The Honourable Society of Lincoln's Inn

The Sir Thomas More Lecture

"Human Rights – Universalism in Retreat?"

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Universality of human rights in times of crisis?

Do you also have that feeling? On a daily basis we are confronted with pictures of war and unimaginable brutality. One piece of bad news follows another. It's as if the world is about to go down a slippery slope. Everything is in motion, but it is not a forward or upward movement, as we have always deluded ourselves with our belief in progress. Rather, it is a vortex that is pulling us downwards.

On 10 December this year, we celebrate the 75th anniversary of the Universal Declaration of Human Rights. We celebrate it as we see it as a "common standard of achievement for all peoples and all nations". Thus the preamble states. The "Universal Declaration of Human Rights" has the word "universal" in its title and is linked to the belief that the "faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" is common to all.

But are human rights still universal today? Or are they part of the vortex that pulls down our most basic convictions together with the hope of having learned from the mistakes of the past?

In search for the starting point: the elusive character of the Universal Declaration of Human Rights

Old-fashioned words?

Let's start with the words.

When you look for the text of the Universal Declaration of Human Rights on the internet you will find different versions, among others the original one, a simplified one and a discrimination sensitive one, the latter one at least in German.

So, what should be our starting point for what is universal? Is it the original text and thus something historical, but perhaps not understandable for all? Or is it a very simple and short message re-prepared for us? Or is the original text deficient and has to be repaired and adapted to the needs and convictions of today?

Depending on how one answers these questions, different conceptions of what is universal become visible: on the one hand it could be understood as something that comes into being at a certain historical point in time but is then unchangeable and eternal, on the other hand it could be understood as something that is context-bound and that we always have to reinterpret or even rewrite for our needs.

Obviously, there is no consensus on this question.

Let's take as an example the first article of the Universal Declaration of Human Rights, which contains descriptive elements that characterize the image of "all human beings", but which contains also normative elements explaining how human beings should be:

> "All human beings are born free and equal in dignity and rights. They are **endowed with** reason and conscience and should act towards one another **in a spirit of brotherhood**."

The expression "endowed with" is replaced in the simplified version by the word "have" – "they have reason and conscience".

At first sight we might think it is the same. But the word "endowed with" carries with it the idea of a woman's "dowry", i.e. of something saved in the family and passed on to the daughter in order to enable her to live a good life and, potentially, to pass on to others what she has received. When we talk about "having something" we do not know where it comes from; it is just there, without any responsibility. The idea of passing on, of receiving and giving is lost. And – you will all have in your mind the famous words of the American Declaration of Independence which are implicitly cited here: "We hold these truths to be self-evident, that all men are created equal, that they are **endowed by their Creator** with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

So, should we simplify? Or should we uphold the historical heritage conveyed with the specific wording elaborated in a long and quite painful drafting process? The word "endowed" appeared only in the third draft, figures there for some time with the addition "endowed by nature" before the final version is approved. It meaningfully changes the heritage of the American Declaration of Independence, leaving the Creator out. We are "endowed with", but do not know by whom. That is the compromise that was accepted.

Furthermore, according to the Universal Declaration we should act towards one another in a "spirit of brotherhood". In the simplified version this is replaced by "in a friendly manner". In the discrimination sensitive version, we find "in a spirit of solidarity".

Once again, we have to ask if those differences matter. And, if yes, what do they tell us about our conception of "universalism"? What is our real and reliable starting point?

It is clear why the "spirit of brotherhood" was replaced by "spirit of solidarity". Based on the idea that language shapes consciousness we see in many countries the emergence of what is understood to be a discrimination-sensitive approach to language. The word "brotherhood" has therefore become suspicious – isn't it the expression of a male-dominated world view? So, it is replaced by "solidarity", a word that seems to be neutral, acceptable to all and replacing a wrong concept.

But is that true?

First, this male-dominated world view might be found in some languages, but not in all. My Japanese colleague for example explained to me that the word used in Japanese for "brotherhood" comprises brothers and sisters. Second, most obviously, the notion of "brother" is different from "friend". The latter we are free to choose, the first is "given" to us. Brothers have the same parents. So, the word describes a much more exclusive and intense relationship.

But what is even more important, the replacement of the word cuts the historical roots. The spirit of "brotherhood" leads us back to the French Revolution. We remember the triad: liberté, égalité, fraternité.

If we replace “brotherhood” by “solidarity” we choose a completely different tradition. “Solidarity” comes from the catholic social doctrine and the workers’ movements; it denotes the solidarity between specific groups in society; it includes some and excludes others.

