injustice, and explicitly or substantively assert their civil, political, economic, social or cultural rights.

The idea that individually perceived and collectively amplified dissatisfaction is an essential driving force for social movements is by no means new and is not fundamentally disputed in social movement research. It was prominently propounded by theories of deprivation, which enjoyed great popularity until the 1980s (Gurney and Tierney 1982). They mainly focused on the willingness of deprived people to act and protest. However, it was pointed out early on that protest-generating discontent is not only fed by the absolute deprivation of people, which can result, for example, from their precarious living and working conditions. Rather, *relative* deprivation is the central social source of dissatisfaction and protest.

[42] These are the questions raised, for example, by Goodwin and Jasper (2015) in their "*The Social Movements Reader*". Participant observations provide an in-depth look at the characteristics and dynamics of individual social movements; see, for example, Staggenborg (2022).

"According to this, burdens are (potentially) protest-generating above all when they are perceived as unreasonable or unjust in relation to the situation of other reference groups" (Rucht 1994, p. 339, own translation). The focus thus shifted to the discrepancy between the subjective perceptions of one's own situation on the one hand and the situation of comparable reference groups and legitimisable demands on the other, which was also a particular motivation for action if the desired situation was seen as realisable.[43]

The assumption that relative disadvantage as well as unfulfilled but legitimate demands and disappointed expectations *can* lead to dissatisfaction and consequently to political protests is certainly plausible, also in the field of human rights. For example, the dissatisfaction of discriminated population groups and minorities is based not least on the subjective comparison of their own situation with that of other reference groups and with legitimate (or possible) demands that (at least in substance) arise from human rights. It remains to be seen, however, whether the protest *potential* this entails will actually lead to protests. Thus, the theories of deprivation do not explain—which was their actual intention—in what way and under what conditions any willingness to protest will turn into protest action. However, the mobilisation and organisation of dissatisfied people actually pushing for change does require explanation. This is where so-called resource mobilisation theories come in, which partly developed from the criticism of the deprivation theories prevalent at the time. They put the organisation and resources needed to form (peaceful) collective protests at the centre of the analysis.

2.4.2 Mobilisation of Resources

The basic assumption of the largely economic approaches to resource mobilisation[44] is that dissatisfaction, displeasure and grievances in a society are not a sufficient condition[45] for the emergence of social (protest) movements. Rather, the emergence and mobilisation power of social movements depend decisively on the resources required for collective action. McCarthy and Zald (1977) even assumed that there is

[43] The feeling of relative disadvantage can be nourished by subjective comparison with other reference groups or by the discrepancy between expectations and their non-fulfilment. These may be stable expectations that cannot (or can no longer) be fulfilled due to declining opportunities, for example as a result of an economic crisis. Expectations may also increase, for example, as a result of social change or political promises, but remain unfulfilled due to insufficient possibilities for realisation or a lack of political will.

[44] For an introduction to *resource mobilisation approaches* see Edwards and Kane (2014), Edwards et al. (2019), among others. The contribution by McCarthy and Zald (1977), reprinted in 2015, is fundamental. See also McCarthy and Zald (2001).

[45] In their influential paper "*Resource Mobilisation and Social Movements: A Partial Theory*" (1977), McCarthy and Zald saw deprivation and grievances as weak, sometimes even secondary, determinants of the emergence of social movements.

always enough discontent in a society to ensure sufficient support *at the grassroots level* for any social movements, *provided* they are effectively organised and can also draw on the resources of established groups within the elites. It is not the pressure of suffering of social groups that is decisive for the emergence of protest behaviour, so the argument, but access to resources. The decisive factor is the extent to which movement organisers succeed in bringing together the resources of individuals necessary for collective action and in organising the discontent (which already exists or has been brought about for mobilisation purposes). It should be critically noted that a top-down perspective is adopted here: From this perspective, successful social movements are more the result of (resource) mobilisation by movement elites and organisations than a "bottom-up" union of a broad base of discontented people who come together to stand up for a cause and make a difference. Accordingly, the spontaneous and expressive moments of social movements that do exist (especially in today's digital age) tend to be ignored.

Nevertheless, the sometimes sophisticated theoretical reflections and empirical studies that can be subsumed under resource mobilisation approaches (and do not need to be dealt with in detail here) have the merit of drawing attention to the organisational structures of social movements and emphasising the importance of resources for collective action, whereby the spectrum of resources considered has expanded considerably (Edwards et al. 2019). Thus, it is also important for human rights movements and NGOs involved in them to mobilise a wide range of resources. These include the mobilisation of (a) material resources, e.g. through their own contributions, the acquisition of donations and fundraising; (b) human resources, e.g. through human rights training, the mobilisation and recruitment of people with human rights, organisational or communications expertise, and the activation of networks; (c) socio-organisational resources, e.g. through the establishment and expansion of communication, campaign and organisational structures, as well as networking with each other and with alliance partners; (d) cultural resources through *collective action frames,* creative forms of protest, identity building, e.g. through symbols, cultural activities (music, literature, film, art, blogs, etc.) and through their own movement stories; e) moral resources, such as morally convincing appearances and campaigns, the mobilisation of respected supporters, human rights awards or other public recognition.

2.4.3 Framing Processes

While resource mobilisation approaches emphasise the importance of resources, framing approaches specifically focus on the emergence and change of collective patterns of interpretation within social movements and refer primarily to the discursive level. These are also significant for NGOs, both for their internal cohesion and for their public relations work and campaigns (Saunders and Roth 2019). *Collective action frames* focus on the processes of subjective collective interpretation of socio-political problems that underlie civil society engagement and collective protest

actions. In a sense, it is an interpretive frame (hence the word *framing*) that suggests a certain way of looking at socio-political problems and their solutions. Such frames can have different functions. Useful here is the widely used distinction between *diagnostic framing*, *prognostic framing* and *motivational framing* (Snow and Benford 2000).

Diagnostic framing offers potential contributors to social movements (or networks and NGOs) an interpretation of a problem and identifies those responsible. Such framing is used by climate activists, for example, when they emphasise that climate change is not natural, but man-made, is progressing rapidly and threatening livelihoods on our planet as a result of government inaction. The diagnosis sounds trivial, has been known among experts for a long time, and yet it is only in recent years that it has triggered a wide climate movement. Such diagnostic framing, which determines and changes the view of the problem, is also significant for human rights movements. Even in the case of obvious oppression and exploitation, people who revolt against it must be convinced that their situation is not God-given or nature-given, but man-made or at least changeable by people, that they are being wronged, and that, for example, repressive governments and their support groups are responsible for this. Ultimately, the human rights interpretation of experiences of injustice is a fundamental prerequisite for human rights politics in general.

The diagnostic framing is followed by a *prognostic* (or better: solution-oriented) framing. It contains suggestions on how to solve the problems mentioned. In the case of climate change, for example, there are various measures to reduce CO2 emissions, combined with demands to fundamentally change our traditional forms of economic activity, mobility and consumption. In the case of a repressive regime, perhaps the resignation of the autocrat, the holding of free and fair elections and/or, as unfortunately unsuccessfully in Chile, the drafting of a new constitution is seen as the solution. In this context, it is important that the proposed solutions are shown to be necessary, appropriate and purposeful and that there is a (at least slight) chance of implementing them. Framing usually only really unfolds its (full) mobilising potential when change appears to be possible subjectively. This leads us to motivational framing.

Motivational framing tries to use specific incentives (recognition, solidarity, moral appeals, etc.) to get people to stand up and fight together for a cause. This is where we see the "faces" of movements such as Greta Thunberg at "Fridays for Future", but also those of *campaigners*. While mobilising frames and slogans can emerge in the context of collective actions, as the many more or less original placards at demonstrations often show, they can also be part of targeted mobilisation strategies used by campaign and communication professionals in social movements and the organisations involved in them. In the social sciences, the importance of "*entrepeneurs*" who communicate and promote appropriate frames is emphasised in this context. In this sense, there are also—admittedly an unattractive term—"*moral entrepeneurs*" who, for example, seek to gain support for human rights framed causes. There is an abundance of such mobilising campaigns. One example (among countless) of a rather spontaneous, motivational framing is the 18-0 movement in Chile. Under the slogan "*Chile despertó*" (Chile has woken up), the increase

in metro fares on 18 October 2019 was a catalyst for mass demonstrations against the neoliberal economic and social order as well as Chile's constitution, which still dated from the time of the dictatorship. The demonstrations were complemented by countless creative actions and artistic self-manifestations of the protesters in public spaces.

Whether the frames resonate *(frame resonance)* depends on many factors. These include questions such as how consistent the corresponding interpretations are, how credibly they are presented and by whom, to what extent they are culturally adapted, to what extent they correspond to the reality of life and the values of the people, and how significant the issue is for them (Snow and Benford 1992; Noakes and Johnston 2005, p. 11). For example, the demonstrators in the GDR in 1989 shouted "*We* are the people", not only using a powerful slogan behind which a broad protest movement could rally, but at the same time offering an interpretative counterproposal to a regime that called itself a people's government but was clearly not one (any longer) for large parts of the population. The fact that three decades later antiliberal protest movements misused the slogan to pose as the "true representatives of the people" in an entirely anti-pluralistic manner is one of the unpleasant after-effects of recent German history.

One of the strategies to increase the impact of social movements is *frame bridging,* which connects previously separate but connectable interpretive frames and problems, such as climate change and human rights. With the appointment of a *Special Rapporteur on the promotion and protection of human rights in the context of climate change* by the UN Human Rights Council in 2021,[46] this kind of thematic connection has now acquired an institutional face in the UN human rights system. Sometimes such bridge-building is necessary even in the case of obviously interrelated issues, for example when it is emphasised that 'Trade union rights are human rights!', 'women's rights are human rights!', 'disability rights are human rights!', children's rights are human rights!', 'LGBTIQ+ rights are human rights'. It was also possible—thanks to the growing importance of economic, social and cultural human rights from the end of the 1990s onwards—to bring the previously separate "worlds" of development cooperation and human rights more closely together.[47]

Another strategy concerns *frame amplification*, for example by means of catchy symbolic actions. Thomas Kern (2008, p. 148) cites the example of how, during the democracy movement in the 1970s and 1980s in South Korea, student groups revived traditional forms of village culture and narrative art in order to make fun of the regime and denounce social grievances. Symbolism also played a major role in the above-mentioned example of the Chilean protest movement 18-0. To give just one example, the well-known song "*El baile de los que sobran*" by the group *Los Prisioneros,* which had been written in 1986 in the midst of the Pinochet

[46] HRC Resolution A/HRC/RES/48/14.

[47] For Germany see Krennerich (2008), GIZ (2020), Kaltenborn et al. (2020), Polak et al. (2021a, 2021b), BMZ (2023).

dictatorship, was sung again, and young protesters wore T-shirts of the music band with the inscription "*Nosotros somos rockeros sudamericanos*" during the protests of 2019.

Patterns of interpretation can also be extended (*frame extension*), for example by highlighting previously underexposed aspects in order to address new target groups. For example, it makes a difference whether "only" the inhumane and exploitative production conditions in the textile and clothing industry in faraway countries of the "Global South" are denounced, or whether, in addition, the co-responsibility of the purchasing practices of large fashion companies in the "Global North" and our own consumer behaviour for the terrible conditions there are also addressed. It may also require a *frame transformation*, i.e. the development of a new perspective that contradicts traditional beliefs. This includes, for example, the view that domestic violence is not a private matter in which the state should not interfere. Even in the discourse on human rights, this view—which was painstakingly fought for by feminist movements—first had to establish itself (cf. Brysk 2017).

However, framing by social movements, especially in terms of human rights, is not usually uncontroversial politically or socially. Rather, corresponding re-interpretations usually have to assert themselves against official framings of governments and/or the *counterframing* of counter-movements, which for their part are equipped with power, resources and organisational strength. In order to assert themselves here, power imbalances must therefore be given consideration and addressed at the same time (see Ryan and Gamson 2015/2006). This also applies to access to the media, which has a decisive influence on the view of socio-political problems and their solutions, albeit without the media consumers always being aware of this. An explicitly motivational framing is not generally attributed to the media (Noakes and Johnston 2005, p. 6), however, there is of course also propaganda and counterpropaganda motivating action in traditional and even more so in new, social media, which needs to be examined specifically. In any case, as Dieter Rucht (1994) called for many years ago, it is worthwhile increasingly including the public reached by mass media in the study of social movements. In his view, framing approaches provide connection possibilities in the same way as *political opportunity structures* approaches and political process approaches, which Rucht subsumes under interaction theories.

2.4.4 Political Opportunities and Processes

Political opportunity structures approaches and the political process approaches based on them[48] bring to the fore the question of the extent to which socio-structural change results in new opportunities for political participation for hitherto politically

[48] Introductory: Johnston (2011); see also: Tarrow (1989), McAdam (1999), Tilly (2006), McAdam and Tarrow (2019).

Table 2.2 Threats relevant to human rights

Human rights related threats and protest movements (examples)	
Threats (dimensions)	Examples of protest movements against:
Political	State arbitrariness and oppression, repressive security laws, restriction of political freedoms (freedom of assembly, association, expression, etc.), abuse of states of emergency, electoral fraud, coups d'état, rampant corruption, etc.
Socio-cultural	Oppression/exclusion/discrimination/defamation of social minorities (status, rights, education, languages, religion, gender, etc.);
Socio-economic	Negative social impact of privatisation of public goods or austerity measures, dismantling of the welfare state, exploitative working conditions, land grabbing, forced evictions, expropriations, etc.
Ecological	Climate injustice, environmental destruction and pollution, health-damaging resource extraction, destruction of biodiversity, industrial accidents, water pollution etc.

Source: own compilation

marginalised social groups and how the state enables and tolerates such participation. This question is considered to be crucial for the emergence of social protest movements and for the way in which they engage with the state. For example, it makes a big difference whether civil society actors strengthened by social change put forward their—possibly human rights policy—demands in a more open or in a more closed political context. The respective legal and political structures offer more or less favourable conditions for protest movements and significantly determine the conflict behaviour of the actors. In the chapter on regional and global human rights politics, we will later discuss the fact that even in the case of a repressive domestic context, political opportunities can arise at the transnational level to assert human rights.

However, the literature on political opportunity structures is not only about *opportunities* that arise and enable disadvantaged groups to address collectively perceived grievances through their participation and action in social movements. *Threats* that reinforce grievances or create them in the first place can also be a motivation for action. There is a difference between the two: *opportunities* offer people who join social movements the chance to bring about improvements, while *threats* mobilise people to avert further deterioration (Almeida 2019, p. 44). Tilly (1978, pp. 134–135) even assumed that "a given amount of threat tends to generate more collective action than the 'same' amount of opportunity". Snow used the so-called *Prospect Theory* (which we will briefly discuss later in the analysis of foreign policy) to explain why groups that fear losses are more motivated to engage collectively than those that hope for improvements (Snow et al. 1998).

Following on from such considerations, examples can be found in today's human rights context that represent threats. The following diagram lists some of these. It should be noted that any threats always have a subjective dimension. It is therefore always a matter of threat *perception*, which can also be additionally strengthened or

weakened by the respective actors. The framing processes already mentioned play a significant role in this (Table 2.2).

2.4.5 *Protests and Protest Repertoire*

An early finding of the studies on political opportunity structures was that very open and less repressive political systems tend to have low levels of protest, as in this case social groups would tend to raise their concerns within the framework of institutionalised politics. However, the frequency of protests is also low in highly repressive, closed political systems, since in this case mobilisation is associated with high costs. Between these two poles, i.e. with a mix of open and closed opportunity structures, the frequency of protest is highest from this perspective[49]—a thesis that is plausible, but which did not stand up to empirical testing without reservation even then, and would also have to be tested empirically today.

However, there is no doubt that a large number of protests are taking place worldwide, which, according to a recent *Protest Event Analysis* (PEA),[50] increased between 2006 and 2020.[51] The almost 3000 protests recorded in the study are classified thematically, depending on whether they are directed (a) against a failure of political representation or the political system (lack of "real" democracy, corruption, etc.), (b) against economic injustice and austerity policies, or c) for civil and minority rights, or (d) for global justice and a better international system. In substance, many of these protests have a connection to human rights.

The *contentious/protest repertoire* that is used worldwide is diverse. It encompasses a broad spectrum of institutional and extra-institutional, conventional and unconventional, legal and illegal forms of political action. Sometimes it also involves violent actions. A pioneering study by Gene Sharp in 1973 already identified 198 forms of *nonviolent action*. Ortiz et al. (2022) largely adopted the list, modified it slightly in some places and added further actions, so that they arrived at a total of 250 non-violent forms of protest. The following is a condensed selection of non-violent protest possibilities (Table 2.3).

However, the diversity of protest forms should not obscure the fact that the protest repertoire in the respective countries reveals consistencies.

> Repertoires vary from place to place, time to time, and pair to pair. But on the whole, when people make collective claims, they innovate within limits set by the repertoire already established for their place, time, and pair (Tilly 2006, p. 35).

[49] In summary, Johnston (2011), pp. 35–36.

[50] See Ortiz et al. (2022). A PEA is a research method in which a large number of protests are systematically recorded and interpreted through content analyses of newspaper reports.

[51] See Ortiz et al. (2022). In contrast, the Carnegie Endowment for International Peace's *Global Protest Tracker*, which is based on the analysis of English-language media, only records "*significant antigovernment protests*"; https://carnegieendowment.org/publications/interactive/protest-tracker (accessed: 15 Aug 2023).

Table 2.3 Protest repertoire

Protest repertoire: non-violent protests (selection)	
Publications and analogue media	Statements, speeches, letters of protest, declarations of solidarity, petitions, leaflets, pamphlets, radio (contributions), television appearances, publication of censored material, whistleblowing, etc.
Online activism	Websites, blogs, online petitions, email and social media campaigns, clicktivism, hashtags, live streaming of incidents, crowdfunding, mass emails to politicians, online ridicule, website hacking, trolling, data leaks, whistleblowing, etc.
Public actions and interventions	Demonstrations, processions, vigils, chains of lights, human chains, protest caravans, (covert) protest walks, protest camps, teach-ins, protest delegations, political tribunals, occupation of buildings, squares, land etc., sit-ins, walk-ins, road blockades, disruptions by chaining or taping, induced congestion of public infrastructure and administration, etc.
Symbolic actions	Use of protest symbols, displaying or wearing flags and symbolic colours, actions in symbolic places, minutes of silence, silent protests, noise (e.g. pot banging, drumming, whistling, honking), breaking taboos (e.g. showing or cutting hair, undressing, nudity, etc.), protest actions during national anthems, deliberate provocation of arrests, hunger strikes, etc.
Art actions	Criticism, protests, solidarity, mobilization, etc. in the form of protest songs, performances of plays, theatre shows, happenings, exhibitions, graffiti, photos, photomontages, videos, literature, readings, ridicule and satire, negative awards, etc.
Religious actions	Protest-oriented prayers, masses, religious processions, fasting actions, pilgrimages, pray-ins, etc.
Honouring the dead	Politicised mourning, funeral marches, demonstrative funerals, memorial services, homage at burial places etc.
Social non-cooperation	Avoidance of contact with certain people, non-observence of rules of conduct (refusal to shake hands, etc.), sex strikes, student strikes, boycotting e.g. cultural or sporting activities, withdrawal from social offices and institutions, social disobedience, etc.
Economic non-cooperation	Strikes, work stoppages, walkouts, dumping of, for example, agricultural products in public places, traders' boycotts, consumer boycotts, postponement or suspension of payment of rent, fees, etc.
Political non-cooperation	Boycott of elections, boycott of political bodies, withdrawal from political office, refusal to cooperate with public bodies, non-recognition of public office holders, rules and institutions, non-fulfilment of duties (registration, censuses, military and civilian service, taxes), etc.

Source: own representation, partly based on the more comprehensive lists by Ortiz et al. (2022) and Sharp (1973)

In his work, Charles Tilly in particular repeatedly pointed out that the repertoire of *contentious politics* used in each case was strongly shaped by historical experience and structural conditions. Against this background, in "*Regimes and Repertoires*" (2006) he therefore also posed the question how changes in the protest repertoire can nevertheless occur. He distinguished between situations in which previous forms of

protest had no effect, a weak effect, a strong effect, or a rigid effect on later protest behaviour (Tilly 2006, pp. 39–40).

More generally, Tilly assumes that "strong" repertoires exist in routinely operating, relatively stable regimes, in which familiar forms of behaviour persist but are innovated and developed further flexibly (for example, for strategic reasons). In the long term, the (mainly incremental) innovations could then lead to a change in the *contentious repertoires* (Tilly 2006, p. 43). Following on from *political opportunity structures* approaches, he conversely assumes that changes in political opportunity structures lead to a change in *contention*: "Rapidly shifting threats and opportunities, I suggest, generally move powerholders towards rigid repertoires and challengers towards more flexible repertoires" (Tilly 2006, p. 44).

It should also be noted that not all forms of civil society human rights engagement that have proven successful in vibrant democracies are suited to or possible for autocracies. Not surprisingly, institutionalised and informal opportunities for human rights organisations to advise or lobby political decision-makers are generally limited or non-existent in autocracies. However, also the extra-institutional possibilities of bringing human rights demands to the attention of politicians by means of public criticism and protests reach their limits insofar as the media and public opinion are more tightly controlled and autocratic governments tend to be less open and responsive to human rights demands. There may be attempts to co-opt human rights activists; for example, critics may be specifically accepted into the government or have other public offices conferred on them. However, in most cases—also with the help of support groups in society—attempts are made to delegitimise, illegalise and repress human rights criticism and protests to a greater or lesser extent. This is often accompanied by considerable personal disadvantages and dangers for their initiators and participants. Many defamed, criminalised and persecuted human rights activists have had to (and still have to) experience this painfully.

Sometimes, however, *windows of opportunity* can also open in autocratic regimes, so that social movements emerge or grow stronger despite adverse contextual conditions. Events that strengthen people's conviction that something finally needs to be changed and that something can be changed are of great importance. This can, for example, be a local protest that—as in the case of the "Arab Spring"—spreads to the whole country or even to neighbouring countries in the sense of a "contagion effect" and is joined by more and more people. But it can also be a current event—such as blatant electoral fraud—that triggers outrage. The "Rose Revolution" in Georgia in 2003, the "Orange Revolution" in Ukraine in 2004 and the "Tulip Revolution" in Kyrgyzstan in 2005 bear witness to this. In the GDR, too, the blatant electoral fraud during the 1989 local elections gave impetus to the protest movement.

As already mentioned, the (not always rationally justified)[52] belief that something can be changed through collective action is essential—a belief that can be further

[52] "Some of the most popular movements are based more on hope than on rational and clear-headed perception of political realities", asserts Johnston (2011), p. 45.

strengthened through participation in large protest movements. But even in democracies, the possibilities of influence are often overestimated if it is not possible to permanently maintain the "pressure of the street" or to bring the concerns of social movements to bear within the framework of institutionalised politics. More sobering—even bearing in mind some protest successes—are the experiences of many mass protests in autocracies. The belief in change and the supposed security of the masses can be deceptive. Recent examples in Venezuela (2018/19), Nicaragua (2018/19), Hong Kong (2019/2020), Belarus (2020), Myanmar (2021) and Iran (2022/2023) illustrate how even impressive mass protests can remain unsuccessful, fade out and be silenced by repression. At the very least, windows of opportunity usually close after a certain time, and often through repression.

2.4.6 Repression and Repertoire of Repression

The available but also changing protest and repression repertoire of the conflicting actors in the respective fields of action and the arenas in which they are played out also determines their tactics and strategies. From a human rights perspective, the central question is whether and under what conditions violence is used and what its consequences are.

Repressive violence can have different effects on the development of social protest and human rights movements. On the one hand, the experience of state repression can lead to mass protests even from local protests (for example, because of the increase in the price of bread, bus fares, petrol, etc.), if people are outraged by excesses of violence in confrontation with the state—and at the same time the regime is not able to nip the protest movement in the bud or suppress it. State arbitrariness and repression can thus form the clip which joins together the protests of very different population groups with very different interests. This was demonstrated, to name just one of many examples, by the outbreak of the protest movements of the "Arab Spring" in Tunisia (2010).

On the other hand, we also know from the discussion about a *shrinking (or closed) political space for civil society*[53] how difficult it can be, especially under politically repressive conditions, for civil society groups to organise and act at all. A minimum amount of socio-political freedom is thus considered a prerequisite for civil society to be effective, especially in the area of human rights. This is where the political opportunity structures make a big difference. In many states around the world, civil society freedoms are not "open", but to a greater or lesser extent "narroved", "obstructed", "repressed" or even "closed".[54] An extreme example is North Korea, where repression, coupled with omnipresent propaganda and indoctrination, leaves no room at all for a free civil society.

[53] For example, Borgh and Terwindt (2012), Krennerich (2015), Unmüßig (2016), Kocyb and Lewicki (2020).

[54] To use the categories of the CIVICUS Monitor here.

Repressive power is therefore also a limiting factor for collective action. Even when peaceful protest movements emerge under repressive conditions, as was the case for a time in Belarus, state power is often able to suppress them quickly (as was the case there after the 2010 elections) or even after weeks of impressive mass protests (as was the case after the 2020 elections), in this case through large-scale arrests and intimidation. In Russia, too, state power is now extremely effective in suppressing criticism and protests. Likewise, the leadership of the People's Republic of China used violence to quell protests in 1989 and has been determined to break resistance during subsequent protest movements through repressive security laws, systematic arrests and prosecutions.

The mobilisation power of protest movements can dwindle as a result of repression if people see themselves permanently exposed to risk. This is especially true if the "heads" and more or less wide circles of supporters are persecuted. In order to reduce the pressure of persecution, forms of protest can sometimes be creatively adapted to repressive conditions (see Johnston 2018). However, in view of the dangers, a (large) number of the protesters may refrain from political action and withdraw temporarily or permanently into their own private spaces. Others may leave the country and go abroad, and there are some who may even become radicalised.

The radicalisation of originally peaceful protest movements has traditionally been the subject of comparative research on political violence and revolution, which will not be discussed here. Just this much: the emergence and, above all, the growth of violent protest movements has a lot to do with whether non-violent alternatives exist and have the potential to be successful, in addition to possible ideological reasons. For example, the discrediting of peaceful transformation alternatives and massive repression on the part of the regime can lead to protest movements becoming radicalised or more radical parts of the movement gaining tremendous popularity if peaceful change does not seem possible. The social-revolutionary unrest in Central America in the late 1970s and early 1980s is a good example of this (Krumwiede 1987; Krennerich 1993).

From the perspective of political rulers, the use of repression is therefore a double-edged sword. However, repression is not the only instrument of power used by autocrats. Here, the resurgence of political science research on autocracies in the 2000s has contributed a great deal to the understanding of repression as an instrument of power and examined its significance in the interplay with autocratic legitimation and co-optation practices, especially from the perspective of the resilience of autocracies (e.g. Gerschewski 2013). Once again, it became clear that the repertoire of actions of autocrats is by no means limited to repression and that the intensity and forms of repression can also differ considerably. Autocratic regimes vary among themselves in terms of how much and what kind of criticism and protests they allow; how much they control not only political institutions and the judiciary, but also the media and the public sphere; how much they determine people's everyday lives. Even within the same country, the level of repression can vary considerably, both over time and in relation to specific conflicts. While in some respects there may be socio-political room for criticism and protest, on the other

Table 2.4 Repression repertoire

Repression repertoire (selection)	
Means of repression	Examples
Defamation and criminalisation	Public insults and defamation, slander, fake news (e.g. at public appearances of government members, in social media), verbal criminalization
Economic and social sanctions	Threat of or actual financial penalties, loss of jobs, restricted access to education (including that of children), discrimination in access to state benefits, confiscation of property of individuals or organisations.
Bureaucratic restrictions	Rigid, arbitrary regulations on NGO registration and demonstration registration, media control and selective issuing of broadcasting licences, internet control, restrictive visa issuing, frequent financial and safety audits, etc.
Legal restrictions	Legal restrictions on freedom of association, assembly and expression, restrictive NGO, media and internet laws, arbitrarily applied anti-terrorism laws, continuing state of emergency
Deprivation of liberty and prosecution	House arrest, detention (without charge or trial), restrictive or vague criminal laws (from insult to terrorism), convictions without guarantees under the rule of law, disproportionate prison sentences
Physical persecution (extra-legal)	Threats of violence and murder, physical and sexual violence, forced displacement, disappearances, torture and ill-treatment, selective murder, mass murder, genocide

Source: own compilation

hand there may be outright taboo subjects to which political leaders are almost allergic.

How diverse repression can be is evident not least in the context of the discussion already mentioned about the shrinking or already limited scope for political action for civil society, especially in the persecution of *human rights defenders*.[55] It ranges from the defamation and slander of those affected as "traitors to the fatherland", "foreign henchmen", "troublemakers" or "terrorists" to bureaucratic harassment, fictitious accusations, restrictive (used) laws and the criminal prosecution of those affected in disregard of the principles of the rule of law to sheer repression, by means of which the physical and psychological integrity as well as the lives of those affected are violated. The following diagram outlines the repertoire of repression to which human rights defenders in particular are also exposed (Table 2.4).

Traditionally, the focus has been on physical persecution and arbitrary detention and prosecution. As important as this is, however, the focus should also be on bureaucratic and legal restrictions that seek to prevent criticism of the regime and human rights in a more subtle way. This is the purpose of, for example:

[55] As for the concept of human rights defenders, see United Nations (2004).

- rigid registration requirements for NGOs, which serve as a lever for the government to deny registration to unwelcome associations or to "discipline" them and deprive them completely or temporarily of the legal basis for their activities;
- the ban on political activities of non-registered NGOs, which can be applied at any time against regime-critical organisations that are not registered, as they see fit;
- disclosure obligations and requirements regarding the funding of NGOs in order to prevent—with reference to national sovereignty—in particular support from abroad;
- fiscal constraints and selective financial audits that hinder the work of critical NGOs or result in criminal penalties for individuals;
- the denial of permission for unwelcome demonstrations and events by the authorities as well as restrictions due to restrictive laws on assembly;
- the denial of licences to independent media as well as media laws that allow legal interventions against critical media workers; internet control, censorhip and shutdowns;
- counter-terrorism laws and measures targeted at dissident activists, who are then accused of being terrorists or supporting them;
- criminal law provisions—from insult to betrayal of secrets—used to initiate criminal proceedings against persons and organisations critical of the regime.

The UN Special Rapporteurs on the situation of human rights defenders have highlighted the widespread nature of the problem in their reports on freedom of association and assembly,[56] and human rights organisations around the world have also documented restrictions. It is also worrying when governments, together with powerful social and religious groups and media loyal to the regime, deliberately stir up public opinion against regime critics and human rights defenders.

In summary, in countries with high levels of repression, human rights violations can be an important motivation for people to revolt, but they can also silence civil society protests, especially when the full repertoire of repression is applied.

2.4.7 The Power of Emotions

After the mostly early mass psychology in the tradition of Gustave Le Bon ("*Psychologie des foules*") had seen mass protests as irrational, affect-driven behaviour, emotions initially played a subordinate role in protest and movement research from the 1960s onwards due to a "radical shift towards rational explanatory approaches" (Bogerts 2015, p. 229). Instead, social movements were seen primarily as rational and strategically acting collective actors and were viewed from an organisational and structural perspective, especially evident in the context of

[56] See www.ohchr.org/en/special-procedures/sr-human-rights-defenders (accessed: 10 Nov 2023).

(early) resource mobilisation and political opportunity structures approaches. Relative deprivation approaches, however, referred to dissatisfaction and anger as motivations for action.

Lateron, when framing processes and collective identities moved into the academic focus within the framework of the "*cultural turn*" in the social sciences, also emotions became more important. It is precisely the mobilising framing that addresses not only cognitive but also emotional aspects of mobilising social movements, and the concept of collective identity cannot function without emotional attachment. However, this did not go far enough for researchers who were particularly concerned with emotions and social movements. They criticised the fact that even after the "*cultural turn*", the focus was primarily on cognitive aspects and, in the sense of an "*emotional turn*", considered stable and transient feelings to be a central element in the mobilisation of protest movements (Jasper 1997; Jasper 2011; Goodwin et al. 2001). Above all, moral feelings—in the words of William Gamson (1995) *hot cognitions*—are thus an important motivation to join protests. With this in mind, Jasper and Poletta (2019, p. 70) state: "Moral emotions are one category of background emotions central to the emergence of protest". Empirical studies now focus specifically on emotions during protests.[57]

It is universally recognised that emotions play an important role in mobilising people and that moral indignation is particularly effective. In the field of human rights, this can be evoked, for example, by personal experiences of state oppression, by shocking events (moral shocks) and the disclosure of "outrageous" injustices, as well as by denouncing serious human rights violations and naming and shaming those responsible for them. This is often reinforced by powerful linguistic and visual[58] representations. Human rights movements also try to appeal to strong emotions, such as a sense of injustice, through appropriate narratives and images in order to mobilise people for their cause. This can create powerful feelings of solidarity that guide actions.

The process of participation in social movements is also usually associated with emotions,[59] especially since it can contribute to the emergence or strengthening of common feelings and identities in joint actions. In the field of human rights, for example, this is where appeals to the moral self-expectations and conscience of those involved come in. Additionally, through the formation of collective identities and a "sense of togetherness", a possible need for belonging to like-minded people and for social demarcation from those who think differently is addressed. The advantageous comparison between "us" and "the others" can—from a socio-psychological point of view—lead to a revaluation of collective and individual identities. Pride can also replace any shame, as the gay pride movement has succeeded in doing (e.g. Britt and Heise 2000; Bruce 2016). At the same time, collective action can strengthen feelings

[57] For example, Pearlman (2013) in relation to the "Arab Spring" or Mok (2022), who studied mobilisation through emotion in Hong Kong's anti-extradition movement.

[58] See Bogerts (2015), pp. 237 ff.

[59] See also Van Ness and Summers-Effler (2019) and the references cited there.

of self-efficacy, so that individuals overcome feelings of political powerlessness in the context of collective protests and feel like subjects of history. There may also be a shared "pleasure of protest" (Jasper 1997).

However, it becomes problematic when the focus is no longer on the cause but on the event character or, conversely, when a "protest fatigue" gradually spreads. Nor are social movements homogeneous. They not only unite different collective (partial) identities of the individuals, groups and organisations that support them, which strengthen and complement each other, or can also find themselves in a tense relationship and compete with each other. As in all large groups, there is also disagreement, envy and rivalry, which can significantly diminish feelings of group solidarity and "emotional energy". Finally, leaders can also motivate in different ways: "(L)eaders who are not charismatic, hopeful, or effective in making blame stick are likely to undermine rather than fire-up a movement" (Van Ness and Summers-Effler 2019, p. 417). It is therefore worthwhile examining the internal structures and processes of human rights movements and the organisations and networks involved in them more closely at the micro level, for example through participant observation and interviews, and to take a closer look at the emergence and dynamics of emotions.

At the same time, account must be taken of the fact that individual and collective emotions can also be directed against human rights movements. The anti-gender movement, for example, is highly emotionally charged. It is not uncommon for the state to stir up emotions in order to delegitimise criticism of human rights. Then, with the corresponding emotional pathos, human rights defenders, for example, are discredited as traitors to the fatherland. Research on authoritarianism also shows how *sentementality*—understood as an interplay of cognitive processes of forming opinions and judgments with affective and emotional dynamics (Bens and Zenker 2019)—can be used to stabilise power (Demmelhuber and Thies 2023). The rich set of emotional repertoires can, for example, be linked to national foundation myths, collective traumas, heroisations and retrotopias and always oscillates between the present and the past. As such, emotional repertoires are always tied to the respective cultural context in which people are socialised.

2.4.8 Take Cultural Contexts Into Account!

Cultural contexts of social movements can be viewed in different ways. Based on a broad concept of culture as "shared mental worlds and their embodiments" (Jasper 1997, p. 12), cultural contexts can be understood—not in an essentialist sense, mind you—as widely shared, changeable and socially constructed values, attitudes and practices in (more or less heterogeneous) societies and social groups. If these change in the course of social change and emancipation efforts, this leads to new collective actors and conflict (lines) within (and possibly also between) societies. For example, secularisation and women's emancipation went hand in hand with demands for legal and de facto equal participation and involvement.

At the same time, cultural contexts also affect how collective (partial) identities are formed within social organisations and movements and how people are mobilised, organise themselves, network and act. The narratives and framing that are used (and ideally find resonance) to mobilise people are as much shaped by established but changeable cultural constructions as the emotions that are addressed against the backdrop of individual and collective experiences and attitudes during protests.

The resources available to civil society actors (and their opponents) can also differ considerably from one culture to another, and the protesters' repertoire of actions is subject to cultural influences. Even the structuralist Charles Tilly (2006, p. 43) emphasises that contentious repertoires are "simultaneously deeply cultural and deeply structural; they certainly rest on shared understandings and their representations in symbols and practices (that is, on culture), but they also respond to the organisation of their social settings". Culturally shaped, subjective assessments come into play, for example, of which forms of action are justified, appropriate and promising. This applies not only to the protest repertoire, but to a certain extent even to the repression repertoire of governments.

However, this also means that some human rights protests in one specific country may not be understood in other political and cultural contexts.[60] The repertoire of actions that protesters in their own country associate with human rights protests by default or innovatively may not be appropriate everywhere. This applies not only to the fact that in many countries protest strategies have to be creatively adapted to authoritarian-repressive restrictions and dangers, but also to the question of which forms of protest are established and practised in cultural contexts elsewhere and to what extent they change. This ranges from the question how clearly criticism is formulated by whom towards whom and which symbols and narratives are used to concrete possibilities for action. What may be recognised as an appropriate form of criticism and protest in certain cultural contexts and environments may be tantamount to a (deliberate or unintentional) breach of taboos in others.

To that effect, there are also "discursive opportunity structures" (Koopmans and Olzak 2004), which are determined by restrictions, but also by possibilities. They are not only dependent on the extent to which the state restricts or allows freedom of expression. Within society, too, there are linguistic borders when it comes to what can be said, which can, of course, be expanded—both in an emancipatory and in a reactionary sense. This is shown not least by the "*Kulturkampf*" that has flared up in some places over the recognition of gender identities, or also by the dispute over a "cancel culture" that is being conducted in battle mode on both sides. Even moderate demands for a gender-sensitive and discrimination-free language show how difficult it is for people to say goodbye to traditional linguistic habits, even if these are obviously tainted by discrimination. Thus, progressive views are always controversial, have to assert themselves against traditional views and at the same time stand up to reactionary ones.

[60] The plural is deliberately chosen here because societies are culturally heterogeneous.

