



Human Rights or Human Wrongs?

**Towards a “thin” universal code of international
human rights for the twenty-first century**

Mikael Baaz

**Working Papers Series
Nr 06:02
ISSN 1404-0026**

Foreword

The Centre for European Research at Göteborg University (CERGU) was established in 1995. Its main aim is to stimulate multidisciplinary research and studies focusing on European issues. CERGU primarily fills the function as communication resource for researchers within different academic disciplines at Göteborg University and as support organisation for research networks with universities and institutes in Sweden and abroad. Conferences, seminars and workshops constitute some of the CERGU core activities, together with courses on the PhD, Graduate, and Undergraduate levels. CERGU also acts as host for multidisciplinary research projects. To promote contact between, on the one hand, researchers and students at Göteborg University and, on the other, interested parties in industry, business and the public sectors also constitutes a central task for CERGU.

Per Cramér

Professor, Director Centre for European Research at Göteborg University

Table of Contents

Introduction	1
Normative theory: What ought international human rights to be? ...	5
Empirical Theory: What are international human rights?.....	11
Constructive Theory: What can international human rights be?	22
Some concluding reflections: The international human rights regime at the dawn of the twenty-first century	32
References	34

Introduction

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us.¹

In the beginning of the twenty-first century, the “international human rights regime” — stressing the universal character of human rights — is a rather established feature of current “world society” and a very good example of the ongoing processes of “globalisation”.² The,

¹ Charles Dickens: *A Tale of two Cities* (New York: Dodd, Mead and Company Publishers, [1859] 1925), p. 3.

² The analysis of “international regimes” (or institutions) has been in focus of scholarly attention for more than two decades. Originally, the regime concept was an alternative way for students of international relations to deal with co-operative relations in what otherwise was considered as an anarchic environment; i.e. the international system/society. Bertil Dunér: *The Global Human Rights Regime* (Lund: Studentlitteratur, 2002), pp. 27f. The classical definition of a regime is as follows. International regimes are “sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations”. Stephen D. Krasner (ed.): *International Regimes* (Ithaca, New York and London: Cornell University Press, 1986), p. 2.

The idea of human rights has its roots far back in history, but the “international human rights regime” that we know today date back to the birth of the United Nations (UN). The core of this regime is, on the one hand, the Universal Declaration of Human Rights (UNDHR), 1948, and on the other hand, the International Covenant on Civil and Political Rights (ICCPR), 1966, and, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. Tim Dunne and Nicholas J. Wheeler: “Introduction: Human Rights and the Fifty Years’ Crisis”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 1.

The term “world society” will be elaborated in fuller length below. In spite of this, we need a preliminary definition for now. Characteristic for a “world society” — as presented from Immanuel Kant (with his *ius cosmopolitanum*) to John W. Burton (associated with the metaphor of international relations as a “cob-web”) — is that it takes the global population as a whole as the focus of global societal identities and arrangements. Just as in the case with international systems and international societies, world societies can be regional or global. See Immanuel Kant: “Perpetual Peace”, in M. Forsyth H. M. A. Keens-Soper, and P. Savigear (eds.): *The Theory of International Relations: Selected Texts from Gentili to Treitschke* (London: Allen and Unwin, 1970); and John W. Burton: *World Society* (Cambridge: Cambridge University Press, 1972).

today sixty years old, regime is however not uncontroversial. Its universal status has always been challenged, during the Cold War by the Eastern bloc, and lately by a heterogeneous body of critics — reaching from e.g. East Asian and Islamic scholars and politicians to Feminist debaters — who argue that the regime is a western, masculine, and intolerant expression of universalism. In fact, human rights, not to mention “humanitarian intervention”, critics argue, are nothing else than an expression of western, male chauvinist neo-imperialism.³ These alternative understandings of the character of human rights have in the literature been cast in different ways. In the following I will use the dichotomy, “universal” vs. “relative” rights, in order to organise and understand the different views found in the debate.⁴

Given the situation sketched, it is difficult to see clearly the ways in which direction(s) the international human rights regime might develop in the future. Do we face a spring of hope or a winter of despair for international human rights? On the one hand, it is not only difficult to enforce compliance with universal standards; the very idea that there exist universal standards is under threat. On the other hand, it can be dangerous to give up the idea that it is desirable to live

The concept of globalisation and the processes of globalisations are object for extensive discussions and debates within *academia* today. When I refer to “globalisation” I have in mind a process, or more correct several processes, that still goes on and through which the world in many respects has been becoming a single place. Jan Aart Scholte, whom I agree with, writes that: “the international realm is a patchwork of bordered countries, while the global sphere is a web of trans-border networks”. Jan Aart Scholte: “The Globalization of World Politics”, p. 14. See also, David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton: *Global Transformations: Politics, Economics and Culture* (Cambridge: Polity Press, 1999).

³ See e.g.: Chris Brown: “Human Rights”, in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2nd ed., 2001), pp. 610ff; and, by the same author: “Universal Human Rights: A Critique”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999).

⁴ Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2000), p. 366. Other possible terms to use are, e.g. “absolute” vs. “contingent”, or “moral monism” vs. “relativism”. See e.g. Bhikhu Parekh: “Non-ethnocentric Universalism”, in Tim Dunne and Nicholas J. Wheeler: *Human Rights in Global Politics*, (Cambridge: Cambridge University Press, 1999), p. 128ff.

in a world where individual political, economic, social, and cultural rights are taken seriously. The situation is complicated.

If we (like the author to this article do) find it valuable and desirable to live in a world in which freedoms and “rights” are enjoyed by everyone, how do we then save the notion of universal human rights from the problems so meritorious pointed out by its critics? This question is what this article ultimately is about. To be more precise, the aim of the article is to investigate in which way the notion of universal human rights can be saved from its critics without falling into the pitfalls stressed by them, like e.g. (cultural) intolerance and neo-imperialism. Hence, the ambition is to diagnose a number of practical problems and present some tentative thoughts of how they can be dealt with (in the future). Because of the huge span of the issue at stake (international human rights) and the limited space for disposal, the article is most fairly described as a “think piece” (i.e. a rough sketch or blueprint) and not a full-fledged and final statement of my views regarding the questions initiated and discussed. The article is tentative, but will (hopefully) give some ideas of how one might proceed in a profitable way. To be brief, the ambition is heuristic rather than realistic.

Human rights can, analytically speaking, be studied from three different theoretical categories, namely: “normative”, “empirical”, and “constructive” theory.⁵ Each category of theory deals with

⁵ The lowest common denominator of the three categories of theory is that they are “operative” theories, i.e. they try to say something about the “reality”. Normative as well as empirical theory is based on some sort of meta-theory. Meta-theory precedes operative theory and consists of fundamental stipulations about ontology (theory of the nature of reality), epistemology (theory of knowledge), and axiology (theory of value). From this statement follows that normative as well as empirical theory lacks a fixed foundation, sooner or later one reach the level of meta-theory and to assumptions that is not possible to verify. Constructive theory, based on normative and empirical ditto as it is, is therefore always possible to criticise. It would take us too far to discuss the meta-theoretical foundations for the present article here (in length). Instead, I refer the interested reader to some of my earlier works. See e.g. Mikael Baaz: “Meta-Theoretical Foundations for the Study of Global Social Relations from the Perspective of the New Political Economy of Development”, *Journal of International Relations and Development*, 1999, no. 2, vol. 4, pp. 461-471; and Mikael Baaz: *A Meta-theoretical Foundation for the Study of International Relations in a Global Era: A Social Constructivist Approach* (Göteborg: Padrigu Papers, 2002).

different questions. If our focus is normative, then we are interested in what human rights *ought* to be and how they can be justified. If the focus is empirical, then the searchlight is directed towards what human rights *are* and how they can be understood or explained. we can also have a constructive focus. In that case we are interested in what human rights *can* be and how this is achieved; i.e. how do we achieve as much as possible of what we want (human rights, understood as respect for individual human beings) given that the reality looks the way it does.⁶