2.4.9 *Do Not Forget the Socio-Economic Context!*

Originally, social movements were understood primarily as a reaction to economic and social change. This begins, on the one hand, with early communist, socialist and anarchist reflections on the conditions for the emergence and prospects of success of the labour movement, which placed the focus on the class struggle. On the other hand, there are studies that, in the tradition of Gustave Le Bon, also saw the dynamics and actions of mass movements as a consequence of profound economic and social upheavals but tried to explain them in terms of mass psychology, initially primarily as irrational, emotionally charged behaviour. Eventually, approaches were added that understood social movements as rational collective action in times of rapid social change, in which new social actors and alliances emerged, new forms of interaction and norms were negotiated, and modernisation crises had to be overcome.

The aforementioned deprivation approaches also often saw processes of social change as causal for social movements and emphasised the emergence and consequences of the associated subjective dissatisfaction, which would then turn into protests. Political opportunity structures approaches and political process analyses, on the other hand, assumed that socio-structural change would create opportunities and threats that would have a mobilising effect. And yet, with the emergence of "new", post-materialist social movements in countries of the "Global North", the socio-economic determinants of social protest movements were temporarily neglected.

Especially outside of affluent western societies, however, socio-economic lines of conflict retained their formative influence. From the end of the 20th century, protests against structural adjustment programmes and neoliberal policies in many countries around the world also gained in political significance.[61] Many protests[62] and numerous critical publications are still directed against the consequences of austerity policies and neoliberalism—and later also of economic and financial crises.[63] They particularly emphasised social grievances and the societal consequences of neoliberal policies, sometimes combined with a disdain for civil-political human rights.[64] Not infrequently, criticism of neoliberalism was even linked to criticism of human rights themselves, whereby human rights were often reduced to their liberal defensive character or even to a—certainly unacceptable—libertarian

[61] See, for example, the above-mentioned protest database compiled by Ortiz et al. (2022).

[62] The Occupy Movement and the Indignados movement in Spain are just two examples.

[63] Two book titles by della Porta are significant: *Social movements in times of austerity: Bringing capitalism back into protest analysis* (2015) and *Global Diffusion of Protest. Riding the Protest Wave in the Neoliberal Crisis* (2017). See also the contribution by Klandermans and Van Stekelenburg (2016).

[64] Noami Klein (2008), for example, claimed that international human rights organisations such as Amnesty International, with their one-sided advocacy for civil-political rights after the 1973 coup in Chile, had obscured the causal link between the neoliberalism then introduced and political violence.

understanding. According to this interpretation, human rights were or are supposedly central to a neoliberal project (Whyte 2019) or at least a powerless companion of neoliberalism (Moyn 2018).

What has not been sufficiently appreciated is that economic, social and cultural human rights have gained considerable importance since the end of the 20th century and that the demands that go along with them are often clearly directed against neoliberal economic policies and social models. Whether it is exploitative resource extraction and free trade agreements, water privatisation and land speculation or the economisation of education and health care, critical human rights voices can be heard everywhere, both at the UN level and in the countries of the "Global South". As the persecution of human rights defenders who advocate for ESC rights shows *e contrario*, the implementation of these rights also depends on civil and political human rights. In a sophisticated, critical-emancipatory sense, human rights can thus be understood as a comprehensive legal and socio-political project, precisely in order to defend against social ills and to demand more social justice (Krennerich 2021).

2.4.10 The Ecological Context

Environmental degradation, loss of biodiversity and climate crisis form the context in which social change is taking place with increasing momentum. More and more collective actors are coming onto the scene who quite rightly see the very basis of life on the planet as being existentially threatened. Throughout the world, environmental and climate movements are calling for a fundamental, radical change in the way we use natural resources as well as in the way we do business, generate energy, and change our living, consumption and mobility habits. The already predicted ecological and climatic changes will fundamentally alter future living conditions, considerably intensify existing intra-societal as well as inter-state conflicts and generate many more.

This also has far-reaching consequences for the human rights of existing and future generations and for civil society human rights engagement. What is interesting to see is the extent to which and under what conditions human rights and climate activists act together. Under what conditions do transnational networks, coalitions and movements form in this field? So far, the heterogeneous environmental and climate movement—when it is not about human rights violations against activists—has only marginally referred to human rights. This may be due to the anthropocentric orientation and the individual rights structure of human rights (the communitarian dimensions of which are often overlooked). In addition, human rights have blind spots with regard to the rights of future generations.

On the other hand, human rights also formulate important individual rights in respect of climate protection and thus complement environmental law, which primarily concerns states. To what extent are strategic litigation or even the language of human rights used as catalysts to advocate for climate justice? And aren't civil and political human rights the very prerequisite for being able to put forward and enforce climate policy demands?

The topic of "human rights in the climate crisis" could be used to illustrate how inseparable civil, political, economic, social, cultural and—going further—ecological human rights are. Significantly, climate activists and defenders of economic, social and cultural human rights are also at risk and affected by a shrinking or closed political space for civil society. This affects not least indigenous peoples, who have special rights (and a unique relationship to nature). They are particularly affected by ecological change, and possibly also by climate protection measures.

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Chapter 3
State Domestic Human Rights Politics: The Implementation of Human Rights at Home

3.1 State Obligations

States bear the main responsibility for the implementation of human rights. In the form of international human rights treaties, they undertake to implement the human rights of the people under their sovereign jurisdiction. Even at first glance, the "Janus face" of the state becomes clear: it is both a (potential) violator and a (necessary) guarantor of human rights. It follows that the state must not violate human rights itself and must at the same time protect and promote them. According to recent developments in the dogmatics of international law, human rights therefore constitute state obligations to respect, to protect and to fulfil.[1]

Obligations to respect oblige states not to directly or indirectly prevent individuals from exercising their human rights—and, where they do, to refrain from the corresponding violations and to remedy their consequences. These are thus primarily negative obligations to refrain, which any state can fulfil, regardless of its resources. Usually, such obligations are formulated primarily in relation to civil and political rights in the sense of "classical" rights of freedom. However, it must be emphasised that economic, social and cultural rights are also rights of freedom that can be violated by state action (Krennerich 2006, 2013).

Obligations to protect consist of the state's obligation to protect individuals against actual or threatened interference with their human rights by third parties (i.e. non-state, private actors, such as companies). Obligations to protect arise in particular when state agencies (a) are aware of an actual or imminent threat (or should have been aware of it if they had exercised due diligence), (b) despite being aware of it, they do not take appropriate protective measures within the scope of their available resources, and (c) at the same time, countermeasures in conformity with human rights would be possible (Kälin and Künzli 2009, pp. 110–111). When it

[1] The obligation triad was largely based on the work of Henry Sue and, building on this, Asbjørn Eide in the UN framework (e.g. E/CN.4/Sub.2/1984/22, 3 July 1984).

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comes to the question of which measures to take, however, states have a wide margin of appreciation/discretion.

Obligations to fulfil oblige states to enable the widest possible exercise of human rights through active state action. This means creating the legal, institutional, procedural and also material conditions for the implementation of human rights, for example through corresponding laws, institutions, procedures or also state benefits in the form of money, goods or services. Here in particular, states have extensive freedom of action. Thus, human rights are in no way intended to deprive the—ideally democratically legitimised—political institutions of responsibility for their, for example, economic and social policies, provided that targeted and human rights-compliant measures are taken.

In the case of ESC rights, the ICESCR even explicitly allows States Parties to implement their covenant obligations "progressively". This is appropriate: in view of scarce resources and social grievances that are difficult to overcome worldwide, many aspects of ESC rights obviously cannot be implemented overnight, especially those legal components whose implementation requires extensive state services and long-term action. This is particularly true of the obligations to fulfil. On the other hand, obligations to respect and protect can be realised more quickly, especially since the former require hardly any resources, are primarily obligations to refrain from state interferences, and such obligations are not subject to the reservation of progressive realisation in the first place. But the obligations to fulfil must not be put on the back burner either. The State Party must immediately initiate concrete, targeted measures to progressively implement the rights guaranteed in the Covenant. Resource problems cannot serve as an excuse to remain inactive.

The obligation triad refers in principle to all human rights. On the one hand, it illustrates that ESC rights require *not only* costly political actions. They are always also rights of defence and protection and as such also establish state duties torespect and protect—something that was neglected for a long time in the conventional debate on ESC rights and is often misunderstood even today.[2] On the other hand, the obligation triad challenges the traditional view that the implementation of civil and political rights does not require state services and resources.[3] Of course, the implementation of these rights does not come without cost, especially since the establishment and maintenance of a functioning state under the rule of law incurs considerable costs. Or to quote Katarina Tomaŝevski (2003, p. 112): "No human right is cost-free" (Table 3.1).

Admittedly, many human rights problems can no longer be tackled by nation-states alone, as powerful non-state actors, such as transnationally active

[2] Such an outdated understanding is not only found in politics, but also, for example, in teaching materials on human rights or in data collections, especially in quantitative-comparative human rights research.

[3] As early as the 1990s, a large number of authors pointed out the dependence of civil and political rights on resources; for example, Craven (1995, p. 15) or Holmes and Sunstein (1999), whose book has the - especially for Americans - provocative title "*The Cost of Rights*: *Why Liberty Depends on Taxes*".

Table 3.1 Human rights obligations of the State

Human rights obligations of the State	
Obligation to respect *The State does not interfere in the exercise of human rights.* Examples:	
The State refrains, for instance, from extra-judicial killing, torture, arbitrary detention, unfair trials, press censorship, electoral intimidation, and disenfranchisement.	The State refrains, for instance, from unlawful forced evictions and house demolitions, the sale or pollution of water sources that are used by the local population, and discrimination in health and education.
Obligation to protect *The State prevents violations from third parties (non-state actors)* Examples:	
The State takes measures to prevent non-state actors from interfering in civil and political rights such as, for instance, the rights to life, privacy, freedom of expression, peaceful assembly and voting without intimidation in elections.	The State takes measures to prevent non-state actors, for example, from engaging in forced evictions, using forced labour practices, creating harmful working conditions, and discriminatory behaviour that limits access to health and education.
Obligation to fulfil *The State takes measures to ensure progressively the full realization of human rights.* Examples:	
The State invests in the necessary infrastructures (e.g. judiciaries, electoral authorities) and takes appropriate measure so that the rights holders are able to fully enjoy their civil and political rights (e.g. fair trial, free vote, etc.).	The State invests in the necessary infrastructures (schools, health services, housing, water supply etc.) and takes appropriate measures so that the rights holders are able to fully enjoy their economic, social and cultural rights.

Source: Own compilation

corporations, influence the human rights situation.[4] And yet, the implementation of human rights still depends to a large extent on the will and ability of states to fulfil their human rights obligations, as well as on the state-granted freedom of rights-holders to assert their rights. It is therefore worth taking a closer look at state human rights politics.

The respective national human rights systems differ considerably, even in liberal democracies. Differences concern the legal-institutional framework as well as the actors of human rights politics and their interactions.[5] Differences also concern the output: the measures taken to protect and promote human rights. The analysis of highly diverse national human rights systems needs to map these components and

[4] One of many O'Brien, who emphasises: "State laws and institutions do not have a monopoly of the rule systems and normative orderings that "regulate" behaviour in society, and which can impact the enjoyment of human rights" (O'Brien 2023, p. 152).

[5] This essentially corresponds to the three components of national human rights systems identified by Zipoli (2023, p. 125), following Lagoutte: "actors (domestic state actors, both government and independent, as well as non-state), interactions (more or less formalized processes that link all actors of the system together) and frameworks (treaties, soft law and policies, legislation and regulations)".

furthermore take into account the political context within which human rights politics is (or is not) conducted.

However, an important structural prerequisite must be noted in advance: The implementation of human rights requires a minimum level of *statehood*. In countries where the state is disintegrating or eroding, it is difficult, if not impossible, to protect human rights at the national level. The ability of state institutions to enact and enforce generally binding legal norms is non-existent or at least severely impaired under such conditions. However, a distinction must be made: Not every loss of state authority culminates in the collapse of the state and civil war. Or, to put it another way: only rarely do conditions prevail such as in Somalia, which experienced a complete collapse of the state in the 1990s. But even if the foundations of the state are not under threat, in many countries there are areas of limited statehood in which state institutions barely function and the law is insufficiently enforced. In such cases, the possibilities to implement human rights obligations are limited. The implementation of human rights is therefore not always a question of will, but also one of ability.

And something else: Endemic corruption undermines human rights, whether this concerns access to social human rights (education, health, food, water, etc.) or, for example, human rights-compliant treatment by the police, the administration or the courts. It affects the whole of society, but vulnerable groups are particularly affected. Where the corruption is widespread and it permeates the state organs, states cannot fulfil their human rights obligations and people cannot assert their rights on an equal footing, certainly not if the corruption has also taken hold of the judiciary. Corruption is not compatible with the idea of equality that underlies human rights. In this sense, endemic corruption and respect for human rights are virtually mutually exclusive (Bielefeldt 2022, p. 129).

3.2 Comprehensive Legal Recognition

States are obliged under international law to implement ratified human rights conventions on their territory. The first step is therefore to check which international and regional human rights treaties have been ratified by the respective states. For example, 55 states have ratified at least 15 of the 18 UN core conventions (including the additional protocols).[6] Furthermore, it is important to note reservations to human rights treaties, which states can invoke unilaterally in order to clarify the conditions under which the State Party wishes to be bound by the treaty.[7] In theory, declarations

[6] However, the 55 states also include some states with a very poor human rights profile, such as Azerbaijan, the Central African Republic or Venezuela. Evidently, not only "sincere ratifiers", but also "strategic ratifiers" can be identified (Simmons 2009, p. 58).

[7] According to the Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting,

of interpretation are to be distinguished from this, with which a State Party declares how it interprets a certain human rights norm without changing or excluding the norm. In practice, however, the transitions are fluid. Furthermore, it must be examined to what extent the monitoring procedures laid down in the treaties and their additional protocols are legally recognised by the respective states and have legal significance in practice there.

For the question as to the extent to which states fulfil their obligations under ratified international human rights treaties, it is subsequently legally relevant how these treaties are implemented in domestic law. In principle, states are free to "incorporate" international human rights treaties into national law and thus give them direct effect, or to transform their content into national law through legislation, for example by means of substantively identical laws or corresponding approval law (see Kälin and Künzli 2009, p. 186). The rank that international treaties occupy in the domestic norm hierarchy can also differ quite considerably. Human rights treaties can, as in some Latin American states, have constitutional status or even be regarded as part of constitutional law in the sense of a *bloque constitucional.* However, they can also only have the status of a statute, or they lie somewhere in between in the hierarchy of law, in that they take precedence over ordinary laws, for example, but do not have constitutional status.

It is also important whether and to what extent individuals (in their capacity as rights holders) can invoke the rights enshrined in human rights treaties domestically. This is not mandatory under international law if analogous constitutional guarantees or legal provisions can be invoked domestically (Kälin and Künzli 2009, p. 187). However, it is desirable under human rights law and is repeatedly called for by human rights treaty bodies. The extent to which an individual can *directly* invoke international human rights law before national courts also depends on the content of the respective legal norm. The legal norm must be sufficiently clearly defined and not require any further acts of implementation. For civil and political human rights, this is widely undisputed, at least in liberal democracies, but often not for economic, social and cultural human rights. Here, therefore, further national legislative acts are usually required—for example, within the framework of labour and social legislation—so that these rights can also be asserted on the national level. Furthermore, the non-observance of justiciable aspects of ESC rights (such as non-discrimination) is also due to the fact that national courts are often not very familiar with human rights treaties that enshrine ESC rights and the interpretation of the rights therein under international law.

No less important, therefore, is the question of whether and to what extent national law—in accordance with obligations under international law—is designed to be human rights compliant[8] and covers the scope of protection of human rights. In fact, national law is far more accessible to national actors who advocate for human

approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state" (Art. 2.1 lit d).

[8] In Germany, such an examination is generally the responsibility of the Ministry of Justice.

Table 3.2 Comprehensive legal recognition of human rights conventions

Comprehensive *legal* recognition and implementation of human rights conventions
Ratification without reservations Recognition of the monitoring procedures of the treaties
Incorporation of the human rights treaties into national law Prominent status of human rights treaties in national law Direct applicability of the legal norms before national courts
Shaping national law in conformity with human rights Coverage of the scope of human rights protection in the constitution and laws, combined with subjective rights of action

Source: Own compilation

rights on a national level. It is particularly helpful if human rights are entrenched as fundamental rights in the constitution and violations of fundamental rights can be the subject of a constitutional complaint. Here, too, the differences between countries are notable. Several recent, progressive constitutions, for example in Colombia (1991), Venezuela (1999), Ecuador (2008), Bolivia (2009) or, receiving more international attention, in the Republic of South Africa (1996), provide for a broad range of fundamental rights, including economic, social and cultural rights.[9] In contrast, in many established democracies of the "Global North", including the much-praised Swedish welfare state, basic social rights appear only rarely and sporadically. Or these rights do not give rise to subjective legal rights that can be sued for. All the more important is the question of which legislative or other political, educational, etc. measures are taken to comply with human rights obligations and to implement human rights in the best possible way (Table 3.2).

3.3 Ambitious State Human Rights Policy

Based on the legal recognition of human rights, state human rights policy can also have different levels of ambition. It can only do what is necessary to implement state human rights obligations, or it can strive to fulfil the state obligations entered into as comprehensively as possible and, beyond that, actively promote human rights internationally. It can see itself as a specialised policy area for the promotion of human rights and/or represent a cross-sectional function aimed at bringing human rights norms and principles to the fore in the various areas of foreign and domestic policy. It can be formulated behind closed doors and over the heads of those affected, or it can be designed in a transparent and participatory manner and work towards a living "culture of human rights" in which people can independently formulate and assert claims to human rights and in which it is possible for them to have a say in decisions relevant to human rights and to review their implementation. An ambitious

[9] In Chile, on the other hand, a socially progressive draft constitution was rejected in a referendum in 2022.

human rights policy is responsive. It picks up impulses from society that are relevant to human rights, integrates them into its human rights policy and roots human rights in political practice. To this end, human rights must not remain an abstract requirement of international human rights conventions and institutions, but must be "broken down" and made comprehensible and usable for everyday practice.

The clear and consistent orientation of state action towards international human rights norms and fundamental human rights principles (non-discrimination, participation, accountability, inclusion), combined with the explicit recognition of people as *rights holders* and states as primary *duty bearers,* are essential features of a human rights approach in state politics. This elevates human rights to a binding frame of reference for *all* policy decisions and thus presents itself as a cross-sectional political goal. On the one hand, such a broadly conceived human rights-based policy differs from a narrowly conceived human rights policy, which to a certain extent leads a niche existence and does not have an impact across policy fields. On the other hand, it distinguishes itself from a policy that is "only" relevant to human rights, but which does not explicitly refer to human rights. Based on different formulations of *human rights-based approaches,*[10] the characteristics of a human rights approach in state policies can be summarised as follows:

Characteristics of a Human Rights Approach to State Policy

Human rights function as a central frame of reference for state policy. This consistently refers to human rights standards, rights, duties and principles (such as non-discrimination, participation, accountability, inclusion).

Human rights represent a cross-sectional function of state policy. Beyond specific human rights measures, human rights are enshrined, taken into account and implemented in all areas of state and municipal policy.

State policy recognises, protects and supports the human rights claims of all people in their capacity as holders of human rights. It picks up and integrates human rights impulses from society.

State policy recognises and implements its obligations to respect, protect and fufil human rights. The obligation also includes measures to raise human rights awareness in society and to make human rights understandable and usable for everyday practice.

State policy also promotes human rights beyond its own human rights obligations. In other words, it voluntarily does more than is required by law.

(continued)

[10]They were formulated earliest and most clearly in relation to development cooperation. However, the approaches differed in how rigorously they elevated human rights to the frame of reference for development cooperation; see, for example, Human Rights Council of Australia 1995, 1998, 2001, Frankovits and Earle (2000), Hamm (2001), El Obaid and Lamontagne (2002), UNSDG (2003), Gready and Ensor (2005), OHCHR (2006), UK Interagency Group on Human Rights-Based Approaches (2007), European Commission (2021).

State policy actively promotes international human rights norms, institutions and procedures.
Source: Own compilation

3.4 A Variety of Topics

The potential range of topics for an inward-looking human rights policy is large. The question of which human rights issues are placed on the political agenda depends not least on which human rights demands are made of governments and parliaments, for example by those affected, civil society, the media, the courts and international human rights monitoring bodies—and how responsively the political institutions deal with them. At the same time, pro-human rights actors within government and parliament can become active on their own initiative. Constitutive for inward-looking human rights politics is the acceptance that human rights are not only violated in foreign countries, but that there is also a need for human rights improvements and actions in one's own country. A corresponding awareness often has to develop first.

This can be exemplified by the human rights reports which the German government has submitted to the *Bundestag* every 2 to 3 years since 1990. While the first five reports in 1990, 1993, 1995, 1997 and 2000 only dealt with human rights in foreign relations, the "Sixth Report of the Federal Government on its Human Rights Policy in Foreign Relations and Other Policy Areas" (2002), on the recommendation of the *Bundestag*, for the first time systematically included domestic policy issues. Since then, the reports have covered both foreign and domestic policy areas. In 2012, the rather long-winded title was changed to "Report of the Federal Government on its Human Rights Policy".

A review of the reports between 2002 and 2022 shows, on the one hand, a continuity of domestic policy issues that are present throughout the reports. These include the approaches to selected civil-political and economic, social and cultural rights, the rights of women and children, and the issue of racism. In some cases, however, new topics (or new aspects of existing topics) were added and a changing socio-political awareness of the disadvantages of social groups is expressed in the reports. For example, over time people with disabilities, older people, as well as trans* and inter* persons have increasingly or for the first time become the focus of attention. Significant events and developments are also reflected in the reports. For example, the seventh Report (2002–2004) embraced the topic of "Human Rights and Counterterrorism", which had also gained in importance in Germany after the attacks of 11th September 2001 in the USA. Socio-politically discussed topics such as the ban on torture, headscarf bans or the protection of refugees also found their way into the reports, as did later topics such as whistleblowing, the No Hate Speech Movement, racial profiling, human trafficking, climate change and many more.

Germany's official *state reports* to international human rights treaty bodies, by means of which the federal government gives an account of the implementation of the individual human rights treaties in and by Germany, are also informative. In accordance with the conventions, civil-political rights (ICCPR), economic, social and cultural rights (ICESCR) as well as the civil, political, economic, social and cultural rights of women (CEDAW), children (CRC) and persons with disabilities (CRPD) as well as the issues of torture (CAT) and racism (CERD) are dealt with in Germany. NGOs try to influence the list of issues through written submissions to the committees and to critically supplement the state reports, which tend to be whitewashed, in the form of parallel reports. Many of these issues are also reflected in the Universal Periodic Review (UPR) procedure of the UN Human Rights Council.

Finally, the annual report of the *German Institute for Human Rights* (GIHR) on the human rights situation in Germany, which is submitted to the *Bundestag*, should also be mentioned. Although the reports only pick out the respective focal points, overall, they cover a broad spectrum of topics. In the reporting periods from mid-2015 to mid-2022, the reports of the GIHR have dealt with the situation of refugees, racism and right-wing extremism, social problems from a human rights perspective, such as the labour exploitation of migrants or homelessness in Germany, as well as the topic of business and human rights. Exclusions from the right to vote or the right to care for people with disabilities, coercion in psychiatric institutions as well as the rights of children and older people were also addressed in detail. A comparatively new topic is climate policy and human rights.

3.5 The Actor Landscape

In order to analyse state human rights policy, it is important to gain an overview of who pursues it and to what extent it is influenced by non-governmental state and non-state actors within the country and by international human rights institutions and actors outside the country. With regard to state human rights policy, the first important actors are those whose participation is *institutionally* based, i.e. who are involved in an institutionalised way in the formulation and implementation of state human rights policy, if not actually responsible for it. First and foremost are the respective *governments* and *ministerial bureaucrats*, who determine what consideration and priority is given to human rights in the day-to-day work of government and what measures are (to be) taken to implement and promote human rights. *Parliaments* come on the scene as human rights policy actors above all when they pass laws relevant to human rights and they (can) exercise their control function over the government with regard to the protection and implementation of human rights. With the independence of parliaments from the government, their potential importance as

human rights actors in their own right increases.[11] They can also pursue symbolic human rights policies. In federal and decentralised government systems, the competences of the various multi-tier governance structures must be taken into account accordingly. In this context, local politics also plays an important role, especially because it is at the local level that many human rights problems arise, and human rights have to prove their practical significance. *Courts*, on the other hand, are part of the judicial branch and not political actors. However, if they act independently of the government, they play an important role in punishing and protecting against human rights violations. Judicial decisions, for example by constitutional courts, can also have a significant impact on human rights policy. Moreover, national courts are indispensable 'compliance partners' of judgments by regional human rights courts, at least when they follow their decisions (see Krimmendijk 2022).

Furthermore, the protection and promotion of human rights, to which the general legislative, executive and judicial powers are committed, can be strengthened with the help of *specific human rights bodies*. This could include, for example, human rights departments and human rights representatives in governments, provided that they endeavour to take up human rights concerns within the respective government and ministries and help to enforce them. The UN Draft Principles on Parliaments and Human Rights also consider parliamentary human rights committees to be the bodies within parliaments responsible for leading or coordinating parliamentary work on human rights and assign them wide-reaching functions,[12] which they only partially undertake in practice. In addition, there are ombudspersons or other independent national human rights institutions (NHRIs) in accordance with the Paris Principles.[13] NHRIs advise policymakers, produce studies or monitoring reports, provide human rights education or participate in court proceedings or international human rights monitoring; some also act as complaints bodies for individual cases. In addition, at national and sub-national levels, there may be dedicated anti-discrimination bodies, anti-torture committees, etc. At the municipal level, many *human rights cities* are committed to promoting a culture of human rights and may also have their own human rights office (such as Nuremberg, to name just one example).

In addition to institutional participation, actors whose participation is *functional*, such as those who contribute human or financial resources, information, expertise or other capacities that are important for the shaping or legitimisation of state human rights policy, are involved in the shaping of state human rights policy on a case-by-

[11] It should be mentioned at this point that, unfortunately, in some countries, parliaments are merely rubber stamps for government policies that are hostile to human rights.

[12] UN Doc. A/HRC/38/25, 17 May 2018. See also Chang and Hunt (2022).

[13] The Paris Principles are standards for the mandate and functioning of NHRIs adopted by the United Nations in 1993 (General Assembly Resolution 48/134). They require, among other things, the legal and factual independence of the institution and a mandate that encompasses all human rights. As an umbrella organisation, the Global Alliance of National Human Rights Institutions (GANHRI) verifies the criteria in an UN-recognised accreditation procedure that distinguishes between A and B status. A-accredited NHRIs have, among other things, the right to speak in the UN Human Rights Council.

case or regular basis. Often, these are academic or civil society actors who have access to the relevant institutional actors and are consulted by them or are also used to carry out human rights capacity building. Cooperations are not uncommon between state and non-state actors in human rights policy.

In addition, there are those actors who are not directly involved in shaping state human rights policy, but who influence public perception and state policy "from the outside" through their demands and actions. This includes a broad spectrum of civil society actors who (explicitly or indirectly) refer to international human rights and demand their implementation. First and foremost, human rights NGOs should be mentioned here, especially if they conduct public protests and campaigns. However, these can also be other civil society groups, trade unions, welfare organisations, churches, etc., which address human rights or human rights-related problems and urge that they be remedied. At the same time, the mass media and social media, as well as academics and epistemic communities, also play a role in shaping the human rights discourse in a country.

3.6 References to Theoretical Approaches

Studies dealing with the role of national human rights systems in the implementation of international human rights law emphasise the crucial importance of domestic actors and institutions for legal and policy change. Zipoli (2023), who refers to Beth Simmons's domestic policy theory on compliance with human rights treaties (Simmons 2009), is a case in point. The underlying logic of such compliance approaches is:

> International human rights regimes can be effective if domestic actors - ministerial staff, parliamentarians, NHRIs, ombudspersons, nongovernmental organisations, protest movements, political parties, or any other group - can use them to pressure their domestic government into increased respect for human rights (Zipoli 2023, p. 119).

At the same time, international norms and institutions are an important lever for domestic human rights actors to strengthen and become effective. They influence the domestic agenda setting of government and parliament; ideally, they create opportunities for ligitation; they can be used as a strategic tool for political mobilisation (Simmons 2009, p. 313, Zipoli 2023, pp. 120–121).

Compliance approaches that ask how international human rights treaties are implemented within states have their origins in research on international relations. However, insofar as they focus on the crucial importance of domestic institutions and actors, an in-depth analysis of national human rights systems is indispensable. To this end, the complex political processes of how human rights problems are put on the political agenda in the respective countries and how human rights policy measures come about must be examined in detail. It is important to note that this is *not only* about how recommendations and decisions of international human rights institutions are implemented in the sense of a top-down approach. In the sense of a

bottom-up approach, it should *also* be asked to what extent civil society groups—explicitly or indirectly—bring human rights demands to the attention of policymakers without necessarily referring to the human rights monitoring of international institutions. In fact, this is common practice, as many social actors are not very familiar with the international human rights system. The basis for such demands on the part of affected people and their support groups are often direct experiences of injustice that are publicly articulated, for example because certain groups in society are excluded and discriminated against. Such experiences of injustice and the local struggles against articulated injustices must therefore be targeted. Ideally, they also influence state human rights policy.

Interestingly, *policy research* provides us with useful conceptual starting points for the study of human rights policy within nation states, complementing mainstream compliance approaches. Although policy research has not yet seriously addressed human rights policy, it helps to examine the complexity of the political decision-making process within states. However, the fact that human rights policy is a cross-sectional policy complicates policy analysis considerably and makes it useful to distinguish between *sub-policies,* each with its own policy arena. It is obvious, for example, that the legal framework, the landscape of actors and the content of human rights policy differ considerably depending on the policy field—whether it is the prohibition of torture, freedom of expression or the right to education, to name just three examples. Nevertheless, cross-thematic terms and concepts of policy analysis are helpful for the presentation and analysis of human rights policy.

3.6.1 The Policy Cycle

The notion of a *policy cycle* offers first heuristic access to the human rights policy processes in individual policy fields. The policy cycle understands politics as a process of problem solving (which is a precondition-dependent assumption). Ideally, different phases of the political process are distinguished: problem definition, agenda setting, policy formulation, policy implementation and evaluation. The latter then leads, if necessary, to redefining problems and feeding them back into the political process—or to discontinuing the political measures.

In practice, policy processes are usually far more complex than the policy cycle suggests; they do not simply follow the ideal sequence and are always connected with parallel or time-delayed political processes in other problem or policy areas. Nor is politics always problem-solving oriented. Sometimes it presents itself only as symbolic politics or focuses primarily on winning votes and political support. Nevertheless, the notion of a policy cycle is also heuristically useful in relation to human rights policy because it helps to systematically distinguish different dimensions of the policy process at the national level.

3.6.1.1 Problem Perception and Agenda Setting

Thus, the perception of certain social situations as social ills and their classification as human rights problems can be understood as independent cognitive and interpretative processes that are inherent in or precede human rights policy demands. Such perceptions and interpretations are strongly dependent on the socio-political context and always connected to actors. Individual or collective actors are therefore always required who perceive a social situation as man-made injustice or at least as injustice that can be influenced by people. Under certain conditions, such experiences of injustice can be articulated publicly and, if necessary, can also take the form of human rights claims. A central role is played here by civil society actors such as NGOs and protest movements that denounce human rights abuses and make human rights demands on politicians. With a view to problem perception and problem articulation, considerations on framing processes that we have already discussed in relation to social movements can be fruitful. In addition to NGOs and social movements, however, functionaries in politics and administration also "frame" problem situations and develop perspectives and problem definitions that can coincide or conflict with human rights framing.

Whether and to what extent human rights concerns are heard and listened to in the public and political spheres is another, analytically quite interesting question. Policy research has highlighted an important aspect of the political process here with "agenda setting", because it is obvious that not all societal problems attract the attention of the mass media and those politically responsible in government and parliament. Public and political attention is a scarce resource, and human rights issues "compete" with many important and unimportant issues that are (supposed to be) dealt with at the same time, as well as with all kinds of routine political issues. Human rights activists know how difficult it is, even in democracies, to position human rights issues in the media and to bring human rights concerns to the attention of parliament or ministries.

So, under what conditions do human rights issues enter public debate and under what conditions do they find themselves on the political agenda? Some topics seem to be more suitable than others. Here, considerations from policy research can be applied that emphasise concreteness and clarity (unambiguity vs. ambiguity), social relevance (high vs. low impact on social groups), urgency (urgent vs. postponable), complexity (simple vs. complex), novelty (novelty vs. routine matter) and symbolic power (high vs. low symbolic significance) (Schneider and Janning 2006, p. 56). Thus, it can be assumed (although it needs to be empirically verified) that easily communicable, urgent human rights problems of great social relevance with clearly named responsible parties and a significant symbolic meaning have great potential for attention, especially if they fit into the respective attention cycles and "issue trends" to which human rights issues can also be subject.

Moreover, it depends on who identifies these issues and in what way. From the perspective of policy research, there is always a need for "discourse generators", often in the form of "discourse coalitions", and "agenda setters". We have already

established in the context of social movements that it is helpful for the resonance of (human rights) frames if they are put forward by credible actors in a consistent, high-profile and strategically astute way, and if they correspond to the reality of people's lives and their values. Accordingly, effective and credible public relations, campaigning and lobbying work as well as the joint coordination of strategies and actions in appropriate networks are important for human rights organisations. This is all the more important because human rights issues are rarely taken up within government and parliament without being brought in "from outside" or attracting public attention. However, this cannot be ruled out.

A corresponding awareness of human rights issues can also arise or develop within the political-administrative apparatus, which motivates action. In addition to the important external initiation of human rights concerns by social and international actors, at best supported by a high level of media attention, human rights issues can also be identified by individuals and groups in government and parliament. In any case, the boundaries are fluid: in the respective human rights problem areas, there are often *issue networks* or *advocacy coalitions* in which—across institutional and organisational boundaries—for example actors from politics, society, academia, media and administration with similar *belief systems*, loosely coordinate to advance a common human rights concern, not infrequently against the resistance of other advocacy coalitions.[14] In addition, rulings by national or regional courts can put human rights issues on the political agenda. Embedded in the European multi-level system, European legislative initiatives also play an important role in the case of EU Member States. Finally, human rights issues can also find their way onto the agenda through international human rights monitoring bodies or transnational forums and actors.

Furthermore, there are unintended triggers—in the language of policy research "*focusing events*"—which can abruptly draw political attention to human rights problems and temporarily put politicians under pressure to act. For example, the collapse of the "Rana Plaza" building complex in Bangladesh in 2013, in which 1127 textile workers died and 2438 suffered injuries, some of them serious, attracted great public attention worldwide—even more so than the fires in textile factories in Pakistan in 2012. The accidents exemplify the grievances in countless textile factories around the world that produce cheap clothing for the world market under inhumane conditions and became a symbol for the lack of care and irresponsibility of factory owners and their clients in the "Global North". Ten years after the avoidable tragedy, Amnesty International (2023) concludes that Rana Plaza has triggered reflection among many consumers and importing companies. In the years that followed, textile companies in Bangladesh, largely financed by Western importers, invested considerable sums in labour protection. The minimum wage has also risen, and in some companies, workers are provided with food, accommodation in collective housing and basic medical care. What has remained, however, is often high

[14] See the chapter on advocacy coalitions.

work pressure, sexual harassment of female workers and, in practice, non-existent protection against dismissal.[15]

The tragedy off Lampedusa in autumn 2013[16] was also such a sad *focusing event* in Europe at the time, which—despite all the demands to the contrary—did not open a new *window of opportunity* for a fundamentally new European asylum and refugee policy in this particular case. Here it remained largely symbolic politics (Bendel 2014). Only with the many people who fled to Europe in 2015 and 2016 did displacement and migration into the EU once again become a political issue of the first order, which was admittedly highly controversial. The willingness to help on the one hand was contrasted by protests against an alleged "opening of the borders" on the other. Only a few years later, the Russian war of aggression against Ukraine led the EU to activate the Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001) for Ukrainian refugees, mostly women and children, for the first (and possibly the last) time. A reform of the European asylum and refugee policy, proposed by the Commission in September 2020, is being negotiated in 2023 in the EU trilogue (Council, Commission, Parliament) under the impression of rising numbers of refugees also from other countries, and is to be adopted before the European elections in 2024.

Focusing events can also have longer-term effects and are then more than just an event that attracts short-term attention. The consequences of the terrorist attacks of 11th September 2001 in the USA were particularly far-reaching and have also been cited in the literature as an example of a *focusing event* (Rüb 2014, p. 379). In the following decade, they not only determined the security policy agenda, but also had a massive impact on human rights. To the extent that even established democracies—such as the USA and the UK—committed serious human rights violations in the fight against international terrorism, it was easier for autocrats to use terrorist threat scenarios to legitimise repression. The military attack on Ukraine in 2022 is potentially an even more consequential event. The Russian war of aggression is not only a *focusing event*, but an often cited turning point for the international and European security system.

3.6.1.2 The Policy Formulation

Policy formulation describes a process in which—in relation to our topic—articulated human rights policy problems, proposals and demands become political programmes. Goals and priorities of governmental human rights policy as well as measures for their implementation are named and decided on. Such goals and plans can be written down in government programmes and coalition agreements, for

[15] https://www.amnesty.de/informieren/aktuell/bangladesch-zehn-jahre-rana-plaza-ungluecktextilindustrie-arbeitsbedingungen (accessed: 21 Apr 2023).

[16] Until then, it was the worst refugee disaster in the Mediterranean. Several hundred people died in the boat accident.

example. Additionaly, there may also be National Human Rights Action Plans. These go back to a recommendation of the Vienna World Conference on Human Rights in 1993, and their preparation is also recommended by human rights committees of the United Nations. There may also be issue-specific Action Plans, for example to combat violence against women, racism or other issues of human rights significance. National Action Plans (NAPs) on Business and Human Rights, for example, which have been called for since 2011 by the EU, the Council of Europe, the OECD, the G20 and the United Nations in order to implement the UN Guiding Principles on Business and Human Rights, have received considerable attention. Such NAPs have already been published in 32 countries and are being developed in another 20.[17] In some cases, the NAPs on business and human rights have led to so-called supply chain laws, for example in France and Germany. The EU has also currently developed a Corporate Sustainability Due Diligence Directive.