As argued the different types of the theory are merely analytical construction and in reality they overlap. On an analytical level they can, however, be separated. Given the aim with the article we need to consider all three categories of theory. If we shall say something about international human rights in the future, both the *ought* and the *can* question must be answered in the analysis. It is “senseless” to discuss what the international human rights regime *ought* to be separated from what it actually *can* be. Furthermore, it is highly inappropriate and, in fact, unethical trying to answer the question what it *can* be without paying any attention to if it also *ought* to be like this. The idea that it would be possible to go directly from normative theory to constructive theory is, in the best case futile and in the worst case dangerous. Neither can we go directly from empirical to constructive theory. In constructive enterprises, both normative and empirical theories serve as foundation for the construction. In order to answer the question what the international human rights regime *can* be and *how* this vision can be fulfilled in a given situation we need normative as well as empirical knowledge. On the basis of our constructive theory, we can, if we like, give

⁶ My methodological concerns are based upon the thinking of Lennart Lundquist. See e.g. his, *Det vetenskapliga studiet av politik [The Scientific Study of Politics]* (Lund: Studentlitteratur, 1993), ch. 3, note especially figure 11, p. 85; and, *Demokratins väktare [The Guardians of Democracy]* (Lund: Studentlitteratur, 1998), pp. 27f. Cf. the outline of R. J. Vincents’s “classic” in the field of international human rights: *Human Rights in International Relations* (Cambridge: Cambridge University Press, 1986).

suggestions of (political) implementation measures.⁷

This article — which is based upon primary sources, in the form of e.g. international declarations, conventions, and covenants as well as secondary sources, in the form of e.g. political statements, scholarly and journalistic writings — is disposed in three sections, emanating from the different types of theory.⁸ Hence, one normative, one empirical, and one constructive section follow in order. In a final section the arguments in the article is winded up and some concluding reflections about the discussions carried out are given.

Normative theory: What ought international human rights to be?

*In theory, there is no difference between theory and practice;
In practice, there is.*⁹

The motive for doing a normative analysis is that the empirical analysis not will be meaningful if we do not know what to look after and that the constructive analysis cannot be done if we do not know what we ought to do (in the future) and why.

The idea of international human rights is not an obvious one, therefore some initial clarifications of what is meant by the idea is

⁷ Lennart Lundquist: *Demokratins väktare [The Guardians of Democracy]*, p. 28; *Det vetenskapliga studiet av politik [The Scientific Study of Politics]*, p. 85; and, Bo Rothstein: *Vad bör staten göra? Om välfärdsstatens moraliska och politiska logik [What Ought the State Do? About the Moral and Political Logic of the Welfare State]* (Stockholm: SNS Förlag, 1994), pp. 12ff., note especially figure 1.1, p. 24.

⁸ The scholarly writing taken into consideration in this article is not only written by legal scholars, but also scholars in International Relations, Peace and Conflict Studies, Political Science, Sociology, and Philosophy, et cetera. The reason for this is the inter-disciplinary character of the topic in question (i.e. Human Rights), which covers at least law, politics, and morals; all placed in a societal context. Note e.g. the title of one of the standard textbooks in the field written by Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2000).

⁹ Chuck Reid (<http://www.musicfolio.com/qoutes/america.htm>). The site was visited 2005-05-26.

appropriate. What are “rights”? And, in extension, what does it mean that these rights are, on the one hand “human”, and, on the other hand, “international”?

It is possible to distinguish between four different types of rights: claim- (e.g. a right generated through a “contract”), liberty- (e.g. the right to dress as we please), power- (e.g. the right to vote) and immunity-rights (e.g. to be legally insane). Other categorisations are possible. But, in order to keep it simple, a (claim-)right (according to, some scholars, the only “true” right) is, with some exceptions, a right held against someone or something. Let me illustrate this point by two examples: a lender has a right to repayment of a debt against the borrower; and, a property owner has the right to exclusive enjoyment of his property to any person. The attribution of a right is however not very meaningful without the possibility of a correlative duty resting somewhere.¹⁰ The philosophical discussions about rights are very extensive and problematic. My aim here is only to give a brief notion of what I mean by a right and not to give myself into this discussion in any length.¹¹ Briefly put, “right and duty are different names for the same normative relations, according to the point of view from which it is regarded”.¹²

The addition of “human” to rights means that every human being has them, regardless if they are black or white, belong to community A or B, and so on. Individuals have rights, simply because they are human. Before the end of WW II human rights were more or less associated with domestic political and legal systems. But in the last six decades in general and during the 1990s in particular questions regarding human rights have been put on the international agenda. Thus, when I talk about

¹⁰ R.J. Vincent: *Human Rights in International Relations*, p. 9.

¹¹ See instead, e.g. Chris Brown: “Human Rights”, p. 602. For a more elaborative discussion on the concept “rights”, see Nigel E. Simmonds: *Juridiska principfrågor: Rättvisa, gällande rätt och rättigheter [Central Issues in Jurisprudence: Justice, Law and Rights]* (Stockholm: Nordstedts juridik, 1996

¹² S. I. Benn and R. S. Peter: *Social Principles and the Democratic State* (London: Allen and Unwin, 1959), p. 88f., quoted in, J. R. Vincent: *Human Rights in International Relations*, p. 9.

international human rights I have in mind a number of basic rights, of international and not only national concern, that every individual in the world enjoy simply because they are human.

Does it exist any fixed foundations for what international human rights ought to be, or are we directed only to free-hand drawings that can change from one situation to the other? I do believe that there exists a rather fixed foundation of what international human rights ought to be. The foundation can be found in the body of international (and regional) declarations, conventions, covenants and treaties that the sovereign nations states in the “international society” have come to agreement with during the post-WW II era. The core of this body of documents are to be found in the UNDHR (1948), the ICCPR (1966), and the ICESCR (1966) but also in the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on all Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), and the United Nations Convention on the Rights of the Child (1989).¹³ The latter conventions are more or less specifications of different aspects (for particular “identities”) of the former ones, in order to underscore the importance of certain dimensions and values. The former documents provide an authoritative statement of internationally recognised human rights, both regarding “positive” and “negative rights”.¹⁴ Among other things, the “international bill of human rights” recognises the right to:

¹³ Among the regional instruments we find e.g.: The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Conventions on Human Rights (1969), the African [Banjul] Charter on Human and Peoples’ Rights (1981), the Arab Charter on Human Rights (1994), and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995). For a more complete list of different human rights instruments, see e.g. P. R. Gandhi: *International Human Rights Documents* (London: Blackstone Press, 2nd ed., 2000).

¹⁴ With positive rights are understood rights such as collective provision of education and healthcare and by negative rights are understood rights such as freedom from repressive government policies. Tim Dunne and Nicholas J. Wheeler: “Introduction: Human Rights and the Fifty Years’ Crisis”, p.1

[E]quality of rights without discrimination, life, liberty and security of person, protection against slavery, protection against torture and cruel and inhuman punishment, liberty and security of person, equal protection of the law, protection of privacy, family, and home, freedom of thought, conscience, and religion, freedom of opinion, expression, and the press, freedom of assembly, and association, social security, work (under favourable conditions), food, clothing and housing, healthcare and social services, special protections of the children, education, self-determination, and protection of minority culture.¹⁵

Thanks to the existing internationally recognised instruments of human rights, the “reconstruction” of what international human rights ought to be is relatively easy to do. I do not believe the “reconstruction” made above to be very controversial. Human rights norms are in fact today more or less fully internationalised. But implementation and enforcement has remained almost completely national. This is one of the major obstacles regarding the practical impact of human rights in contemporary “international society”. From confession and ratification of international human rights does not necessarily follow an actual commitment. Furthermore, the UN Commission of Human Rights (UNCHR) resolved at its first session, in early 1947, that it had “no power to take action in regard to any complaints concerning human rights”.¹⁶ This means, traditionally speaking, that neither UN nor any other (regional or national) agent can “intervene” in a country that violates human rights without breaking the

¹⁵ The “bill of international human rights” is based upon the UNDHR (1948), the ICCPR (1966), and the ICESCR (1966). In my list above, not all rights are included. Most important aspects are, however, included. For a complete overview, see Jack Donnelly: “Social Construction of International Human Rights”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 74, table 2.

¹⁶ UN Document E/259, 1947, para. 22. The Economic and Social Council (ECOSOC) ratified this decision later the same year in E/RES/75 (V); a document that also severely restricted Commission access to the thousands of complaints that the UN receives every year. The UN document mentioned here is quoted in Jack Donnelly: “Social Construction of International Human Rights”, p. 73, note 3.

(fundamental) principle of non-intervention of the UN–charter (article 2[7]), unless the country intervened has agreed upon this in advance. This is a problem that I will return to in the sections below. What remains to be done in this section is to discuss how the rights in the international bill of human rights can be justified.