Occasionally, (amendments to) laws also become necessary as a result of decisions by national and regional courts. In Germany, for example, the Aviation Security Act (LuftSiG, 2005, last amended in 2020), which did not stand up to constitutional scrutiny by the Federal Constitutional Court (2006) on one central point, i.e. the possible shooting down of an aircraft carrying passengers that is misused for a terrorist attack, attracted great public attention after the attacks of 11th September 2001 in the USA.[18] Other examples in Germany include the revision of subsequent preventive detention in the Criminal Code (2013) or the withdrawal of the exclusion of people under so-called complete care and of forensic psychiatry patients from the right to vote in the Electoral Act (2019). In March 2021, the Federal Constitutional Court also ruled that the provisions of the Climate Protection Act (KSG) on national climate protection targets and the annual emission levels permitted until 2030 are incompatible with fundamental rights of the young complainants, insofar as sufficient requirements for further emission reductions from 2031 are missing.[19]

What is important in terms of human rights policy is the question of the extent to which civil society human rights actors succeed in incorporating their demands into the shaping of human rights policy goals, programmes and laws. To what extent do they actively lobby in the respective human rights problem areas? How open to human rights actors and their concerns are the respective functionaries in the political-administrative apparatus, who usually have more or less clear ideas about which problems should be tackled (with priority), in what way and with whom? In order to find this out, it is not only necessary to compare human rights demands from

[17] See https://globalnaps.org (as of 20 August 2023).

[18] Specifically, the corresponding § 14 para. 3 LuftSiG read: "Direct action with armed force is only permissible if it can be assumed according to the circumstances that the aircraft is to be used against the lives of people and it is the only means of averting this present danger." In addition to formal reasons, the regulation was not compatible with the right to life in connection with the guarantee of human dignity, according to the BVerfG. BVerfG, Judgment of the First Senate of 15 February 2006 – 1 BvR 357/05.

[19] BVerfG, Decision of the First Senate of 24 March 2021 - 1 BvR 2656/18 -, marginal no. 1-270.

civil society on the one hand and the proclaimed goals of state human rights policy on the other. A closer examination of the respective processes of policy formulation is also necessary, for example in the form of *process tracing*, which combines causal-process observations with specific knowledge of the processes (see e.g. Beach and Pedersen 2013; Reiners 2021). Qualitative interviews with the actors involved in each case, who have the relevant insider knowledge, may be informative here.

3.6.1.3 The Implementation and Enforcement of the Policy

The adoption of policy programmes does not necessarily mean that they will be implemented. This is especially true for human rights policy frameworks and Action Plans, which are strongly influenced by human rights rhetoric. Therefore, it must always be examined to what extent the programmatic specifications are concretised and effective measures are taken to protect and promote human rights. The implementation is decisive for whether human rights policy is pursued consistently and benefits the protection of human rights.

Here, too, human rights reports by governments can provide a general (although tendentially sugarcoated) overview of the measures taken. It can be left open whether laws are still understood as measures to be implemented or as measures already implemented. The boundaries between policy formulation and implementation are fluid. Without a doubt, however, we must move away from the idea that implementation follows a purely top-down logic. This does not only apply, for example, to the sometimes-deficient implementation of Union law in EU Member States, visible in numerous EU infringement proceedings. The implementation of national laws is also affected. Their implementation is by no means always problem-free. This is all the more true in states with federal structures and autonomous regions. To put it simply: the diversity of state and non-state actors involved in the implementation of laws is inevitably accompanied by an increased need for coordination in order to implement the previously formulated goals of public policy.

Enforcement problems can arise even in the case of sanctioned, regulatory legal measures in the form of requirements and prohibitions, especially if the possibilities for control and sanctions are associated with a high level of effort and there is a distinct tendency to violate regulations. Violations of fundamental labour rights can also be found in Europe, for example in relation to migrant workers in a number of sectors, be it the construction industry, international road transport, agriculture, the meat industry, gastronomy, not to mention home care and domestic help. No less complex is the implementation of (re-)distributive programmes, which entails high administrative and financial costs. The expansion of an inclusive school system called for by the UN Committee on the Rights of Persons with Disabilities, for example, requires not only personnel, organisational and financial resources. It also requires the effective action of the executive and the active participation of all stakeholders, from the school supervisory authorities to the headmasters and

teachers to the parents and the children with and without disabilities. In short, implementation is the difficult part of human rights policy.

3.6.1.4 The Policy Evaluation

Evaluation of political action is an integral part of politics. It takes place in the sense of a *political evaluation* by a multitude of stakeholders and by the media—and as such is always part of the public debate about "good policy". This must be distinguished from an *administrative evaluation* of state action, which takes place, for example, within the framework of controlling. Externally, this focuses on the management, control and accountability of administrative action in terms of the specified political goals. Internally, the focus is on performance, efficiency and economy in terms of administrative goals (Wollmann 2009). In addition, there may be a *judicial* evaluation of state action in the area of fundamental and human rights by national or regional courts or an evaluation under *international law* by UN human rights monitoring bodies.

To be distinguished from (a) ongoing political, (b) routine administrative, (c) case-by-case judicial and (d) international legal evaluation is (selective) *academic* policy evaluation in the narrower sense. It refers to the academic and empirically supported assessment of the conception, implementation and effectiveness of public policies, be they measures, programmes or projects.[20] The focus is usually on an impact analysis of public policies that have already been implemented. Then, for example, it is examined to what extent the previously formulated political programmes and measures have been implemented and what policy results have been achieved (*output*) and how the output performance has affected the target group (s) (*outcome)*, and provided through this, also the social conditions (*impact*) which the policy addresses. However, since we are often dealing with multi-layered interrelationships of effects, it makes sense not only to look at linear chains of effects, as often happens, in which individual variables are examined in isolation. Rather, it is important to think in terms of complex effects and to take a context-sensitive look at a variety of determining factors and weigh them against each other.[21]

Scientific evaluations are application-oriented and usually contain policy recommendations. Provided they are taken up constructively by policymakers (and not just used to legitimise their own political actions), they ideally provide the basis for an evidence-based assessment and, if necessary, a reorientation of policy. Comprehensible problem definitions as well as precise, implementable and innovative

[20] Sager et al. (2021), p. 2, following Bussmann et al. (1997), p. 37 and Widmer and De Rocchi (2012), p. 11.

[21] Evaluation research offers a range of different methodological evaluation approaches and causal impact models, which do not need to be listed in detail here. A helpful introduction on how policy evaluations can be designed and applied can be found in Sager et al. (2021). On the development and institutionalisation of scientific evaluation research in Europe, see Stockmann et al. (2020).

recommendations for action, combined with a clear target group approach, are considered useful for the acceptance and implementation of recommendations (Sager et al. 2021, pp. 264–265). The actual policy evaluation takes place *ex post* in line with the policy cycle. Policy impact assessments in the run-up to, and interim assessments during the implementation of policy programmes and measures (ex-ante and midterm evaluations) refer, in the logic of the policy cycle, to policy formulation and policy implementation.

In western democracies, scientific policy evaluations are now firmly established. However, a comparison of countries reveals considerable differences with regard to their institutional embedding (Stockmann et al. 2020). Nor is such institutionalisation a guarantee for the emergence of an "evaluation culture" that promotes political learning beyond control, accountability and self-legitimation. However, it can at least be seen that in several European countries an increasing number of laws contain evaluation clauses. This is important: "A responsible legislator has to assess and consider the consequences of his actions in advance as well as analyse and evaluate them afterwards and - if necessary - draw consequences" (Weingärtner 2021, p. 10, own translation).

From a human rights perspective, it is important to know what impact laws in different policy areas have on human rights. As already mentioned, this can be examined in advance of the measures—for example by means of a *human rights risk assessment* or a *human rights impact assessment*—as early as during the policy formulation stage. However, this can also be done during the process of policy implementation or retrospectively as part of an ex-post evaluation. On the other hand, identified human rights policy measures that are *expressiv verbis* intended to benefit human rights protection can be examined in terms of their impact.

One example: In the wake of the attacks of 11th September 2001 in the USA and other terrorist attacks around the world, many countries passed new security laws that had human rights implications.[22] On the one hand, they served to protect the population as required by human rights. On the other hand, they were often accompanied by interferences in the fundamental and human rights of the population, which must stand up to scrutiny under the rule of law. In Germany, for example, the Counterterrorism Act (which has been amended several times) was therefore subjected to several evaluations before time limits were removed in 2020 and the obligation to evaluate was lifted. The powers granted to the security authorities in 2002 to combat terrorism were thus constantly evaluated on the basis of a legal mandate, and the legislator used the results of the evaluations to make changes and remove unused legal authorisations (Weingärtner 2021, p. 16). For our topic, it is important that such evaluations seriously examine whether the legally permitted interventions in fundamental and human rights were proportionate to the intended goals and the effects actually achieved.[23] However, a methodically admittedly

[22] See also Weinzierl (2006), Albers and Weinzierl (2010), Gusy (2015), Ziekow et al. (2016).

[23] In the case of the study commissioned by the Ministry of the Interior, this was affirmed; see BT Drs. 18/5935, BT Drs. 19/23350.

difficult "combined surveillance account" that compiles all security laws and their use by the competent authorities does not yet exist in Germany either—but was announced in the 2021 coalition agreement:

> The state's encroachments on civil liberties must always be well justified and considered in their overall impact. We want to evaluate the security laws in terms of their actual and legal effects as well as their effectiveness. That is why we are drawing up an overall surveillance account and, by the end of 2023 at the latest, an independent scientific evaluation of the security laws and their impact on freedom and democracy in the light of technical developments. Any future legislation must comply with these principles. To this end, we are creating an independent body of experts (Freedom Commission) to advise on future security legislation and evaluate restrictions on freedom (Coalition Agreement 2021, 3419–3426).

Finally, it should be mentioned again that policy evaluation within the framework of the policy cycle is not limited to academic evaluations in the narrower sense and does not only include evaluations commissioned by the executive. In the sense of feedback loops, it is also about how stakeholders evaluate the programmes and measures taken and implemented, what problems they identify and what corrections they recommend. There are countless examples of how human rights organisations critically evaluate individual policy measures and call for policy changes.

3.6.2 The Party Difference Approach (Partisan Theory)

Does it actually make a difference in terms of human rights policy which party or parties are in government? Proponents of the party difference theory

> ... formulate as scientific hypotheses what is on everyone's lips in a popular version and is sometimes affirmed, sometimes vehemently denied: The party-political colouring of the legislature and the executive makes a difference in politics, namely in policy production ("*policy output*") as well as in the ultimate results of state activity ("*policy outcome*"). Thus, from the perspective of party difference theory, state activity is primarily determined by the party-political composition of the government (Schmidt et al. 2007, p. 51, own translation).

Party difference theories thus emphasise the importance of the political-ideological "family affiliation" of the governing parties first of all for the programmatic shaping of government policy, i.e. for the question of what policies the governing parties want to realise. This is followed by an examination of the extent to which the governments actually (can) realise such policies. To this end, the framework conditions of government action are also examined, such as the power resources of the governing party (or parties) inside and outside parliament, institutional framework conditions and the existence of co-rulers or opponents to the government (Schmidt et al. 2007).

Also with regard to human rights policy, it is to be expected that the party-political composition of the government will make a difference. This is already evident in the party and election programmes, the human rights policy profiles of which differs considerably. Despite all consistencies, differences in the human rights priorities, programmes and measures of the policies of changing governments can

also be clearly recognised, although these are subject to various restrictions on action, especially within the framework of government coalitions, and path dependencies exist. Due to its easy empirical verifiability, the party difference approach is particularly well suited for studies on human rights policy, both in a time-delayed (diachronic) and in a simultaneous (synchronic) comparison of similarly or differently coloured governments (coalitions). A small example from Germany on the right to health: Under the title "A strong case for party difference theory", Günther et al. (2019) showed that the introduction of a health card for asylum seekers[24] in the 16 German federal states did not depend solely, but nevertheless significantly, on the party-political composition of the respective state governments.

3.6.3 Advocacy Coalitions

The importance of so-called *advocacy coalitions* has already been mentioned. The advocacy coalition approach, as originally developed in the context of policy research by Paul Sabatier in cooperation with colleagues (Sabatier 1988, 1993; Sabatier and Jenkins-Smith 1993), seeks to explain long-term policy change. The approach assumes that actors come together in policy subsystems—across various institutional and organisational links—who have a common set of political values, problem perceptions and causal assumptions (*belief systems*) and coordinate their actions at least weakly over a longer period of time with common goals.[25] These can be, for example, actors from politics, academia, media, society and administration. The approach further assumes that within a policy subsystem there are one or a few policy advocacy coalitions whose members engage politically in order to transfer their basic *policy core beliefs* in the respective policy (sub)field into public policies. The shaping and change of (sub-)policies are thereby decisively determined by the action and debate between the respective competing policy advocacy coalitions. (In the case of a single coalition, this is a subsystem with little conflict).

In the case of relatively stable parameters of the policy subsystem (characteristics of the policy field, the constitution, etc.), according to Sabatier's assumption, policy change can result on the one hand from external events and changes (e.g. in public opinion, as a result of a change of government, due to effects from other policy fields, etc.) changing the restrictions and possibilities for action of the subsystem actors. On the other hand, policy change can also be based on changes in the *belief systems* and thus the action orientations of the subsystem actors. This is where policy-oriented learning comes into play, which can initially take place within advocacy coalitions, but under certain conditions (e.g. common forums and

[24] The health card enabled asylum seekers to consult a doctor directly, without having to seek prior authorisation from social services.

[25] Sabatier speaks here of a"nontrivial degree of coordinated activity over time" (Sabatier 1988, p. 139).

overarching political goals) also across coalition boundaries. However, Sabatier remains sceptical about the effect of policy-field-internal learning processes, which often only affected secondary aspects; fundamental policy change would primarily be attributable to external factors, as the initial conditions of political action changed.

Although the advocacy coalition approach in its original and further developed[26] form has hardly been applied in the analysis of human rights policies so far, the notion of competing advocacy coalitions is also useful in the field of human rights policy. In this sense, corresponding advocacy coalitions can also be identified in human rights subpolicies that are in conflict with each other. This is the case, for example, in the field of business and human rights, specifically in the long-standing political disputes over the design of National Action Plans on Human Rights and Business and over possible supply chain laws in various countries.

Such advocacy coalitions can also be identified in the long-standing debate in Germany on the ratification of an optional protocol to the ICESCR, which provides for a complaints procedure. The advocacy coalition included representatives of NGOs, academia, parliament and various ministries, most notably the Federal Foreign Office and the Ministry for Economic Cooperation and Development. The coalition of opponents was mainly made up of those ministries (and departments) that were responsible for the domestic implementation of the Covenant, supported by traditional legal scholars who were sceptical about the justiciability of social human rights.[27] Thus it happened that the federal governments of all party political colours had not ratified the Additional Protocol after its adoption (2008) and entry into force (2013) up to and including the 19th parliamentary term—despite all announcements to (intensively) examine a possible ratification. Even in the 19th parliamentary term, when ratification seemed to be a foregone conclusion, it did not happen in the end. Here, the analysis of advocacy coalitions can be linked well with political science approaches to *veto players* and *veto points.* Ultimately, another change of government was needed. In the coalition agreement of 2021, ratification of the Additional Protocol was agreed upon, and in 2023 Germany ratified the Additional Protocol.

3.6.4 Policy Learning, Lesson Drawing *and* Policy Transfer

The types of learning used in policy research distinguish between simple and complex forms of learning. Simple learning is mainly about changing strategies to better achieve existing goals. It is therefore often "instrumental learning" or

[26] Later, for example, the approach was supplemented by two further determinants of political change: internal shocks and compromises negotiated by brokers; cf. Sabatier and Weible (2007), Weible et al. (2011).

[27] Methodologically, comprehensive document and literature analyses as well as guideline-based expert interviews with participants are necessary for such studies.

Table 3.3 Policy Learning: adoption of political programmes

Copying	Adoption true to the original
Adaptation	Adoption adapted to local conditions
Making a hybrid	Combination of different, external programme elements
Synthesis	Merging external and own programme elements

Source: own representation in accordance with Rose (1993)

"improvement learning", which is aimed at designing and implementing political programmes more effectively, more efficiently, more transparently, with more participant orientation, etc. Complex learning, on the other hand, questions and changes fundamental beliefs, goals and assumptions that guide action. Here, learning processes may trigger real paradigm shifts.

Linked to instrumental "improvement learning" is the lesson-drawing approach of the British political scientist Richard Rose. Essential here is his book "*Lesson-Drawing in Public Policy. A Guide to Learning across Time and Space*" from 1993. His concept is closely related to political practice. When faced with acute tasks and urgent problems that, in the view of the government or the public, can no longer be dealt with satisfactorily by existing policies,[28] political decision-makers often look for lessons, experiences and insights gained from other spatial units (e.g. municipalities, federal states, countries) and temporal phases (e.g. in their own history) in order to tackle the tasks and problems in a promising way in terms of their own goals. Rose sees such *lessons* as *tools* for political action, and he understands lesson drawing as the conscious and systematic process of identifying, evaluating and adopting such practical experiences and lessons.

In the area of *policies*, on which the book already focuses according to its title, it is a matter of adopting political programmes that have already been applied elsewhere or in earlier times (Rose 1993, p. 21). This does not necessarily mean a 1:1 adoption (*copying*). As Rose illustrates with policy programmes, other forms of lesson-drawing are also possible: for example, a modified adoption of programmes adapted to local conditions (*adaptation*); or a combination of elements of different programmes that have been applied in different places (*making a hybrid*); or a combination of one's own or other programme components (*synthesis*). It is also possible that experiences elsewhere only serve as inspiration for the development of one's own, new programme (*inspiration*) (Rose 1993, p. 30). Although Rose focuses on policy programmes, this distinction can also be applied to the adoption of institutional arrangements. Significantly, Rose, who was also an election researcher, himself repeatedly cites examples of electoral law reforms (Table 3.3).

David Dolowitz and David Marsh follow Rose and consider lesson drawing to be a voluntary *policy transfer*. Besides such *voluntary transfers,* policy transfers also

[28] At this point, it should be remembered that politics is not only about solving problems, but also about winning votes. Many a politician may also adorn himself with the proposal of adopting a model that has been tried and tested elsewhere, without there being a corresponding need to solve the problem.

include direct and indirect *coercive transfers* (Dolowitz and Marsh 1996, pp. 344 ff.). They cite IMF conditions for international lending to "developing countries" as an example of such pressured or coerced adoption of political programmes. Indirectly, they argue, externally induced adoption results from mutual or unilateral dependencies and the associated convergences in policy design. At the same time, the two authors point out in their 1996 literature review that the analysis of policy transfers does not only refer to policy field-related goals, contents and instruments, and identify the following areas of transfers: policy goals, policy structures and policy contents; policy instruments and administrative techniques; institutions; ideologies (and ideological rhetoric); ideas, attitudes and concepts; negative lessons (Dolowitz and Marsh 1996, pp. 349–350).

Policy research has not yet systematically applied questions of policy learning to human rights policy. However, numerous examples from the field of human rights policy can be examined to see to what extent the conditions that Rose and Dolowitz and March identified for the transferability of programmes (and which are not elaborated here for reasons of space) also apply to the transfer of human rights policy *best practices* or *relevant practices.*[29] It is therefore worthwhile examining local, national and international processes of lesson-drawing and policy transfer in the field of human rights policy more closely.[30] This is already possible at the level of students' theses. To give just one example: Regarding the human right to housing, it is possible to ask to what extent and under what conditions the Finnish "*housing first*" model can be transferred to other countries as a measure against homelessness. In addition to the specific local conditions, however, *path dependencies* must always be taken into account.[31]

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[29] For *relevant practices* as distinct from *best practices* in international learning processes between cities, see Hambleton (2020).

[30] See also Dolowitz and Marsh (2000), Dunlop and Radaelli (2013).

[31] In policy research, the concept of path dependency focuses on the fact that once a development direction has been taken, it continues and is difficult to change after a certain point because, for example, the costs would be too high.

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Chapter 4
State Human Rights Foreign Policy: Protecting Human Rights Abroad

In the following, human rights foreign policy will be considered separately, as the corresponding policy processes differ in various respects from the implementation of human rights obligations at home.

4.1 Extraterritorial State Obligations

First of all, the question arises to what extent it is incumbent upon states, or they have an obligation to respect, protect and promote human rights in other states. Does a state's responsibility for human rights end at its borders? Intuitively, there is already much to be said against this. Does it not correspond to our general understanding of human rights that human rights bind the state's actions as a whole, regardless of whether they take effect in one's own country or elsewhere? In terms of international law, this is not so clear-cut. Traditionally, states are primarily responsible for the human rights situation in their own country (territorial state obligations). There they can—ideally—guarantee the most effective legal protection possible. However, it is disputed to what extent states have human rights obligations in respect of people living outside their territory (or not under their sovereign jurisdiction), i.e. to what extent they have human rights obligations as actors acting internationally (extraterritorial state obligations, ETOs) (one of many: Gibney et al. 2022).

On the one hand, the scope of application of such ETOs is controversial: Do they only apply to situations in which the state exercises effective control over foreign territory and over persons there? An extreme example is the use of torture against terror suspects in foreign secret prisons, as practised at times by the USA and the United Kingdom, among others, in the context of the fight against terrorism.[1] Or are

[1] For example, according to the European Court of Human Rights in the case of British prisoners in Iraq: ECtHR, *Al Skeini* et al. *versus United Kingdom,* 18 October 2016 - 55721/07.

M. Krennerich, *Human Rights Politics*, Interdisciplinary Studies in Human Rights 12, https://doi.org/10.1007/978-3-031-57026-1_4

state actions or omissions also covered that have a negative impact on the implementation of human rights in other countries without such control? For example, foreign economic activity can also have a negative impact on human rights. Or do extraterritorial obligations already exist if the state, individually or in international cooperation, is in a position to significantly influence or implement measures for the implementation of human rights in other countries?

Equally controversial is the question as to the extent to which the various obligation dimensions (respect, protect, fulfil) should also apply extraterritorially. It is increasingly recognised that states must not themselves violate human rights in their bilateral and multilateral relations (do-not-harm approach). However, there is no consensus on the extent to which they are also obliged to protect human rights in other countries[2] or to promote their implementation. Even when governments acknowledge their human rights responsibility, they do not seem to want to be legally obliged to do so.

However, the UN Charter provides for a global obligation of international cooperation to promote universal respect for and realisation of human rights (UN Charter, Art. 56 and 55). The reference to international cooperation is also found in UN human rights treaties, most clearly in the ICESCR. In it, States Parties have committed themselves

> to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant (ICESCR, Art. 2 para. 1).

Accordingly, the ESCR Committee and several UN Special Rapporteurs on ESC rights repeatedly refer to corresponding international obligations of states. In 2011, around 40 human rights experts from the United Nations, academia and civil society adopted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[3] It is the most comprehensive reference framework for extraterritorial obligations of states to date and interprets them quite broadly.

It should be noted, however, that ETOs merely describe an additional dimension of human rights protection. They do not relieve states of their own domestic obligations. Each state still has primary responsibility in its own country. Nevertheless, the discussion on ETOs has had a significant impact on the development of human rights, as it is ultimately about the human rights orientation of international action in the context of global problems (Table 4.1).

[2] Even if supply chain laws do not explicitly refer to ETOs, the point is that states (or the EU) take legal (and other) measures to ensure that domestic companies do not participate in or benefit from human rights abuses. In substance, this is the state fulfilling its duty to protect people in other countries from private actors (in this case, transnationally operating companies from its own country).

[3] https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf (accessed: 10 Dec 2023).

Table 4.1 Extraterritorial obligations of States in the area of economic, social and cultural rights

Definition	Obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and Obligations of a global character that are set out in the charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally
Duty bearers	States, separately, and jointly through international cooperation
Scope of jurisdiction	(a) Situations over which a State exercises authority or effective control, whether or not such control is exercised in accordance with international law; (b) Situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory; (c) Situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law
Obligations to respect	States have the obligation to refrain from . . . (a) Conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories. (b) Conduct which impairs the ability of another State or international organisation to comply with their obligations as regards economic, social and cultural rights (c) Adopting measures, such as embargoes or other economic sanctions, which would result in nullifying or impairing the enjoyment of economic, social and cultural rights.
Obligations to respect	States must take necessary measures to ensure that non-State actors which they are in a position to regulate do not nullify or impair the enjoyment of economic, social and cultural rights. States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct should exercise such influence in order to protect economic, social and cultural rights. All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons.
Obligations to fulfil	States must take steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation. States, acting separately and jointly, that are in a position to do so, must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States. A State has the obligation to seek international assistance and cooperation on mutually agreed terms when that State is unable, despite its best efforts, to guarantee economic, social and cultural rights within its territory.

Source: own compilation, extracted from the Maastricht Principles of Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

4.2 Diversity of Human Rights Foreign Policies

Whether as an expression of legal obligation or political responsibility, whether value-driven or more interest-driven, many governments pursue an active human rights foreign policy. It is obvious at first glance that human rights foreign policy differs considerably even in liberal-democratic states in terms of motivation, addressees, goals, measures and effectiveness. To put it simply: foreign policy on human rights in Austria[4] is different from that in Brazil (after the democratisation of the country)[5] or in South Africa (after the end of apartheid).[6] Depending on the country, it takes place under completely different conditions and in completely different political contexts, which must be examined case-by-case. There can also be major differences in human rights policy between the respective governments of a country.

The extent to which autocratic governments also pursue a human rights foreign policy in the sense of the ambitious understanding of human rights policy advocated here is more than doubtful. The repressive Chinese one-party state, for example, not only systematically violates human rights at home, but also pursues an obstructive policy in international human rights institutions. It also propagates its "very own" understanding of human rights in international forums.[7] The Russian government[8] has completely discredited itself as a serious international human rights actor at the latest since the brutal war of aggression against Ukraine. However, the autocratic governments there—as well as others—must adopt a foreign policy approach to human rights and deal with human rights criticism.

Certainly, the foreign human rights policy of liberal democracies often exhibits ambivalences. This is especially true of the USA, which on the one hand has been a driving force for international human rights since the mid-20th century, but on the other hand has repeatedly provided economic and military support to regimes that violated human rights—from Pinochet in Chile and the Somozas in Nicaragua to Marcos in the Philippines and Suharto in Indonesia, to, especially under US President Trump, Saudi Arabia. In addition, the USA has itself committed human rights crimes abroad, for example, as part of the international fight against terrorism. Above all, the multi-layered and ambivalent US human rights policy offers researchers a wide field of activity and has produced numerous studies.[9]

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[4] See, for example, Rosenberger (2023).

[5] See, for example, van Lindert and van Troost (2014).

[6] See, for example, Lettinga and van Troost (2016).

[7] See Ismangil et al. (2020), Pils (2021).

[8] See, for example, Lettinga and van Troost (2017).

[9] Among the numerous studies on US human rights policy see, for instance, Kommers (1979), Pastor (1987), Vanderlaan (1987), Forsythe (1990, 1995, 2000), Liang-Fenton (2004), Sikkink (2004), Apodaca (2006), Hancock (2007), Laurienti (2007), Mertus (2008), Schulz (2008), Eckel (2015a, 2015b), Eckel and Moyn (2012), Renouard (2016). On the "exceptionalism" of US human rights policy, see Ignatieff (2005).

Not nearly as much political as academic attention was paid to the far less influential foreign human rights policy of the Federal Republic of Germany, to which the following remarks are limited as *an example.*

4.3 Fundamentals of German Foreign Human Rights Policy

In numerous official documents and statements, German federal governments have identified human rights as the core of a value-led and interest-led foreign policy. The current federal government, which has explicitly committed itself to a feminist foreign and development policy, speaks even more accentuated of a "values-led, human rights-oriented foreign and development policy" (Deutscher Bundestag 2022, p. 144, own translation).

In Germany, the mission to respect and implement human rights is derived from the Basic Law, namely from Article 1 (1) of the Basic Law: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority". Article 1 (2) of the Basic Law places this obligation in an international context: "The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world".

The mission continues to be based on membership in international organisations (United Nations, Council of Europe, etc.) and is founded on numerous international and regional human rights treaties that Germany has ratified. They emphasise the international human rights responsibility of states and, as explained, contain "extra-territorial state obligations" (ETOs) that are ideally enforced. Even though previous federal governments have struggled to recognise such ETOs, they have always acknowledged their international human rights responsibility and have pursued an active bilateral and multilateral foreign human rights policy in various thematic areas, embedded in the Common European Foreign and Security Policy (CFSP) and in the institutions of regional and international human rights protection.

4.3.1 Outline of the Actor Landscape

Traditionally, foreign policy is the domain of the executive, also in the field of human rights. Heads of government and foreign ministers usually shape a country's human rights profile in the public eye. This is also true for Germany. The question of whom the respective officeholders meet and the extent to which they take a stand on human rights policy issues is a constant source of public debate on the significance of human rights in foreign relations. However, human rights policy is not limited to the high-profile appearances of high-ranking members of the government. The Foreign Ministry and its missions abroad continuously observe and assess the human rights situation in other states and have to implement human rights policy in everyday detail work.

In principle, it is the responsibility of the Federal Foreign Office to bundle and coordinate foreign policy activities in the field of human rights. It is the department responsible for bilateral and multilateral human rights policy, both within the framework of the CFSP of the European Union and in the corresponding bodies of the United Nations, the OSCE and the Council of Europe. The Federal Foreign Office has its own (small) human rights unit, and various other units there also deal with human rights. In addition, the Federal Government Commissioner for Human Rights and Humanitarian Aid is located in the Federal Foreign Office. However, important foreign policy decisions must also be coordinated with the Federal Chancellery, especially if the Federal Chancellor is very active in (human rights) foreign policy.

The Federal Ministry of Justice (BMJ), which also has a human rights commissioner, and the Federal Ministry for Economic Cooperation and Development (BMZ), which in its own self-image pursues a human rights-based approach, also play an important role in Germany.[10] Other ministries—such as the Federal Ministry of Labour and Social Affairs (BMAS) or the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSJ)—appear sporadically in foreign policy when they are in charge of individual human rights treaties and are involved in the implementation of human rights within the scope of their responsibilities. These include the Ministry of Defence (BMVg), for example, with regard to foreign deployments of the German Armed Forces, or the Federal Ministry of the Interior and Community (BMI) with regard to the fight against international terrorism and with regard to migration and refugee policy.

4.3.2 Instruments of Human Rights Foreign Policy

Within the framework of its bilateral policy, the German government uses various instruments and formats to raise its human rights policy concerns with other countries.[11] First of all, there are various forms of *human rights dialogues* which it conducts with the governments of other countries, either independently or as part of general political dialogues, bilaterally or through the EU. Here, general human rights issues can be addressed, individual cases discussed and, if necessary, cooperation agreements reached.

Such *cooperation* can serve, for example, to promote the capacity of other states to respect, protect and implement human rights (*capacity building*). This can be done by strengthening national human rights institutions or, for example, through democratisation assistance, election observation or support for administrative

[10] In 2022 and 2023, the BMZ developed a new human rights concept. Civil society was also involved in the consultation process.

[11] Cf. for example the 14th Human Rights Report of the Federal Government: BT-Drs. 19/2500, 4 December 2020, p. 66.

reforms. Sometimes, an attempt is also made to promote stability in the respective countries and to prevent repression by the police and military by "upgrading" the armed and security forces in line with human rights. In addition, there may be crisis prevention measures. Development cooperation, which is often carried out in cooperation with German civil society organisations, ideally serves to promote not only, but above all, economic, social and cultural human rights. At the same time, it can—just like foreign economic policy—provide additional incentives for human rights-compliant behaviour. The withdrawal or "freezing" of cooperation can in turn be used as a means of exerting pressure in terms of human rights policy.

Criticism of human rights in relation to other states takes place either confidentially within the framework of "quiet diplomacy" or publicly through corresponding declarations and protests on the part of the German government or the EU. Likewise, human rights criticism can be presented or supported in multilateral forums such as the UN Human Rights Council and the Third Committee of the UN General Assembly. The aim here is to uphold established human rights standards and to formulate expectations of human rights behaviour that ideally bring about conscious or unconscious adjustments in the behaviour of governments that violate human rights. It can also support the establishment of international commissions of inquiry to investigate allegations of serious human rights violations. At the same time, human rights criticism also expresses solidarity with those affected by human rights violations.

Closely linked to this are efforts to *protect human rights defenders* (HRDs) at risk. This can be done bilaterally, through German embassies, or within the framework of the EU and its missions abroad. To improve the protection of human rights defenders, the German network *Forum Menschenrechte* has repeatedly suggested expanding the human resources, financial and technical capacities for human rights work in German embassies at the operational level.[12] The Coalition Agreement of 2021 announced that at appropriate missions abroad, additional human rights posts will be created, but the increase was not very comprehensive, also due to budgetary constraints. The EU Guidelines on Human Rights Defenders also contain practical suggestions on what the EU and its Member States can do together on the ground. These include continuous monitoring and assessment of the human rights situation; elaboration of local strategies for the protection of HRDs; regular contact and exchange with HRDs; visible recognition of their work in the media and the public; if necessary and possible, court and prison visits; emergency measures for persons under acute threat, etc. With the Elisabeth Selbert Initiative, the Ministry of Foreign Affairs launched a special protection programme for human rights defenders in 2020.[13]

[12] The author refers here to discussions of the *Forum Menschenrechte* at the Federal Foreign Office in which he participated.

[13] It complements the existing protection programmes for academics at risk (Philipp Schwartz Initiative), students at risk (Hilde Domin Programme), cultural workers at risk (Martin Roth Initiative) and journalists at risk (Hannah Arendt Initiative), which are supported by various institutions in Germany.

Finally, the harshest measures are diplomatic and above all economic *sanctions*, which the Federal Republic of Germany supports and implements within the framework of the EU or the UN. So far, however, German governments have always refrained from unilateral sanctions. In any case, German foreign policy is strongly committed to multilateralism. Accordingly, within the framework of its human rights policy and the CFSP of the EU, Germany is very much committed to the use and further development of multilateral human rights protection within the framework of regional and global human rights institutions.

But how should we deal with autocrats? How can we work "from the outside" to dismantle state apparatuses of repression and at the same time promote the development of state and non-state capacities for human rights protection in the respective country? There can be no master plan. Depending on the country and situation, intelligent human rights foreign policy uses the appropriate measures from the large toolbox of bilateral and multilateral human rights policy, taking into account the moral, political, economic, geostrategic and military "vulnerability" of the respective regimes. It is also essential to link up with human rights institutions and actors on the ground. However, it must be critically examined in each case whether human rights foreign policy has always explored what is feasible in terms of human rights, especially vis-à-vis those autocracies with which it cooperates. A number of areas of tension arise here.

4.3.3 Areas of Tension

To what extent does human rights foreign policy conflict with other interests? Germany, for instance, is also faced with this question. This will be demonstrated using three policy areas as examples.

(a) Foreign trade policy: As an exporting country, Germany also trades extensively with autocratically ruled countries, above all China, so that conflicts of objectives arise here between human rights foreign policy and foreign trade policy. From the perspective of human rights, it must be ensured that economic (and development policy) cooperation with both "difficult" and other partners does not itself cause human rights problems (do no harm!) but is ideally used to protect and promote human rights. At the same time, the question arises as to how clearly and with what consequences human rights criticism is also formulated vis-à-vis economic partners.

Despite isolated criticism—in the case of China, among other things, of the repression of minorities (Tibet, Xinjiang)—the federal governments have in the past often held back in order not to permanently burden economic relations, especially with heavyweights such as China or India (Kinzelbach 2014; Kinzelbach and Mohan 2016). However, in the new "China Strategy" elaborated by the Federal Foreign Office, China is no longer considered only a partner and competitor, but also a "systemic rival". The German government views with concern China's efforts to influence the international order along the lines of the interests of its one-party system and, in doing so, to relativise the foundations of the rule-based order, such

as the status of human rights (Auswärtiges Amt 2023, p. 10). In the case of Russia, the federal governments—despite human rights violations and the annexation of Crimea (2014)—held on to the economic cooperation with the "difficult partner" for a long time. This changed abruptly with Russia's attack on Ukraine (2022), which led to comprehensive economic sanctions by the EU, including Germany that stands firmly by Ukraine.

(b) Arms export policy: There is also a "classic" tension between arms export and human rights policy. From a human rights perspective, the main question is to whom (which) arms are supplied. By their own admission, federal governments of all colours have pursued a "restrictive and responsible" arms export policy in recent decades. However, despite legal restrictions and political commitments, the arms export reports of the federal governments do not give the impression that—at least measured by the scope of licenses and the information on end-users—a restrictive arms export policy giving priority to human rights was pursued. Thus, the interest in regional stability and migration control explains, for example, the extensive arms exports to Algeria during the term of office of the autocrat Abd al-Aziz Bouteflika (1999–2019), which received little media attention. With regard to the highly repressive regime in Saudi Arabia, as a regional hegemon, it was only due to media outrage that tank deliveries were stopped, and only after the scandalous murder of the journalist Jamal Khashoggi (2018) were arms exports from Germany suspended, with the exception, however, of European joint projects. Even the current German government did not revoke export licences to Saudi Arabia for equipment and ammunition as part of a European joint project in 2022.

(c) Migration policy: The increasing externalisation of EU migration policy, which is supported by Germany, combined with a strong focus on reducing irregular migration, must also be repeatedly put to the human rights test. The migration policy interests of the EU and its Member States sometimes conflict with the human rights demands of refugees. This becomes particularly apparent at the EU's external borders. There, the implementation of the Common European Asylum Policy (CEAS) by the EU Member States sometimes leads to an open breach of international law, including the Geneva Refugee Convention, and EU law. In view of inadequate state and state-impeded (rather than supported) private sea rescue operations as well as push- and pullbacks at the EU's borders, Germany also has a responsibility to help shape the CEAS in a way that complies with human rights.

Let us be clear: Those who cooperate with autocracies in terms of economic, development or migration policy must not regard human rights merely as an annoying compulsory topic, as sometimes appears to be the case. This is especially true if the cooperation also involves the police, border police and military for the purpose of strengthening regional security (as it was or has been in the case of Germany, for example, with regard to Burkina Faso, Mali, Niger, Nigeria). Especially in states with a poor human rights profile, this is a very risky undertaking.

4.4 References to Foreign Policy Analysis

From a political science perspective, the foreign human rights policy of individual states can be seen as a policy field that is decisively shaped by domestic institutions, processes and actors. In this sense, considerations from policy research can also be applied, although, as mentioned, foreign policy is largely the domain of the executive, and parliamentary legislators are far less in demand than, for example, in domestic and social policy areas. But here, too, there is agenda-setting as well as the formulation, implementation and evaluation of political programmes and measures, which can be described in a modified form in terms of the policy cycle. However, *Foreign Policy Analysis* is a rather independent field that deals with the domestic determinants of foreign policy decisions.

At the same time, decisions in human rights foreign policy are also significantly influenced by the international environment, which not only provides opportunities for human rights policy action, but also defines the scope for the protection and promotion of human rights in foreign relations. Therefore, studies from the field of *International Relations* are also fundamentally important for describing and explaining human rights foreign policy. In contrast to *Foreign Policy Analyses,* these start with states as the relevant actors[14] and examine the behaviour of states towards each other against the background of the structures of the international system. However, the manifold domestic determinants of foreign policy decisions tend to be ignored.

In order to accentuate the differences between *Foreign Policy Analysis* and the study of *International Relations*—which have been fiercely debated in the Anglo-American world—three levels of analysis should be mentioned, which actually go back to Kenneth Waltz (1959): "*first image*" (individual decision-makers), "*second image" (*domestic processes and actors) and "*third image*" (structure of the international system). In short, *Foreign Policy Analysis* focuses primarily on the first and second levels, while *International Relations* research focuses primarily on the third—as did Kenneth Waltz (1979, 1996), who, as a convinced representative of the neo-realist school, insisted on a strict separation between *Foreign Policy Analysis* and the study of *International Relations*. There is no doubt, however, that it makes sense to integrate the different approaches and levels of analysis. At this point, however, we will initially focus only on approaches of *Foreign Policy Analysis,* on which there is a comprehensive English-language literature.[15] Even though they so far hardly relate to human rights, they will be briefly introduced.

[14] Critical of this, e.g. Hudson and Day (2020, p. 6): "States are not agents because states are abstractions and thus have no agency. Only human beings can be true agents".

[15] See, for example, Breuning (2007), Beach (2012), Alden and Aran (2017), Morin and Paquin (2018), Thies (2018), Hudson and Day (2020) as well as the contributions in the journal *Foreign Policy Analysis Studies*. In Germany, the textbook by Brummer and Oppermann (2019) is helpful, and many of the subsequent explanations are based on it.

Links to *International Relations* approaches will only be named after the presentation of global human rights policy.

4.4.1 Cognitive and Psychological Approaches

At the level of the persons responsible for foreign policy (*first image*), Foreign Policy Analysis focuses on the personality traits, psychological dispositions and cognitive processes of the key foreign policy decision-makers. This is where *at-a-distance* studies come in, which are not based on an intimate knowledge of the respective leaders, as is (ideally) the case with political biographies or insider reports. Rather, it is "profiling" from a distance, by means of which their leadership characteristics and political convictions are to be recorded even without direct access to the persons studied. For this purpose, speech acts are quantitatively collected and analysed on the basis of corresponding coding schemes.

The *leadership trait* approach, for example, is based on the assumption that the particular leadership style adopted by leaders influences the decision-making process.

> The term leadership style means the ways in which leaders relate to those around them – whether constituents, advisers, or other leaders – and how they structure interactions and norms, rules, and principles they use to guide such interactions (Hermann 2003, p. 181).

These leadership styles, which guide how political leaders interact with those they lead or with whom they share power, are based on the answers to three questions: (1) How do leaders respond to political constraints in their environment—do they respect or challenge such constraints?, (2) How open are leaders to incoming information—do they use information selectively or are they open to information that guides their political response? (3) What are the motivations of political leaders? Are they driven internally (by a particular problem, an ideology, a specific set of interests) or by the desire for certain feedback from those around them (e.g. acceptance, approval, support, acclaim)? (Hermann 2003, pp. 181 ff.) A trait analysis is used to provide information that is relevant to assess how political leaders respond to the constraints in their environment, how they process information, and what motivates them to act. Methodically, the leadership characteristics are determined through quantitative studies of (spontaneous) speech acts on the basis of a corresponding text collection and a coding scheme.

The *operational code* approach is also based on the coded, quantitative collection and analysis of speech acts (speeches, interviews with media). However, it does not focus on leadership styles but on *beliefs*. Alexander George (1969, 1979) understood operational codes as a set of general beliefs about fundamental issues of history and central questions of politics as these, in turn, guide the action. They serve

> as a prism that influences the actor's perceptions and diagnoses of the flow of political events, his definitions and estimates of particular situations. These beliefs also provide norms, standards, and guidelines that influence the actor's choice of strategy and tactics,

> his structuring and weighing of alternative courses of action (George 1969, p. 191, quoted from Brummer and Oppermann 2019, p. 197).

The beliefs recorded in operational codes are, on the one hand, *philosophical beliefs* about the nature of political life, the feasibility of implementing fundamental political values, the predictability of the political future, control over historical development and the role of "chance" in human affairs. Secondly, *instrumental beliefs are* examined, which concern the selection and effective pursuit of political action goals and the timing and means in their implementation. Here, too, political beliefs are linked to behavioural expectations, which can serve as a basis for explaining foreign policy decisions taken in the past as well as for predicting future decisions.

Even if one is not a fan of such and other quantitative *at-a-distance* studies, they highlight the importance of individual leaders for shaping foreign policy, who are not only subject to structural constraints and guidelines, but also shape policy as personalities. The *leadership trait* and *operational code* approaches—which have been briefly mentioned here as examples—are ultimately based on the plausible assumption that leadership traits and belief systems of foreign policy leaders have an impact on the decisions and content of foreign policy and thus also influence the foreign policy behaviour of states. For this purpose, such leadership characteristics and beliefs are collected systematically and replicably with great technical effort, detached from subjective judgements. These supplement or reinforce qualitative assessments, which are by no means becoming obsolete. A profound knowledge of foreign policy decision-makers and foreign policy decision-making processes still contributes a great deal (and possibly more) to answering the question as to the extent to which leadership characteristics and political convictions of leaders actually have (had) an impact on individual foreign policy decisions. This presumably also applies to decisions in foreign human rights policy.

Sound knowledge of foreign policy decision-making situations is also important in the mostly qualitative studies that use so-called *prospect theory* approaches (e.g. Kahneman and Tversky 1979; Levy 1992a, 1992b). These take a closer look at the *decision-making* context and try to explain decisions under *risk*, in which the respective decision-makers evaluate the identified options and the expected results as gains or losses compared to a reference point (status quo, certain goals), not least on the basis of subjective perceptions and a corresponding framing. It is assumed that losses and gains are weighted differently (keyword: loss aversion), and the different assessment by the decision-makers affects their propensity to take risks. Corresponding empirical studies attempted to use this approach to explain, among other things, the foreign policy decisions of then US President Jimmy Carter in relation to Iran and of George H.W. Bush in relation to Iraq or, more generally, the policy of the USA and allied states in relation to North Korea.[16] With regard to Germany, the influence of the then Chancellor Gerhard Schröder on the decision to participate in the NATO intervention in Kosovo was examined from the perspective of *prospect theory* (Brummer 2012).

[16] See Brummer and Oppermann (2019) for the examples and references given there.

4.4.2 Domestic Political, Bureaucratic Approaches

Foreign Policy Analyses on the second level (*second image*) focus on the domestic political processes underlying foreign policy decisions. Here, *for example,* the extent to which foreign policy decisions are prepared, implemented or even blocked in the respective ministerial bureaucracies can be examined. Organisational routines, regularised work processes, division of labour, coordination as well as hierarchical decisions and control play an important role. Moreover, bureaucracies are not always concerned with identifying the best option for action in the matter at hand. Often it is sufficient (and less costly) to merely find satisfactory options. In doing so, bureaucrats, who are influenced by the respective organisational culture, often orient themselves on earlier decision-making situations. However, internal—or externally triggered—learning processes can occur when the results of earlier decisions fall short of the targeted standard. Experience shows that this is incremental learning, unless the pressure to learn is particularly high due to unusual events (or also a fundamental change at the top in the ministry).

These and other questions are addressed by *organisation theory* approaches in foreign policy analysis, which see organisational processes and routines as an explanatory variable for the preparation and implementation of foreign policy decisions.[17] While organisation-theoretical approaches focus on the decision-making process *within* an organisation or a ministry, *bureaucracy-theoretical* approaches examine the foreign-policy negotiation process *between* actors in different organisations, i.e. between different ministries and ministerial bureaucracies. Similar to the organisational theory approach, three basic analytical questions arise—but here across ministries: Who are the foreign policy actors involved? What foreign policy positions do they represent? How strong is their influence on the respective foreign policy decision under investigation? (Brummer and Oppermann 2019, p. 147).

With regard to the German government's foreign human rights policy, there are still no independent studies on organisation or bureaucracy theory. However, there is a lot of practical experience among human rights NGOs, which in their lobbying work depend on knowing the responsibilities and processes within and between the relevant ministries. Accordingly, in Germany, for example, the human rights network *Forum Menschenrechte* not only meets annually with the Foreign Minister, but also maintains good contacts at the working level with the human rights commissioner and the human rights department in the Foreign Office, with the country and regional departments there, or with foreign missions, which are often involved in the preparation or implementation of human rights policy decisions. Contacts are also maintained with other relevant ministries.

Beyond the government-centred approaches described so far, the view can also be broadened to include other domestic determinants of state foreign human rights

[17] The comments and references by Brummer and Oppermann (2019, pp. 119–141) are also helpful here.

policy. For example, the extent to which parliaments, political parties, civil society organisations, diaspora groups or the media influence foreign policy decisions in the field of human rights can also be examined. Here, the aforementioned approaches of policy research can be useful.

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Chapter 5
Regional and Global Human Rights Policy

5.1 Fundamental Rights Protection and EU Human Rights Policy

There is no doubt whatsoever that from a human rights perspective, the Lisbon Treaty, which entered into force on 1 December 2009, starts promisingly: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." (Article 2, first sentence TEU). At the same time, the protection and promotion of human rights are an integral part of the catalogue of objectives of the European Union (Art. 3 TEU). The question therefore arises as to what extent the European Union is doing to protect and promote human rights both within the EU and in the EU's external action.

5.1.1 Protection of Fundamental Rights within the EU

When addressing human rights issues within the EU, EU parlance usually refers to *fundamental rights,* which are enshrined in the EU's primary and secondary law. Significantly, the European Union also gave itself a "Charter of Fundamental Rights", which is part of the Union's primary law. The Charter applies to all measures taken by EU institutions and is authoritative for Member States when implementing Union law. Since 2010—with the exception of 2019—the EU Commission, as the "guardian of the treaties", has submitted an annual *Report on the application of the Charter of Fundamental Rights in the EU*.[1] On the one hand, the

[1] Available at: https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en (accessed: 10 Dec 2023).

M. Krennerich, *Human Rights Politics*, Interdisciplinary Studies in Human Rights 12, https://doi.org/10.1007/978-3-031-57026-1_5

reports deal with the question of how the Charter can be become better known and used more comprehensively; in 2020, the European Commission presented a new "strategy to strengthen the application of the Charter of Fundamental Rights in the EU" specifically for this purpose. On the other hand, problems are also addressed, such as disinformation and hate speech, racism and discrimination, or violations of rule of law principles and EU asylum regulations in the Member States. The 2021 report focused on the protection of fundamental freedoms in the digital age, the 2022 report on the crucial role of civil society organisations and rights defenders.

Furthermore, the *Rule of Law Reports*, which the European Commission has been producing annually since 2020, illustrate in 27 country chapters not only positive but also negative developments in the EU Member States with regard to the justice system, the anti-corruption framework, media pluralism and freedom as well as institutional issues related to checks and balances.[2] Indeed, within the EU, the "rule of law has come under pressure" (Kovács and Scheppele 2021). The situation in Hungary is particularly worrying. There, the elected Fidesz government of Victor Orbán controls not only the political institutions, but now also the judiciary and the media[3] and restricts civil society's room for manoeuvre by means of its NGO legislation. "Hungary's autocratisation is becoming more and more entrenched," the country report of the Bertelsmann Transformation Index of 2022 accurately states.[4] At the same time, the state of Polish democracy has deteriorated (at least until the elections of 2013). "Serious concerns persist related to the independence of the Polish judiciary",[5] and further restrictions on the media and civil society have been introduced.[6]

Within the EU, the European Commission, as "guardian of the treaties", relies primarily on dialogue with governments, but it also has legal levers at its disposal to react to violations of the EU's fundamental values. Legal action has just been taken against Hungary and Poland. The European Commission has initiated various *infringement proceedings* against both states (under Article 258 of the Treaty on the Functioning of the European Union) concerning, among other things, restrictions on the independence of the judiciary, violations of the fundamental rights of LGBTIQ+ persons and the criminalisation of refugee aid workers. In some cases, the proceedings resulted in rulings by the European Court of Justice (ECJ).[7]

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[2] https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en (accessed: 10 Dec 2023).

[3] Cf. European Commission: 2023 Rule of Law Report. Country Chapter on the rule of law situation in Hungary, Brussels, 5 July 2023, SWD(2023) 817 final.

[4] https://bti-project.org/de/reports/country-dashboard/HUN (accessed: 19 Sep 2022).

[5] European Commission: 2023 Rule of Law Report. Country Chapter on the rule of law situation in Poland, Brussels, 5 July 2023, SWD(2023) 821 final.

[6] https://bti-project.org/de/reports/country-dashboard/POL (accessed: 19 Sep 2022).

[7] In the vast majority of infringement cases, Member States comply with their obligations under EU law before they are referred to the ECJ. If the ECJ's binding judgments are not implemented, it can impose a fine at the request of the Commission.

Only in exceptional cases is the *procedure under Art. 7* of the Treaty on European Union (TEU) for the protection of the values of the EU envisaged, which provides for a suspension of the voting rights of the member state as the most severe sanction. The European Commission first initiated such a procedure against Poland in December 2017,[8] which the European Parliament approved in March 2018.[9] Against Hungary, the initiative came from the Parliament itself in September 2018.[10] While the motion itself has great symbolic significance, a suspension of voting rights can only be decided by the Council by qualified majority if it—on the proposal of one third of the Member States or the European Commission and after approval by the European Parliament—has previously *unanimously* determined that there is a serious and persistent breach (and not only a corresponding threat) (Art. 7 para. 2, para. 3). The veto power of Poland and Hungary alone makes this unlikely (at least until 2023), as both states have pledged mutual support.

However, with the new *rule of law mechanism* (conditionality regulation),[11] which came into force in 2021, the EU now has the possibility to cut funds from the EU budget to Member States if they deviate from the principles of the rule of law when using them. After the ECJ rejected complaints by Poland and Hungary against the mechanism in February 2022, the European Commission activated the new rule of law mechanism against Hungary for the first time in April 2022. But even in the face of the threat of withholding or cutting EU budget funds, only superficial corrections have been made there so far. The will to undertake comprehensive reforms is clearly not present in the Hungarian government of Víctor Orban.

With regard to the surveying of discrimination, racism and hate crime within the European Union, the annual reports and other publications of the *European Union Agency for Fundamental Rights* (FRA) are particularly informative. The independent Fundamental Rights Agency, founded in 2007 and based in Vienna, aims to provide expert advice to the Union and its Member States on the implementation of Union law on fundamental rights issues and to raise awareness among policymakers and the public of the above-mentioned problems in particular. The *Fundamental Rights Report 2023* of the Fundamental Rights Agency also deals with fundamental rights implications for the EU of the war in Ukraine.[12] The Fundamental Rights Agency formulates recommendations on all of these problems in the form of *FRA Opinions.*

[8] COM(2017) 835 final, 20 December 2017.

[9] European Parliament: 2018/2541(RSP).

[10] European Parliament: PA_TA(2018)0340.

[11] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general conditionality regime for the protection of the Union budget.

[12] http://fra.europa.eu/sites/default/files/fra_uploads/fra-2023-fundamental-rights-report-2023_en_1.pdf (accessed: 15 Nov 2023).

5.1.2 Human Rights in the EU's External Action

5.1.2.1 The Legal and Programmatic Framework

The "actual" human rights policy, designated as such in EU parlance, concerns the EU's policy towards "third countries" and international organisations such as the United Nations. The EU's human rights commitment in its external action is an integral part of the Treaty of the European Union:

> The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. (Article 21(1), first sentence, TEU).

With the first adoption of an explicit EU Human Rights Strategy (2012) and the subsequent Human Rights and Democracy Action Plans (2012–2014, 2015–2019, and 2020–2024) adopted by the Council,[13] human rights in EU external relations were given a strategic operational framework. They also acquired an institutional face with the establishment of the office of a "European Union Special Representative for Human Rights" (2012), attached to the European External Action Service (EEAS).

In the *Strategic Framework for Human Rights and Democracy* of 2012, the EU commits itself to the protection and promotion of civil, political, economic, social and cultural human rights and identifies the promotion of human rights as an overarching cross-cutting policy that affects all of the EU's external action: "The EU will promote human rights in all areas of its external action without exception", it states. Thus, the promotion of human rights is also to be integrated into the areas of trade, investment, technology, telecommunications, internet, energy, environment, corporate responsibility and development policy. The same applies to the Common Defence and Security Policy, to external dimensions of both employment and social policy, and to the area of "freedom, security and justice", including the fight against terrorism. In development cooperation, the EU is explicitly committed to a human rights-based approach. The first Action Plan on Human Rights and Democracy (2012–2014), building on the Strategic Framework, included a large number of specific actions by the Council of the European Union and its EEAS, the European Commission and EU Member States.

The second Action Plan (2015–2019), which was also ambitious, included 34 actions and related measures. These included support for local institutions (e.g. national human rights institutes, electoral authorities, parliaments, judicial

[13] Council Conclusions on the Action Plan on Human Rights and Democracy (2020–2024), doc. 12848/20, 18 November 2020. Also of human rights relevance are, inter alia, the EU Strategy on the Rights of the Child (2021–2024), as well as the EU Action Plans against Racism (2020–2025) and on Gender Equality and Women's Empowerment in External Action (2021–2025).

bodies and anti-corruption authorities) and the strengthening and protection of civil society organisations and human rights defenders. It was also planned to promote individual human rights norms and principles (such as freedom of expression, protection of privacy, freedom from discrimination, etc.) as well as the human rights integration of the business sector. A comprehensive human rights approach was also to be applied in conflict and crisis situations. In addition, measures were mentioned to promote human rights policy coherence and consistency in the areas of migration, human trafficking and asylum policy, trade and investment policy, counterterrorism, development cooperation and in impact assessments of the European Commission on proposals in external relations. Measures were also mentioned to strengthen effectiveness and results orientation, for example in human rights dialogues, country-specific human rights strategies, the implementation of EU human rights guidelines, election observation and with regard to the interlinking of EU strategies, instruments and funding.

The third Action Plan, which is systematically structured in a slightly different way, contains overarching priorities and objectives of EU human rights policy for the years 2020 to 2024 to be adopted at the national, regional and multilateral level, and identifies five work priorities to be implemented in operational terms locally in partner countries: (1) protecting and empowering individuals; (2) building resilient, inclusive and democratic societies; (3) promoting a global system of human rights and democracy; (4) harnessing the opportunities and addressing the challenges of new technologies; (5) delivering by working together. The focal points were underpinned by numerous sub-objectives and in turn comprise a broad bundle of measures that form the basis for a programmatically ambitious EU foreign policy on human rights. Among other things, the promotion of measures to combat the effects of climate change and the loss of biodiversity as well as a separate focus on the human rights approach to new technologies, one of the "most important areas of action of the new Action Plan" (Council of the European Union 2021, p. 4), were re-addressed.

5.1.2.2 The EU Human Rights Policy Instrument Tool

The EU has a wide range of policies, instruments and measures at its disposal to protect and promote human rights in line with its noble objectives (Table 5.1).

The *Human Rights Guidelines,* which have been successively adopted since the 2000s (and have since been partly revised), set out the priorities of the EU and EU Member States in promoting and protecting human rights in third countries. They serve as guidelines for the implementation of human rights foreign policy on the ground. To date, there are 13 guidelines on the following topics: children and armed conflict; human rights defenders; violence against women and girls and combating all forms of discrimination against them; promoting compliance with international humanitarian law; EU policy towards third countries on torture and other cruel, inhuman and degrading treatment or punishment; the promotion and protection of freedom of religion or belief; to promote and protect the enjoyment of all human

Table 5.1 EU instruments in foreign human rights policy

Instruments	
Human Rights Guidelines	Defining core areas of external action for the EU and EU Member States; guidance on how to implement EU human rights priorities on the ground.
Country strategies for human rights and democracy	Ensuring coherent strategic action by the EU and EU Member States in relation to their respective countries.
Dialogues	Addressing human rights in general policy dialogues and in human rights dialogues and consultations with partner countries and regional organisations.
Demarches	Formal diplomatic approaches to representatives of third countries to exchange human rights information and views (confidential).
Public statements	Public positioning and criticism on human rights issues ("speaking up for human rights and democracy").
Support programmes	Global Europe Human Rights and Democracy Programme; comprehensive funding instrument for EU support in promoting and protecting human rights, democracy, the rule of law as well as the work of civil society organisations and human rights defenders. Includes the EU Human Rights Defenders Mechanism.
Trade and preferential system	Human rights clauses in trade and cooperation agreements with EU third countries; dialogue and monitoring missions on the implementation of the EU's Generalised Scheme of Preferences (GSP+).
EU participation in regional and multilateral human rights institutions and forums	Participation in or support to: UN General Assembly (Third Committee), Human Rights Council, Special Reporteurs on Human Rights, Office of the High Commissioner for Human Rights, etc.; participation in interactive dialogues, public debates and briefings, and events to promote human rights.
Sanctions	Diplomatic, political, social and economic sanctions as well as targeted sanctions against persons and institutions (entry bans, freezing of assets).

Source: own compilation

rights by LGBTI persons; the death penalty; freedom of expression online and offline; the promotion and the protection of the rights of the child; non-discrimination in external action; safe drinking water and sanitation; on human rights dialogues with partner/third countries.

In addition, there are *country strategies* on human rights and democracy, which the EU delegations and (in part) the embassies of the EU Member States prepare on the ground, if necessary. The country strategies set out the strategic priorities for the

EU's approach to human rights and democracy, define short- and medium-term policy objectives vis-à-vis the respective third countries and specify concrete measures to implement them. A total of 128 country strategies existed for the period 2016 to 2020. They were intended to ensure coherent, strategic action on the part of the EU and EU Member States and served to prepare for high-level state visits and political dialogues in particular.

Human rights dialogues are a frequently used and central instrument of the EU's external human rights policy. Apart from the fact that EU delegations (can) raise human rights in the general political dialogues with third countries and regional groups (e.g. ASEAN, African Union), the EU again holds dedicated human rights dialogues and consultations with about 40 states. These serve to exchange information and opinions on human rights issues and aim to promote and improve the protection of human rights in the respective countries and regions. Sometimes they are also used to coordinate behaviour in UN human rights bodies. Ideally, consultations with civil society groups in Brussels or in the respective country are also held before and after the human rights dialogues. In addition, regular *exchanges* with civil society organisations and human rights defenders are an important aspect of European human rights policy.

The *Global Europe Human Rights and Democracy Programme*, launched in December 2021, is a comprehensive funding instrument with a budget of €1.5 billion for the period 2021 to 2027. This programme is "the EU's flagship tool for action to advance human rights and democracy".[14] It steps up EU support in promoting and protecting human rights and fundamental freedoms, democracy, the rule of law as well as the work of civil society organisations and human rights defenders around the world. The programme thus follows on seamlessly from its predecessor, the *European Instrument for Democracy and Human Rights,* which had a budget of 1.3 billion euros from 2014 to 2020. Accordingly, it continues to place a specific focus on civil society support.

The *EU Human Rights Defenders Mechanism* is a key priority of the programme. The Mechanism is managed by ProtectDefenders.eu, a consortium of 12 human rights NGOs and can finance a wide range of measures, including legal representation, medical costs and protection measures. According to official information, between 2015 and 2022, the EU Human Rights Defenders Mechanism has supported over 55,000 human rights defenders and their family members at risk in over 120 countries thanks to EU funding of €35 million during its first two phases. In the new phase, the Mechanism also includes the EU Emergency Fund for Human Rights Defenders at Risk, which, managed by the Commission in close cooperation with the European External Action Service, has supported around 1600 human rights defenders and their families in 100 countries with emergency grants since 2014.[15]

[14] "Strengthening human rights and democracy in the world: EU launches a €1.5 billion plan to promote universal values." European Commission, press release 21 December 2021.

[15] "Human Rights: EU increases support to the protection of human rights defenders worldwide". European Commission, press release 29 September 2022.

With regard to *participation in UN human rights bodies,* the Council is responsible for defining the EU's priorities for action. To this end, it adopts annual conclusions setting priorities for work in UN bodies. They are intended to enable the EU and the EU Member States to advance common concerns there or to become active collaboratively.

The EU's strongest instrument is *sanctions*. The EU may adopt "restrictive measures", as they are called in EU jargon, either as its own measures (autonomous sanctions) and/or as a way of implementing UN Security Council resolutions, in cases where non-EU countries, natural or legal persons, groups or non-state entities do not respect international law or human rights or pursue policies or actions that do not abide by the rule of law or democratic principles. The EU may impose a range of gradual sanctions on third countries, including diplomatic sanctions (expulsion of diplomats, suspension of official visits, suspension of bilateral or multilateral cooperation with the EU, and boycotts of sporting or cultural events), and economic and financial sanctions (arms embargoes on military goods included in the EU Common Military List; restrictions on imports and exports of goods with both civilian and military uses). Restrictive measures also include the freezing of funds and economic resources owned or controlled by targeted individuals or entities, visa or travel bans preventing individuals from entering the EU, sectoral measures prohibiting, for example, the import or export of certain goods or technologies.[16]

5.1.2.3 Implementation of EU Human Rights Policy

The extent to which the strategic framework has been adhered to and the Action Plans have been and are being effectively implemented must be examined in each case. The self-perception is very positive: according to official statements, the first Action Plan (2012–2014) strengthened the mainstreaming of human rights issues in all EU external relations policies and implementation measures.[17] The Action Plan also facilitated the development of tools and resources for the formulation and implementation of more coherent policies, namely: the establishment of a Council Working Group on Human Rights (COHOM); the adoption of detailed EU guidelines on key human rights issues; the creation of a toolkit for a rights-based approach to development policy; the adoption of local human rights strategies in cooperation with EU delegations and EU member state embassies on the ground; the establishment of human rights focal points in EU delegations; and a streamlined training programme for EU diplomats from EU Member States. The annual planning of EU strategies in UN human rights bodies, first and foremost in the UN Human Rights

[16] https://eur-lex.europa.eu/EN/legal-content/summary/general-framework-for-eu-sanctions.html. See also the current sanctions list: https://www.sanctionsmap.eu (accessed: 15 Nov 2023).

[17] European Commission. High Representative of the Union for Foreign Affairs and Security Policy: Joint Communication to the European Parliament and the Council. Action Plan on Human Rights and Democracy (2015–2019). "Reaffirming human rights at the heart of the EU agenda", Brussels, 28 April 2015. JOIN(2015) 16 final, pp. 3–4.

Council, as well as increased cooperation with civil society are also important in the sense of effective multilateralism. Consultation with civil society organisations, for example in the run-up to human rights dialogues, has become common practice as a result of the Action Plan. In short, there is now

> a solid basis for the EU's continued efforts to give greater emphasis to respect for human rights and support for democratic transition processes worldwide, bilaterally, in cooperation with other regional organisations and multilaterally, in particular within the framework of the United Nations.[18]

While the Mid-Term Review published in 2017 already gave a positive overall assessment of the implementation of the second Action Plan,[19] the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy also emphasised at the presentation of the Action Plan 2020–2024 that much had been achieved in the meantime. The strategic framework, the Action Plans, the appointment of a Special Representative for Human Rights, among others, had enabled the EU to better coordinate its engagement in and with third countries, to make it more active, visible and effective, and to strengthen its engagement at the multilateral level. In a changing geopolitical landscape, the EU remained steadfastly at the forefront of the defence of human rights and democracy.[20] The *Annual Reports on Human Rights and Democracy in the World*, prepared by the High Representative of the Union for Foreign Affairs and Security Policy and approved by the Council, also report on progress made in implementing the Action Plans.[21] As impressive as the conglomerate of measures taken is in these reports, nothing critical is mentioned. This is more likely to be found in the annual reports of the European Parliament (EP).[22]

In the corresponding report for 2022,[23] for example, the European Parliament strongly encourages the Union "to strive for a continued ambitious commitment to make the protection of human rights a central part of all EU policies in a streamlined manner and to enhance the consistency between the EU's internal and external policies in this field" (para. 2). The 2020–2024 EU Action Plan on Human Rights and Democracy should be "in the centre of all EU external policies" and Member States should make it their own and report on actions taken. In a number of areas, Parliament calls on the EU and its Member States to step up their efforts and set a

[18] JOIN(2015) 16 final, p. 4.

[19] EU Action Plan on Human Rights and Democracy (2015–2019): Mid-Term Review, 11138/17, 7 July 2017.

[20] European Commission/High Representative of the Union for Foreign Affairs and Security Policy: Joint Communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020–2024. Brussels, 25.3.2020, JOIN(2020)5 final.

[21] https://www.eeas.europa.eu/eeas/eu-annual-reports-human-rights-and-democracy_en (accessed: 15 Nov 2023).

[22] Example: European Parliament: Human rights and democracy in the world and the European Union's policy on the matter - annual report 2022 (A-0298/2022).

[23] Human rights and democracy in the world and the European Union's poly on the matter - annual report 2022, P9_T(2023)0011.

good example, for example when opposing the global democratic decline (para. 8) or in the protection of human rights defenders through EU delegations and their human rights "focal points" (para 27). The criticism is particularly clear when the European Parliament

> recalls the obligations states have to protect refugees and respect their rights in accordance with the relevant international law; deplores the number of migrant deaths occurring along migration routes and illegal pushbacks in violation of international law; recalls that the EU and its Member States, in their external and extraterritorial acions, agreements and cooperation in the areas of migration, borders and asylum, should respect and protect human rights (para 92).

This points to the problem of coherence.

Ultimately, a particularly great challenge lies in the establishment of a coherent EU human rights policy. The problem of coherence encompasses several dimensions. Firstly, there is the question of how the active demand for and promotion of human rights in the EU's external action relates to human rights violations at the EU's borders and within the EU (*internal-external consistency*) (Bendel 2018; Bendel 2022). The continuing human rights tragedy of thousands and thousands of drowned refugees in the Mediterranean, the obstruction of sea rescue, pushbacks at the EU's external borders and the sometimes inhumane reception conditions for asylum seekers in EU Member States counteract(ed) the EU's human rights aspirations in its external action and are at the expense of the credibility of the EU's human rights policy. Whether the latest reform of the Common European Asylum System, which is to be adopted before the European elections in 2024, will benefit the EU's credibility in terms of human rights is doubtful. Credibility problems also arise as a result of discrimination against minorities in Europe, racist and xenophobic violence or insufficient protection of ESC rights in times of economic crisis, to name but a few examples. Likewise, the aforementioned authoritarian tendencies and deficits in the rule of law, as can be seen above all in Hungary, tarnish the image of a democratic community of values committed to human rights.

Secondly, the problem of coherence concerns the question of the extent to which human rights policy is presented as coherent in *external* action (*external-external consistency*). Various sub-questions can be formulated here: (a) Does the EU treat human rights violations equally? Or are human rights problems assessed and criticised differently depending on the state, whether allied or not? (b) Do the EU's various policy areas form a coherent unit with regard to human rights? Or do the human rights implications of EU policies in other policy areas, for example in agricultural, fisheries and trade policy, counteract human rights policy in the narrow sense. European foreign (economic) policy offers a broad field for critical analyses from a human rights perspective. Finally, the third question is whether the various EU institutions and the individual EU Member States contradict each other or "pull together" when they speak out about human rights and human rights violations in a state (*internal-internal consistency*).

5.2 The Council of Europe—Guardian of Human Rights?

The Council of Europe (CoE), with its seat in Strasbourg, was founded in 1949 as the first European organisation of states after the Second World War by originally ten states. Following the exclusion of Russia in March 2022, the Council of Europe currently has 46 Member States, which—with the exception of Belarus and now Russia—comprise all the states of Europe, including the Caucasus. The primary objectives of the Council of Europe include the protection of human rights, pluralist democracy and the rule of law. Countries joining the Council of Europe undertake to recognise the principles of the rule of law and the primacy of human rights and fundamental freedoms.

On its website, the Council of Europe describes itself as "Europe's leading human rights organisation". This self-image is expressed in a number of international agreements on the protection of human rights. First and foremost is the European Convention on Human Rights (ECHR, 1950, in force since 1953), which has been ratified by all Council of Europe Member States and which has been supplemented by 16 protocols that have entered into force to date. However, a number of other agreements are also committed to the protection and promotion of human rights, with a more or less large number of signatory states: The European Social Charter in its original (1961/1965) and revised (1996/1999) versions, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987/1989), the Convention on Action against Trafficking in Human Beings (2005/2008), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007/2010) and the Convention on Preventing and Combating Violence against Women and Domestic Violence (2011/2014). The latter has become known as the "Istanbul Convention" and gained particular media attention in 2021 when Turkey withdrew from the Convention. In addition, there are agreements on the national protection of minorities.

5.2.1 Judicial Human Rights Protection

The ECHR is at the heart of European human rights protection, and the European Court of Human Rights (ECtHR) is the central body for the protection of the rights enshrined therein. States Parties can turn to the Court in the form of inter-state applications for any alleged violation of the ECHR, although this rarely happens.[24] Far more important is the judicial protection of individual rights: any person subject to the jurisdiction of a State Party who is (or believes to be) affected by a violation of the rights enshrined in the ECHR may, if national legal recourse is exhausted (or obstructed), lodge a complaint against the state concerned with the ECtHR.

[24] Cyprus, for example, filed such complaints against Turkey, and Georgia and Ukraine against Russia.

The ECtHR examines whether the conduct of the respondent state was compatible with the ECHR, finds a violation of the rights guaranteed therein, if any, and may award damages to the complainant(s).

The ECtHR's judgments are binding and must be implemented by the states concerned. However, the ECtHR cannot overturn or amend any judgements or laws passed in the Member States. It is up to the respective state—beyond the payment of any compensation—to take measures to end the violation of the Convention and to avoid similar violations in the future. The Committee of Ministers of the Council of Europe (see below) monitors the implementation of the judgement and decides (at the level of representatives) at regular *human rights meetings* whether the measures taken are sufficient to implement the judgement or whether improvements are necessary.

The number of complaints is very large. At its peak in 2011, 151,600 complaints were pending before the ECtHR. After the entry into force—long blocked by Russia—of Protocol No. 14 to the ECHR, which allows for a more efficient handling of cases, the number of unresolved complaints decreased, but still stood at 74,647 on 31st December 2022, with an upward trend again since 2017; most of them concerned Turkey, the (now exited) Russian Federation, Ukraine and Romania. In 2022 alone, around 45,500 new applications allocated to a judicial formation were accepted, while "only" 39,570 complaints were ended in the same period. Of these, 35,402 were dismissed as inadmissible or struck out[25] and 4181 complaints were decided (sometimes jointly) by judgments of the Court.[26] The rights most frequently addressed in the judgments of 2022 were the right to liberty and security, the prohibition of inhuman or degrading treatment, the right to an effective remedy and the right to fair trial. Most of the judgments in 2022 concerned Russia, Ukraine and Turkey.[27]

Despite being chronically overburdened, the ECtHR is of great importance for judicial human rights protection at the regional level. The ECtHR has contributed significantly to the "consolidation" of the understanding of at least civil and political human rights within the countries of the Council of Europe. With the help of the doctrine of the "margin of appreciation", it has found a way to harmonise human rights standards while at the same time taking into account the specificities of national legal systems by granting states a certain, but also not unlimited, margin of appreciation in interpreting the law (Sicilianos 2021). Beyond the individual cases dealt with, the ECtHR rulings have in part also led to far-reaching changes in laws, regulations and procedures in the Member States. The annual "major advances" can be found in the corresponding annual reports of the Committee of Ministers.[28]

[25] Proceedings may be terminated by unilateral declarations or amicable settlements.

[26] https://www.echr.coe.int/Documents/Stats_analysis_2022_ENG.pdf (accessed: 15 Nov 2023).

[27] https://www.echr.coe.int/Documents/Stats_violation_2022_ENG.pdf (accessed: 15 Nov 2023).

[28] Example: Council of Europe, Committee of Ministers: Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights 2022, 16th Annual Report, Strasbourg 2023.

The ECtHR also adapted its interpretation of the ECHR, which is now over 70 years old, to changing social conditions. In doing so, the Court not only continually re-evaluated the limits of state interference in human rights, but also repeatedly redefined the *active* measures that states must take to protect the rights enshrined in the ECHR. With the help of a dynamic interpretation of the Convention, current problems are also addressed, for example with regard to new information and communication technologies or environmental issues.[29] This became clear in 2020 when the ECtHR allowed a climate complaint by Portuguese children and young people against 33 countries.[30] The ECtHR also dealt with the Covid 19 pandemic.[31] However, as the ECHR and its protocols do not contain economic and social human rights, with the exception of the rights to property and education, these rights cannot usually be brought directly before the ECtHR, but usually only indirectly,[32] for example, through the rights to life and the protection of private and family life (such as in relation to health),[33] or through the right to a fair trial and the prohibition of discrimination.

Despite a high level of implementation of ECtHR rulings, the judicial protection of individual rights has also reached its political limits. As important as it is that the ECtHR is also called upon by people from countries in which they do not enjoy adequate human rights protection, judicial protection of individual rights—which is particularly lengthy—can only improve the human rights situation in countries in which human rights are systematically violated to a limited extent. This is all the more true since it is not certain that even rulings on "leading cases" will be implemented quickly and effectively, although they are subject to increased monitoring. Corresponding structural and complex problems concern, for example, the functioning of the judicial and criminal justice systems (excessive length of judicial proceedings, delayed enforcement or non-enforcement of domestic judicial decisions etc.), the independence and impartiality of the judicial system, the excessive use of force and ill-treatment by security forces and ineffective investigations, poor conditions of detention as well as restrictions on political rights, such as the right to free elections, freedom of expression, freedom of assembly and freedom of association.[34] Above all, a large number of interim injunctions and judgements of the ECtHR, which unsuccessfully demanded the release of opposition members or

[29] Of particular interest here - in the absence of a right to health in the ECHR - are the positive measures to protect the right to life, for example in the case of hazardous industrial activities, toxic waste disposal, pollutant emissions or natural disasters; see ECHR Press Unit, Factsheet - Environment and the ECHR, Strasbourg 2021.