One fundamental part of the claim that there exist such things as international human rights has been that, except being universal, they are not subject to change over time, since they express the essential nature of human beings. By tradition, human rights have been founded on some version of “natural law”. The origin of natural law thinking dates back to ancient Greek and early Christian scholars, but in its modern form it is based upon medieval Catholic theology. The general idea is that human beings share an essential nature, which dictates that certain kinds of human goods are always and everywhere desired. Accordingly, there exist common moral standards that shall govern all human relations. These common standards can be distinguished by the application of reason to human affairs. Thus, natural law provided the foundation for a theory of rights in the Middle Ages.¹⁷ But, in the rough world of Medieval and Renaissance political practice (e.g. in England and on the Italian peninsula) rights had quite different connotations. Here a right was a concession the individual extracted from someone superior to him, often by force. A good example is the Magna Carta (1215). The rights in this charter are not based upon natural law but positive law (read contract law). The Magna Carta contain rights (and duties) for a certain group of people (the Barons of England) in relation to their king and there is no sense in which they could be considered as universal or human rights. The Magna Carta is clearly a contract, emanating from a political bargain. Hence, we can identify two traditions for funding rights, universalism and relativism. The two

¹⁷ Chris Brown: “Human Rights”, p. 602. See also: Tore Strömberg: *Rättsfilosofins historia i huvuddrag [The Essential Feature of Legal Philosophy]* (Lund: Studentlitteratur, 3rd ed., 1989), ch. 5, 12, and 13; and, J. R. Vincent: *Human Rights in International Relations*, ch. 2.

traditions are, however not, as we shall see below, necessarily incompatible.¹⁸

In fact, the modern (liberal) view of international human rights — developed initially by scholars such as Hugo Grotius, Thomas Hobbes, and John Locke — are a synthesis between rights entailed by natural law and positive law. This conceptually “suspect” position has been, and is still, criticised by thinkers such as Friedrich Hegel, Jeremy Bentham, Karl Marx, and subsequent (pure) relativist, or communitarian, scholars.¹⁹ This disagreement is still in the forefront of the current battle between universalists and relativists.

I think the dilemma, or battle, can be dealt with as follows. To begin with, I believe that a theory of international human rights needs to be founded in or influenced by some sort of “soft” natural law thinking. Soft because it does not claim the existence of unyielding principles of reason, like e.g. that humans have a primordial right to freedom and equality. Such claims, like the existence of a primordial right to freedom and equality, does only, as argued by e.g. the Swedish “Legal Realist” Axel Hägerström and his disciples in the so-called “School of Uppsala”, contribute to sharpen the antagonism between different nations and obstruct reasonable agreements between them.²⁰ Neither does soft natural law thinking put in some kind of social contract between natural law and positive law. Furthermore, the soft natural right shall not be held to be immutable but dependent in its concrete shaping by the surrounding “societal” context. The normative foundation underlying the idea of soft natural law based human rights does not exist in advance but must be negotiated and decided by a majority of the member states in the UN. Thus, the international human rights regime shall be understood as a social, man-made, construction. Through such a procedure objections regarding

¹⁸ Chris Brown: “Human Rights”, p. 602; and, “Universal Human Rights: A Critique”, p. 106.

¹⁹ Chris Brown: “Human Rights”, p. 604.

²⁰ See Tore Strömberg, *Rättsfilosofins historia i huvuddrag [The Essential Features of Legal Philosophy]* (Lund: Studentlitteratur, 1989, 3rd ed.), p. 69

cultural imperialism and thereto-related objections can be neutralised and the normative base for human rights be more legitimate than the current “Western” base. Furthermore, the actual problem with possible abuses is also potentially neutralised by such a procedure. The only thing not possible to change is the core value of the regime, namely a firm demand of respect of the value of *human dignity*. From this follows that there exist certain fundamental human rights, that not can be dissolved generally or restricted arbitrary but only on certain institutionalised grounds and in legal order. Whether one shall attach oneself to this normative view based on soft natural law thinking or not, is at the end of the day not a scientific question but a moral one.²¹

Finally, it is not a secret that this normative standpoint is based on “Western” values. A fact that, from my point of view, does not necessarily disqualifies the standpoint *per se*. It has advocates outside the West as well as opponents within the western cultural sphere. More progressive and fruitful is therefore to speak about a “global culture of human rights”, instead of a “Western” one, based not on geographical culture belongings but a shared supra-cultural common-value system. After this normative excursion, let us now turn the searchlight to the empirical level of human rights.

Empirical Theory: What are international human rights?

*America did not invent human rights. In a very real sense, human rights invented America.*²²

My primary interest in this section is to analyse to what extent international human rights are put into practice in current

²¹ This section is inspired by Sven Strömberg: *Rättsfilosofins historia i huvuddrag [The Essential Feature of Legal Philosophy]*, p. 81. Cf. R. J. Vincent: *Human Rights and International Relations*, pp. 53ff.; and, Chris Brown: “Universal Human Rights: A Critique”, pp. 120ff.

²² James Earl Carter (<http://www.musicfolio.com/quotes/america.htm>). The site was visited 2005-07-16.

international relations characterised by overall (a) rapid process(es) of globalisations(s) (read homogenisation) but also, in parallel, fragmentation. Are international human rights exercised without restrictions or does it exist factors that prevent that they are exercised fully in practice? As guideline for the section two rather straightforward questions will serve: What are the possibilities to apply international human rights in present international relations? Why does the current situation look the way it does?

Human rights have a long history in theory and have even been practised occasionally. But it was the American and French revolution, in 1776 and 1789 respectively, that sought to create national politics based on broadly shared human rights. Despite the rhetorics of universality, human rights, however, remained essentially a concern for the sovereign nation state, whether to be accepted or not, until the end of WW II when they (eventually) were recognised in global international law.²³

The goals of the UN are listed in art. 1 of the UN-charter. Among them are included the promotion and encouragement of respects for human rights and fundamental freedoms for all, regardless of race, sex, language or religion. The humanitarian goal of the Organisation is elaborated further in art. 55 of the Charter. In art. 56 it is stated that “all Members *pledge* themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.²⁴ Even though the word “pledge” most likely implies a legal obligation, it can be (and indeed has been) debated if human rights were to be observed immediately (i.e. in 1945), when the rights in question were not listed neither defined, or if the observation was a future goal (*sine die*). The vague language

²³ David P. Forsythe: *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), p. 3. See, e.g. art. 1, 2, 13, 55, 56, 62, and 68, the UN Charter (1945); and the UNDHR (1948).

²⁴ Art. 55 and 56, the UN Charter (1945). Italics added.

probably leaves a wide discretion both regarding speed and means for the states to carry out their obligations.²⁵

The fundamental declaration regarding international human rights are the UNDHR (1948), a resolution passed by the UN General Assembly on the 10th of December 1948, by forty-eight votes to nil. Eight states (the six communist countries as well as Saudi Arabia and South Africa) abstained voting. The stipulation of rights falls into two main categories, civil and political rights, on the one hand, and, economic, social, and cultural rights, on the other. This division — which mirror the fact that the international human rights regime was questioned from the very beginning — was later manifested by the two covenants, the ICCPR and the ICESCR, regarding human rights that was developed from the UNDHR and completed in 1966. It is a common misunderstanding (among laymen) that states are under a legal obligation to respect the rights in the UNDHR. But most states that voted in favour of the Declaration regarded it as a statement of distant ideal, without any legal obligations. The UNDHR was not more than a list of rights that states *pledge* themselves to promote under art. 55 and 56 of the UN-charter.²⁶ From art. 13, in the same charter, follows, however, that the GA can — via the Economic and Social Council (ECOSOC) — not only initiate studies but also issue recommendations on human rights questions.²⁷

As just said, eighteen years after the passing of the UNDHR, the UN completed the drafting of two treaties designed to transform the principles of the Declaration into binding legal documents. They more or less, except from the fact that they have been divided into two documents, follow the UNDHR. The former covenant also provides for a monitoring system, which, however, is rather weak. The only compulsory element for the member

²⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law* (London: Routledge, 1997, 7th revised ed.), p. 212

²⁶ Peter Malanczuk: *Akehurst's Modern Introduction to International*, p. 213.