[30] ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Other States,* No. 39371/20.

[31] https://www.echr.coe.int/Documents/FS_Covid_ENG.pdf (accessed: 15 Nov 2023).

[32] But see also Binder et al. (2016), Leijten (2018).

[33] https://www.echr.coe.int/Documents/FS_Health_ENG.pdf (accessed: 15 Nov 2023).

[34] See Council of Europe, Committee of Ministers: Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights 2022, 16th Annual Report, Strasbourg 2023, pp. 25 f.

media workers in Azerbaijan, Turkey and Russia, show that the ECtHR is only able to counter authoritarian practices in its Member States to a limited extent.

5.2.2 *Extrajudicial Human Rights Protection*

While violations of the ECHR can be brought before the ECtHR, this does not apply to the other human rights conventions of the Council of Europe mentioned above. Although these conventions are also binding under international law for the respective signatory states, their implementation is "merely" monitored by expert committees, for example within the framework of state reporting procedures (or in the case of the Revised European Social Charter, insofar as accepted by the states, also within the framework of collective complaints). While the resulting reports or recommendations indicate in many respects a need for human rights policy action in the States Parties, it depends on the political will of governments to initiate appropriate measures. The same applies to other human rights-specific institutions such as the European Commission against Racism and Intolerance (ECRI), established in 1993 to counter racism, xenophobia and anti-Semitism, and the Office of the Commissioner for Human Rights of the Council of Europe, created in 1999, which is primarily active in raising awareness, educating and advising.

However, the *political* protection of human rights is primarily carried out by the general organs of the Council of Europe, first and foremost by the *Committee of Ministers*, which is made up of the foreign ministers of the Member States and their permanent representatives in Strasbourg, who carry out the Committee's day-to-day work. The Committee of Ministers is assisted in an advisory capacity by various steering committees, including one on human rights. The Committee of Ministers takes final decisions on all treaty texts, adopts non-binding recommendations and monitors the implementation of ECtHR judgments. Outside the monitoring mechanisms of the human rights treaties, it also monitors compliance with Council of Europe norms and standards, especially in the areas of democracy, human rights and the rule of law, through country-specific or thematic monitoring procedures. The monitoring activities serve to uncover shortcomings in the implementation and enforcement of the norms and standards of the Council of Europe and to support the elimination of these shortcomings in political dialogue. However, states do not have to fear serious consequences in the event of violations, even if sanctions can be imposed as a *last resort*; these range from the temporary suspension of a state's right of representation to its expulsion from the Council of Europe, as happened for the first time on 16th March 2022 in the case of Russia as a result of the war of aggression against Ukraine.

Together with the Committee of Ministers, the *Parliamentary Assembly,* consisting of members of the national parliaments of the Member States, is supposed to act as the "democratic conscience of Europe" and strive to protect the fundamental values of the Council of Europe and monitor compliance with the obligations entered into by the Member States. The Parliamentary Assembly, which meets several times

a year, adopts resolutions and makes recommendations to the Committee of Ministers and the governments of the Member States on a wide range of issues, especially in the field of human rights.[35] The self-assessment on its website is self-confident: "In its 60-plus years of existence, PACE's role as a 'human rights watchdog', a motor of ideas and a forum for debate has triggered positive change, defused conflict, and helped to steer the continent towards an ever-evolving set of shared values.[36]

Among its successes are the contribution of the Parliamentary Assembly to the abolition of the death penalty in Europe, initiatives for the adoption of Council of Europe treaties and its importance as a discussion forum on controversial political and social issues, as well as Europe-wide campaigns (against the imprisonment of underage migrants, domestic violence, sexual child abuse) and some "hard hitting reports" (CIA secret prisons, trafficking in human rights bodies, etc.).

However, human rights criticism can also be undermined politically. To cite just one drastic example, in January 2013, the majority of the Parliamentary Assembly rejected a resolution calling for the release of political prisoners in Azerbaijan. The draft resolution was based on a report on political prisoners there, prepared by the German rapporteur Christoph Strässer, who was appointed specifically for this purpose. Here, as on other occasions, the efforts of the autocrat Ilham Aliyev to prevent criticism of human rights and to polish up the image of the regime by means of generous donations were effective. The "caviar diplomacy" also caught on with several (also German) MPs in the years to follow.[37]

Russia's war of aggression against Ukraine posed a major challenge to the Council of Europe but did not shake it to its foundations. At the Summit of Heads of State and Government in May 2023 (only the fourth in the Council of Europe's history), they came together "to stand united against Russia's war of aggression against Ukraine and to give further priority and direction to the Council of Europe's work".[38] Combined with a clear commitment to the sovereignty, independence and territorial integrity of the CoE Member States, Russia was called upon to withdraw its troops not only from Ukraine, but also from Georgia and Moldova. In addition, an "Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine" was established by resolution CM/Res (2023)3.

[35] The work of the Parliamentary Assembly is based on the preparatory work of its committees, such as the Committee on Legal Affairs and Human Rights and its subcommittees.

[36] https://pace.coe.int/en/pages/achievements (accessed 25 September 2023).

[37] CoE: Report of the Independent Investigation Body on the Allegations of Corruption within the Parliamentary Assembly, Strasbourg, 15 April 2018. See also Taube (2021).

[38] CoE: Reykjavík Declaration: United around our values, Reykjavík Summit, 4th Summit of Head of State and Government of the Council of Europe, 16–17 May 2023, p. 3.

5.3 The "Human Dimension" of the OSCE

The Organisation for Security and Co-operation in Europe (OSCE) comprises 57 Member States, including all the states of Europe and the former Soviet Union as well as the USA and Canada. Mongolia was the latest member to join the OSCE in 2012. The OSCE emerged on 1st January 1995 from the Conference on Security and Co-operation in Europe (CSCE), which had already been established in 1975 on the basis of the Helsinki Final Act. The Final Act created a multilateral forum between the then military blocs in East and West in the midst of the Cold War. In it, originally 35 states committed themselves to political principles for dealing with each other and with their citizens and professed a comprehensive understanding of security which, in addition to political-military aspects, also included economic and ecological cooperation and—in return for the recognition of existing borders and the principle of non-interference in internal affairs—the rule of law and human rights. Civil rights movements then arose in the communist countries that invoked the Helsinki Act.

> The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.[39]

Against the background of the upheavals in Central and Eastern Europe from the end of the 1980s, the promotion of democracy and human rights gained considerable importance. Significant for human rights was the outcome document (1989) of the Third Helsinki Follow-up Conference in Vienna, as it introduced the concept of the "human dimension". It includes political commitments concerning human rights, rights of national minorities, democracy and the rule of law, and humanitarian issues. The Charter of Paris for a New Europe (1990) then ushered in a "new era of democracy, peace and unity", identifying the protection and promotion of human rights as the primary duty of governments and making a clear commitment to democracy and elections as an expression of the will of the people. The Final Document of the Moscow Conference (1991) explicitly recognised the human dimension as an international concern and abandoned the principle of non-interference in this regard:

> The participating States categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.[40] (Moscow 1991).

[39] See the Final Act of the Conference on Security and Co-operation in Europe, Helsinki 1975, reproduced in OSCE (2023b), pp. 1–25, here: p. 4.

[40] See the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow 1991, reproduced in OSCE (2023b), pp. 84–96, here: p. 84.

In the course of the institutionalisation of the CSCE/OSCE, which progressed in the 1990s, the *Human Dimensions Commitments* were updated (OSCE and ODIHR 2023a, 2023b) and the thematic fields and areas of work of the Human Dimension expanded. The growing importance of the Human Dimension, however, also sparked criticism, especially from the Russian government. Its support for the OSCE diminished noticeably in the course of the 1990s when it became clear that the OSCE could not be developed into a counterweight to NATO and at the same time Russia's supremacy and interests in Eastern Europe and the states of the former Soviet Union were threatened by the political change supported by the OSCE. Together with other successor states of the Soviet Union, Russia criticised the focus of the field missions in the Balkans and on the territory of the former Soviet Union and the strong emphasis on the "human dimension". Serious differences of opinion were manifested not least in the observation of human rights and electoral standards, which—contrary to the spirit of the 1991 Moscow Declaration—were again seen as interference in internal affairs.

At the last summit of heads of state and government in Astana (2010)—despite the reaffirmation of OSCE principles in the final document—the different views on the content and strategic orientation of the OSCE between East and West became clear. After the annexation of Crimea (2014), the Russian war of aggression against Ukraine (2022) ushered in the much-cited security policy turning point, to which the OSCE must also react. The OSCE is and remains primarily an intergovernmental forum for *political dialogue* between the participating states—in the Ministerial Council, the Permanent Council and the OSCE Parliamentary Assembly.

With regard to human rights, the activities of the Office for Democratic Institutions and Human Rights (ODIHR), which was established in 1991 as the lead institution for the implementation of the OSCE's Human Dimension, are particularly noteworthy. The ODIHR is is mandated to assist OSCE participating States to

> ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society.[41]

To this end, ODIHR—often together with the OSCE Parliamentary Assembly—monitors elections on a large scale; promotes democratic governance and the rule of law, especially in an advisory capacity; conducts training programmes in the area of human rights; supports human rights defenders; assists in the fight against hate crimes; promotes freedom of religion and belief; and maintains its own contact point for *Sinti and Roma*.

Other specific human rights institutions are the Office of a High Commissioner on National Minorities (since 1992) and the Representative on Freedom of the Media (since 1997). In addition, there are the field missions as a core element of the OSCE's crisis and conflict management, which ideally make a practical contribution to human rights protection in the conflict societies of the region undergoing

[41] Helsinki Document: The Challenges of Change (Summit of Heads of State or Government), Helsinki 1992, reprinted in: OSCE (2023b), pp. 99–115, here, p. 108.

transformation. Although the specific mandates and tasks vary, the missions ultimately aim to promote human and minority rights as well as the establishment of democratic structures and the rule of law. Of particular importance are the expert missions that were deployed to investigate the human rights and humanitarian impacts of the Russian war of aggression in Ukraine. The reports documented serious human rights violations and war crimes.[42]

5.4 Regional Human Rights Protection in Other Regions of the World

This introduction is largely limited to European and global human rights protection, which does not mean that regional human rights protection in other regions of the world is of secondary importance. It is of great importance for the concretisation of human rights in the respective regional contexts (which, however, are themselves quite heterogeneous).

The *Inter-American human rights system*[43] is particularly well developed within the framework of the Organisation of American States (OAS), to which 35 states of North, Central and South America and the Caribbean belong.[44] In addition to the American Declaration of the Rights and Duties of Man (1948), by which all OAS states are bound, there are various human rights conventions that are binding on the—almost without exception Latin American[45]—signatory states.[46] Central to these is the American Convention on Human Rights (AMRC, from 1965/in force since 1969) with its additional protocols on ESC rights (1988/1999) and on the abolition of the death penalty (1990/1991). In addition, there are Inter-American Human Rights Conventions on the Prevention and Punishment of Torture (1985/1999), Combating Violence against Women (1994/1995), against the "Disappearance" of People (1994/1996), against Discrimination against People with Disabilities (1999/2001) and on the Promotion and Protection of the Human Rights of Older Persons (2015/2016).

Institutionally significant are above all the Inter-American Commission on Human Rights, which has complaint, reporting and investigation procedures at its

[42] ODIHR.GAL/36/22/Corr.1, 14 July 2022.

[43] On the treaties and institutions of Inter-American human rights protection, see https://www.oas.org/en/topics/human_rights.asp (accessed: 10 Dec 2023). See also e.g. Antkowiak and Gonza (2017), Engstrom and Hillebrecht (2020), Salvioli (2020) and Hennebel and Tigroudja (2022).

[44] However, Cuba was excluded from participation in the OAS by resolution in 1962. According to a 2009 resolution, renewed participation can be agreed in a political dialogue initiated by Cuba.

[45] The USA and Canada have not ratified any of the Inter-American Human Rights Conventions. The same applies - with the exception of the Convention to Combat Violence against Women - to many small Caribbean states. Venezuela's withdrawal from the American Human Rights Convention (2012) caused a political stir.

[46] For the treaty texts and ratification statuses, see the OAS website (www.oas.org).

disposal, as well as the Inter-American Court of Human Rights with dispute resolution and advisory powers, to which, however, not all States Parties to the AMRC have submitted. Both have promoted a progressive interpretation of human rights, for example in relation to forced disappearances, indigenous rights, sexual self-determination, a comprehensive understanding of the right to life (*viva digna*) and, related to this, social human rights and the protection of the right to a healthy environment and the rights of nature.[47] While the norms, institutions and procedures of the Inter-American Human Rights System cannot really curb everyday human rights violations in the region (see Krennerich 2019), they are of great value as reference points for the work of national and transnational human rights organisations resisting oppression and hardship. Thus, civil society groups use the now well-developed institutions and procedures of national, regional and global human rights protection to demand the respect, protection and guarantee of human rights.

In *Africa,* the idea of human rights is closely linked to the struggle against colonialism and apartheid, but only received its own basis in international law within the framework of the (Organisation of the) African Union with the African Charter on Human and Peoples' Rights (Banjul Charter of 1981/1986). The Banjul Charter and its additional protocols—on the recognition of the African Court on Human and Peoples' Rights (1998/2004) and on women's rights (Maputo Protocol, 2003/2005)—as well as the African Charter on the Rights of the Child are the central regional human rights agreements. The African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child in turn form the institutional framework of regional human rights protection.[48]

The most important procedure here is individual complaints; these are dealt with by the Commission and—in cases of systematic and serious human rights violations or non-implementation of provisional measures or recommendations of the Commission—can be referred to the Court, provided that the states have submitted to its jurisdiction. (Only a few states allow individuals and NGOs to appeal directly to the Court). However, African human rights institutions, some of which have progressive adjudication practices, receive little support from African governments. This is clearly visible in the low implementation of the Commission's recommendations and the insufficient recognition of the Court. Civil society organisations, however, are interested in regional human rights protection. Examples of this are women's organisations, which campaigned for the Maputo Protocol, or the many NGOs that have observer status with the Commission. An African Court Coalition is also active in support of the Court.

[47] See e.g. Ferrer et al. (2020), Ibáñez Rivas et al. (2020), Morales et al. (2020), Calderón-Gamboa and Recinos (2022).

[48] Here, too, reference should be made to the literature: *African Human Rights Yearbook*, *African Human Rights Law Journal* as well as e.g.: Evans and Murray (2008), Bösl and Diescho (2009), Breutz (2015), Murray and Long (2015), Ssenyonjo (2015) and Adjolohoun (2020).

The normative-institutional development of regional human rights protection in *Asia* is rudimentary. In the Arab region, the Arab Charter on Human Rights, the revised version of which entered into force in 2008, is of little practical significance. In South (East) Asia, there are isolated sub-regional initiatives and activities, especially on the part of the *Association of Southeast Asian Nations* (ASEAN).[49] Most significant are the ASEAN Intergovernmental Commission on Human Rights, established in 2009—which admittedly consists mostly of government representatives, remains committed to the principle of non-interference and has remained silent on the most serious human rights crimes (Bui 2016; Hanung and Judhistari 2019)—and the ASEAN Declaration on Human Rights of 2012 (Clarke 2012; Renshaw 2013). While the Inter-American and African human rights declarations and treaties are consistent with or complementary to the international UN human rights treaties, despite some cultural specificities, the Asian human rights documents have some problematic provisions.[50] At the same time, governments try to control the human rights discourse.

However, "rights talk cannot be put in a box" (Langlois 2021, p. 153). In interaction with national human rights institutions (Goméz and Ramcharan 2020), civil society organisations in the region sometimes function "as watchdog and critical observer, sometimes norm socializer, and also creator of alternative human rights discursive positions" (Manea 2015, p. 73), especially as global human rights protection also comes into play in Asia (Sundrijo 2021). The Universal Declaration of Human Rights is also developing its customary international law influence there, and Asian states are bound by those global UN human rights treaties that they have ratified. However, there is an urgent need for greater civil society engagement on the part of a number of Asian states in the context of the UN Human Rights Council's Universal Review process (Goméz and Ramcharan 2017).

5.5 Human Rights Protection within the Framework of the United Nations

International human rights protection within the framework of the United Nations is based on the UN Charter of 1945. In addition to the reference to human rights in the preamble, the UN Charter states that one of the objectives of the United Nations is to promote and consolidate respect for human rights without discrimination through international cooperation (Art. 1 para. 3). To achieve this goal, the UN Charter

[49] The ten ASEAN member states are: Brunei, Indonesia, Cambodia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

[50] See the criticism of several international and regional human rights NGOs (https://www.amnesty.org/en/documents/ior64/002/2012/en/) and the then UN High Commissioner for Human Rights, Navai Pillay, at the adoption of the ASEAN Declaration on Human Rights (https://news.un.org/en/story/2012/11/426012), both accessed: 15 Nov 2023. See also Wahyuningrum (2019).

Table 5.2 Core UN human rights conventions

UN Human Rights Convention (adoption / entry into force)	Adoption/ entry into force	Ratifications Total
International Covenant on Economic, Social and Cultural Rights	1966/1977	171
Optional Protocol[a]	2008/2013	27
International Covenant on Civil and Political Rights	1966/1976	173
Optional Protocol[a]	1966/1976	117
Second Optional Protocol[b]	1989/1991	90
International Convention on the Elimination of All Forms of Racial Discrimination	1966/1969	182
Convention on the Elimination of All Forms of Discrimination against Women	1979/1981	189
Optional Protocol[a]	1999/2001	115
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	1984/1987	171
Optional Protocol (Prevention of Torture)	2002/2006	92
Convention on the Rights of the Child	1989/1990	196
Optional Protocol, on the Involvement of Children in Armed Conflict	2000/2002	172
Optional Protocol, concerning the sale of children, child prostitution and child pornography	2000/2002	178
Optional Protocol[a]	2012/2014	50
International Convention on the Protection of the Rights of All Migrant Workers and their Families	1990/2003	58
Convention on the Rights of Persons with Disabilities	2006/2008	185
Optional Protocol[a]	2006/2008	100
International Convention for the Protection of All Persons from Enforced Disappearance	2006/2010	68

[a]Including complaints procedures
[b]Abolition of the death penalty
Own compilation based on www.ohchr.org, as of December 2023

obliges all Member States to cooperate with the United Nations (Art. 55 and 56). However, one looks in vain for concrete provisions—or even a catalogue of human rights—in the UN Charter. Such a catalogue is only to be found in the Universal Declaration of Human Rights of 1948 and the international human rights conventions based on it, which were elaborated, adopted and ratified by a more or less large number of states within the framework of the United Nations (Table 5.2).

5.5.1 Range of Institutions

Anyone dealing with human rights in the United Nations today can easily lose track of the many UN institutions that now directly or indirectly protect and promote

human rights.[51] However, not all of them belong to the UN human rights system in the narrower sense, which is based on two pillars:

The first pillar comprises the UN *charter-based* human rights bodies, first and foremost the UN Human Rights Council, which functions as a subsidiary body of the UN General Assembly and is accountable to it. In 2006, the Human Rights Council replaced the Commission on Human Rights, which had previously existed for 60 years and was still subordinate to the Economic and Social Council. Together with the UN General Assembly, the UN Human Rights Council is the authoritative political body for human rights protection in the United Nations. It is also where the *Universal Periodic Review* (UPR), which was introduced in 2006 and to which all states have so far submitted, takes place. In addition, the Human Rights Council utilises commissions of inquiry and, as "special procedures", independent thematic and country-specific special rapporteurs and working groups on human rights. The office of the UN High Commissioner for Human Rights (since 1993) is also of great importance. The High Commissioner's Office is part of the United Nations Secretariat.

The second pillar consists of the *treaty-based* human rights treaty bodies. These include all those independent committees of experts that monitor the implementation of individual human rights treaties. They are easy to recognise: With the exception of the Human Rights Committee (CCPR), which monitors the International Covenant on Civil and Political Rights (ICCPR), the committees have the same names as the treaties: The Committee on the Elimination of Racial Discrimination (CERD) monitors the Convention on the Elimation of All Forms of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC) monitors the Convention on the Rights of the Child (CRC), and so on. The relevant committees are generally part of the treaty text and are created by the treaties themselves. The only exception is the UN Committee on Economic, Social and Cultural Rights, which was only established at a later date.

The UN human rights system in the narrower sense does not include all those main bodies (such as the Security Council), subsidiary bodies (such as the ad hoc criminal tribunals on the former Yugoslavia and Rwanda), special organisations (ILO, FAO, UNESCO, WHO, etc.) and programmes (e.g. UNDP, Habitat, UN Women) which deal with human rights on a case-by-case basis within the scope of their competences. For example, the International Labour Organization (ILO) deals in particular with the rights to work and social security, and (in substance or explicitly) the Food and Agriculture Organization (FAO) works on the right to food, the United Nations Educational, Scientific and Cultural Organization (UNESCO), among others, on the right to education and the World Health Organization (WHO) on the right to health. The UN Security Council is also of particular importance, as it is the only UN institution that can ultimately decide on coercive measures. While the two (now dissolved) ad hoc criminal tribunals in and on

[51] The diversity of institutions is sometimes criticised for "excessive institutionalisation" (Mégret and Alston 2020, p. 3).

Rwanda and the former Yugoslavia were established by the UN Security Council, the International Criminal Court (ICC), established in 2002, is itself an autonomous institution based on the Rome Statute of 1998. It is not an organ of the United Nations, although cooperation with the UN in the prosecution of human rights criminals is regulated by treaty.

This introduction is not intended to and cannot cover the institutional diversity of the UN human rights system in detail; this has already been done in other publications (one of many: Mégret and Alston 2020). The website of the Office of the High Commissioner (www.ohchr.org) also provides a comprehensive and detailed documentation of all activities of the charter- and treaty-based UN human rights bodies. But let us take a closer look at at least a few selected institutions.

5.5.2 The Human Rights Council

The Human Rights Council (HRC) replaced the former Commission on Human Rights in 2006.[52] On the basis of an institutional upgrading and various procedural reforms, the HRC was intended to give human rights protection within the United Nations greater significance and a new dynamic and to overcome the weaknesses of the former Commision. It is true that the Commision on Human Rights had great historical merits, especially in the area of standard-setting. The introduction of special procedures and the opportunities for dialogue between representatives of governments and civil society were strengths that could be built upon. However, the credibility and professionalism of the Commission were ultimately low due to its politicisation, selectivity and low level of effectiveness. According to then UN Secretary-General Kofi Annan, the Human Rights Council should now usher in a "new era". According to the predefined goals,[53] the new HRC should, among other things, promote the implementation of state human rights obligations; prevent human rights violations through dialogue and cooperation; respond promptly to human rights crises; make recommendations for the protection and promotion of human rights. What was new, however, was above all that *all* UN Member States were now subject to regular review within the framework of the Universal Periodic Review (UPR) procedure. In order to be able to describe, examine and evaluate the HRC and its work, the above-mentioned website of the High Commissioner's Office is an extremely helpful source of information, in addition to numerous publications.[54] Its subpage on the HRC[55] documents its regular and special sessions. It also

[52] John P. Pace (2020) has undertaken a comprehensive description and evaluation of the "grand experiment" of the Commission on Human Rights.

[53] General Assembly A/RES/60/251, 3 April 2006.

[54] See for example Ramcharan (2011, 2022), Freedman (2013, 2020), Rathgeber (2013, 2017), Tistounet (2020).

[55] https://www.ohchr.org/en/hrbodies/hrc/home (accessed: 10 Dec 2023).

lists the commissions of enquiry and fact-finding commissions set up by the HRC, as well as the thematic and country-specific special reports of the HRC, which are to be distinguished from these. Comprehensive information on the UPR procedure and the work of the Advisory Committee can also be found. HRC meetings are also broadcast *live* and archived on UN WebTV.

Reports from thinktanks as well as NGOs and NGO networks that monitor, track and comment on the work of the HRC are also informative. One example is the thinktank *Universal Rights Group*, which operates a "UN Human Rights Resolution Portal" and an "HRC Voting Portal". The NGO *International Service for Human Rights* runs, among others, a Human Rights Council Monitor. In Germany, the monitoring of the HRC by the NGO network *Forum Menschenrechte* is exemplary. Its reports on the sessions of the HRC, which are openly accessible on the forum's website[56] and have up to now been prepared by Theodor Rathgeber (from 2006 to 2018) and Silke Voß-Kyeck (since 2019), provide a subjective but extremely knowledgeable insight into the work of the HRC. In addition to the many routine meetings, they report on confrontational debates and contentious resolutions, on tactical manoeuvres, questionable compromises and blockades, but also on unexpected successes and substantial statements, reports, resolutions and discussions. In the process, they also always identify states that are trying to promote human rights protection or to thwart it.

In the following, four aspects are singled out that repeatedly give rise to discussion and are of importance for the evaluation of the HRC. They concern (a) the composition and, related to this, (b) the politicisation of the HRC, (c) the addressing of urgent human rights problems, and (d) the participation of civil society actors.

5.5.2.1 Composition of the Human Rights Council: A Place for "Bad Guys"?

From the beginning, the composition of the HRC has been a point of criticism and has repeatedly given rise to reform proposals. At first glance, there seems to be nothing wrong with the election of members: the 47 Member States of the HRC are each elected for 3 years by secret ballot with an absolute majority of the UN General Assembly, with one third of the members being renewed each year. Immediate re-election is possible, after which the country must pause for at least 1 year for rotation reasons before it can be re-elected. To ensure appropriate geographical distribution, similar to the former Commission on Human Rights, regional groups each provide a fixed number of members (Africa 13, Asia/Pacific 13, Latin America/Caribbean 8, Eastern Europe 6, Western and other countries 7). As of January 2024, a total of 124 of the 193 UN Member States had been members of the HRC at least

[56] https://www.forum-menschenrechte.de/unsere-themen/un-menschenrechtsrat/ (accessed: 10 Dec 2023).

once.[57] Among the most frequently elected members of the Human Rights Council are e.g. Argentina, Brazil, China, Cuba, Germany, India, Indonesia, Japan, Mexico, Pakistan, Qatar, Saudi Arabia, South Korea and the United Kingdom.[58] Member States should actually meet the highest human rights standards and cooperate fully with the UNHRC, and the election should take into account their past contributions to human rights protection and the *voluntary pledges* and *commitments* they made in their candidature.[59]

The first problem is that there is no real election. The respective regional groups usually only nominate as many candidates as there are seats to be allocated ("clean slates").[60] The main problem, however, is that states with a poor or even disastrous human rights record are also nominated as candidates and—with a few exceptions[61]—have so far also been "elected" by the UN General Assembly. Although highly repressive regimes are in the minority there, overall, those states that are classified as "not free" or "partly free" in terms of civil and political rights by Freedom House, for example, usually made up the (slim) majority in the HRC.[62] So far, their share was highest in 2023 with 70%.

In 2022, China, Cuba, Russia (until 7th April) and Venezuela were also members of the Human Rights Council, along with several other autocracies (including Eritrea for the second time). Their open obstructionism towards multilateral human rights protection weakens the argument for an inclusive HRC, which is supposed to serve as a forum to exchange views on human rights across political and cultural boundaries, and diminishes the credibility of the HRC. While it is important that the HRC not only consists of like-minded states, but also provides the opportunity for active engagement with those governments that are indifferent to, or sceptical and hostile towards human rights—especially if their conduct meets with resistance in the HRC—the fundamental dilemma remains: The election of notorious human rights violators is, to use an idiomatic expression, "to put the fox in charge of the henhouse".

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[57] https://www.ohchr.org/en/hr-bodies/hrc/hrc-elections (accessed: 10 Dec 2023).

[58] HRC World Map 2006–2023, Historic membership at: https/yourhrc.org (accessed: 10 Dec 2023).

[59] UN Doc. General Assembly A/RES/60/251, 3 April 2006, and: UN Office of the High Commissioner for Human Rights: "Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to Human Rights Council".

[60] In the 2022 and 2023 elections, 17 countries stood for 14 and 15 new seats, respectively.

[61] While individual autocracies, such as Syria, were diplomatically "discouraged" from running or, like Iran in 2010, withdrew their candidacy due to lack of support, Belarus in 2007 and Sri Lanka in 2008 fell short of the necessary majority in the election. Saudi Arabia suffered the same fate in 2019, despite having been elected to the HRC several times before. Before the October 2022 election, Bahrain withdrew its candidacy in the face of massive criticism, and Afghanistan and Venezuela (along with South Korea) were not elected.

[62] According to calculations by the pro israel organisation UN Watch ("Dictatorships at UN"): 2007: 47%, 2008: 51%, 2009: 53%, 2010: 51%, 2011: 62%, 2012: 57%, 2013: 49%, 2014: 52%, 2015: 57%, 2016: 62%, 2017: 53%, 2018: 54%, 2019: 53%, 2020: 52%, 2021: 61%, 2022: 68%, 2023: 70%; https://unwatch.org/database/ (accessed: 23 Sept 2023).

An important difference to the former Commision on Human Rights is that the UN General Assembly can, with a two-thirds majority, suspend the membership rights of a member state of the Human Rights Council if it is guilty of serious and systematic human rights violations. The first time such a temporary suspension was imposed was on Libya during the final phase of Gaddafi's rule on 1st March 2011 (until 18th November 2011). A second time, the UN General Assembly suspended Russia's membership of the HRC on 7th April 2022 (with 93 votes in favour, 24 abstentions and 58 against).

5.5.2.2 Politicisation: Unavoidable?

A body consisting of political representatives of states is inevitably political. The question is, however, whether the political debates primarily relate to human rights or are overlaid by other political interests. As is to be expected given the composition of the HRC, the global conflict between democracies and autocracies, which has become more heated again, is currently also reflected in the HRC. The accusation of politicisation and partisanship is not only put forward by democratically governed states. It is also part of the standard rhetorical repertoire of declared autocrats who like to accuse "the West" of double standards. Despite all routine, consensus-seeking and dialogue-orientation, some debates in the HRC are therefore politically charged and take place in a tense, heated atmosphere.

Political perennial issue is also the fixed agenda item 7 of the regular sessions of the HRC. It deals with the "human rights situation in Palestine and other occupied Arab territories". This means that Israel, unlike all other countries, comes up in every HRC session and is regularly criticised there, especially by Islamic states, for human rights violations. The disproportionately frequent preoccupation with and massive criticism of Israel provided the US administration under President Donald Trump with the occasion and justification to withdraw from the HRC in 2018—the first country to do so voluntarily. The then UN Ambassador Nikki Haley and the then US Secretary of State Mike Pompeo justified the move at the time with the anti-Israeli orientation of the HRC, with its resistance to reform and with the HRC membership of states whose governments were responsible for the most serious human rights violations. It was only under US President Joe Biden that the USA returned to the HRC, initially as an observer, before being elected as a member for another term in 2022.

Controversial human rights issues in the interregional discourse continue to include, to name but a few examples, racism and Islamophobia, gender issues and sexual orientation, as well as traditional values and the protection of the family. The impact of colonialism, international economic and financial policy or sanctions on human rights are also contentious issues, as is the treatment of a critical civil society and human rights defenders. Here, too, criticism and countercriticism often follow foreign policy interests, political alliances and common enemy images of governments from very different regions of the world. At the same time, the approval and rejection of resolutions in the HRC are more or less strongly influenced by the

affiliation to the regional groups. In order to reduce politicisation, it is therefore also important to overcome block mentality and to cooperate with other states on human rights issues beyond the regional groups. This is possible on a wide range of issues.

5.5.2.3 Addressing Pressing Human Rights Issues

Despite all the diplomatic manoeuvres and routines, sessions of the HRC do offer opportunities to put pressing human rights issues on the agenda and to explore them in greater depth. This can be done in special sessions or in regular sessions of the HRC, for example in urgent debates or as a result of reports by the UN High Commissioner for Human Rights and Special Rapporteurs. The possibility of openly naming human rights violations and problems in individual states, adopting critical country resolutions and mandating investigations into individual countries is also offered by the fixed agenda item 4 of the regular sessions, which was only placed there after tough negotiations; it deals with the human rights situation in all parts of the world that require attention by the HRC.

Since the first session of the HRC in July 2006, a total of 36 special sessions have been held up to and including May 2023, which can be convened with the votes of one third of the HRC members. They concerned the human rights situation, for example, in Iran, Ukraine (as a result of the Russian aggression), Ethiopia, Afghanistan, several times in Sudan, the Occupied Palestinian Territory (includig East Jerusalem), Myanmar and Syria, as well as in South Sudan, Burundi, Iraq, the Central African Republic, Libya and Sri Lanka, and in Côte d'Ivoire, Haiti and Lebanon (as a result of Israeli military operations). Very occasionally, there were also issue-centred special sessions.[63]

In addition, seven emergency debates were held during the regular sessions until the 53rd session of the UN Human Rights Council in July 2023, which require a simple majority in the HRC for votes to be held.[64] In part, they addressed the same country situations as the special sessions. For example, an emergency debate on the human rights situation in Ukraine as a result of the Russian aggression was held during the 49th session of the UNHRC in March 2022, with China, Cuba, Eritrea, Russia and Venezuela voting against. In other cases, other country-specific situations came up that gave rise to contentious political debates. One example: the emergency session on Belarus in September 2020, which had been requested as a result of serious human rights violations and ongoing mass protests following the presidential elections there, offered everything that makes the work of the HRC necessary and unpleasant in equal measure, according to Voß-Kyeck:

[63] A list of all special sessions can be found at https://www.ohchr.org/en/hr-bodies/hrc/special-sessions (accessed: 10 Dec 2023).

[64] The figure was given by Michelle Bachelet, then UN High Commissioner for Human Rights, in her statement at the opening of the 50th session of the HRC on 15 June 2022.

After the statements by the UN Deputy High Commissioner for Human Rights, Nada Al-Nashif, and the Special Rapporteur on Belarus, Anäis Marin, the Belarusian opposition politician Svetlana Tikhanovskaya and the activist Ekatarina Novikana, who took part *online,* were allowed to speak. Not only were the speeches interrupted and subject to unsuccessful attempts to cut them short by numerous amendment applications, first and foremost by Belarus and Russia, but also by China and Venezuela. In the ensuing debate, substantial references to serious human rights violations were also dismissed by the government of Belarus as unproven and unjustified, and accusations against security forces were countered with accusations against allegedly violent demonstrators. Demands for an independent investigations into events were contrasted with insistence on state sovereignty and non-interference and offers of cooperation and dialogue contrasted with criticism directed against the EU, for example by Russia, of the alleged politicisation of the HRC by a group of "aggressive states".[65]

The standard for addressing urgent human rights problems continues to be the 36 fact-finding commissions on individual countries that the Human Rights Council has set up to date with corresponding resolutions, either in regular or special sessions.[66] The commissions of inquiry, which have been established or extended until September 2023 and have not yet been concluded, concern violations of human rights and, where applicable, of international humanitarian law in Iran, Nicaragua, Ukraine (as a result of the Russian aggression), Ethiopia, the Occupied Palestinian territory, including East Jerusalem, and Israel, Libya, Venezuela, Myanmar, the Democratic Republic of the Congo and South Sudan. The country mandate on Yemen, on the other hand, was not renewed in 2021—despite the ongoing humanitarian and human rights emergency. Saudi Arabia, supported by Bahrain and Egypt, lobbied hard to prevent an extension of the mandate. At the same time, the establishment of a commission of inquiry does not guarantee that the states concerned will cooperate. The Ortega regime in Nicaragua, for example, completely refuses to cooperate.

With regard to the many of the 1372 other resolutions that the Human Rights Council had adopted by its 50th session by June 2022,[67] it is interesting to see which topics and countries they deal with, how openly human rights problems are enumerated and what the voting behaviour of the states is like.[68] There have never been critical resolutions on several countries, such as China and the USA, despite obvious, albeit different, human rights problems. In the 51st session in October 2022, for example, China succeeded in ensuring that a resolution calling for the

[65] https://www.forum-menschenrechte.de/wp-content/uploads/2020/11/45.-Tagung-des-UN-MRR.pdf (accessed: 15 Nov 2023).

[66] https://www.ohchr.org/en/hr-bodies/hrc/list-hrc-mandat (accessed: 10 Dec 2023).

[67] The figure was given by Michelle Bachelet in her statement at the opening of the 50th session of the HRC on 15 June 2022.

[68] The respective voting behaviour is documented in the meeting reports - available on the website of the HRC. See also the HRC Voting Portal of the Universal Rights Group.

situation in Xinjiang to be addressed at the next Human Rights Council session was rejected by a narrow majority. However, there were critical resolutions on a number of other countries. Some resolutions clearly state human rights problems, others are visibly "watered down" in the search for consensus. Many resolutions are adopted by consensus, others only by simple majority. Some country resolutions are highly contentious,[69] others, such as those on technical cooperation with individual countries, are politically less controversial.

No less revealing are the debates and amendments that precede resolutions, as well as the compromises that are made in the run-up to resolutions (see also Voss 2019). In the search for consensus or majorities, many a progressive or problematic draft resolution is watered down. Even if no resolutions are passed, state representatives may issue joint statements on the human rights situation in individual countries, which in turn often elicit opposing opinions.[70] It is then revealing who is criticised in the statements, why and in what way, and how many and which states support the statements.

Thematic resolutions can also be controversial. To take just one of many problem areas as an example: resolutions on women's rights, gender, sexual and reproductive rights regularly trigger criticism from conservative governments (Jordaan 2016; Voss 2018). Or as Joel Voss (2018) describes it:

> To say that resolutions related to sexual orientation and gender identity are highly contested would be an understatement. The 2011 resolution, which first introduced SOGI to the Council, featured an orchestrated walkout by members of the Organization for Islamic Cooperation, while the 2014 resolution faced seven 'hostile' amendments; the purpose of which was to make the resolutions devoid of any meaning.

It is also interesting to see to what extent resolutions address newly emerging issues (e.g. Covid 19, digitalisation, climate justice) (which does happen) and how states position themselves on them. Resolutions that recognise human rights that have not yet been codified, or that have hardly been codified, are significant for the further development of human rights protection. For the recognition of the human right to water and sanitation, for example, the resolutions regularly introduced and adopted by Germany and Spain in the HRC were important. They reaffirm a UN General Assembly resolution of 28 July 2010, which called on the international community to intensify its efforts to provide all people with access to clean water and sanitation. A current example is the resolution on the "right to a safe, clean, healthy and sustainable environment", which was adopted without dissenting votes on 2nd October 2021 in the 48th session of the HRC. At the same time, it is important to

[69] Examples of this are the country resolutions on Tigray/Ethiopia and Burundi at the 46th session of the HRC.