²⁷ See art 13 and 62, the UN Charter (1945).

states are that they shall present a report every fifth year on the national human rights situation to the Human Rights Committee of the UN.²⁸ There also exist an optional procedure in art. 41, the ICCPR (1966), by which a state can complain against another state. This procedure must, however, have been accepted by both states (in advance). The procedure is rather toothless since there is no reference to a judicial body that can take binding decisions. In conclusion, the legal obligations that follow from the Covenants are weak.²⁹ One explanation to this is to be found in (the very important) article 2(7) of the UN-charter, which states that nothing in the charter shall authorise the UN to intervene in matters, which are essentially within the domestic jurisdiction of any state (read human rights issues). The major obstacle with the international human rights regime is the contradiction between the norms in different treaties and the lack of a UN Human Rights Court, or something similar, to enforce them.³⁰

The international human rights system is a system in which the individual is the primary legal subject (a “world society”). This system is however situated within another system, a state-system, in which the sovereign nation state is the primary legal subject (an “international society”). So far, with few exceptions, state sovereignty has had priority over individual human rights.³¹

The international protection of human rights still leaves much to be desired and there exist no global consensus on the content, and implementation of these rights are often very difficult to achieve. From ratification of international instruments does (unfortunately) not automatically follow an actual commitment.³²

²⁸ Art. 40, the ICCPR (1966).

²⁹ Art. 40, the ICCPR (1966). See also, Peter Malanczuk: *Akehurst's Modern Introduction to International*, pp. 215ff.

³⁰ David P. Forsythe: *Human Rights in International Relations*, p. 55

³¹ See Baaz, Mikael (2001): *Statssuveränitet och humanitär intervention: (O)förenliga principer i dagens globaliserade värld?* [State Sovereignty and Humanitarian Intervention: (In)compatible principles in Today's Globalised World]. Göteborg: The School of Business, Economics and Law at Göteborg University, Department of Law.

³² J. R. Vincent: *Human Rights in International Relations*, p. 99.

The UN-charter, as shown by its *travaux préparatoires* (something like a “preparatory work”), did not attach so much significance to the promotion and protection of human rights as to the maintenance of international peace and security.

Intervention on humanitarian grounds was not considered a legitimate practice during the Cold War. But, during the 1990s the scene changed dramatically. Severe human rights violations were no longer considered exclusively to belong to the domestic domain of states, irrespective of art. 2(7), the UN-charter.³³ What has happened is that the investigation, discussion, condemnation, and enforcement of human rights violations in a state have, at least to a certain extent and (important to note) in some cases, become compatible with the sovereignty of that state. The cases I have in mind are: Operation “Safe Haven (1991) in Iraq (SC7res/688), Operation “Restore Hope” (1992) in Somalia (SC/res/794), and “Opération Turquoise” (1994) in Rwanda (SC/res/929). Non-western states, especially China, but also Russia, are, however, suspicious of legitimating humanitarian intervention by a broadening of chapter VII, the UN-charter. The humanitarian operations carried out during the first half of the 1990s have in spite of these hesitations been possible, since the “crimes” in question was considered as being of the calibre that they were covered by the principle of *erga omnes*.³⁴

Russia’s doubtfulness against the practice of humanitarian intervention developed from suspiciousness to open opposition in the late 1990s with the outbreak of the so-called “Kosovo-crisis”.

³³ Nicholas J. Wheeler and Alex J. Bellamy: “Humanitarian Intervention and World Politics, in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2001, 2nd ed.), p. 471. In this text (pp. 472ff) is given an (elaborated) definition of the concept of humanitarian intervention. Simply put it is about “intervention” — i.e. a forcible breach of sovereignty that interferes in a state’s internal affairs — on humanitarian grounds. Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 220.

³⁴ With *erga omnes* is meant obligations owed by every state to the international community as a whole. Rebecca M. M. Wallace: *International Law* (London: Sweet and Maxwell, 3rd ed., 1997), pp. 178f.

Even though the SC reached consensus around resolution 1199, determining that there was “a threat to peace and security in the region” and demanded a cease-fire, and threatened to take more drastic steps if this resolution was not obeyed, Russia made clear that it would veto any resolution authorising the use of force. In October 1998 the NATO, however, made it clear that it would be willing to use military force if the Federal Republic of Yugoslavia (FRY) did not comply with the Council resolution. The legal ground offered was “intervention on humanitarian grounds”. The FRY did not comply, and therefore the NATO launched air strikes toward targets in FRY, starting on the 25th of March 1999. The new thing with the NATO attack was that it was launched without a mandate from the SC. Hereby, from an international legal perspective the NATO intervention was illegal. It is true that the SC in its resolution 1199 determined the situation in Kosovo to be a threat to peace and security (according to art. 39, the UN-charter) but it never sanctioned the use of military force to restore international peace and security (according to art. 42, the UN-charter).³⁵

In the aftermath of the attacks, a discussion has been initiated if the NATO action was legitimate anyhow — *if it was illegal but legitimate*.³⁶ To conclude: in spite of the developments during the 1990s, the universal status of the international human rights regime is (still) challenged by critics from different camps. What remains to be done in this section is to provide an (historical) answer of why this is the case. The answer shall be sought in the

³⁵ Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, pp.653ff*; *The Kosovo Report* (Oxford: Oxford University Press, 2000); and, Nicholas J. Wheeler and Alex J. Bellamy: “Humanitarian Intervention and World Politics”, pp. 484f.

³⁶ This standpoint — *illegal but legitimate* — has been put forward by, among others, the members of an independent commission appointed by the Swedish Prime Minister Göran Persson. The main argument in the report presented by the Commission is that the UN Charter shall be interpreted to the intention rather than to the letter. There is, according to the members of the commission, a necessary choice to make. It is better that the international community does something than passively watch flagrant and systematic violence of fundamental human rights (see the *Kosovo report*).

evolution of the international relations over the last full five centuries.

Within the so-called “English Historical School” of International Relations,³⁷ there is a distinction made between “international systems” and an “international societies”. We can understand the difference between the concepts if we think as follows. An “international society” is:

*[A] group of states (or more generally, a group of independent political communities) which not merely form a system, in the sense that the behaviour of each necessary factor in the calculations of the others, but also have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognise their common interest in maintaining these arrangements.*³⁸

From the end of the fifteenth century an onwards an international system, emanating from Europe, or to be more precise

³⁷ The basic problem anyone trying to understand contemporary international relations has to face is that there is such much material to look at that it is very difficult to know which things that matter and which do not. Faced with such a problem we have to resort to some (operative empirical) theory, understood as some kind of simplifying device that allows us which facts that matter and which do not. Steve Smith and John Baylis: “Introduction”, in John Baylis and Steve Smith (eds.): *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2001, 2nd ed.), p. 2ff. International relations have during its a bit over eighty years’ intellectual history been dominated by three competing theories: Realism, Liberalism, and Marxism. For an intellectual history of the disciplinary development of International Relations, see e.g.: Mikael Baaz: “Studiet av internationella relationer och doktrinen om gemensam säkerhet” [The Study of International Relations and the Doctrine about Common Security]. Background material for the, by the Swedish Government authorised, official report: *Konfliktförebyggande verksamhet: En Studie [Conflict Prevention: A Study]* (Stockholm: Utrikesdepartementet, Ds 1997:18), 1996. For a more extensive study, see e.g. Thorbjørn L. Knutsen.: *A History of International Relations Theory* (Manchester: Manchester University Press, 2nd ed., 1997). What makes the English School especially interesting for scholars of International Relations is that this theory actually constitutes a via med between Realism and Liberalism. See e.g. Mikael Baaz: *A Meta-theoretical Foundation for the Study of International Relations in a Global Era: A Social Constructivist Approach*, especially ch. 2 and 4.

³⁸ Hedley Bull and Adam Watson: “Introduction”, in Hedley Bull and Adam Watson (eds.): *The Expansion of International Society* (Oxford: Oxford University Press, 1984), p. 1.

Renaissance Italy, linking earlier virtually isolated regional systems/societies together, was brought into being.³⁹ This process started much earlier than an international society came into being.⁴⁰

Then, how does an international society come into being? Is the development immanent or intentional? When have all, or a part of an international system developed to an international society? These questions are put forward by Barry Buzan, in an interesting article, published in 1993.⁴¹ Regarding the first question, Buzan, inspired by the sociologist Ferdinand Tönnies, differs between two types of societies: *gemeinschaft* and *gesellschaft*. In the former type, society is considered as something organic and traditional; a society that involves bonds of common sentiment, experience, and identity. It is a society, which is cemented by some sort cultural hegemony, like e.g. religion and/or language; by some sort of “natural” “we-ness”. Examples of such international societies are e.g. ancient Greece and the early modern European international society that emerged in Renaissance Italy. In the latter type, societies are understood as something functionally and contractually constructed rather than immanently evolved. A good example of this kind of international society is the European Union. They are characterised by being constructed “by acts of will”.⁴² Hence, an international society can, theoretically speaking, come into existence, in two distinct ways, through a civilisational (*gemeinschaft*) and a functional (*gesellschaft*) process.

³⁹ Robert H. Jackson: “The Evolution of International Society”, in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2001, 2nd ed.), pp. 35ff. See also, L. S. Stavrianos: *The World since 1500: A Global History* (Englewood Cliffs, NJ: Prentice Hall, 7th ed., 1995).

⁴⁰ See, Gerrit W. Gong: *The Standard of “Civilisation” in International Society* (Oxford: Clarendon Press, 1984).

⁴¹ Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, *International Organization* (1993), vol. 47, no. 3.

⁴² Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, p. 333.

Except for the difference between system and society, one more distinction is necessary to do. We have to differentiate between, international societies and “world societies”. Characteristic for a “world society” is that it takes the global population as a whole (the humanity) as the focus of global societal identities and arrangements.⁴³ International societies, just as world societies, can be either global or regional in their geographical scope.

Are then the ideas of international society and world society opposites or complements? The former standpoint is based upon an assumption that identities must be mutually exclusive, that people can hold only one identity at the expense of another. This is a rather old-fashioned view anchored in nineteenth-century nationalisms. A more updated and accurate view is that people are quit capable of holding several identities at the same time. One can be Gothenburger, Swedish, European, and Western, citizen of the world as well as father, son, husband, law student, employee, Christian, and Social Democrat, et cetera, all at the same time. If this idea is accepted, then it becomes possible to imagine the development of a world society alongside a national or a civilisational one without any necessary excavation of one by the other. The belonging to a group is not essential but imagined, i.e. constructed. International society and world society can therefore develop at the same time. In fact, an international society cannot develop further without parallel development in its corresponding world society. Most likely, international societies, just as international systems, will, both in *gemeinschaft* and *gesellschaft* societies, emerge initially within “regional” subsystems and first later develop at the global level. As in economics, the rule is uneven development; from this follows that, when there exist a global international system, in which at least one societal subsystem exist, there will develop layers of co-centric societal

⁴³ Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, p. 336f. See the discussion above about regarding what is considered to be the legal subject.

circles. In the centre, states will have more shared values, fuller sets of rules and institutions, than those will in circles that are more distant.⁴⁴

Contemporary international society is a hybrid. It stems partly from the *gemeinschaft* international society that developed in modern Europe and imposed itself on most of the globe during the era of imperialism, and in part it reflects a *gesellschaft* process by which different cultures embedded in a system with an increasing level of interaction and interdependence gradually have learned to come to terms with one another. Today, international society is no longer a globalised expression of the European *gemeinschaft*, from which most non-European cultures and peoples were excluded due to their colonial or in other terms, unequal status.⁴⁵ The foundation of contemporary international society is the mutual recognition by more or less all states of each other as legally equal sovereign states; if this criteria is used, only very few states are now outside the international society. Present day global international society is by definition a post-colonial phenomenon. But, as could be expected from its partly *gemeinschaft* origins, it has a European, or more correct now a Western, core that is much more highly developed than the rest of it regarding the number, variety, and intensity of institutions and organisations binding its members in a network of regimes. Furthermore, as expected from its partly *gesellschaft* origins, contemporary international society is globally multicultural in character and clearly differentiated regarding the degree of commitment with which states attach to it. After the end of the Cold War, when the rivalry between the East and West ended, the complexity and density of the international society has substantially increased.

Accordingly, the current international society is best pictured as a construction of (changing) concentric circles. At the “external

⁴⁴ Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, p. 338ff.

⁴⁵ Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, p. 348f.

arena” we find a small number of pariah states, like e.g. Taiwan, that is excluded by the unwillingness of many others to (diplomatically) acknowledge them. Some states place themselves in the outer fringe of the international society by accepting very little more than the basic of (formal) diplomatic exchange — examples of such a state is North Korea and (at least earlier) Libya. In the middle, we find states, like India and China, which strive to preserve a high level of independence and select carefully what institutions they want to take part in. In the core, the Western states are located. These states more or less support as well as generate the expanding network of international regimes.⁴⁶ The international human rights regime can serve as a very good example of this state-of-the-art.

The Gulf War (1991), the crisis in e.g. the former Yugoslavia (from 1991-1995), Somalia (1992), Rwanda (1994), Kosovo (1999), Afghanistan (2001), and Iraq (2003) are good examples of how the concentric circles of international society operates and identify themselves in relation to fundamental challenges in international relations. Furthermore, the cases show how the international society arranges itself, depending on the issue at stake. The way the international society looks, depends on the issue at stake. This is important to remember.

To conclude: if we situate the earlier discussions about the contradiction between the norms in different treaties and the lack of an effective enforcement machinery in its historical perspective we are well-equipped to understand why the international human rights regime work (or does not work) the way it does (or does not) in different situations in current international society. The international human rights regime is neither supported by any effective enforcement machinery, nor by a feeling of a “natural” global “we-ness”. After having done this analysis we can now turn to the constructive level and discuss what we possibly can achieve — given that the world looks the way it does — of what we want.

⁴⁶ Barry Buzan: “From International System to International Society: Structural Realism and Regime Theory meet the English School”, p. 349.

Constructive Theory: What can international human rights be?

They always say that time changes things, but you actually have to change them yourself.⁴⁷

A fanatic is one who can't change his mind and won't change the subject.⁴⁸

In this the last but one section the focus will be on the normative level. I will try to present some guiding principles of how to overcome the problem presented initially, namely how the notion of “universal” human rights can be saved from its critics at the dawn of the twenty-first century. Or, to put in a different way: how do we bring reality closer to what we want — a world in which everyone enjoys freedoms and rights — without falling into the pitfalls, such as ethnocentrism and neo-imperialism, pointed out by several critics to the notion of “universal” human rights?

The current international human rights regime, based on universalism (i.e. moral/cultural monism), have, in spite of the seemingly consensus around it, proven to be very weak, due to the lack of an effective enforcement machinery as well as the shortage of a natural “we-ness” on the global level. Even judged in its own term, the regime has not been very effective. The NATO tried to overcome the first problem, the lack of effective enforcement machinery, by side-stepping the UN during the Kosovo-crisis in 1999. This attempt, in spite of the rhetorical acrobatics carried out by advocates in favour of the operation who argued that the operation was “illegal but morally justifiable”,⁴⁹ is bound to fall in the pitfalls of ethnocentrism, neo-imperialism, and arrogance, and must therefore be considered as an “intellectual” cul-de-sac. The

⁴⁷ Andy Warhol (<http://www.musicfolio.com/quotes/change.htm>). The site was visited 2005-05-26.

⁴⁸ Winston Churchill (<http://www.musicfolio.com/quotes/change.htm>). The site was visited 2005-05-26.

⁴⁹ See *The Kosovo report*.

second problem, the lack of a natural “we-ness” was not even considered by the NATO in the Kosovo case. The critique towards the NATO action seems to open up for relativism and indeed, in one form or another, relativism has become a highly popular doctrine lately. But does this mean that we must give up the idea that it is good to live in a world where the rights of the individual are taken seriously? In order to decide this let us begin by looking a bit closer on some of the central beliefs held by relativists and universalists, respectively.

Advocates for relativism rightly insist that no way of life is by objective standards possible to be decided the best or to suit all. What shall be considered as good life cannot be defined without including the character of the individuals involved. Furthermore, moral beliefs and practices cannot be detached from its societal or cultural context and judged or graded in an abstract manner. The relativist core can be boiled down to three statements. *Pro primo*, human beings are not determined but shaped by their society and culture and are therefore most likely unable to rise above its beliefs and truths. *Pro secundo*, different societies entertain different bodies of beliefs and there exist no neutral ground of judging these. *Pro tertio*, existing values and practices suit the members of the society best, and therefore they are entitled to live after them.⁵⁰

What are then the central beliefs held by universalists? Advocates for universalism rightly argues that morality is a matter of rational reflection, that it presupposes some conception of human being, that at least some moral principles are universally valid, and that different ways of life can be evaluated critically.⁵¹

⁵⁰ Bikhu Parekh: “Non-ethnocentric Universalism”, p 133. Cf. Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals*, pp. 366ff.; and R. J. Vincent: *Human Rights and International Relations*, p. 37ff.