[70] An example is the joint statement of 49 states in the 50th session of the HRC, which criticised human rights violations in China. In contrast, the counter-opinion of 69 states presented by Cuba insisted on non-interference in the internal affairs of sovereign states and criticised double standards (both dated 14 June 2022).

prevent resolution initiatives that seek to weaken or reverse established human rights standards, such as those repeatedly pushed by the Chinese government.[71]

Overall, it can be said that the HRC does address current and urgent human rights issues in its sessions. Nevertheless, there are a number of "gaps". The selection of topics and the way they are discussed and dealt with is determined both by procedural routines and by diplomatic manoeuvres of the individual states and regional groups in their search for consensus or allies. Efforts to strengthen human rights protection are always countered by efforts to fend off criticism and formulate countercriticism. Different ideas of human rights and state human rights obligations are also put forward.

5.5.2.4 Participation of NGOs

A key feature of the HRC (as of the Commission on Human Rights before it) is the participation of NGOs.[72] "There is no other body within the UN system or in other organisations where the space granted to civil society is as important" (Tistounet 2020, p. 140). Although only NGOs with consultative status in the UN Economic and Social Council[73] can be accredited as "observers" of HRC meetings,[74] their number doubled from 407 to 874 between 2006 and 2018 (Tistounet 2020, p. 140). At the same time, they are allowed to do far more than only observe proceedings (with the exception of the confidential complaints mechanism). Accredited NGOs may make written and oral submissions before and during HRC sessions, participate in debates, interactive dialogues, panel discussions and informal meetings, and organise side events. The number of such side events alone increased from 87 to 590 between 2006 and 2018 (Tistounet 2020, p. 140). During the virtual or hybrid sessions held because of the Corona pandemic in 2020 and 2021, the usual formal and informal exchanges in Geneva were impaired, but the online statements opened up new opportunities for NGOs and stakeholders to bring their experiences and concerns to the HRC.

However, the participation of civil society organisations that criticise human rights is a thorn in the side of some governments. Not only are critical statements by NGOs and affected persons repeatedly interrupted, disrupted or prevented by

[71] More generally on China's foreign policy in UN human rights institutions: Piccone (2018), Chen (2019), and Kinzelbach (2019). See also the Amnesty International and urgewald dossier: "What China Says, What China Means and What this Means for Human Rights", https://whatchinasays.org/ (accessed: 10 Dec 2023).

[72] https://www.ohchr.org/en/hr-bodies/hrc/ngo-participation (accessed: 10 Dec 2023). See also the corresponding chapters in Tistounet (2020) and McGaughey (2021).

[73] The website (www.csonet.org) indicated - at the time of access on 25 November 2023 - 6494 NGOs with an active consultation status with ECOSOC. Only a portion of these are human rights active or accredited to the HRC.

[74] In practice, non-accredited NGOs can sometimes participate in MR meetings with the help of the accreditation of accredited NGOs.

points of order (as in the above-mentioned emergency session on Belarus). There is also repression of civil society actors (and their families). These include bans on leaving the country or detention to prevent travel to Geneva; photographing and filming people in Geneva; defamation and hate messages; intimidation and threats; or reprisals after returning from Geneva (Tistounet 2020, pp. 145–146).

The previous Commission on Human Rights had already urged governments to refrain from any obstruction, intimidation and reprisals against private individuals (and their families) who cooperate with UN human rights institutions. Rather, they should effectively protect them.[75] The Human Rights Council followed up on this. In 2009, it adopted Resolution 12/2, on the basis of which the Secretary General has submitted annual reports on relevant incidents since 2010.[76] In the report for the period from 1st May 2021 to 30th April 2022 alone, corresponding cases of repression were named in almost 40 states.[77] In resolutions on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights", the Human Rights Council regularly condemns such practices.

Despite all the reprisals, one of the strengths of the HRC, including the UPR and the special procedures (which we will discuss later), is that a lively human rights scene has emerged around the HRC in which those affected by human rights violations and their supporters can voice their concerns. At the same time, civil society organisations ideally help to ensure that the recommendations adopted in Geneva find their way into the (human rights) political discourse in the respective countries and, where possible, use them for their human rights work on the ground.

5.5.2.5 Universal Periodic Review

The most important innovation that accompanied the establishment of the HRC is the *Universal Periodic Review* (UPR).[78] With the UPR, a procedure of mutual universal review was established: From this time on, *all* 193 UN Member States were to have themselves reviewed periodically[79] on the basis of objective and reliable information to determine the extent to which they fulfil their human rights

[75] Most recently: Human Rights Resolution 2005/9.

[76] The list of reports since 2010 can be found at https://www.ohchr.org/en/reprisals/annual-reports-reprisals-cooperation-un (accessed: 10 Dec 2023).

[77] UN Doc. A/HRC/51/47, 14 September 2022. In alphabetical order: Afghanistan, Andorra, Bahrain, Bangladesh, Belarus, Brazil, Burundi, Cameroon, China, Cuba, Cyprus, DR Congo, Djibouti, Egypt, Guatemala, India, Indonesia, Israel, Kazakhstan, Lao Peopole's Democratic Republic, Libya, Maldives, Mali, Mexico, Morocco, Myanmar, Nicaragua, Philippines, Russian Federation, Rwanda, Saudi Arabia, South Sudan, Sri Lanka, Sudan, Thailand, Turkmenistan, United Arab Emirates, Venezuela, Viet Nam.

[78] In addition to the UPR website and the UPR Info database, see, inter alia: Charlesworth and Larking (2014).

[79] The review period was initially 4 years but was increased to four and a half years in the second review cycle and 5 years in the third cycle.

obligations. The procedure is explicitly based on cooperation and dialogue, with the full participation of the state under review and taking into account its capacity needs.[80] The UPR is therefore not conducted against the state under review, but in cooperation with it and in reliance on its participation. In doing so, states are encouraged to cooperate and interact. The overarching goal is to contribute to a tangible improvement of the human rights situation in the respective state for the people there. To this end, human rights problems are identified, and the states make recommendations on how to overcome them. In brief, the UPR procedure is as follows:

(a) In preparation for the review, the state concerned prepares a *state report* of no more than 20 pages—ideally as part of a national consultation process. The UN High Commissioner submits two further documents: a compilation of the recommendations and opinions of special rapporteurs, human rights treaty bodies or other UN institutions on the state under review of up to ten pages (*UN compilation*); a summary of information, opinions and parallel reports submitted by stakeholders, including national human rights institutes and NGOs, of up to ten pages (*stakeholder summary*).

(b) The actual review initially takes place outside the regular session in a UPR working group of the HRC, in which the 47 HRC members are represented, but in which all other UN Member States can also participate as "observer states" and have the right to speak. In an "interactive dialogue" lasting up to three and a half hours, the state representatives comment on the human rights situation in the state under review with the help of the above-mentioned documents, ask questions and make recommendations. A "troika", consisting of three HRC Member States from different regional groups, acts as facilitator and rapporteur.[81] Their preliminary report on the interactive dialogue and the recommendations made there, together with the statement of the state under review (on the recommendations), is then dealt with in the next regular plenary session of the HRC. By this time at the latest, the state under review must have declared which recommendations it *supports,* i.e. accepts, and which it only *takes note of*, i.e. in fact rejects. During the final deliberations in the regular session, the reviewed state and the member and observer states have their say again. However, their respective speaking time is very short. In addition, NGOs can now also make short oral statements, which, however, are not included in the final report.

(c) After the review in Geneva, the state concerned should implement the recommendations it has accepted. However, there are hardly any provisions on to how the implementation and its follow-up are to be carried out. The manner in which the follow-up is organised is thus left to the respective states. Ideally, the states conduct national consultations on the implementation of the recommendations and prepare an interim report on a voluntary basis. Often, however, the

[80] UN Doc. General Assembly A/RES/60/251, 3 April 2006, 5e.

[81] The members of the Troika are chosen at random. The state under investigation can request a state from its regional group and have a state replaced once.

follow-up is completely inadequate. The next regular review then refers to the implementation of the recommendations and the development of the human rights situation in the state concerned.

One strength of the UPR procedure is that all UN Member States, including political heavyweights such as the USA and China, undergo a human rights review before the eyes of the international community of states. In particular, this counteracts the much-criticised selectivity in the treatment of country situations.[82] In fact, no state has so far fundamentally withdrawn from the UPR, even if, for example, Israel's non-participation was only just prevented during the second review cycle (Charlesworth and Larking 2014, p. 15) and later, in the 38th regular session of the HRC (June/July 2018)—coinciding with the withdrawal of the USA from the HRC—the Israeli state representation boycotted the adoption of the UPR report on its own state.

In any case, there are major differences in the extent to which states cooperate in their own review and are willing to be self-critical. They also differ in the extent to which they engage in the review of other states within and outside their regional groups and also address substantive problems. Despite serious human rights violations, it sometimes remains a case of friendly states "patting each other on the back" and harmless recommendations, especially (but not only) among autocracies. While some contributions in Charlesworth and Larking (2014) point to rituals and ritualism in the UPR, Milewicz and Goodin (2018) see evidence that the UPR initiates a deliberative process on the promotion of human rights worldwide and even consider the procedure as a model for international organisations to strengthen the deliberative capacity of the international system. However, this assessment is overly favourable.

The final reports of the UPR show which recommendations the governments of the states under review accept from which states or only take note of. Terman and Voeten (2018) highlighted that while governments are more lenient towards their strategic partners in the UPR process, the criticism is more likely to be accepted by them. They call this "relational politics of shame" between states. Etone (2020) also found in the case of African states that recommendations from their "own" regional group were most likely to be accepted. The question as to the reasons why certain recommendations are made and accepted by governments offers researchers a broad quantitative and qualitative field of investigation that also offers links to theoretical concepts.

To give just one example: Andrea Cofelice (2017) showed for the study period 2008 to 2014 that the Italian government presented itself as human rights-friendly in Geneva, for instance by making recommendations on which Italy itself performed well at the multilateral and national level. Cofelice attributed these efforts to gain international legitimacy in a constructivist sense to social pressure to conform in the

[82] Although it may be criticised that states with good and bad human rights records receive equal attention, this is conducive to equal treatment of all states. In any case, even in "human rights-friendly" states there is a need for human rights action and room for improvement.

multilateral forum, and in a liberal-institutionalist sense also to the implementation of other liberal goals in foreign policy.[83] At home, however, where this pressure to conform would have been felt far less, the main concern had been to keep the political and material costs of the recommendations as low as possible. Here, the author uses Putnam's metaphor of the Two-Level Game (without, however, bothering with its deeper mechanism of action).

As far as the quality of the recommendations is concerned, it should be noted that many of the recommendations made and adopted are general in nature. However, the recommendations are potentially most effective if they are formulated precisely, contain concrete, verifiable measures and can be used within the countries to actively lobby governments. It is therefore essential that national human rights institutions and, above all, NGOs and NGO networks embrace the UPR process and, as far as possible, become involved in all phases of the UPR, i.e. in the preparation, implementation and follow-up:

(a) In the preparation of the UPR, they can participate in government consultations and point out critical points and gaps in the preparation of the State Report. Or they can send their own statements and reports to the UN High Commissioner, which are then included in the *stakeholder summary*.[84] This is also possible for NGOs without consultative status with ECOSOC and without accreditation for the meetings of the HRC.

(b) Before the review in Geneva, NGOs can provide the state representatives there with targeted information on the states under review. Side events and pre-sessions also serve this purpose. The NGO "UPR-Info", for example, has been conducting pre-sessions since 2012, at which national human rights institutes and civil society organisations report on the human rights situation in the states under review and the representatives of other states can obtain first-hand information.[85] Furthermore, their own governments can be lobbied and pressured to adopt recommendations. Finally, oral statements can be made by accredited NGOs when the final report is adopted by the HRC.

(c) In the national implementation of the recommendations, national human rights institutes and civil society organisations are ideally also involved in national consultations, accompany and/or monitor the implementation of the recommendations and provide information on problems and progress.

The fundamental question is therefore to what extent the UPR is used by civil society organisations (and also national human rights institutes) to raise human rights concerns with the help of human rights-friendly states (cf. Parra 2017) and to improve the human rights situation in their own countries in the sense of a

[83] We will come to the theoretical IR approaches later.

[84] In view of the diversity of information, however, the High Commission has to "filter" (see Billaud 2014; McGaughey 2021). NGOs with experience of the processes in Geneva and with the corresponding resources also have a structural advantage. However, they - as well as national human rights institutes - sometimes provide assistance to inexperienced NGOs.

[85] However, this also gives UPR-Info a gatekeeper function.

"boomerang effect". The extent to which the voices of the ground are actually heard in Geneva and the UPR recommendations can later be used for local human rights work depends not least on the nature, strength and networking of civil society organisations as well as the willingness of the respective governments to involve them in the process. It is particularly problematic when—as mentioned above—NGO representatives are prevented from feeding information into the UPR process and participating in it. It is also problematic when governments—such as those of China, Cuba and Venezuela—mobilise "servile" NGOs or GONGOs that are sympathetic to them in order to introduce favourable reports into the process (McGaughey 2021, p. 48) or to fill the lists of speakers at the final deliberations of the UPR reports.

5.5.2.6 The UN Special Rapporteurs

Once described by Kofi Annan as the "crown jewels" of the UN human rights system,[86] the *special procedures* established by the Human Rights Council are an important instrument of charter-based human rights protection that has developed organically.[87] These are country-specific or thematic mandates held by independent experts. Based on a multi-stage selection process,[88] they are appointed by the HRC for 3 years (with the possibility of a further term); they are expected to bring with them expertise, experience in the field of the mandate, independence, impartiality, personal integrity and objectivity.[89] The gender ratio of mandate holders in 2022 was 55% female and 45% male.

As of November 2023, in addition to 14 country-specific mandates,[90] there were a further 46 thematic mandates covering a broad spectrum of content.[91] The sharp increase in the number of thematic special procedures over time reflects the thematic expansion of the human rights discourse in the United Nations. If one sorts the mandates chronologically, it is noticeable that initially "classic" civil and political rights were in the foreground, then from 1998 onwards economic, social and cultural rights gained in importance, and finally the rights of individual population groups and cross-cutting issues were increasingly taken into account, some of which extend far into economic and now also ecological areas. Significantly, the 48th session of

[86] SG/SM/10769-HR/4907, 29 November 2006.

[87] On the history of special procedures, see Domínguez-Redondo (2017). See also Nolan et al. 2017.

[88] https://www.ohchr.org/en/hr-bodies/hrc/sp/basic-information-selection-independent-experts (accessed: 10 Dec 2023).

[89] A/HRC/RES/5/1, 18 June 2007, para. 39 et seq.

[90] On Palestine (since: 1967), Myanmar (1992), Somalia (1993), Cambodia (1993), North Korea (2004), Iran (2011), Syria (2011), Belarus (2012), Mali (2013), Eritrea (2013), Central African Republic (2013), Afghanistan (2021), Burundi (2021) and Russia (2022). The mandates have to be renewed regularly.

[91] A list can be found at https://www.ohchr.org/en/special-procedures-human-rights-council (accessed: 10 Dec. 2023).

the Human Rights Council (2021) decided to establish a special procedure on "human rights and climate change". Despite all the differences in the respective resolution texts on which the mandates are based, the special procedures have one thing in common: on the one hand, they are intended to contribute to the protection and promotion of human rights by *monitoring* and *fact-finding*, compiling *examples of best practice* and making recommendations. On the other hand, they can contribute to the normative development of human rights. The instruments available to them are individual case reports, country reports and thematic reports.

(a) *Communications in individual cases*: Within the framework of their respective mandates, the Special Rapporteurs can accept complaints ("communications") from individuals or groups of individuals and investigate them by requesting statements or measures from the states in the form of *letters of allgegation* or *urgent appeals*. In contrast to the complaints procedures under the UN human rights treaties (see below), the national legal recourse procedure does not have to be exhausted. Due to its simplicity, the procedure is now frequently used. To illustrate the dimensions: According to a list of the UN High Commissioner's Office, the Special Rapporteurs addressed a total of 1002 communications (concerning 2256 persons) to 149 states and 257 non-state actors (companies, organisations, etc.) in 2021—individually or mostly together with other mandate holders.[92] They received a total of 527 responses to these (by 10th January 2022).[93] The number of "substantial" responses was 459.[94] A lower number is given for the following year[95]: In 2022 the mandate holders sent 654 communications (concerning 934 persons) individually or jointly with other mandate holders to 138 states and 109 non-state actors. 318 responses were received to the communications sent in 2022,[96] of which 285 were classified as "substantial".[97] Individual communications are an important part of the work of Special Rapporteurs. Heiner Bielefeldt, for example, sent a total of 254 individual communications during his term as Special Rapporteur on freedom of religion or belief between 1st August 2010 and 31st October 2016, i.e. a letter to a government or de facto authority every 9 days on average (Wiener 2023).

(b) *Country reports*: Not only the country-related mandate holders but also the thematic mandate holders regularly produce country reports, which are usually

[92] Of which 3 urgent appeals, 107 joint urgent appeals, 35 allegation letters, 724 joint allegation letters as well as 35 other letters and 100 joint other letters. The number of the many communications of the Working Group against Involuntary and Forced Disappearances, referred to separately, does not seem to be included here. See UN Doc. A/HRC/49/82/Add.1, 22 March 2022.

[93] The total number of responses received in 2021 (651, of which 584 were substantive) is higher because it also includes responses to enquiries before 2021.

[94] Confidential responses were not recorded. Some communications received multiple responses.

[95] UN Doc. A/HRC/52/70, 4 April 2023.

[96] The total number of responses received in 2022 (440, of which substantially 401) is higher, as it also includes responses to enquiries before 2022.

[97] Confidential responses were not recorded. Some communications received multiple responses.

based on country visits.[98] These visits are—in the words of Ted Piccone (2012, p. 23)—"the most important tool in the special procedures' toolbox". They are particularly important for fact-finding and fact-checking. The country visits enable the Special Rapporteurs to gain a personal impression of the situation on the ground and to obtain first-hand information. However, they require an invitation from the respective governments, which can be ad hoc or on the basis of standing invitations (which must, however, also be implemented).[99] As of 31st December 2022, 128 of the 193 UN Member States have such "standing invitations" for Special Rapporteurs, and as of 31st December 2022, 172 of the 193 UN Member States have been visited at least once by Special Rapporteurs.[100] Of course, not all visits are the same.

Optimal conditions exist if the United Nations enjoys a good reputation in the countries; if the visits are well prepared in terms of content and organisation and are well coordinated with any UN missions locally; if the Special Rapporteurs can move freely in the country and obtain information—as provided for in the (revised) terms of reference for country visits;[101] if the state authorities cooperate with them at various levels; if confidential discussions take place with those affected, representatives of civil society organisations and other stakeholders; if the media report appropriately on the country visit; if there is an honest dialogue with the government; if substantial and feasible recommendations are made after the visit and these are also implemented in the context of a follow-up.

It is particularly problematic, however, when governments are unwilling to cooperate despite invitations and try to manipulate and instrumentalise the Special Rapporteurs[102] or do not take their recommendations seriously or reject them outright. Or even worse: when the Special Rapporteurs are obstructed or personally defamed and their dialogue partners are subjected to threats and repression. Reference is made to the annual reports of the UN Secretary General on the repression of persons who cooperate with UN bodies. There are also repeated attempts by states, such as China and Pakistan in the 42nd session of the Human Rights Council (2019),

[98] In exceptional cases, country reports may be prepared without visits to the country under study because the Special Rapporteurs were denied access, such as in the case of North Korea or Eritrea.

[99] A number of requests for country visits are pending in a number of states despite such standing invitations; see UN Doc. A/HRC/49/82/Add.1, 22 March 2022.

[100] For the regional distribution of standing invitations and country visits in 2022, see UN Doc. A/HRC/52/70/Add.1. 21 states have never had country visits by the end of 2022.

[101] https://www.ohchr.org/en/special-procedures-human-rights-council/terms-reference-country-visits-special-procedures (accessed: 10 Dec 2023).

[102] Governments can engage in picking and choosing by allowing country visits on issues that are convenient or less problematic for them, and refusing or indefinitely postponing those on more critical issues (cf. Gaer 2017). The Special Rapporteur on the negative impact of sanctions on human rights, Alena Douhan, for example, was accused of being politically instrumentalised by autocratic governments that otherwise do not invite Special Rapporteurs (cf. Pfaff 2022).

to restrict the independence and powers of Special Rapporteurs. NGOs,[103] national human rights institutions and human rights-friendly states are fighting against this.

(c) *Thematic reports*: In addition to their country reports, thematic Special Rapporteurs and Working Groups also produce thematic reports. Although they write them in their personal capacity as independent experts, they can make an important contribution to the understanding of the rights and issues being investigated. For example, the first Special Rapporteurs on the rights to education, housing, health and water and sanitation[104] have contributed a great deal to clarifying the normative content of these rights and the related state obligations through their thematic reports. Even in the case of established rights such as the right to freedom of religion or belief—as a "human right of the first hour"—many substantial clarifications and normative developments have been made.[105] The impact can be empirically verified if the reports are taken up by international, regional and/or national human rights institutions as well as by governments and stakeholders.[106]

5.5.2.7 A Plea for the Human Rights Council.

Public criticism of the Human Rights Council is sometimes scathing: The UN Human Rights Council is useless and an imposition on the peoples of the world, wrote a conservative German politician in the *Frankfurter Allgemeine Zeitung* on 21st October 2021. She criticised the reciprocal "clean bill of health" of human rights violating states, the Israel fixation of the Human Rights Council and above all the behaviour of China and Russia, which not only regularly get away without admonishment, but with the help of their allies also accuse democratic states of obscure human rights violations. The politician recommended the consistent exposure of human rights violators. Politicised in this way, the HRC would be "broken to some extent", but it had to be "smashed up" so that something new could be created from the broken pieces.

Whilst frustration about the HRC's work is certainly justified, such fundamental criticism goes much to far. Here are a few key reasons why the HRC is necessary, even if it only has "non-binding powers" (Freedman 2020, p. 217) and can only act to counter human rights violations to a limited extent: (1) The HRC offers human

[103] As an example, here is a statement by Amnesty International on behalf of 20 NGOs at the 42nd session of the HRC: "Civil society statement on efforts to strengthen and increase effectiveness of the United Nation Special Procedures", 30 August 2019; http://www.amnesty.org/en/documents/ior40/0967/2019/en/ (accessed: 10 Dec 2023).

[104] In order of rights mentioned: Katarina Tomasevski (1998–2004), Miloon Kothari (2000–2008), Paul Hunt (2002–2008), Catarina de Albuquerque (2008–2014). With regard to the right to housing, Rajindar Sachar, who was appointed Special Rapporteur on the right to housing in 1993 by the then Subcommission on Human Rights, should also be mentioned; see Hohmann (2017), pp. 274 ff.

[105] In this case by Heiner Bielefeldt (2010–2016); see Schirrmacher (2017); see also Bielefeldt (2013), Bielefeldt et al. (2016), Bielefeldt and Wiener (2020).

[106] On the reception of Bielefeldt's reports, see Wiener (2023).

rights-friendly states a forum to uphold human rights standards and to demand them from those states that are indifferent to human rights or violate them. In view of global human rights violations and new human rights challenges, this is of great importance. (2) Instead of just moving among like-minded states, the HRC offers the possibility of active engagement with governments that otherwise refuse to accept human rights criticism and/or try to reinterpret human rights. The questioning, reinterpretation and undermining of human rights standards can, if necessary, be countered in the HRC, provided that human rights-friendly states take a committed stance. (3) Highly repressive regimes, at least, are in the minority in the HRC and find it difficult—despite some successful efforts—to completely prevent human rights criticism. (4) In the form of commissions of inquiry and special rapporteurs, the HRC has procedures for recording and documenting the extent and severity of human rights violations. At the same time, in the UPR, all states are subject to an—albeit strongly cooperative—examination of the extent to which they fulfil their human rights obligations. (5) The procedures of the HRC open up the possibility for civil society groups to draw attention to human rights violations worldwide and to urge states to implement their human rights obligations. At the same time, they can use the resolutions and recommendations of the HRC for their human rights work at the transnational, national and local levels. (6) The HRC also offers human rights-friendly states the opportunity to critically reflect on the implementation of human rights in their own countries and to initiate improvements. (7) The HRC is at the heart of international human rights policy. Its abolition or condemnation would be like taking an axe to multilateral human rights protection. Democratic governments should therefore actively use the HRC instead of withdrawing from it. However, more courage would often be appropriate.

5.5.3 The UN Human Rights Treaty Bodies

The international human rights treaties adopted within the framework of the United Nations are the central legal source of UN human rights protection and are binding under international law on the parties that have ratified them. In their entirety, the above-mentioned nine (core) human rights treaties and their additional protocols essentially cover the hitherto established spectrum of global human rights standards.

All treaties (now) have their own monitoring bodies: the treaty bodies. These are committees of experts whose members[107] are usually elected by the contracting states for 4 years (staggered);[108] they are supposed to be persons of high moral standing and proven expertise. Although nominated and elected by the States

[107] Depending on the committee, the number of members varies between 10 and 23 experts; in most cases there are 18. The Subcommittee on Prevention of Torture (SPT) has 25 members.

[108] Depending on the committee, re-election is possible without limitation, limited or not at all.

Parties,[109] the experts are not intended to perform their duties as state representatives, but in their personal capacity and independently.[110] The transparency of the elections as well as the expertise and independence of the members are thus important assessment criteria for the composition of the treaty committees. Accordingly, a non-transparent selection of candidates without adequate examination of their professional suitability is criticised,[111] as is the nomination of some diplomats and government functionaries.[112] Also, not all committee members are equally committed. Other official evaluation criteria are geographical distribution and gender representation. The geographical distribution of all committee members in 2023 was more or less balanced in relation to ratifications. The same was true for the gender ratio (91 women, 81 man), but only thanks to the high proportion of women in the Committee on the Elimination of Discrimination against Women (CEDAW). Women were still clearly underrepresented in the Committee on Migrant Workers (CMC), Committee against Torture (CAT), and the Committee on Economic, Social and Cultural Rights (CESCR) in 2023.[113]

The central task of the treaty committees is to monitor the implementation of the individual human rights conventions by the respective States Parties and to enter into dialogue with the governments about this. Several procedures are available for this purpose:

(1) The mandatory *state reporting procedure* is one of the main areas of the committees' work. For each core UN human rights treaty, the parties must first submit an initial report and then periodic reports at intervals of several years on the extent to which they are fulfilling their obligations under the human rights treaties. In order to simplify the procedure, the committees now sometimes allow simplified reporting on the basis of a list of issues prior to reporting (LoIPR), which specifies topics so that a comprehensive report is not necessary.[114] Although this practice, which is time-consuming for the committees, has not yet become fully established as a standard procedure, it could be adopted in the foreseeable future—after agreement by the committee chairs and if the appropriate resources are made available—and possibly applied for all States Parties from 2024, then in an eight-year cycle (with follow-ups on selected important issues after 4 years).

Reports received are examined by the respective committees. They also take into account additional information from UN institutions, national human rights institutes

[109] The exception here is the Committee on Economic, Social and Cultural Rights, which is elected by ECOSOC members.

[110] See also the *Guidelines on the independence and impartiality of treaty body members (Addis Ababa guidelines)*, A/67/222, Annex 1, 2012.

[111] Alston (2020), p. 442, Evans (2020), p. 521, Hennebel (2020), p. 342.

[112] Alston (2020), p. 443, Byrnes (2020), p. 399, Chetail (2020), p. 606, Hennebel (2020), p. 344.

[113] See the lists (as of 1 January 2023) at https://www.ohchr.org/en/treaty-bodies/electing-treaty-body-members (accessed: 10 Dec 2023).

[114] This is to be distinguished from the conventional procedure, in which a list of issues (LoI) is drawn up only *after the* reports have been submitted in order to pre-structure the Committee's dialogue with the state delegation.

and NGOs, which may submit "parallel reports" ("shadow reports"). After a "constructive dialogue" with the delegations of the states under review, which is pre-structured by country rapporteurs and lists of issues (before or after the submission of the report), the committees then publish "*concluding observations*". In these, they point out positive developments before subsequently identifying human rights problems and making recommendations. In the meantime, all committees have expanded their follow-up mechanisms for monitoring the implementation of recommendations, for example by appointing rapporteurs and calling for follow-up reports.

For the evaluation of the state reporting process, the following questions can be formulated by modifying the criteria of Kälin (2012, p. 41): (a) How punctually do the states fulfil their reporting obligations and how quickly are the reports reviewed (*efficiency)*? (b) How participatory and transparent is the process (*participation, transparency*)? (c) What is the quality of the reports, reviews and recommendations (*quality*)? (d) To what extent are the recommendations acknowledged and effectively implemented—and further, what is the impact on human rights protection (*effectiveness)*? (e) How much political and public attention is paid to the state reporting process and its results (*attention*)? All these questions can be examined empirically, both quantitatively and qualitatively. Here is just a brief impression:

(a) *Efficiency:* A basic problem of all committees is that state reports are sometimes submitted incompletely, years late or sometimes not at all. For example, in the case of CERD with its 182 States Parties, as of 8 August 2023, the reports of 47 States had been overdue for more than 10 years and those of 14 other States for more than 5 years.[115] Such overdue reports are partly due to a lack of political commitment, but also to the lack of capacity of the states examined; in the case of many defaulting states, these are poorer countries. In order to reduce the number of overdue reports, the committees send out reminders, publish lists of defaulting states, provide technical assistance through the High Commissioner's Office and/or sometimes allow the states concerned to submit collective or simplified reports. In exceptional cases, the examination can also take place without a state report.[116] However, delays and backlogs also occur in the handling of the reports received by the committees - despite all the overdue reports.

(b) *Participation/transparency*: Civil society organisations are sometimes already in contact with the lead ministries in the run-up to the review. At the same time, depending on the procedure, they can submit written submissions on the list of issues before the report is submitted or before the country review session in Geneva. Many NGOs or NGO networks also submit parallel reports. Furthermore, NGO representatives, if they travel to Geneva, seek an exchange with committee members in

[115] See CERD's annual report to the UN General Assembly: A/78/18 (2023).

[116] The Human Rights Committee first conducted such a review without a state report in 2001 in the case of The Gambia (Kälin 2012, p. 33), CEDAW for the first time in 2009 in the case of Dominica (Byrnes 2020, p. 407). CAT did the same with Antigua and Barbuda and Cape Verde; A/76/44 (2021), para. 29.

preliminary talks and thus try to influence the dialogue between the committees and the state delegations. After the adoption of the Committee's recommendations, they can use the concluding observations for their public relations and lobbying work. They also play an important role in the follow-up. It is helpful that the entire process is well documented and archived on the website, including, among other things, the state reports, the lists of issues, the information from NGOs, the composition of the state delegations, the concluding observations and any follow-up reports.

(c) *Quality*: The quality of state reports varies considerably depending on existing reporting capacities and political commitment. While the quality of the dialogue and recommendations is generally higher than that of the UPR process, here too there are large differences depending on countries and issues. The ideal situation is when substantive state reports are submitted in a timely manner so that they do not become outdated; when the rapporteurs and committee members have the necessary expertise and country knowledge and alternative information is available to them; when a critical review of the reports takes place that is oriented towards the rights in the treaty text and identifies implementation deficits and necessary action; when an honest discussion takes place between the committee and substantively qualified state delegations; when the review results in concrete, substantive and useful recommendations and particularly urgent points are highlighted, the implementation of which is then scrupulously reviewed in the follow-up. In order to determine the extent to which this or other procedures are followed, an analysis of the processes and the committee recommendations on individual countries (or in a country comparison) is required. There is sufficient need for research in this area.

(d) *Effectiveness*: This also applies to the question of the extent to which the States Parties implement the recommendations (which are non-binding under international law) in order to (better) fulfil their obligations under the human rights conventions (which are binding under international law)—and further, what effects these have. A first insight into the implementation is provided by the follow-up reports accessible on the website as well as any evaluations by the committees. In an evaluation of the reporting period from 2011 to 2016, for example, CEDAW came to the conclusion that 18% of the recommendations were implemented, 37% were partially implemented, 20% were not implemented and in the rest of the cases there was insufficient information for an evaluation (Byrnes 2020, p. 413). Ideally, indications for the implementation of recommendations already result from the state reports, which should in particular also address the implementation of recommendations from the respective previous reporting procedure.

More methodologically sophisticated is a study by Jasper Krommendijk (2015) on the recommendations of six treaty bodies concerning the Netherlands, New Zealand and Finland. He examined the effectiveness of the concluding observations (COs). He measured effectiveness by whether the COs led to changes in the respective countries (which otherwise would not have taken place). Specifically, he examined whether the COs led to new policy initiatives or to the provision of extra resources for (existing) policy measures, or: to the adoption of legislative reforms; to new topics on the political agenda; to the initiation of studies and evaluations; to the establishment of new or the strengthening of existing institutions or to the

abandonment of planned policy measures. This was measured by an obvious link between COs and legislative measures, policy documents and reports; the initiation of corresponding measures shortly after the adoption of COs; the use of COs for successful lobbying of national actors. Finally, he counted the number of times the government officials interviewed who were involved in the reporting process referred to the importance of COs for actions taken. He saw COs as ineffective if they were explicitly rejected by governments or if they were consistent with policies and legislation already in place (Krommendijk 2015, p. 201).

The author concluded that most COs did not have a major impact in the three countries studied. Only in some cases did COs, together with other determinants, lead to or accelerate policy and legislative action. Nevertheless, he pointed to COs as helpful instruments that strengthened the arguments and demands of national actors advocating for policy and legislative reforms. While Krommendija suggested that the results might be transferable to other liberal Western democracies in industrialised countries, he called for research on different cases, arguing that monitoring procedures might be greatest in transition states (from autocracies to democracies) (Krommendijk 2015, p. 222).

In addition to the Krommendijk study, other possible effects should be pointed out: By participating in the state reporting procedure, the respective governments can reaffirm their commitment to the respective human rights treaty. The procedure also has a potentially important function of self-regulation. In preparing the report, the respective governments and government departments must ascertain to what extent human rights are important in their fields of work and to what extent they are respected, protected and guaranteed there. Ideally, this can trigger intra- and inter-ministerial learning effects, strengthen self-evaluation capacities and add value to progress in human rights protection. Self-monitoring is followed by external monitoring by the UN committees that review the reports. Self- and external monitoring can also be strengthened, as has already been shown, by an active civil society, which can influence the selection of human rights topics and their critical examination. At the same time, the state reporting procedures offer civil society organisations an additional opportunity for networking. This can be easily monitored through participatory observation or interviews with participants.

(e) *Attention*: The effectiveness of the process ultimately also depends on the political and public attention it receives, both internationally and nationally. To what extent do other UN institutions and procedures refer to it? How much attention do governments and other state institutions pay to the procedure? To what extent do national human rights institutes and civil society organisations use the recommendations in their work? To what extent do the recommendations find their way into national human rights policy discourse, and to what extent does the media pick up on the issue? Here, too, there is a great need for research. Even at first glance, however, it is apparent that the more specialised state reporting procedures (still) receive less political and media attention than the UPR. It is therefore up to governments and, in addition, national human rights institutions and civil society organisations to draw attention to the procedure, to disseminate the recommendations and to conduct a serious follow-up or critically accompany it.

(2) While the obligatory state reporting procedure focuses on the overall development in the respective states, optional *individual complaints* procedures are primarily designed for individual legal protection. They give individual persons and/or groups of persons[117] the opportunity to submit a "communication", in effect a complaint, to the respective UN committee after exhausting the domestic legal process (or if this is not available to them), if they feel that their rights under the respective convention have been violated. The matter must not have already been brought before another international complaints body. On the basis of the complaint and the written statement of the state concerned, the competent committee of experts evaluates the facts in so-called views on the communications, whereby views usually also contain recommendations. For the evaluation of the procedure, it is important (a) to what extent it can be used and is used, (b) what quality the quasi-judicial views have and (c) what their effects are.

(a) *Use*: It should first be pointed out that not all parties to human rights conventions have adopted the optional complaints procedures. This applies both to those conventions in which the optional adoption of complaints procedure is already regulated in the treaty text,[118] and (and even more clearly visibly) in the case of optional additional protocols to the respective conventions. The level of ratification of the respective additional protocols is far below that of the respective human rights treaties. For example, as of October 2023, only 117 of the total 173 parties to the International Covenant on Civil and Political Rights have ratified the additional protocol that provides for a individual complaints procedure. The ratio in the case of the Convention on the Elimination of All Forms of Discrimination against Women is 115 to 189 and for the Convention on the Rights of Persons with Disabilities 104 to 186. In the case of the Convention of the Rights of the Child (50 to 196) and the International Covenenant on Economic, Social and Culture Rights (27 to 171), the ratification level of the—albeit also quite recent—additional protocols is particularly low.

Where accepted, complaints procedures are used to varying degrees depending on the convention. The ICCPR has received the most complaints to date, with a total of 4408 complaints received since the entry into force of the Optional Protocol (1976) until March 2022, of which 831 complaints were not admitted, 625 proceedings were discontinued, and violations were found in 1434 out of 1969 cases dealt with, while 983 proceedings were still not yet concluded.[119] For the ICESR's complaints procedure, which came into force in 2013, the jurisprudence database of the UN

[117] Some committees sometimes accept complaints from legal persons, especially if their members are affected. For example: *TBB-Turkish Union in Berlin/Brandenburg v. Germany,* CERD/C/82/D/48/2010 (2013), para. 11.

[118] This is the case with the Convention against All Forms of Racial Discrimination (Art. 14), the Convention against Torture (Art. 22) and the Convention against Enforced Disappearances (Art. 23). In the case of the Migrant Workers Convention, the complaints procedure (Art. 77) has not yet entered into force due to a lack of sufficient recognition.

[119] A/78/40, 2023.

High Commissioner's Office[120] shows 27 decisions on the inadmissibility of complaints and 70 decisions to discontinue complaints procedures, as well as 14 decisions on merits. At the same time, 196 complaints from 2018 to 2022 were already pending.[121] It is particularly striking that the overwhelming majority of complaints come from Spain (and recently also from Italy) and concern the right to housing, especially forced evictions.[122] The number of complaints concerning the Convention against Torture is also comparatively high, in contrast to the Convention on the Elimination of All Forms of Racial Discrimination. Overall, it can be said that the individual complaints procedure, insofar as it has been accepted by states, is definitely being used. A more or less large number of complaints are deemed inadmissible, discontinued or are still pending. Insofar as there are views, violations of the Covenant rights are repeatedly determined.