⁵¹ Bikhu Parekh: “Non-ethnocentric Universalism”, p 136. Cf. Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals*, pp. 366ff.; and R. J. Vincent: *Human Rights and International Relations*, p. 37ff.

To conclude, the insights provided by both relativists and universalists are without doubt interesting and important. In principle I agree with the insights presented by both approaches. My problem with them is, however, that advocates from both camps exaggerate, misinterpret and, in extension draw wrong conclusions from the insights generated. These rather serious accusations of mine require to be justified.

Against the relativists I would like to adduce the following. Firstly, as indicated above, every society and culture is internally differentiated and its members are subject to different sources of influences and never confronted by a homogenous and determining social whole. Then, what are the (true) values of a particular society or culture? Secondly, we do have some means of judging a society's moral beliefs and practices, since some values are embedded in and underpin all human societies; to this argument I will return below. Therefore, a broad consensus around them already exists, if not, it can be secured. Thirdly, we must call in to question if the beliefs and practices of a society are good for its member. It depends on the situation. They might be familiar for the members of the society in question, which, however, is not the same as they are good. A prevailing system is definitely not good for those who are marginalised and oppressed by it. Such groups perhaps accept existing beliefs and practices, not from commitment but rather out of fear or the force of habit.⁵² Let me illustrate this point. The apartheid system was "good" for the white but not for the black people in South Africa. Eventually, due to the apartheid system, South Africa became a pariah in the international society. This was bad for the system as a whole. South Africa had to pay a very high prize, e.g. regarding its room for manoeuvre in the international domain and in slow economic growth. When these consequences became obvious for the whites, combined with internal pressure from the blacks, the system changed and the apartheid system was brought to an end. From

⁵² Bikhu Parekh: "Non-ethnocentric Universalism", p 133ff.

this follow, that a society and a culture can be judged by its members with reference to considerations such as the possibility to perform and develop but also the possibility to cope with changing circumstances.

The conclusions drawn by the universalists also deserve to be criticised. Human individuals are embedded in a societal and cultural context that gives a distinct tone to the rational reflections done; they are not made in a cultural vacuum. The, "hard" natural law based, notion about the unalterable nature on man is, as argued above, vague, and philosophical suspect but also arrogant. We have to keep in mind, as underscored by Thomas Luckman and Peter Berger, that: "Society is a human product. Society is an objective reality. Man is a social product."⁵³ Cultural differences, no doubt exist. From this follows not, however, Western superiority and that all other cultures are ignorant, unequal intellectually, and moral inferior. The idea that one way of life is the truly human (read the highest) is morally reprehensible and logically incoherent. The latter since, every way of life entails a choice, and in extension a loss. It is difficult to judge between values such as justice and mercy, respect and pity, et cetera, since it is almost impossible to decide which of these values that is higher, both in abstract terms and in specific contexts. The loss involved cannot be measured and compared by any objective standards. Finally, to say that one way to live is better than another demands that a way of life can be reduced to a single value, and that all such values can be measured to one master value and that the good can be determined regardless of the human beings involved.⁵⁴ This chain of argument is untenable.

In order to sum up our discussion so far, we can conclude that universalism is open for severe criticism by relativists. On the other hand, the relativist arguments are also them possible to criticise profoundly. Hence, we face two positions, one "worse"

⁵³ Peter Berger and Thomas Luckmann: *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London: Penguin Books [1966]1991), p. 79.

⁵⁴ Bikhu Parekh: "Non-ethnocentric Universalism", p 136f.

than the other. I outlined my normative preferences in the introduction and the first section of this article. Instead of trying to deconstruct the relativist standpoint and, in extension, show that the position is untenable, which I believe is a mission impossible, I will accept that this standpoint exist, are influential, and furthermore, produce valuable insights. This (empirical) state-of-the-art will serve as a ground for the discussion that follows. The situation is, however, not so discouraging, as it can seem to be at a cursory glance, because “embryonic” alternative paths to relativism and universalism are possible. Some ideas presented by Michael Walzer have served as an important source of inspiration for my thinking about an alternative path.

Walzer argues that it might be difficult to reach an agreement about a “thick” universally acceptable moral code, to which all “local” codes conform, but there might be a “thin” code, which at least can be used to de-legitimise some actions. This position, which can be labelled “minimum” or “thin” universalism, alternatively pragmatism, represents an intermediate position between relativism and universalism.⁵⁵ Pragmatism agrees with the former position that moral life can be lived in several different ways, but insists, in agreement with the latter position, that the different ways of life can be judged on the basis of a (“thin”) universally valid body of values. Thin universalism rejects the idea that it is possible to show that one specific way of life is truly human. This difference is fundamental.⁵⁶

Moral terms, Walzer argues, “have minimal and maximal meanings; we can standardly give thick and thin accounts of them, and the two accounts are appropriate to different contexts, serve different purposes”. By this Walzer do not mean that we carry

⁵⁵ Michael Walzer: *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994). Chris Brown: “Human Rights”, p. 612. Cf. Mikael Baaz: “Meta-Theoretical Foundations for the Study of Global Social Relations from the Perspective of the New Political Economy of Development”; and Mikael Baaz: *A Meta-theoretical Foundations for the Study of International Relations in a Global Era: A Social Constructivist Approach*, Ch. 6.

⁵⁶ Bikhu Parekh: “Non-ethnocentric Universalism”, p 130.

around two sets of moralities in our heads. Minimalists meanings are, so to say, embedded in the maximal morality, expressed in the same idiom and sharing the same historical, cultural, and societal orientation. Morality is, not as might be expected, thin from the beginning and thicken as time pass by, on the contrary. Walzer argue that “[m]orality is thick from the beginning, culturally integrated fully resonant, and it reveals itself thinly only on special occasions, when moral language is turned to specific purposes”. From this follows not that minimalism should be judged to be substantively minor or emotionally shallow. In fact the case is the opposite. Minimalism is a morality more close to the bone, more “pure”.⁵⁷ The chief advantage with moral minimalism is that “it is everyone’s morality because it is no one’s in particular; subjective interest and cultural expression have been avoided or cut away”.⁵⁸ The universal values constitute a kind of “floor” — an irreducible minimum — which no chosen way of life can cross and still claim to be good or even tolerated by others. When a society meets the basic principles, it is (more or less) free to organise its own way of life, just the way it considers being the best one.⁵⁹

Interesting to note is that minimum universalism was not — as in the case of universalism and relativism — developed in ancient Greece but in the *Roman empire*, which extended over a large number of very different societies, with (very) different moral codes (cf. globalisation). Due to this, the Romans were forced to consider how to regulate the relations between different groups within their empire. The unified answer was that some sort of universal principles were needed, however, regarding content and justification thinkers disagreed. Some turned to human nature, while others turned to the idea of some sort of cross-cultural consensus, however, debating the scope and significance of the

⁵⁷ This section is based on Michael Walzer: *Thick and Thin: Moral Argument at Home and Abroad*, pp. 2ff. The quotes are from p. 2 and p. 4, respectively.

⁵⁸ Michael Walzer: *Thick and Thin: Moral Argument at Home and Abroad*, p. 7.

⁵⁹ Bikhu Parekh: “Non-ethnocentric Universalism”, p 131.

consensus. Minimum universalism received further articulation from (the end of) the fifteenth century onwards due to the above sketched development of an international system. Most European scholars emphasised cultural monism, urging that the world needed to be “civilised”. Only a few argued in favour of cultural relativism.⁶⁰ Some scholars — among them Hugo Grotius and Samuel von Pufendorf — were unhappy with both perspectives, and argued instead for some sort of minimum universalism.⁶¹ Michael Walzer but also John Rawls and others are present inheritors to this tradition. The earlier mentioned debate about how one shall arrive at universal principles is still full of life and more or less follows the same lines as during the ancient period.