(b) *Quality*: With regard to the quality of the decisions, it must first be considered that they are not made by permanent panels of judges, but "only" by expert committees that meet a few times a year. Also, the appeals are not heard orally. Thus, the legal opinions are only drawn up on the basis of written documents. However, since the decisions and views are given quasi-judicial significance, they must nevertheless also stand up to legal evaluation. This is where legal scholars are needed. In the case of the young complaints procedure in respect of the IESCR, for example, Christian Tomuschat (2018) criticised the first decision-making practice and called on the CESCR to develop precise criteria in order to narrow down the circle of potential complainants in an appropriate manner. At the time, the German Institute for Human Rights came to the opposite conclusion on the basis of the 17 complaints received to date: The procedures made clear that the Committee proceeds carefully in its case assessment and applies strict review criteria (Bettzieche 2018: 8). The extent to which the complaints then also lead to legally appropriate results that are also desirable in human rights policy terms can then be examined again separately.

(c) *Effect*: In terms of international law, the recommendations of the UN human rights treaty bodies are not binding. However, the state concerned must take note of the Committee's legal opinion and recommendations, should deal with them and give reasons if it does not follow them. Similar to the state report procedure, differences in the interpretation of treaty rights between the respective governments and the UN committees can come to light in the context of a complaints procedure; legal opinions are also sometimes disputed within the committees. Nevertheless, the complaints offer the possibility of reaching an agreement on questions of legal interpretation, especially since they must also discipline the respective treaty bodies to justify their "quasi-judicial" decisions in a justiciable manner. Politically, the

[120] https://juris.ohchr.org (accessed: 07 Dec 2023).

[121] https://www.ohchr.org/en/treaty-bodies/cescr/table-pending-cases (accessed: 07 Dec 2023).

[122] This is partly due to the fact that the Spanish Supreme Court considers the decisions of UN human rights treaties to be binding (critical of this: Tomuschat 2022) and the CESCR has seen the right to housing violated on several occasions in the case of forced evictions (Alston 2020, pp. 458–459). It is also striking that a number of discontinuance decisions were made because the complainants did not pursue the complaint any further.

question arises again whether the individual complaints identify systematic problems beyond the individual cases and whether the committees' legal opinions are (can be) also used to address and tackle such problems politically.

(3) For the sake of completeness, it should be mentioned that a number of human rights treaties, whether in the Optional Protocol or in the text of the treaty, either optionally or even obligatorily, provide for a *state complaints procedure*. Such a procedure allows States Parties to file a complaint ("communication") against another State Party if they believe that the latter is not fulfilling its treaty obligations. In practice, the procedure did not play any role until recently. Two *interstate communications* were then filed with the CERD for the first time in March 2018 - by Qatar: one against Saudi Arabia, the other against the United Arab Emirates, both on the grounds of border closures and expulsions of its nationals under unilateral sanctions. In April 2018, another state complaint was filed, this time by *State of Palestine v. Israel*, concerning protection against racial discrimination.[123]

(4) Six of the nine core UN human rights treaties also provide for *inquiries*. Adoption of these is not mandatory. Here, too, many states have not ratified the corresponding optional protocols or have taken advantage of an opt-out option in the treaty text or in the optional protocol. Where states have submitted to the procedure, the respective UN committees can conduct investigations on their own initiative, provided they receive reliable information about serious and systematic human rights violations. CAT has so far (as of August 2022) conducted such investigations into nine countries,[124] CEDAW into seven,[125] CRPD into three countries[126] and CRC into one country (Chile).[127] CED paid Mexico a visit. The CESCR has not yet conducted an investigation.

(5) A comparatively new procedure established by the Optional Protocol to the Convention against Torture is *preventive measures*. By means of a visit system, torture and ill-treatment of persons deprived of their liberty should be prevented instead of being sanctioned afterwards. To this end, not only was a UN Subcommittee for the Prevention of Torture established to carry out visits, but states also undertake to establish independent domestic visiting mechanisms themselves. In Germany, for example, the National Agency for the Prevention of Torture was established specifically for this purpose. Its purpose is to draw attention to any abuses identified and, if necessary, to make suggestions for improvement to the authorities concerned. In principle, such visits take place at all places where people are deprived of their liberty: from prisons, police stations, barracks and deportation

[123] For details of the complaints: https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications.

[124] Starting with Turkey in 1994, then Egypt, Peru, Sri Lanka, Mexico, former Yugoslavia, Brazil, Nepal and Egypt again.

[125] Mexico, Philippines, Canada, Kyrgyzstan, United Kingdom, and most recently Mali and South Africa in 2021.

[126] Spain, Hungary, United Kingdom.

[127] The relevant documents can be found on the websites of the respective committees.

detention centres to psychiatric institutions or even old people's and nursing homes.[128] However, CAT has repeatedly criticised Germany for the inadequate staffing, financial, technical and logistical resources of the National Agency for the Prevention of Torture (Table 5.3).[129]

In addition to the monitoring procedures described above, the committees have also developed *early warning* and *urgent action* mechanisms with which they attempt to act preventively on human rights threats and reactively on pressing human rights problems.[130] These are used extensively in some cases.

Furthermore, the treaty bodies play an important role in the interpretation of the rights enshrined in the human rights conventions and the associated human rights obligations, primarily of the state. In addition to the concluding observations in the state report procedure and the rulings in possible complaints procedures, the *general comments* are of great importance. These are interpretative guidelines which, although not legally binding, lay claim to a high degree of authority. Accordingly, they are also taken up by regional human rights commissions and courts and play a major role in legal and political discourse on human rights.

5.5.4 The UN Security Council and the Human Rights

Within the United Nations, the Security Council bears the main responsibility for maintaining international peace and security. According to the UN Charter, it should, among other things, work towards the peaceful settlement of disputes that are likely to endanger international peace and security (*settlement powers* pursuant to Chapter VI of the UN Charter). In the event of a threat to or breach of the peace and in the event of acts of aggression (Art. 39), it can also authorise and implement non-military (Art. 41) or military (Art. 42) coercive measures (*enforcement powers* under Chapter VII). Finally, it should promote efforts to settle local disputes peacefully by making use of any regional agreements and institutions (*regional arrangement powers* under Chapter VIII). The Security Council is thus primarily an instrument of peace and security policy and not of human rights policy. Thus, it is not one of the institutions of the UN human rights protection system in the narrower sense.

Significantly, for a long time the Security Council dealt almost exclusively with interstate conflicts and, with few exceptions, not with violent conflicts and serious human rights violations within states. This only changed in the 1990s. In the following, it will explained when and how the Security Council, which is the only

[128] See Follmar-Otto (2013) as well as the annual reports of the National Agency, available on the website: https://www.nationale-stelle.de/publikationen.html (accessed: 10 Dec 2023).

[129] CAT/C/DEU/CO/6, 11 July 2019, para. 13 f.

[130] Exemplary: the relevant guidelines of CERD; https://www.ohchr.org/en/treaty-bodies/cerd/about-early-warning-and-urgent-procedures (accessed: 10 Dec 2023).

Table 5.3 Monitoring procedures of the UN human rights conventions

UN Human Rights Treaties, treaty bodies and monitoring procedures			
Treaty	Treaty body[a]	Procedure	Comment
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (CCPR)[b]	State reports State complaints Individual complaints	Mandatory Optional (Art. 41) Optional (1st AP)
International Covenant on Economic, Social and Cultural Rights (IESCR)	Committee on ESC Rights (CESCR)	State reports Individual complaints Investigation	Mandatory Optional (AP) Optional (AP)
Convention against Racial Discrimination (CERD)	Committee on the Elimination of Racial Discrimination (CERD)	State reports State complaints Individual complaints	Mandatory Mandatory Optional (Art. 14)
Convention against Discrimination against Women (CEDAW)	Committee on the Elimination of Discrimination against Women (CEDAW)	State reports Individual complaints Investigation	Mandatory Optional (AP) Optional/ opting out (AP)
Convention against Torture (CAT)	Committee against Torture (CAT) Subcommittee on Torture Prevention (SPT)	State reports State complaints Individual complaints Investigation procedure Prevention measures	Mandatory Optional (Art. 21) Optional (Art. 22) Mandatory/ opting out (Art. 20) Optional (AP)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC)	State reports State complaints Individual complaints Investigation	Mandatory Optional (AP) Optional (AP) Optional (AP)
Migrant Workers Convention (CMW)	Committee on the Rights of Migrant Workers (CMW)	State reports State complaints Individual complaints	Mandatory Optional (Art. 76) Optional (Art. 77)
Convention on the Rights of Persons with Disabilities (CRPD)	Committee on the Rights of Persons with Disabilities (CRPD)	State reports Individual complaints Investigation	Mandatory Optional (AP) Optional/opting out (AP)
Convention for the Protection against Enforced Disappearances[c]	Committee against enforced disappearances (CED)	State reports State complaints Individual complaints	Mandatory Optional (Art. 32) Optional (Art. 31)

Source: own compilation. AP = Additional Protocol

[a]The abbreviations are often identical; in one case the convention is referred to, in the other case the commission

[b]Not to be confused with the Human Rights Council

[c]In the case of information on serious violations, country visits are possible with the consent of the respective state (Art. 33)

UN institution that can impose legally binding sanctions, has been active in the area of human rights—and how this has changed over time (see also Forsythe 2014; Stagno Ugarte and Genser 2014; Mégret 2020). But before that, a few basics should be recalled.

5.5.4.1 Structure of the Security Council

The composition and decision-making mode of the Security Council influence its work and have long been a source of criticism, especially due to its low representativeness and the disproportionately strong position of power of the five permanent members. These are China, France, the United Kingdom, Russia and the USA. In addition, there are ten non-permanent members, half of which are elected annually, with immediate re-election not possible. The current *elected 10* in 2023 are Albania, Brazil, Ecuador, Gabon, Ghana, Japan, Malta, Mozambique, Switzerland and the United Arab Emirates.[131] Security Council resolutions that UN Member States have committed to adopt and implement require a majority of at least nine votes, with all five permanent members voting in favour or at least abstaining (with the exception of procedural issues). The *permanent 5* thus have a veto position on substantive decisions. This makes the Security Council vulnerable to politically motivated blockades. In addition, non-permanent members of the Security Council can also pursue their own political interests. Thus, it is ultimately a political issue which country situations and topics the Security Council deals with and how, and which resolutions it adopts, if any.

In the meantime, the Security Council has a variety of formats at its disposal to prepare declarations and resolutions for the purpose of maintaining peace and security that are sensitive to human rights and to obtain the relevant expertise. This can be done in open and closed debates, in briefings or in informal meetings, such as interactive dialogues or Arria-formula meetings.[132] In addition to country situations, the Security Council can also address systemic issues across countries, such as the issue of children in armed conflict, on which it has established a separate working group. Furthermore, the Security Council can also establish commissions of inquiry by resolution. Such temporary commissions with strong human rights components have been set up to investigate serious violations of international

[131] Since 1946, Japan (11 times), Brazil (10) and Argentina (9) have been elected to the Security Council most frequently. Around 60, mostly smaller states have never had a seat on the Security Council.

[132] The meetings are named after former Venezuelan UN Ambassador Diego Arria. In 1992, as then president of the Security Council, he invited non-permanent Council members to an informal exchange with eyewitnesses of the Balkan conflict. The informal consultations, which now take place regularly, provide an opportunity to invite civil society representatives as experts. NGOs can also engage in informal exchanges with the UN Security Council through the NGO Working Group. However, they have much less influence than in the UN General Assembly or the UN Human Rights Council. For the individual formats, see Security Council Report 2019.

humanitarian law and international human rights law in the former Yugoslavia, Rwanda, Sudan, the Central African Republic and Syria (*investigative powers*). The Security Council has also contributed to the prosecution of those responsible for war crimes, crimes against humanity and genocide by establishing ad hoc criminal tribunals for the former Yugoslavia (1993–2017) and Rwanda (1994–2015). Under the Rome Statute of the International Criminal Court, it can also request the Prosecutor of the ICC to open an investigation by referring a situation to the Court.

5.5.4.2 The UN Security Council and Human Rights in the "Cold War" Era

For many decades, as already mentioned, the Security Council rarely made substantial reference to human rights. At the end of the 1940s, in the conflict over Jammu and Kashmir between India and Pakistan, it did refer to the situation of the population there and the validity of freedom and political participation rights in the demand for a free, democratic plebiscite. However, in the 1950s, references to human rights violations (such as in relation to Algeria and Hungary) were rejected, partly with the argument that human rights and the right of peoples to self-determination did not fall within the remit of the Security Council (Stagno Ugarte and Genser 2014, pp. 8–9). In the 1960s, the Security Council at least expressed its regret and concern about the human rights violations in Congo when it reacted to the assassination of the country's first prime minister, Patrice Lumumba, and his followers Joseph Okito and Maurice Mpolo with Resolution 161 in 1961. At the time, it authorised an immediate, independent investigation into the assassination and called on the United Nations to use all appropriate means to prevent the outbreak of civil war.[133]

However, the resolutions on the Republic of South Africa and on Southern Rhodesia were most clearly related to human rights. In the 1960s, the Security Council passed several resolutions,[134] in which it clearly condemned the racist apartheid policy and identified the situation in South Africa as a serious disturbance of international peace and security. The Security Council called on the South African government to abolish apartheid and, among other things, to release all imprisoned opponents of apartheid and suspend the death sentences imposed on them. Other states were called upon to refrain from trading arms and ammunition with South Africa or from supplying the corresponding means of production. With Resolution 418 of 1977, the Security Council finally went beyond the voluntary arms embargo and imposed—in the sense of a non-military coercive measure based

[133] SR/RES 161 (1961).

[134] For example SR/RES/181 (1963), SR/RES/182 (1963), SR/RES/190 (1964), SR/RES/191 (1964). Resolution 182 was the first Security Council resolution to explicitly refer to the Universal Declaration of Human Rights of 1948.

on Chapter VII of the UN Charter—a binding arms embargo on the Republic of South Africa for the first time.

Previously, the Security Council had already adopted coercive measures against Southern Rhodesia. After calling on states from 1965 onwards not to recognise the unilateral declaration of independence by the racist minority regime and to stop supplying arms and oil to the regime,[135] in 1966—acting explicitly on the basis of Art. 39 and Art. 41 of Chapter VII of the UN Charter—it designated the situation in Southern Rhodesia as a threat to international peace and security and imposed an economic embargo,[136] which was reaffirmed in 1968. Resolution 253 of 1968 made very clear reference to human rights violations. In it, the Security Council condemned both the inhumane executions and all other forms of political repression that violated the fundamental rights of the population to freedom and self-determination.[137]

However, military coercive measures that would have been authorised by the Security Council on the basis of human rights violations under Chapter VII of the UN Charter did not occur during the "Cold War". This only changed in the 1990s. As a result of the end of the East-West conflict, not only did the number of peacekeeping missions with human rights implications increase in leaps and bounds, but the chances of imposing economic and military sanctions in the Security Council on humanitarian grounds also increased. At the same time, global conflict shifted more to internal conflicts, and civil wars, human rights crimes and humanitarian catastrophes received greater attention worldwide. In the 1990s, the discussion about "humanitarian interventions" gained momentum, further fuelled by television images and reports of human tragedies in various parts of the world.

5.5.4.3 "Humanitarian Interventions"

A humanitarian intervention is a military intervention in the territory of a state to protect people who are in a humanitarian emergency, provided that the affected state is not able or willing to offer these people protection. While the traditional understanding of the term focused primarily on interventions by individual or several states, there was greater awareness of military interventions authorised by the Security Council on humanitarian grounds. The legal basis for such humanitarian interventions (in the broad sense) is provided by the collective security measures of Chapter VII of the UN Charter. Two conditions must exist for this: (1) The human rights violations or the humanitarian emergency within a state must be assessed by the Security Council as a breach of or threat to international peace (determination of the threat to peace according to Art. 39 of the UN Charter). (2) The Security Council must decide on the use of military means on the basis of Art. 42 of the UN Charter

[135] SR/RES/216 (1965), SR/RES/217 (1965) and SR/RES/221 (1966).
[136] SR/RES/232 (1966).
[137] SR/RES/253 (1968).

because it considers peaceful sanctions to be inadequate and, taking into account the legal principle of proportionality, military sanctions to be appropriate to preserve or restore peace and international security.

Under changed global political conditions, several such humanitarian (military) interventions took place from the 1990s onwards. The first of these was the "Kurdish Resolution" 688 of 1991, which assessed the consequences of the oppression of the Iraqi civilian population in the form of a cross-border flow of refugees as a threat to peace and international security, combined with an appeal to Member States and aid organisations to provide emergency humanitarian aid. In an extensive interpretation of this resolution, which was not without problems under international law, the USA and its allies not only militarily secured the delivery of aid to the Kurds, but later also established no-fly zones in northern and southern Iraq.

The Somalia Resolution 794 of 1992 went a step further. At the time, there was famine in the failing state, which was exacerbated considerably due to the violent obstruction of urgently needed aid supplies by parties to the conflict there. In the resolution, the Security Council considered the resulting human tragedy to be a threat to peace, not because of its cross-border effects, but already because of its scale. Authorised by the Security Council, an international contingent of troops (UNITAF) landed in Somalia to militarily establish a safe environment for humanitarian aid. This was the first clear humanitarian intervention on behalf of the United Nations. It was framed by peacekeeping operations by UN blue helmets that preceded (UNOSOM 1) and followed it (UNOSOM 2) respectively.

After that, the Security Council authorised military coercive measures in humanitarian precarious conflict situations on several occasions. Resolutions to this effect authorised military interventions, for example, in Haiti in 1994 by a US-led multilateral force, in Rwanda in 1994 (after the genocide) by a French intervention group, and in East Timor in 1999 under Australian military leadership. The NATO air strikes against Bosnian Serb positions in 1995 also fall under this category. Furthermore, numerous "robust" mandates of UN peacekeeping forces were agreed on. Until the war in Kosovo (1999), the threat or use of force for humanitarian purposes was always based on a Security Council resolution, even if the concrete interpretation of such resolutions was often disputed among the members of the Security Council and a corresponding mandate was sometimes only issued afterwards, as in the case of the intervention of West African peacekeeping forces in Liberia (1990) and Sierra Leone (1997/98).

NATO's air strikes against Serbia in the Kosovo war (1999) were for the first time completely devoid of any such resolution that could be interpreted as a mandate or authorisation for military intervention. The trigger was—despite media-effective reports on massacres and mass expulsions in Kosovo—the Security Council's inability to act. Although the Security Council assessed the situation there as a threat to peace and security in the region,[138] it did not authorise any military coercive measures, mainly because of Russia's resistance. Against this background, NATO

[138] S/RES/1244 (1999).

decided to carry out military air strikes without a mandate. According to prevailing opinion, the deployment was illegal under international law (e.g. Simma 1999).

5.5.4.4 Responsibility to Protect

Even more than the Security Council's blocking of action in the Kosovo war, the powerlessness of the UN blue helmets in the face of the genocide in Rwanda in 1994 and the massacre in Srebenica (Bosnia-Herzegovina) in 1995 was perceived as a failure of the United Nations.[139] The then UN Secretary General Kofi Annan raised the question of how such comprehensive and systematic human rights crimes could be prevented if, at the same time, humanitarian interventions were understood as an unacceptable encroachment on sovereignty.[140] The concept of the responsibility to protect (R2P), which was first put into concrete terms by the International Commission on Intervention and State Sovereignty (ICISS 2001) (appointed by the Canadian government), provided guidance for action. In addition to the responsibility to prevent, to non-militarily react, and to rebuild, this concept also provided for the responsibility to intervene militarily as a last resort in the case of "large-scale loss of life" or "large-scale ethnic cleansing".

The *High Panel on Threats, Challenges and Change* set up by Annan—after the outbreak of the Dafur conflict in Sudan (2003) and after the invasion of Iraq (2003), which was not authorised by the UN Security Council—basically supported the concept of the responsibility to protect in its report "*A more Secure World: Our Shared Responsibility*" (2004). In contrast to the ICISS, however, it strictly adhered to the exclusive authorisation of military interventions by the Security Council anchored in the UN Charter and substantiated or limited the reasons for intervention to "genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law".[141] The report "*Larger Freedom*" (2005), which Kofi Annan published in preparation for the 2005 World Summit, took up the R2P in a similar way in some places (see Cater and Melone 2016, p. 122). The UN General Assembly finally adopted the responsibility to protect in the following form in the outcome document of the 2005 World Summit[142]:

> The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant

[139] The failure was clearly acknowledged in corresponding reports: see UN Security Council 1999, UN General Assembly 1999.

[140] https://www.un.org/en/preventgenocide/rwanda/pdf/bgresponsibility.pdf (accessed: 02 Mar 2023).

[141] United Nations 2004, para. 203.

[142] A/RES/60/1, 24 October 2005, para. 138 f.

> regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[143]

The Responsibility to Protect thus provides for intervention by the United Nations, explicitly linking it to the possibilities of peaceful dispute settlement and the imposition of coercive measures enshrined in the UN Charter. Although the R2P did not change the basis in international law for possible military interventions, it did give the debate a new "twist": sometimes it no longer seemed necessary to justify intervention—even military intervention if necessary—but rather to refrain from it.

After a thematic resolution on the protection of civilians in armed conflicts[144] and a country resolution on the deployment of peacekeeping forces in Sudan[145] had already explicitly referred to the R2P adopted at the World Summit in 2005, non-military sanctions and ultimately also a military intervention to protect the civilian population (among other things from serious and systematic human rights violations) in Libya (2011) were justified with the R2P.[146] As a result, the dictator Muammar al-Gaddafi was overthrown, which fuelled criticism from the Russian government, for example, that the corresponding security resolution had been used by the West for the purpose of a violent regime change (Bellamy and Dunne 2016, p. 10). Apart from the military intervention in Côte d'Ivoire[147]—which was only authorised by the Security Council shortly after the Libya resolution—such military interventions could no longer be implemented and were not carried out in Syria and Myanmar.

Although Security Council resolutions have on various occasions included a responsibility to protect the population[148] and the Secretary General has been issuing annual reports on the responsibility to protect since the fundamental report "*Implementing the Responsibility to Protect*" from 2009,[149] the R2P concept no longer represents a common basis for decision-making in the Security Council, at least not for military interventions. In view of the now renewed political confrontation between the permanent members of the Security Council, it is in any case unlikely at present that military coercive measures will be adopted there even in the case of the most serious human rights crimes or humanitarian emergencies.

Irrespective of this, general objections to humanitarian interventions and military operations on the basis of R2P should be noted. Apart from the danger of abuse and the attention- and interest-driven selectivity of such interventions, it is precisely a use

[143] A/RES/60/1, 24 October 2005, para. 139 (extract).

[144] S/RES/1674 (2006).

[145] S/RES/1706 (2006).

[146] S/RES/1970 (2011), S/RES/1973 (2011). Critical: Beestermöller (2013).

[147] S/RES/1975 (2011). See also Hunt (2016).

[148] Bellamy and Dunne (2016, p. 11) counted 37 resolutions alone by the mid-2010s that would have referred to the responsibility to protect.

[149] See the reports on the website of the Office on Genocide Prevention and the Responsibility to Protect; https://www.un.org/en/genocideprevention/key-documents.shtml (accessed: 21 Mar 2023).

of military force that always creates suffering itself. In extreme cases, there is a danger that more suffering will be created than remedied, for example through an escalation or a failure of the intervention. Military interventions, even to protect against the most serious human rights violations and to address humanitarian needs, have far-reaching consequences and entail high risks with an uncertain outcome. They are therefore not a standard solution for the protection of people threatened by civil wars, genocide or other serious human rights crimes, but at best a collective emergency instrument if non-violent measures of human rights protection and multilateral crisis management have been applied unsuccessfully (and not only announced).

5.5.4.5 The Current Sanctions Regimes

Based on Chapter VII, the Security Council can impose a wide range of non-military sanctions. As with coercive military measures, not all such sanctions are directed against human rights violations. There are currently 14 United Nations sanctions regimes in force, which are primarily aimed at the settlement of conflicts, the non-proliferation of nuclear weapons and the fight against international terrorism. Only in some cases is explicit reference made to violations of international human rights and international humanitarian law, as in the case of Somalia, Sudan and the Central African Republic.

While arms embargoes are usually not very controversial, since 2004 the Security Council has moved from imposing comprehensive economic and trade sanctions, which have had a negative impact on the situation of the affected population in the past, especially in Iraq (1990–2003),[150] to imposing targeted sanctions directed against specific individuals, entities and companies.[151] In 2022, the list of such *targeted sanctions,* concerning, for example, travel restrictions and the freezing of accounts, included more than 1000 persons, entities and companies listed for threatening peace, security and stability, violating international human rights and humanitarian law and/or obstructing humanitarian aid. Of course, it is debatable whether such sanctions actually lead to changes in the behaviour of those responsible for human rights crimes or whether they at least have a deterrent effect. However, they undoubtedly have a symbolic effect, as they uphold international human rights standards and are a clear sign of solidarity with those affected by human rights violations.

It is not unproblematic, however, that the listing of individuals, which is carried out in close cooperation with UN Member States, is not based on an examination that

[150] Significantly, in 2004 the United Nations Inter-Agency Standing Committee (IASC) and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) published a "Sanctions Assessment Handbook. Assessing the Humanitarian Implications of Sanctions" (Bessler et al. 2004).

[151] Only with regard to North Korea and Iran—in this case because of the danger of proliferation of weapons of mass destruction—are more comprehensive UN sanctions packages in force.

meets rule-of-law criteria. Significantly, various national and regional courts have objected to national regulations implementing the corresponding UN sanctions (Genser and Barth 2014, pp. 198–199). In view of the growing criticism, the Security Council established a "Focal Point for De-listing" in 2006, where it is possible to apply to be taken off the list.[152] In December 2009, the Security Council went a step further and temporarily established an independent and impartial Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee, who is the contact person for the applicants and supports the Sanctions Committee.[153] Even though in the majority of cases that the ombudsperson has dealt with so far, the applications have been granted,[154] procedural deficiencies of listing and de-listing remain.

5.5.4.6 UN Peace Missions and Human Rights

Peacekeeping operations have become an important instrument of UN peacekeeping since the 1990s. Their primary goal is to contain violence, prevent conflict escalation and ensure the safety of people. While traditional peacekeeping is primarily concerned with monitoring ceasefires and protecting the civilian population, peace missions have been entrusted with more comprehensive tasks over time (multidimensional peacekeeping, peacebuilding). The range of tasks also (or even primarily) includes civilian components such as monitoring elections, building democratic structures and protecting human rights. In extreme cases, the missions have even assumed legislative and executive functions, as in the case of the United Nations Interim Administration in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET). Peacekeeping missions are always authorised in the form of security resolutions. Although peacekeeping operations are not explicitly mentioned in the UN Charter, they can be regarded as means of peaceful dispute settlement (in the sense of Chapter VI). However, since they are military operations in which armed force can be used in self-defence or, in addition, sometimes for the protection of the civilian population, they are also referred to as Chapter VI ½ measures when equipped with more robust mandates or already act on the basis of Chapter VII of the UN Charter.

For our topic, it is important that the mandates can have more or less strong human rights components. To give a clear example: In the case of the (now failed) United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSAMA), not only were human rights violations strongly condemned, the

[152] S/RES/1730 (2006).

[153] See in detail on the mandate S/RES 1904, Annex II (2009). The mandate has been renewed regularly since then: S/RES/1989 (2011), S/RES/2083 (2012), S/RES/2161 (2014), S/RES/2253 (2015), SR/RES/2368 (2017), SR/RES/2610 (2021).

[154] 70 of the 100 applications that have gone through the Ombudsperson's review process so far have been granted; www.https://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases (accessed: 02 Dec 2023).

mandate also specifically included a section on the promotion and protection of human rights. Accordingly, MINUSAMA's diverse tasks included:

(i) To monitor, help investigate and report to the Council on any abuses or violations of human rights or violations of international humanitarian law committed throughout Mali and to contribute to efforts to prevent such violations and abuses; (ii) To support, in particular, the full deployment of MINUSMA human rights observers throughout the country; (iii) To monitor, help investigate and report to the Council specifically on violations and abuses committed against children as well as violations committed against women including all forms of sexual violence in armed conflict; (iv) To assist the transitional authorities of Mali in their efforts to promote and protect human rights; . . .[155]

In each case, it must be examined to what extent peace missions are authorised to investigate human rights violations or to protect and promote human rights—and to what extent this is successful. The corresponding experiences are mixed (see, for example, Katayanagi 2014). It is particularly problematic when members of peace missions themselves commit human rights violations. Since the 2000s, incidents of sexual exploitation and sexualised violence have repeatedly become public. Despite all counterstrategies and countermeasures by the United Nations, the problem persists to this day. Significantly, Christian Saunders, the current Special Coordinator on Improving United Nations Response to Sexual Exploitation and Abuse, highlighted the problem as recently as January 2023.[156]

5.5.4.7 The Protection of Children in Armed Conflicts

From the end of the 1990s onwards, the Security Council took up the issue of the impact of armed conflicts on children on the basis of reports by the UN Special Rapporteur or the UN Secretary-General. Since then, children and armed conflicts have been a weighty and institutionalised thematic item on the agenda of the Security Council. The first thematic Security Council resolution on children and armed conflicts dates back to 1999 (Resolution 1261). In this resolution, the Security Council condemned the "targeting of children in situations of armed conflict", including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflicts. It also urged all parties to armed conflicts to take measures to protect children, especially girls, from rape and sexual abuse in the context of armed conflict and to take their protection, welfare and rights into account in the peace process.

In subsequent resolutions, the Security Council urged states to ratify the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of

[155] S/RES/2100 (2013).

[156] "'Absolutely no place' for sexual exploitation, top UN official raises alarm", UN News, 22 January 2023.

children in armed conflict (2000),[157] and required the UN Secretary General to include in his report to the Security Council a list of parties to the conflict that recruit child soldiers.[158] Remarkably, the request was not limited to those country situations that were on the agenda of the Security Council, but also included those situations that the UN Secretary-General (in accordance with Art. 99 of the UN Charter) considered to be a threat to peace and international security. Other resolutions provided e.g. for national action plans, threats of sanctions and the establishment of a permanent working group on the subject, or dealt with ensuring schooling during armed conflicts, as was recently the case with Resolution 2601 (2021).[159] The recruitment of child soldiers (or attacks on schools) has also been included in the criteria for imposing targeted sanctions, as is currently the case in the Democratic Republic of Congo,[160] Mali,[161] the Central African Republic,[162] Yemen[163] and South Sudan.[164]

All in all, the reports and resolutions on children and armed conflicts show that the Security Council's thematic work on children in armed conflicts has progressed comparatively far and that corresponding monitoring and reporting structures have been established. However, they also show that violence against children in armed conflicts and the recruitment of child soldiers continue despite the naming and shaming of the listed parties to the conflict and despite any threats of sanctions.

5.5.4.8 The Protection of Women and Girls in Armed Conflicts

With the establishment of the two ad hoc criminal tribunals on the former Yugoslavia (ICTY 1993) and on Rwanda (ICTR, 1994), the Security Council not only made an important contribution to the further development of international criminal law in general, but also to the criminal punishment of sexualised violence as a crime against international humanitarian law in particular. The statutes of the lCTY[165] and the ICTR[166] explicitly listed rape among the crimes against humanity, the statute of the ICTR additionally considered rape and coercion into prostitution as grave violations of the Geneva Conventions. The 1998 Rome Statute of the International Criminal

[157] S/RES/1314 (2000).

[158] S/RES/1379 (2001).

[159] S/RES/1460 (2003), S/RES/1539 (2004), S/RES/1612 (2005), S/RES/1882 (2009), S/RES/1998 (2011), S/RES/2068 (2012), S/RES/2143 (2014), S/RES/2225 (2015), S/RES/2427 (2018), S/RES/2601 (2021).

[160] S/RES/2293 (2016), para. 7 (d).

[161] S/RES/2374 (2017), para. 8 (g).

[162] S/RES/2399 (2018), para. 21 (d).

[163] S/RES/2511 (2020), para. 6.

[164] S/RES/2521 (2020).

[165] On the ICTY see: https://www.icty.org/ (accessed: 10 Dec 2023).

[166] On the ICTR see: https://unictr.irmct.org/ (accessed: 10 Dec 2023).

Court[167] (which was admittedly not established by the Security Council) later designated rape, sexual slavery, coercion into prostitution, forced pregnancy, forced sterilisation or any other form of sexualised violence of comparable gravity as crimes against humanity and war crimes. The jurisprudence of the international criminal courts lent practical legal significance to the definition of different forms of sexualised violence.

With regard to the Security Council, the adoption of Resolution 1325 in 2000 was another milestone. This was preceded by the commitment of women's rights activists who, especially since the World Conference on Women in Beijing in 1995, had campaigned for the situation of women and girls in armed conflicts to be addressed, including in the Security Council. Resolution 1325 aims both to protect women and girls from sexualised violence in armed conflict (which is the focus of the present chapter) and to increase women's participation in political processes and institutions in the prevention and management of conflict. It has been reinforced and extended by several other Women and Peace and Security resolutions.[168]

The follow-up resolution 1820 (2008), for example, once again clearly condemned sexual violence in armed conflicts and identified it as a tactic of war aimed at humiliating people, exerting power over them, instilling fear in them and displacing or forcibly relocating them. In the resolution, the Security Council demanded, among other things, that the parties to the conflict immediately and completely cease all acts of sexual violence against civilians with immediate effect and that appropriate measures be taken to protect civilians, especially women and girls, from all forms of sexual violence. At the same time, it declared that rape and other forms of sexualised violence are a war crime and a crime against humanity, or may also constitute genocide, and called for the perpetrators to be prosecuted.

The Security Council adopted the last resolution to date on the topic of sexualised violence in 2019 after protracted negotiations. Resolution 2467 was introduced by the German government, which had made the issue the focus of Germany's sixth membership of the Security Council (2019/20). Since sexualised violence occurs before, during and after conflicts, it is first of all to be welcomed that the resolution no longer (like many other resolutions before it) only identifies it as a tactic of war and that, in the sense of a survivor-centred approach, it focuses on comprehensive protection against sexualised violence and comprehensive support for victims and survivors; in doing so, the resolution also takes into account previously neglected groups of victims, such as boys and men. It also aims to strengthen the accountability of the parties to the conflict. However, as with the previous resolutions, it is mainly a matter of calls and encouragement to take appropriate measures. In addition, some controversial points could not be pushed through in the face of resistance from the USA, China and Russia; these related to text passages on sexual and reproductive rights, the establishment of a formal working group on sexualised violence in

[167] On the ICC see: https://www.icc-cpi.int/ (accessed: 10 Dec 2023).

[168] Resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019), 2493 (2019).

conflicts or the explicit recognition of LGBTI as an affected group.[169] Nevertheless, the then German Foreign Minister Heiko Maas described Resolution 2467 as a milestone on the way to ending sexualised violence in conflicts.[170] This view was not universally shared, not even in Germany.[171]

As groundbreaking as the Women and Peace and Security resolutions are, there is still a lack of implementation. According to critics, the Security Council has so far done too little to enforce them resolutely,[172] even though rape and other forms of sexualised violence are now listed as criteria for targeted sanctions—for example against the Democratic Republic of the Congo,[173] Mali,[174] the Central African Republic,[175] Yemen[176] and South Sudan.[177] The annual reports of the UN Secretary General on conflict-related sexual violence,[178] prepared at the request of the Security Council, demonstrate the continuing urgency of the problem and list in the annex numerous state and non-state parties to the conflict that are allegedly responsible for such crimes. However, the list is limited to those countries that are on the agenda of the Security Council. Among the report's recommendations to the Security Council were to ensure that sexualised violence functions as an independent criterion for targeted sanctions; that relevant expertise is available in the Security Council's Sanctions Committee; that women's protection advisors are embedded in peace missions and that increased attention is paid to sexualised violence; and that signs of sexualised violence are recognised early on by the Security Council and taken seriously. The UN Secretary General also recommends referring such situations to the International Criminal Court.

5.5.4.9 A Very Brief Outlook

As was emphasised at the beginning, the Security Council is not a human rights institution in the strict sense. Nevertheless, it can deal with human rights from a security policy perspective. The Security Council was prepared to do so from the 1990s onwards in the context of various armed conflicts. Although the Security

[169] https://www.securitycouncilreport.org/whatsinblue/2019/05/in-hindsight-negotiations-on-resolution-2467-on-sexual-violence-in-conflict.php (accessed: 11 Mar 2023).

[170] https://www.auswaertiges-amt.de/de/aussenpolitik/regelbasierte-internationale-ordnung/uno/resolution-2467/2212904 (accessed: 11 Mar 2023).

[171] Example: Chinkin and Rees (2019) or in Germany: medica mondiale's press release with the telling title "Resolution against sexualised wartime violence: not a milestone, a minimal compromise", 26 April 2019.

[172] See, for example, the critique by Benshoof (2014).

[173] S/RES/2293 (2016), para. 7 (e).

[174] S/RES/2374 (2017), para. 8 (f).

[175] S/RES/2399 (2018), para. 21 (c).

[176] S/RES/2511 (2020), para. 6.

[177] S/RES/2521 (2020), para. 15 (e).

[178] The most recent report dates back to 2022 (S/2022/72).

Council did not deal with all violent conflicts equally, human rights violations, especially against children and women in armed conflicts, were addressed and human rights were integrated into measures of conflict management and post-conflict rehabilitation. However, in order to prevent violent conflicts or to contain them at an early stage, it would be necessary to systematically collect relevant information on human rights violations and to cooperate to a much greater extent with the UN human rights institutions, above all the UN Human Rights Council. In view of great power rivalries and geopolitical calculations, however, the situation in the Security Council has become rather confused. The fact that the governments of the two permanent members, China and Russia, want to keep the issue of human rights out of the Security Council and that the USA has not always played a pioneering role there in recent years is a particular hindrance. In view of the veto power of the permanent members of the Security Council, it will be (even) more difficult to enforce coercive measures based on human rights violations in the future.

5.6 International Criminal Jurisdiction

The punishment of human rights criminals is first and foremost an issue of criminal law, not politics. Nevertheless, the establishment of ad hoc criminal courts and the permanent International Criminal Court (ICC) were inherently political processes. Also, as has been shown in respect of the ICC, international criminal prosecution presents itself as a "complex interplay of law and politics, State engagement and disengagement, and commitment and contestation" (Dittrich 2021, p. 7). In this respect, it is worthwhile in an introduction to human rights politics to at least briefly address international criminal justice,[179] which is embedded in the major topic of transitional justice.[180]

It must be emphasised at the outset that every state is obliged to prosecute human rights crimes in its own country. The courts of the respective country are therefore primarily responsible for punishing the perpetrators. However, human rights criminals often manage to go unpunished, for example by enjoying political amnesties or by using political influence and money to escape the grip of a weak or corrupt judiciary. In Latin America, the use of the term "impunity" (*impunidad*) has become commonplace. However, the Inter-American Court of Human Rights has ruled that amnesties for serious human rights crimes are inadmissible,[181] and many victims' and human rights organisations have called for the perpetrators of such crimes to be

[179] For general information on international criminal law, see e.g.: Safferling (2011), Cryer et al. (2019), Werle and Jessberger (2020).