What remains to be done in this section is to discuss two more issues: First, the question of how the content of the international human rights regime can be decided? And, secondly, when the content have been decided, how can it be made effective, i.e. enforceable? Let us deal with the questions in order. The most common approaches regarding the first question are trying to derive universal principles from the human nature or from a universal or hypothetical consensus. The problem is however, as already argued, that human nature is a too vague and blur concept to offer such principles, and, that no universal consensus exist today. Indeed some universal consensus exist, in practice e.g. regarding the low view of women, held by most cultures of today, and the use of torture, which was, according to Amnesty International, routinely practised by 123 out of then (1997) 185

⁶⁰ Bikhu Parekh: “Non-ethnocentric Universalism”, p 131.

⁶¹ Hugo Grotius, the “founding father” of international law, wrote his famous book, *De Jure Belli ac Pacis [Laws of War and Peace]*, in 1625. His aim with the book was to provide a model to restrict wars and expand peace by clarifying standards of conduct which were insulated against all religious doctrines and therefore could be able to govern the relations of all independent states, Protestant and Catholic (the two big western “cultures” at that time) alike. Robert H. Jackson: “The Evolution of International Society” in, John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2nd ed., 2001), p. 43, box 2.6.

sovereign states.⁶² This also goes for racism, discrimination, and contempt for the poor. These areas of consensus are however unacceptable. The last alternative, to construct a hypothetical consensus, from abstract reasoning is attached with two problems. On the one hand, it is (often) highly unrealistic, and, on the other hand, which partly follows from the first problem, the proposals given, due to their “unrealism” and “abstractness”, often lack teeth.

If universal values are to enjoy widespread support, democratic validation, and, be free of ethnocentrism, they shall, as argued by Bhikhu Parekh, “arise out of an open and uncoerced cross-cultural dialogue”.⁶³ Such a dialogue is an exceedingly complex activity and the level of ambition can be debated. I believe that the initial ambition shall, in order to be true to the “thinness” stressed above, be modest. Indeed, a thin universal code can continue both visions — in form of “human unity, human dignity, human worth, promotion of human well-being, and human equity — but also,⁶⁴ and in the short-run more important, a list of de-legitimate actions, identified within different moral codes, like e.g. the condemnation of genocide. Hopefully, as Michael Walzer writes,

*the end product of this effort will be a set of standards to which all societies can be held — negative injunctions, most likely, rules against murder, deceit, torture, oppression, and tyranny. Among ourselves, late twentieth century ... Europeans, these standards will probably be expressed in the language of rights, which is the language of our own maximalism. But that is not a bad way of talking about injuries and wrongs that now one shall have to endure, and I assume that it is translatable.*⁶⁵

⁶² Tim Dunne and Nicholas J. Wheeler: “Introduction”, p. 2.

⁶³ Bikhu Parekh: “Non-ethnocentric Universalism”, p 139.

⁶⁴ Bikhu Parekh: “Non-ethnocentric Universalism”, p 149f.

⁶⁵ Michael Walzer: *Thick and Thin: Moral Argument at Home and Abroad*, p. 10.

The important thing to remember is that this exercise must be carried out as a genuine cross-cultural dialogue and not through abstract deduction; otherwise the end-result will not be thrust-worthy.⁶⁶ If we proceed along this rather gentle path, change our time focus and take a longer perspective on international human rights (perhaps centuries) rather than the almost sixty years that have passed since the UNDHR was signed, then it might be possible, through the process of gradual integration, to bring different societies closer. Hereby the consensus around human wrongs can serve as a foundation for future ramification, and the visions given as an illustration above — which full-fill the standards of being everyone's morality because they are no one's in particular — can eventually come true.

I argued above that moral values have no certain foundation in the sense that they are indisputable and based on objectivity. But, they have grounds in the forms of well-considered reasons, and are therefore not arbitrary. This might be disappointing for some, however this is the reality we have to live with. At least, if people do not agree to the identified human wrongs they have an (moral) obligation to show why the defence of them are unconvincing. If the opponents do not do this, they can at least be accused for being unreasonable.

Since contemporary international society is a hybrid, this activity — to identify human wrongs and rights — can by advantage be carried out via regional co-operation. Then the process probably will speed up. I do believe that the process needs to be a step-by-step process, since the international society cannot develop further without parallel development in its corresponding world society. Furthermore, as argued, international societies, just as international systems, will most likely, both in *gemeinschaft* and *gesellschaft* societies emerge initially within “regional” subsystems and first later develop at the global level.

⁶⁶ Cf. Michael Walzer: *Thick and Thin: Moral Argument at Home and Abroad*. The examples of human wrongs given by Walzer, are not based on a cross-cultural dialogue but on (abstract) deduction.

This path, the path of *minimum universalism* or pragmatism, might not take us as far as some would wish, at least not in the short run. But it might still be the best response to contemporary critics of the current international human rights regime if our goal is to save the notion of universal human rights (in the long run). It is noteworthy, as stressed by Chris Brown, that most adherents of so-called “Asian values” — among the harshest critics of the moral monist approach to human rights — acknowledge the existence of a thin code, including issues such as the abolition of torture and the right to a fair trial. This does not prove anything. But it indicates that the path to follow suggested in this article is promising.

Another weakness with the current international human rights regime is, as we know, the lack of an effective machinery of enforcement. Something that made the NATO to act in the irresponsible way they did during the Kosovo-crisis; a behaviour, that, from my point of view, does not promote the notion of universal human rights. On the contrary, such behaviour is in fact counterproductive. Among the strongest arguments against intervention on humanitarian grounds are that states do not intervene primarily for humanitarian reasons, that the principle of humanitarian intervention easily is abused, and selectively applied.⁶⁷ All these objections apply in the Kosovo case. Therefore, if and when a “thin”, or in the distant future a non-ethnocentric “thick”, code of human wrongs and rights has been developed, it is essentially that it is exercised in a principled and institutionalised way. Without a consistent application of clear principles, human rights will remain highly suspect, ineffective, and, extension, counterproductive; not more than an expression of (western) neo-imperialism. It is not acceptable to side step the SC (or any future substitute) and take the matter in one’s own hands. The regional arrangement for the protection of human rights practised in Europe can serve as an institutional role model for

⁶⁷ Nicholas J. Wheeler and Alex J. Bellamy: “Humanitarian Intervention and World Politics, pp. 473f.

how the enforcement can be carried out.⁶⁸ This regional arrangement is interesting since it contains a procedure for complaining and a Court. In short: the European regime is the judicially most developed of all existing human rights regimes.⁶⁹ Therefore it is interesting and can serve a good role model, or source of inspiration.

By this we have seen what international human rights can be; I have presented a constructive theory and presented some (tentative) measures to be taken in order to accomplish as much as possible of what we initially argued to be desirable given that the world looks the way it does.

Some concluding reflections: The international human rights regime at the dawn of the twenty-first century

*If we don't change direction soon, we'll end up where we're going.*⁷⁰

*Change before you have to.*⁷¹

What I have tried to do in this article is to “save” the notion of universal human rights from some of the criticism that rightly has been launched against the approach (lately). As argued, this rescue action might not take us as far as some would wish. But, to them I would like to say be patient. Rome was not built in one day. We

⁶⁸ For an overview of the European system of human rights, see e.g. Iain Cameron: *An Introduction to the European Convention on Human Rights* (Uppsala: Iustus Förlag, 3rd ed., 1998); and, Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals*, pp. 786ff.

⁶⁹ Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Politics, Morals*, p. 786.

⁷⁰ Unknown (<http://www.musicfolio.com/quotes/change.htm>). The site was visited 2005-04-26.

⁷¹ Jack Welch (<http://www.musicfolio.com/quotes/change.htm>). The site was visited 2001-06-26.

need to take a realistic time perspective on the development of a “true”, in the meaning that an actual commitment exist to it, international human rights regime. The most realistic and practicable path to follow is to start from an internationally agreed list of human *wrongs* that can be regionally expanded to include *rights*. The development, due to our historical heritage, necessarily needs to be carried out step-by-step. Otherwise, I believe, we are bound to fail.

As argued in the introduction the contribution presented here is a “think piece”, an attempt to present a temporary stop in a still ongoing work. The ideas presented here are not my full-fledged and final statements of my view regarding the questions initiated and discussed. I hope, however, that I have presented some ideas of how we, if we want to save the notion of international human rights from its critics, can proceed in the future in a profitable way. Regarding methodology, my hope is that I have shown the importance to include normative, empirical as well as constructive theoretical contributions, if the aim is to give (political) recommendations of how to do in the future.

Finally, since we currently do not have any secure knowledge about the foundations of social life (if this is at all possible) all construction of social scientific theories is insecure. We, more or less, lack control over the reality that we want to study and, in extension, change. This problem is accentuated when we deal with constructive theory since it is based upon normative and empirical theory. Karl Mannheim has in a brilliant way formulated the problems attached to the mission identified in this article. Therefore, let his words be the last:

*[T]o reconstruct a society under change is like changing tyres on a train in movement, rather than building a house on new foundation.*⁷²

⁷² Karl Mannheim: *Man and Society. In Age of Reconstruction* (London: Routledge and Kegan Paul, 1940), p. 12, quoted in Lennart Lundquist, *Demokratins väktare [The Guardians of Democracy]*, p. 215. My translation.

References

A. Literature

- Baaz, Mikael (1996): "Studiet av internationella relationer och doktrinen om gemensam säkerhet" [The Study of International Relations and the Doctrine about Common Security]. Background material for, the by the Swedish Government authorised, official report: *Konfliktförebyggande verksamhet: En Studie [Conflict Prevention: A Study]* (Stockholm: Utrikesdepartementet, Ds 1997:18)
- Baaz, Mikael (1999): "Meta-Theoretical Foundations for the Study of Global Social Relations from the Perspective of the New Political Economy of Development", *Journal of International Relations and Development*, 1999, no. 2, vol. 4, pp. 461-471.
- Baaz, Mikael (2001): *Statssuveränitet och humanitär intervention: (O)förenliga principer i dagens globaliserade värld? [State Sovereignty and Humanitarian Intervention: (In)compatible principles in Today's Globalised World]*. Göteborg: The School of Business, Economics and Law at Göteborg University, Department of Law.
- Baaz, Mikael (2002): *A Meta-theoretical Foundation for the Study of International Relations in a Global Era: A Social Constructivist Approach*. Göteborg: Padrigu Papers.
- Baylis, John and Smith, Steve (2001). "Introduction", in John Baylis and Steve Smith: *World Politics: An Introduction to International Relations*. Oxford: Oxford University Press.
- Benn, S. I., and Peter, R. S. (1959): *Social principles and the Democratic State*. London: Allen and Unwin.

-
- Berger, Peter and Luckmann, Thomas ([1966]1991): *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. London: Penguin Books.
- Brown, Chris (1999): “Universal Human Rights: A Critique”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics*. Cambridge: Cambridge University Press.
- Brown, Chris (2001): “Human Rights”, in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press, 2nd ed.
- Bull, Hedley and Watson, Adam (1984): “Introduction”, in Hedley Bull and Adam Watson (eds.): *The Expansion of International Society*. Oxford: Oxford University Press.
- Burton, John W. (1972): *World Society*. Cambridge: Cambridge University Press.
- Buzan, Barry (1993): “From International System to International Society: Structural Realism and Regime Theory meet the English School”, *International Organization*, vol. 47, no. 3, pp. 327-352.
- Dickens, Charles ([1859]1925): *A Tale of two Cities*. New York: Dodd, Mead and Company Publishers.
- Donnelly, Jack: “Social Construction of International Human Rights”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics*. Cambridge: Cambridge University Press, 1999.
- Dunér, Bertil (2002): *The Global Human Rights Regime*. Lund: Studentlitteratur.
- Dunne, Tim and Wheeler, Nicholas J. (1999): “Introduction: Human Rights and the Fifty Years’ Crisis”, in Tim Dunne and Nicholas J. Wheeler (eds.): *Human Rights in Global Politics*. Cambridge: Cambridge University Press.

- Forsythe, David P. (2000): *Human Rights in International Relations*. Cambridge: Cambridge University Press.
- Gandhi, P. R.: *International Human Rights Documents*. London: Blackstone Press, 2nd ed., 2000.
- Gong, Gerrit W. (1984): *The Standard of "Civilisation" in International Society*. Oxford: Clarendon Press.
- Grotius, Hugo ([1625]1853): *De Jure Belli ac Pacis*. Cambridge: Cambridge University Press.
- Held, David, McGrew, Anthony, Goldblatt, David, and Perraton, Jonathan (1999): *Global Transformations: Politics, Economics and Culture*. Cambridge: Polity Press.
- Jackson, Robert H. (2001): "The Evolution of International Society" in, John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press, 2nd ed.
- Kant, Immanuel: "Perpetual Peace", in M. Forsyth H. M. A. Keens-Soper, and P. Savigear (eds.) (1970): *The Theory of International Relations: Selected Texts from Gentili to Treitschke*. London: Allen and Unwin.
- Knutsen, Thorbjørn L. (1997): *A History of International Relations Theory*. Manchester: Manchester University Press, 2nd ed.
- The Kosovo Report* (2000). Oxford: Oxford University Press.
- Krasner, Stephen D. (ed.) (1986): *International Regimes*. Ithaca, New York and London: Cornell University Press.
- Lundquist, Lennart (1993): *Det vetenskapliga studiet av politik [The Scientific Study of Politics]*. Lund: Studentlitteratur.
- Lundquist, Lennart (1998): *Demokratins väktare [The Guardians of Democracy]*. Lund: Studentlitteratur.
- Malanczuk, Peter (1997): *Akehurst's Modern Introduction to International Law*. London: Routledge, 7th revised ed.

-
- Mannheim, Karl (1940): *Man and Society. In Age of Reconstruction*. London: Routledge and Kegan Paul.
- Parekh, Bhikhu (1999): "Non-ethnocentric universalism", in Tim Dunne and Nicholas J. Wheeler: *Human Rights in Global Politics, Human Rights in Global Politics*. Cambridge: Cambridge University Press.
- Rothstein, Bo (1994): Vad bör staten göra? Om välfärdsstatens moraliska och politiska logik [What Ought the State Do? About the Moral and Political Logic of the Welfare State]. Stockholm: SNS Förlag.
- Scholte, Jan Aart (2001): "The Globalization of World Politics", in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press, 2nd ed.
- Simmonds, Nigel E. (1996): Juridiska principfrågor: Rättvisa, gällande rätt och rättigheter [Central Issues in Jurisprudence: Justice, Law and Rights]. Stockholm: Nordstedts juridik.
- Stavrianos, L. S. (1995): *The World since 1500: A Global History*. Englewood Cliffs, NJ: Prentice Hall, 7th ed.
- Steiner, Henry J. and Alston, Philip (2000): *International Human Rights in Context: Law. Politics. Morals*. Oxford: Oxford University Press.
- Strömberg, Tore (1989): Rättsfilosofins historia i huvuddrag [The Essential Features of Legal Philosophy]. Lund: Studentlitteratur, 3rd ed.
- Wallace, Rebecca M. M. (1997): *International Law*. London: Sweet and Maxwell, 3rd ed.
- Walzer, Michael (1994): *Thick and Thin: Moral Argument at Home and Abroad*. Notre Dame: University of Notre Dame Press.

Wheeler, Nicholas J. and Bellamy, Alex J. (2001): "Humanitarian Intervention and World Politics, in John Baylis and Steve Smith: *The Globalization of World Politics: An Introduction to International Relations*. Oxford: Oxford University Press.

Vincent, R. J. (1986): *Human Rights in International Relations*. Cambridge: Cambridge University Press.

B. Primary sources

I. Treaties

The Magna Carta (1215)

Charter of the United Nations (1945).

Universal Declaration of Human Rights (1948).

Convention on the Prevention and Punishment of the Crime of Genocide (1948).

International Convention on the Elimination of All Forms of Racial Discrimination (1965).

The International Covenant on Civil and Political Rights (1966).

The International Covenant on Economic, Social and Cultural Rights (1966).

Convention on the Elimination of All Forms of Discrimination against Women (1979).

United Nations Convention on the Rights of the Child (1989).

II. United Nations Security Council Resolutions

SC/res/688 (1991)

SC/res/794 (1992)

SC/res/929 (1994)

SC/res/1199 (1999)

III. Other UN Documents

UN Document E/259 (1947)

E/RES/75, ECOSOC (1947)

IV. Other sources

<http://www.musicfolio.com/qoutes/america.htm>