[180] See, for example, Kritz (1995), Roht-Arriaza and Mariezcurrena (2006), Buckley-Zistel et al. (2014), Werle and Vormbaum (2018), Huhle (2022) and the *International Journal of Transitional Justice* or the *International Center for Transitional Justice*.

[181] For example: IAGMR, *Caso Barrios Altos vs. Perú*. Fondo. Sentencia de 14 de marzo de 2001.

punished. In countries such as Argentina and Chile, many of those responsible for serious human rights crimes committed during military dictatorships have been convicted by national courts after the fact.

If the national legal system remains inactive or fails, international criminal law comes into play. At least the most serious human rights violations can be taken up by the International Criminal Court, which began its work on the basis of the Rome Statute, which was adopted in 1998 and entered into force in 2002[182]—affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. The ICC is the first *permanent* international judicial body that can try individuals for genocide, crimes against humanity, war crimes and now also crimes of aggression. Previously, there were "merely" ad hoc courts that punished the most serious human rights violations in relation to specific periods of time and specific states. Besides the military tribunals of Nuremberg[183] and Tokyo[184] after the Second World War, the International Criminal Tribunals on the former Yugoslavia and Rwanda are the best-known examples.[185] Less well known are the international or "hybrid" ad hoc special courts established in the 2000s, for example in and on Sierra Leone, Lebanon and Cambodia.[186]

In the meantime, the ICC has become "a permanent feature of the international legal and judicial landscape" (Hofmański 2021, p. vi). However, it not only has to master juridictional and organisational challenges, but also political ones. For example, although (as of October 2023) a total of 123 states have submitted to the jurisdiction of the ICC,[187] China, India, Russia and the USA are not among them. The ICC has also faced criticism from the outset, most notably from the US, which has protected US personnel from access by the ICC and concluded bilateral immunity agreements with more than 100 states. The administration of George W. Bush was particularly hostile to the ICC, withdrawing the US signature to the ICC Statute, and later the administration of Donald Trump, who even imposed travel and economic sanctions on key personnel of the ICC, including the chief prosecutor Fatou Bensouda. But resistance to the ICC also grew within Africa, where the (occasionally politically instrumentalised) experience of colonialism is still very much present. The African Union and several African states, which had initially supported the ICC, later criticised its anti-African bias. Threats of withdrawal

[182] See e.g. Werle and Zimmermann (2019), Schabas (2020), Steinberg (2020), Ambos (2021), Heinze and Dittrich (2021), Safferling and Petrossian (2021) as well as the ICC website: https://www.icc-cpi.int/ (accessed: 15 Nov 2023).

[183] See e.g. Nuremberg Human Rights Centre (1996, 2015), International Military Tribunal (2022).

[184] See e.g. Boister and Cryer (2008a, 2008b), Totani and Cohen (2018), Dittrich et al. (2020).

[185] See https://www.icty.org/ and https://unictr.irmct.org/ (accessed: 15 Nov 2023).

[186] See, for example, Klip and Freeland (2018), Alamuddin et al. (2014), Etcheson (2019), Hinton (2022).

[187] 33 African States, 19 Asia-Pacific States, 18 Eastern Europe States, 28 Latin American and Caribbean States, and 25 Western European and other States. Most recently Kiribati in 2019.

followed, and ultimately Burundi withdrew in 2017. Two years later, the Philippines withdrew from the Rome Statute, in this case due to preliminary investigations by the ICC against its then President Duterte.

The ICC is undoubtedly a major achievement in the fight against impunity for the most serious human rights crimes, especially as it has introduced a number of innovations, such as victim participation.[188] Hundreds of governments and non-governmental organisations have spent much time and energy accompanying the work of the ICC, and atrocity accountability is now a fixture of diplomatic and popular discussions on conflict resolution (Hale 2021, p. 160). However, the ICC today operates in a climate that is sometimes openly hostile to human rights, characterised by disrespect of multilateral institutions and attacks against the integrity of international criminal justice. Even after more than 20 years, there is no guarantee that the ICC—in the face of political headwinds—will prove to be an effective tool in the fight against impunity for atrocious crimes in the long run. Beyond the various institutional and procedural reforms and reform recommendations,[189] it undoubtedly needs sufficient resources and high-level support and cooperation from the states and must be defended against attacks. Conversely, a high-level state policy to undermine the Court can have a paralysing effect on proceedings, as the Kenyatta case in Kenya has shown (Nwadikwa-Jonathan and Ortiz 2021, p. 297). In the case of non-Member States of the ICC, vetoes by permanent members of the Security Council can also prevent referral of large-scale atrocity crimes to the ICC, as happened in the case of Syria.[190] It should also be remembered that under the Rome Statute, the ICC acts in a complementary manner and can only deal with a limited number of cases. This means that international human rights crimes must also be prosecuted at the national level.

Based on the principles of universal and extraterritorial jurisdiction, international crimes can be prosecuted not only by those states on whose territory or by whose nationals these acts were committed, but also by all others. According to the reports of Trial International, from 2015 up to and including 2022, a total of 78 nationals of foreign states were convicted before national criminal courts, based on universal or extraterritorial jurisdiction. In 2022 alone, national courts in 12 countries initiated criminal investigations into international crimes against 169 persons, namely genocide, crimes against humanity, war crimes, torture and enforced disappearances (Trial International 2023). At the same time, 2022 was marked by "an unprecedented mobilization of existing legal and judicial resources to respond to the international crimes committed in Ukraine" (Trial International 2023, p. 10), both at the

[188] See e.g. Lissowsky (2021), Safferling and Petrossian (2021).

[189] ICC ASP: Independent Expert Review of the International Criminal Court and the Rome Statute System, 30 September 2020, paras. 17, 23 (IER Final Report), http://www.legal-tools.org/doc/cv19d5/ (accessed: 15 Nov 2023).

[190] For criticism of the inadequacy of the Security Council's referral function, see Gaynor (2021), who argues that "a General Assembly referral function in the ICC Statute would enable ICC investigations and prosecutions to get off the ground without delay" (Gaynor 2021, p. 356).

international and national levels. It is now important that such efforts last beyond the temporary momentum and are continued in order to punish corresponding crimes.

5.7 References to Theories of International Relations

5.7.1 (Neo)Realism, Liberalism and Constructivism

In contrast to Foreign Policy analyses, as already mentioned, studies in the field of International Relations (IR) start with the states as the relevant actors and examine the behaviour of states[191] among themselves against the background of the structures of the international system (e.g. Forsythe 2012). Studies that deal with human rights politics in the field of *International Relations* sometimes refer to corresponding grand theories: Dunne and Hanson (2016, pp. 45 ff.), for example, outline three basic views of human rights politics, which they assign to (neo-)realism, liberalism and constructivism. If one takes such a three-way division as a starting point, then the views are as follows:

From the perspective of *(neo-)realist approaches,* it is not primarily about human rights, but about power. From this point of view, a human rights foreign policy may be useful if it promotes the relative power of the respective states in the international environment or conceals power interests, but as soon as it is directed against such interests, it must be subordinated to them or it must be abandoned altogether. If human rights foreign policy is pursued at all, it is (or should be) guided by power and interests.[192] If necessary, governments pay only lip service to human rights and do not shy away from "double standards". From a (neo-)realistic point of view, the implementation of a human rights foreign policy also requires effective sanctions against states that violate the norms. The international human rights institutions are too weak for this due to a lack of appropriate means of coercion.

From the point of view of *liberalism,* human rights foreign policy, put simply, is about promoting the worldwide spread of liberal democracies and (civil-political) human rights and counteracting the spread of autocratic regimes and the disregard for these human rights. The expansion of the "liberal zone" is in the well-understood self-interest, as it is intended to create a peace-promoting international environment of liberal-democratic states.[193] At the same time, human rights foreign policy is based on the liberal idea that individual human rights are fundamental freedoms that are universally valid and that states have a responsibility to respect and protect them.

[191] As mentioned above, states cannot actually be actors. Governments or other representatives of the state always act on their behalf.

[192] In the case of the Russian war of aggression in Ukraine, the "defence of European values" is not only required from a liberal point of view, but is also part of a security policy that appears necessary from a *realpolitik* point of view to put a stop to Putin.

[193] Here it is worth recalling the general finding of peace and conflict research that democracies do not wage war against each other.

From this point of view, human rights require an appropriate legal-institutional foundation and protection through democratic and constitutional principles and institutions. The focus here is admittedly on civil-political human rights, although in the meantime economic, social and cultural human rights have also found their way into the liberal human rights discourse.[194]

Constructivist approaches assume neither predefined and stable national interests of states nor pre-existing liberal norms that guide action. Rather, they focus on the (human rights) norms that emerge within the framework of the international community and a spreading "world culture". Human rights-compliant action in foreign and domestic policy then results from the fact that behavioural expectations—created within the framework of international human rights discourses and regimes—are met and/or governments have already internalised and habitualised human rights-compliant behaviour. Transnationally active NGOs, networks, coalitions and movements can reinforce these socialisation processes through "naming and shaming", among other things. States that resist the internationally developed human rights consensus pay for this, so the logic goes, with loss of reputation and isolation.

5.7.2 *International Human Rights Institutions: Instruments, Arenas, Actors*

For a functional analysis of international human rights institutions, which also has links to theories of *International Relations*, a threefold division can be used, which has proven itself in studies on international organisations.[195] According to this, international human rights institutions also represent (a) instruments, (b) arenas and (c) actors (Oberleitner 2007, pp. 10–11.).

(a) As an *instrument,* international institutions are used by states to pursue their interests and goals. In the understanding of (neo-)realism, the founding, shaping, cooperation and maintenance of such institutions primarily serves the purpose of powerful states to pursue their own, primarily power-political interests. From a (neo-)realist perspective, international human rights institutions are largely ineffective and thus meaningless. However, it may seem necessary for reasons of national interest to have a say in the decision-making processes in such institutions, even if only to prevent decisions that run counter to one's own interests. However, it is not only (neo-)realists, insofar as they deal with human rights institutions at all, who take an instrumental view, but also (left-wing) critics who see the global human rights

[194] On the understanding of social human rights also as rights of freedom see Krennerich (2006, 2013). However, these are not neo-liberal rights: Krennerich (2021).

[195] In the following, I prefer the term "international institutions" to the term "international organisations" in order to clearly distinguish the latter from international non-governmental organisations.

system merely as an expression of the imperialist policies of powerful Western states, above all the USA.

The instrumental character of international institutions is different when they are used by states to pursue overriding interests and values which, in their view, can only or better be implemented multilaterally. Thus, in view of possible insufficient implementation capacities and problematic political, economic and ecological structures, international cooperation is certainly needed to better respect, protect and guarantee human rights. If the foreign policy goal of governments is also to promote human rights in other states, then state cooperation in human rights institutions can reduce the domestic costs of such action. Such costs may consist not only of expensive support measures, but also of harmful countermeasures by states that violate human rights. Above all, however, states are more likely to be able to make a difference together. This is one of the reasons why many governments, including the German government, rely on a multilateral human rights policy within the framework of international institutions in order to pursue their human rights policy goals, which they are only able or willing to implement bilaterally to a limited extent. However, a multilateral human rights policy presupposes that the promotion of human rights is indeed a common foreign policy goal of a sufficiently large number of states.

(b) International institutions serve as *arenas* when they provide space for intergovernmental exchange, discussion, negotiation and cooperation. In the sense of an "agora" function (Oberleitner 2007, p. 35), international human rights institutions open forums for Member States to engage in global dialogue on human rights. Even in the case that insurmountable differences exist, and the exchange remains inconsequential, the densely spun threads of conversation usually do not simply snap. On the contrary, the various international human rights forums provide institutionalised opportunities for the different stakeholders to engage in a sustained exchange on the meaning, understanding and implementation of human rights. This includes the opportunity to define human rights problems, put them on the public agenda and agree on how to solve them. Beyond the intergovernmental exchange, it is also possible for civil society organisations to raise human rights concerns in a formalised way (or informally).

The arena function of international human rights institutions fits into liberal perspectives in international relations insofar as liberal-democratic states use the institutions to multilaterally advocate for, demand and promote liberal values and norms. From a (neo-)institutionalist perspective, such institutions potentially provide an arena for institutionalised conflict resolution concerning human rights, even with states representing opposing interests. However, the arena function is also significant from a constructivist perspective because international human rights institutions represent important socialisation forums in which human rights behavioural expectations are formulated and communicated with the participation of representatives of states, institutions and civil society.

(c) International institutions are to be regarded as *actors* in their own right if they themselves appear as actors on the basis of the rules and statutes on which they are founded and through representatives of their institutions. In the sense of (neo-)

institutionalist approaches, they thus take on actor qualtities. This raises the fundamental question of the extent to which international human rights institutions—after being mandated by the Member States—are in a position to pursue an independent, goal-oriented human rights policy, if necessary also against the interests of participating states. Even though assessments may vary, a certain independence cannot be denied, for example, either to the special procedures and commissions of inquiry of the UN Human Rights Council or to the human rights treaty bodies of the United Nations. The Office of the UN High Commissioner for Human Rights also sets its own accents in human rights policy, although it has to coordinate more closely with states. On the whole, however, the activities of the UN human rights institutions are designed primarily for cooperation and less for confrontation. Especially in the implementation of human rights, the UN human rights institutions are dependent on the political will of governments and on cooperation with them. The same applies to regional human rights institutions, even when they have human rights courts that pronounce legally binding judgements.

5.7.3 Transnational Human Rights Politics

Since the 1990s, the growing importance of transnationally active NGOs, networks, coalitions and movements has produced a multitude of studies in the field of *International Relations*.[196] Khagram et al. (2002, pp. 7 ff.) distinguish between: (a) *transnational adovacy networks,* which represent a loose form of coordination and whose network activities consist primarily in the exchange and use of information; (b) *transnational coalitions,* which are more strongly coordinated and coordinate their strategies, tactics and campaigns; and (c) *transnational social movements,* which have stronger collective identities and focus on mobilisation for collective action. Here there are points of contact with established social movement research, but now with a focus on transnational actions. However, transnational networks, coalitions and movements are difficult to distinguish from each other, especially as they can be intertwined.

According to a narrow understanding of the term, transnational networks, coalitions and movements only include civil society actors. In a broader, more common understanding, at least advocacy networks and advocacy coalitions have a greater diversity of actors; thus, in addition to civil society actors, such as national and international NGOs, representatives of governmental and intergovernmental institutions, epistemic communities, foundations, interest groups and companies can also be involved. Here, the similarity to advocacy coalitions, which we know from *Policy Analysis*, is striking. However, in the context of transnational politics, the concept of

[196] See, for example, Risse-Kappen (1995), Keck and Sikkink (1998), Smith et al. (1998), Khagram et al. (2002), Tarrow (2006), West (2013), Bob (2019).

advocacy is narrower: it is about activists who stand up for ideas, values and norms across national borders.[197]

In the words of Khagram et al. (2002, p. 4): "One of the primary goals of transnational advocacy is to create, strengthen, implement, and monitor international norms." This includes human rights in particular. The examples are manifold. Whether civil and political or economic, social and cultural human rights, whether human rights of political dissidents and prisoners, of workers, the landless, campesinos, environmental and climate activists, of children, women and LGBTIQ+, of people with disabilities, of members of ethnic, religious or other national minorities—examples of transnational advocacy efforts that take place and have an impact far beyond national borders can be identified everywhere.[198] In doing so, successful transnational human rights politics links the local and the global level.[199]

Their success is determined on the one hand by whether and to what extent local, domestic human rights concerns can be raised to the regional and global level and find their way into international human rights policy. There are numerous examples of publicly articulated experiences of injustice being taken up by local and transnationally active NGOs, networks, coalitions and movements on the grand stage of the United Nations and influencing the legal-institutional enshrining, interpretation and global protection of human rights. Successful transnational human rights politics "from below" thus enables global human rights politics to be linked back to human rights problems at the local level, i.e. not to "take off" and not to be pursued over people's heads and needs.

On the other hand, the success of transnational human rights politics is determined by whether and to what extent local human rights activists can improve the situation of people locally with the help of transnational civil society actors, human rights-friendly governments and/or international institutions.[200] Of crucial importance here is whether (additional) opportunities open up at the transnational level that enable local actors to build up or intensify external pressure on the domestic authorities "across borders", so to speak. Furthermore, it is important whether external material, human, organisational, symbolic and moral resources can be

[197] This becomes clear in the definition by Keck and Sikkink (1998, pp. 8–9): "We call them advocacy networks because advocates plead the causes of others or defend a cause or proposition. Advocacy captures what is unique about these transnational networks. They are organised to promote causes, principled ideas, and norms, and they often involve individuals advocating policy changes that cannot be easily linked to a rationalist understanding of their 'interests".

[198] See for instance the examples in Keck and Sikkink (1998), Khagram et al. (2002), Risse et al. (1999, 2002, 2013), Tarrow (2006), Cleary (2007), Quatert (2009), De Feyter et al. (2011), Neier (2012), Becker (2013), Monshipouri (2016), Snow et al. (2019), and articles in the journal *Mobilization: An International Quarterly.*

[199] According to Morten Kjaerum (2023), it is about "downstream and upstream processes" from local to global and vice versa.

[200] Accordingly, successful transnational activists are, as Tarrow (2006, p. xiii) puts it, "rooted cosmopoliticians"—people who maintain a connection to local human rights activism and are transnationally active at the same time. On the local significance of human rights, see also De Feyter et al. (2011) as well as Kjaerum (2023).

used for human rights mobilisations within the country (and to generate further support outside the country).

It is interesting to note that political opportunities and possibilities exist for human rights activists at the transnational level even when these are blocked domestically. Here it makes sense to relate considerations on political opportunity structures to the transnational level as well. Missing domestic opportunities can be demanded "from outside" and existing domestic opportunities can be strengthened at the transnational level. In short, there are interconnected "*multilayered opportunity structures*" (Khagram et al. 2002, p. 18) that can be used by activists to denounce human rights violations and to push for the implementation of human rights.

At the same time, it must be examined what additional repertoire of action is available to human rights activists at the transnational level. In view of the global communication structures, for example, the possibilities to prepare and disseminate human rights information and to address it in a targeted manner have grown enormously (*information politics*). The same applies to the possibilities of mobilising support beyond national borders through symbolic actions (*symbolic politics*). Leverage effects can also be achieved at the transnational level if powerful actors, such as human rights-friendly governments and international human rights institutions, are persuaded to promote human rights change together with or independently of advocacy networks or coalitions (*leverage politics*). It is also a proven tactic of transnational human rights NGOs, networks, coalitions and movements to hold responsible state (or non-state) actors accountable to their proclaimed human rights policies, principles and (self-)commitments and to demand that they "walk the talk" (*accountability politics*).[201]

Ultimately, transnational human rights politics presents itself as a complex interplay of non-governmental and governmental actors who have a broad spectrum of possibilities for action at their disposal to develop, strengthen and demand human rights norms: from information on human rights violations to coordinated human rights campaigns to international sanctions. Corresponding mechanisms of action are coercion, pressure and incentives, the formulation of expectations that are consciously or unconsciously adopted by those responsible (socialisation, habitualisation), argumentation, persuasion and learning processes, or human rights capacity-building.

5.7.4 The "Spiral Model of Human Rights Change"

Finally, the spiral model will be discussed in more detail because it has achieved considerable prominence in political science research in the field of International

[201] The terms *information politics*, *symbolic politics*, *leverage politics* and *accountability politics* were adopted from Keck and Sikkink (1998, pp. 16–24), but are here applied not only to transnational advocacy networks, but to various forms of transnational civil society engagement.

Relations. The model was developed at the end of the 1990s and is characterised by the human rights optimism of its time. Indeed, after the end of the East-West conflict and in view of the democratisation processes of the "third wave", the window of opportunity for transnational human rights policy seemed larger than ever. At the time, human rights effectively advanced to become a *lingua franca* that even autocrats were initially unable to escape.

The spiral model makes generalised statements about how international human rights norms are enforced and implemented within states. In other words, it identifies conditions under which international human rights norms are enforced within the respective countries and lead to lasting changes in behaviour. The model is explicitly limited to human rights that refer to "freedom from state repression", especially physical integrity rights.[202] These include freedom from extra-legal killings, torture and arbitrary arrest. It remains somewhat unclear to what extent political human rights such as freedom of assembly, association and expression are also included in the analysis.

The analytical approach is actor-based: The focus is on the interaction between the respective government, the domestic opposition and the actors of the global human rights regime. The spiral model is based on the boomerang model developed by Keck and Sikkink, according to which "domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside" (Keck and Sikkink 1998, p. 12). Figuratively speaking, the spiral model consists of several boomerang throws and describes a multi-phase change that—from the perspective of those in power—leads from repression and denial via tactical concession to serious reform and norm-guided behaviour. The basic structure of the phases, as often presented in the literature, can be summarised as follows[203]:

Phase of repression: The starting point is the situation in an authoritarian state in which the opposition[204] is repressed and cannot articulate its demands domestically, let alone bring them to bear. According to the model, repression can vary in intensity and last for different lengths of time. Only when opposition groups repressed in their own country succeed in establishing contact with transnational human rights networks and thus with "Western states"[205] and with international human rights organisations would there be a transition to the "phase of denial". Crucial for the

[202] Cf. Risse et al. (2002), p. 13, Jetschke and Liese (2013), p. 27.

[203] Cf. Risse et al. (1999, 2002, 2013), Risse (2007).

[204] The concept of opposition is not further elaborated. From a systematic point of view, it makes sense to understand it not only as party-political opposition, but also to take into account those groups who suffer from human rights violations or who criticise the government in terms of human rights.

[205] The original model explicitly speaks of "Western states"; systematically it would make more sense to speak of "human rights-friendly states". Of course, these can also come from other regions of the world.

transition, according to the model, is the dissemination of information and alerting the international public.[206]

Phase of denial: This phase is characterised by transnational networks—in cooperation with local human rights organisations—informing and mobilising the international public about the human rights situation in the authoritarian state. The contacts here are primarily international organisations (of the global human rights regime) and "Western" (better: human rights-friendly) states, but less the repressive regime. The regime's first reaction is nevertheless "denial", understood here not as the rejection of individual accusations, but as an attempt to ward off human rights criticism as an unjustified concern and illegitimate interference in internal affairs. The more the transnational network succeeds in building up international moral and material pressure against the regime violating human rights, and the more vulnerable the government is to this international pressure, the sooner the transition to the phase of tactical concessions takes place. The decisive factor here is therefore the vulnerability of the regime and international pressure.

Phase of tactical concessions: In this phase, the regimes violating human rights come under increasing pressure "from above" (better: "from outside") and "from below". The ability of repressive regimes to act is visibly limited by the extensive international and internal mobilisation. They would be forced to make "tactical concessions" (such as the release of political prisoners etc.), possibly even to initiate a controlled liberalisation. If domestic critics succeed in making human rights the "consensual basis" of domestic opposition to the government, and if at the same time social mobilisation is supported by transnational networks and the international public, then repressive regimes would be forced to initiate a profound policy change—or regime change would become likely. In both cases, there would be a transition to the next phase.

Phase of prescriptive status: In this phase, human rights achieved a "prescriptive status", meaning that the relevant actors would regularly refer to human rights. The validity of human rights claims is no longer in question. The authors apply strict standards to this status. According to them, governments (and parliaments) not only have to ratify the international human rights conventions and the respective optional protocols. They must also make sustained efforts to institutionalise human rights protection. For example, human rights standards must be incorporated into the constitution and national law, human rights complaints must be made possible at the national level, and governments must publicly recognise the validity of human rights. Prescriptive status, however, is not yet identical with rule-consistent behaviour. Despite their recognition, human rights could still be violated by state actors, especially by armed and security forces that the government does not adequately control.

[206] A critical point to be made here is that there is sufficient information about human rights violations in many states without attracting international attention. Obviously, information alone is not enough to convince the international community to act.

Phase of rule-consistent behaviour: This phase corresponds to the realisation of human rights in everyday political life. According to the authors of the spiral model, it is reached when the rule of law becomes institutionalised. The development of the rule of law, however, depends decisively on the ongoing local and international mobilisation through transnational human rights networks (whose mobilisation capacity is already threatening to decline during the prescriptive state due to the improved human rights situation). If human rights violations occur, they are punished legally and are no longer part of state policy.

With regard to the modes of action, the authors of the spiral model understand the domestic implementation of international human rights norms as a socialisation process. In the course of this process, the political and social elites of a country adopt human rights standards of appropriate behaviour, which the international community and the domestic opposition expect and demand of them. The spiral model uses a comprehensive concept of *socialisation*. It encompasses three modes of action: (1) strategic, purposeful rational action and *instrumental adaptation* to pressure, (2) rule-guided behaviour in the sense of a "logic of appropriateness" consisting in the adoption of norms of action (*habitualisation)*; (3) argumentative action aimed at understanding and argumentative persuasion (*argumentation*). Especially in the early phases of the model, international and domestic pressure would prove to be a necessary condition for the implementation of human rights. However, immaterial, moral pressure and the public denunciation of human rights violations are at least as important as tangible, material sanctions, such as economic or even military sanctions. According to the model, the importance of argumentative action and the internalisation of human rights norms increases in later phases.

Appreciation and criticism: The spiral model makes it possible to conduct structured and comparable case studies, even if these are accompanied by the risk of over-schematisation of real processes. The model, developed in the 1990s, has been applied in numerous country studies and has proven its descriptive-systematic usefulness. It could be shown that in a number of cases from the 1980s and early 1990s went through individual (mostly not all) phases of the model.[207] The model proved particularly helpful in describing the first three phases of human rights change. On several occasions, it was possible to demonstrate that international pressure led to success when it promoted civil society mobilisation within the respective countries and political space opened up there due to tactical concessions by the regime. However, only a few states in which human rights had previously been systematically violated also reached the last two phases of the model (Jetschke and Liese 2013, pp. 27 ff.).

[207] According to Risse and Ropp (2013, p. 7), success stories during the 1980s include the following cases: Chile, South Africa, the Philippines, Poland and Czechoslovakia, while more difficult cases included Guatemala, Kenya, Uganda, Morocco, Tunisia and Indonesia. Other states have since been investigated, including Israel, Turkey, Yemen, China, Algeria, Egypt, Colombia, Mexico, Bangladesh, Iran and Saudi Arabia. Cf. Jetschke and Liese (2013, pp. 28 ff.) and the case studies cited there.

In addition to much praise, however, the spiral model has also attracted criticism. Its authors have themselves identified a number of weaknesses: firstly, the model was based on functioning states, so that the implementation of human rights was treated primarily as a question of political will and not as a question of institutional possibilities. Despite political commitments, however, problems of statehood (limited statehood) can hinder the implementation of human rights. Another weakness, according to the authors, is the underspecification of the process of how and under what conditions state and non-state actors move from commitment to compliance.[208] Thirdly, the original concept did not take into account powerful states such as the USA or China, which are more resistant to external human rights pressure than the less powerful states that were originally studied.

The follow-up volume (Risse et al. 2013) attempted to fill this gap—and contains chapters on each of the above-mentioned spaces. It is interesting to note that, partly overlapping, partly complementary to the modes of socialisation already mentioned, other compliance mechanisms from the literature were also taken up. These include (a) coercion in the sense of military force from outside (keyword: responsibility to protect) and the increasingly important enforcement of law by national, regional and international courts; (b) incentives and sanctions; (c) argumentation, persuasion and learning processes[209]; (d) capacity building, which is particularly important in the case of weak states. In addition, the original model also requires comment and supplementation in other respects:

(1) Although it is pointed out that stagnation and regression can occur, the model (in contrast to some, especially recent case studies) focuses primarily on those interactions that promote the socialisation process. This is important in order to understand the dynamics of efforts to promote human rights from "below" and "outside". However, it would also be important to systematically supplement the model and, if necessary, the analyses with opposing strategies and actions. Socialisation processes are not only shaped by strategic, argumentative and rule-consistent behaviour *in favour of human rights*. As a rule, autocratic regimes also use state institutions, controlled media, social forces loyal to the regime and international alliances to (a) ward off human rights criticism, (b) build up counter-pressure and counter-discourses, and (c) change perceptions and standards of action, often in alliance with allied governments.

Particularly in view of the manifold, recently intensified efforts of autocrats, but unfortunately also of some democratic governments, (a) to restrict the scope of civil society in their own countries (keyword: shrinking or closed political space of civil society), (b) to cut the ties between human rights defenders in their own countries

[208] *Commitment* means that actors accept international human rights as valid and binding for themselves; *compliance* is defined as sustained behaviour and domestic practices that conform to the international human rights norms (*rule-consistent behaviour*). The transition from *commitment* to *compliance* takes place in the final phases of the spiral model.

[209] While argumentation is an integral and important part of the discourse-oriented spiral model, the model has not addressed concepts of *social learning*—and how any learning processes are embedded in strategies of argumentative persuasion.

and the international human rights community, which are so important for the protection of human rights, and (c) to discredit the global and regional human rights institutions or even human rights, it would be necessary to systematically examine the socialisation processes that are conducive and detrimental to human rights change and to relate them to each other. This is all the more so since a number of autocracies, above all China, no longer use international forums only defensively to counter human rights criticism, but also offensively to propagate alternative models of order in respect of human rights.[210]

In view of the successful—populist and popular—efforts of many governments to ban human rights interference from outside in the name of state sovereignty and to discredit domestic human rights defenders as "foreign agents" or "henchmen of foreign interests", the spiral model also tends, from today's perspective, to overestimate the human rights-promoting influence of transnational human rights policies within the respective country. This is all the more true when, in the context of actual or alleged threats to national security or territorial integrity, human rights activists and regime critics locally are successfully defamed and criminalised as (sympathisers of) terrorists and separatists. Turkey—especially after the failed coup attempt in 2017—is one of many examples of this.

(2) The spiral model shows only a very coarse-grained picture of the actor landscape. Essentially, the model is about the interaction between (a) government, (b) domestic opposition and (c) actors of the global community (transnational networks, international organisations, "Western states"). It would make sense to take greater account of the heterogeneity of these groups of actors.

Even the *government* is not a monolithic block. The complex and changing relationships within and between the political leadership and the economic, social, religious and military elites that may support it, are of great importance for explaining political change towards more democracy and human rights. Often there is no consensus among the elites on how to evaluate political dissent and human rights criticism and how to react to it. Both repression and concessions can lead to considerable friction in the "ruling bloc". Thus, the collapse of authoritarian regimes, political openings, democratic transitions and human rights transformations are often the result of conflicts and power shifts within the ruling and rule-bearing elites. Even the simple distinction between *hardliners* and *softliners*, which was already used in early actor- or elite-oriented approaches to transition research (O'Donnell et al. 1986) in relation to Latin America, is not taken into account in the spiral model. Ultimately, in-depth, structurally enriched analyses of the behaviour and strategies of the respective heterogeneous elites are necessary (Nohlen and Thibaut 1994).

There are also social forces in the *population* that differ significantly in their attitude to the regime—whether they support it, oppose it or are apolitical and indifferent. An explanatory model that relies on the strength of the *domestic opposition* must take into account the heterogeneity of society, but also of the opposition.

[210] Piccone (2018), Chen (2019), Kinzelbach (2019, 2020), Pils (2021).

Sometimes autocracies have a broad social base and local human rights organisations, if they are allowed and known at all, enjoy little support among the population. Also, the opposition is often divided into moderate and radical parts. Parts of the opposition may, for example, rely on the violent overthrowing of the regime in order to get rid of a highly repressive dictator (an option that does not appear in the spiral model), others rely on reforms and are prepared to make concessions and agreements. Nor is everyone who opposes political repression a champion of democracy and human rights. Moreover, opposition groups can also behave tactically—paying lip service to the democratisation and human rights discourse while possibly pursuing diverging goals.

Finally, the *international community* is also very complex. Transnational networks, international organisations and "Western states" are not in themselves uniform actors, let alone always pulling in the same direction. The restriction to "Western states" is unacceptable anyway. Later, the authors of the spiral model write about a "human rights international community", which is far more appropriate. However, as has already been shown, there are also states (representatives) in the regional and global human rights institutions that not only behave in a human rights-friendly manner, but also participate in these institutions in order to prevent human rights criticism or to criticise critics themselves, often with the—not entirely unjustified—reference to "double standards". Moreover, there is no uniform picture between supporters and opponents of human rights. Some governments demand certain human rights while rejecting others, or they criticise the human rights violation of one state but block human rights criticism of another.

(3) Less explanation than description: The spiral model offers the possibility to capture different phases of human rights change in a systematic-comparative way. However, its analytical usefulness beyond this remains limited: Although the model makes the success of human rights change—in the sense of a socialisation process—largely dependent on the strength and networking of civil society,[211] the model says little about how and under what conditions a strong civil society emerges. Nor does it say much about how and under what conditions civil society groups succeed in drawing the attention of transnational and international actors to their concerns—and in persuading them to take up their cause. Such processes, however, require a great deal of explanation. Answering such questions is ultimately left to qualitative individual case analyses, without the corresponding empirical results being inserted into the model in a systematic-comparative way. Theoretical considerations, for example from research on the success or failure of social protest movements, could be specifically taken into account here. In doing so, however, it should be avoided that a bottom-up bias already shapes the empirical analysis in advance. Ultimately, it is not a theoretical but an empirical question which actors in the

[211] According to the model, if external and domestic pressure to respect human rights is high (and the regime is vulnerable to human rights pressure), human rights change will occur. If, on the other hand, the pressure is weak (and the regime is not very vulnerable), change does not occur.

interaction of non-state actors, human rights-friendly governments and international organisations were or are significant for human rights change in the respective case.

(4) The spiral model is, as mentioned, primarily actor-oriented—and claims to describe and explain human rights change across political, economic and cultural differences primarily on the basis of the interaction of the above-mentioned actors. For qualitative empirical analyses, however, it makes sense to think of actors and structures together. Neither the interaction of actors nor the question of the vulnerability or resilience of the respective political regimes to human rights pressure can be adequately explained without analysing the political-institutional, economic and socio-cultural structures. The actor strategies for "democratisers", which some early transformation researchers on Latin America had formulated almost like a recipe book, find their counterpart, so to speak, in the spiral model designed for human rights change: it also reads like a recipe book, which students are only too happy to follow, often uncritically. In contrast, transition researchers working in a historical-qualitative and comparative manner try to capture the complexity of political changes through an overall view of structures, institutions and actions, even if this is at the expense of the generalisability of the results. It makes sense for the follow-up study to the spiral model later on to focus specifically on at least some fundamental "scope conditions for compliance", namely the question of regime type (democratic vs. authoritarian), the degree of statehood (consolidated vs. limited), the structures of norm enforcement (centralised vs. decentralised) and the material and social vulnerability of the regime (substantial vs. limited) (Risse et al. 2013, pp. 16 ff.).

(5) For analytical reasons, the research group first looked at authoritarian-repressive regimes. The selection of cases was based on the assumption that the effect of international human rights norms on the behaviour of actors can *only* be proven if compliance with the norm is initially "inconvenient", i.e. associated with material or social "costs". In order to be able to meaningfully measure one's own influence of international norms, a discrepancy between, on the one hand, international norms and, on the other hand, the national regulations, institutions and collectively shared convictions on which the behaviour of the actors within the country is oriented would be required (Risse et al. 2002, pp. 18–19).

Methodologically, such an approach is due to the attempt to clearly present the effect of the independent, explanatory variable (transnational mobilisation for international norms) on the dependent, explanatory variable (human rights change within states) in a causal way. In countries where actors already adhere (or are inclined to adhere) to human rights because of the national structures of law, politics and society, it is more difficult to establish the independent influence of international human rights norms in isolation. However, it is not impossible: for one thing, even in democracies where human rights have been implemented to a large extent, there are sometimes discernible discrepancies between international norms and political practice. In later works, torture practices on the part of the USA are also discussed in this sense. Second, international norms can demonstrably reinforce or complement existing national norms. One example would be the introduction and interplay of

international and national mechanisms for the prevention of torture, including in Germany.

In this respect, it is important to also examine the influence of international human rights norms on politics in liberal democracies—as was also done in later case studies on the spiral model. In this context, it is plausible to assume that democratic states are particularly vulnerable to immaterial pressures and argumentative discourses that appeal to their human rights self-understanding and their self-obligations under international law. However, such moral vulnerability is often coupled with democratic ignorance or even arrogance, according to which human rights are implemented in one's own country. One does not even have to look at the USA, whose relationship to human rights is characterised by a pronounced exceptionalism (Ignatieff 2005). In Germany, too, it is often difficult to problematise political or even economic and social grievances from a human rights perspective.

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Chapter 6
Closing Words

As mentioned at the beginning, this book introduces the diversity of topics, actors and institutions in human rights politics. Much could and should be expanded on and supplemented. At the same time, the book also contains guidance and suggestions on how human rights politics can be conceptualised and examined. Inevitably, this is only a small selection of social science approaches. Many more are possible. The range of epistemological-methodological approaches to the social phenomena to be described, explained or understood—such as human rights politics—is considerable in the social sciences. Whichever approach is chosen, however: the analysis of human rights policy remains strangely anaemic if human rights are only an academic exercise and not a genuine concern.

Thus, social science analyses can contribute significantly to the understanding of human rights and to the success of human rights policies. They show, for example, that a successful human rights policy requires many things: vibrant civil societies that are committed to demanding human rights and that need to be protected and promoted; courageous governments that stand up for human rights even in the face of opposition and that gear their policies towards implementing human rights in the best possible way; strong, inclusive institutions in which human rights problems are dealt with seriously and that offer those affected and their supporters the necessary legal and institutional backing. At the same time, however, it is also important to focus on counterforces in politics and society that question established human rights standards and try to fend off human-rights claims; these have gained considerably in significance in recent years. Furthermore, politics as well as academia are called upon to always look beyond the actual human rights politics to the overarching political, economic, social and ecological conditions that are conducive or detrimental to the realisation of human rights. Only in this way human rights politics can develop into politics and actions that comprehensively respect, protect and fulfil human rights. As has already been emphasised, the realisation of human rights is (or should be) a highly demanding, critical-emancipatory political project that is democratically, socially and ecologically oriented. We should adhere to this.

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