It is true, though, that while we take the English words as a basis, we have to acknowledge that important concepts of living-together developed in other regions of the world were not sufficiently taken into account while elaborating the Universal Declaration. I want to cite one beautiful example that I have found in Mary-Ann Glendon’s wonderful little book *A World Made New*. There she explains that when working on the first article the drafters wanted to add to the European idea of “reason” the Chinese idea of “rén”. This is a basic concept of Confucianism describing human beings as always related to one another. Yet, they did not find an adequate notion in European languages and replaced it by “conscience” – which is something quite different.

So, we admit, while the text of the UDHR integrates different traditions of the world, it expresses and summarizes them in the words, concepts and notions coined by the Enlightenment. Or, in other parts of the UDHR, in the words concepts and notions coined by the workers’ movements in the 19th century, e.g. “just and favourable conditions of work” or “reasonable limitation of working hours and periodic holidays with pay”.

Birth defects

But we do not only have a problem with the words.

If we adopt a participatory approach, we must admit that the Universal Declaration of Human Rights was not universal. The story about its birth defects has been often told, so we do not have to go into details. But there were only 56 states that were asked to participate in the endeavour. The drafting process was chaired by the wife of an American president. Those who had the largest share in the elaboration came from or had been educated in what we now call the "Western world", even though representatives from different continents were present. It was the time of colonialism; the countries under colonial rule were excluded from participating in the discussion. The countries that had lost the Second World War were not involved either. In addition, eight countries abstained in the final vote, the entire Eastern Bloc as well as Yugoslavia, South Africa and Saudi Arabia, the most important representative of the Muslim world.

Yet, while it is easy to argue that there was no input legitimacy, we could claim universality based on output legitimacy. The text was meant to be applicable to every human being: Thus, the preamble talks of the “inherent dignity and of the equal and inalienable rights of all members of the human family”. It is clearly spelled out: “Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” – If we compare this text, for example, to the 1930 ILO Convention against forced labour we see that it was still quite different. In the latter, exceptions were allowed for dependent territories.

Nevertheless, we have to admit – our starting point for the universalist understanding of human rights is a difficult one. We have a Eurocentric, old-fashioned document not living up to the requirements of true representative democracy.

Yet, an inheritance always comes with debits and credits. That alone cannot be a reason to reject the heritage as a whole.

But how should we see the Universal Declaration? Should we see it despite all obvious deficiencies as part of a long tradition whose core elements were agreed upon in a "great

moment" of humanity and are now binding for all? Or as something changeable that can ultimately be reshaped at will and adapted to the times, to our better knowledge, something detachable from tradition?

It seems to me that people have always wanted to have it both ways - to see human rights as unchallenged and universal, and at the same time to change and improve them permanently. I don't think that has succeeded, nor can it succeed, because it is squaring the circle.

Therefore, even in 2023, we have no better starting point for a universal understanding of human rights than the original text of the UDHR of 1948. It is comprehensive and includes not only rights such as freedom of religion, freedom of expression and the protection against arbitrary detention, but also the right to take part in the government of the country, the right to rest and leisure and the right to a standard of living adequate for health and well-being. You might remember the famous saying of Nelson Mandela “We do not want freedom without bread, nor do we want bread without freedom.” The UDHR is inclusive, it is a “best of” of our traditions.

It's worth mentioning that its validity was confirmed in 1993 when the Vienna Declaration and Programme of Action was adopted. Numerous other international treaties refer to it; the words are reproduced in many solemn international documents and declarations.

It is not a holy text, though. It misses any mystical story about burning bushes or stone tablets given to man by God. It is just about delegates sitting round a table and working with words. It is very much down-to-earth.

Nevertheless, after all the deconstructing and reconstructing I would argue - let’s take the UDHR as a basis for our reflections on the universality of human rights. We do not have anything better.

In the following, I would first like to discuss the development of international human rights between 1948 and the present day and ask critically whether the usual narrative of linear progress is correct. Based on this, I would then inquire whether the assumption of universal human rights is still helpful and meaningful in the present. And I cannot end my lecture without asking the most difficult question: “What can be done?”

Progress and retrogression

Equal and inalienable rights of the human family

Usually, the history of international human rights is told as a story of progress after 1948. But we could also interpret it differently. The more human rights are being developed and differentiated on the regional and universal level, the more they are integrated into binding treaties and enforced by treaty bodies and courts, the more they are instrumentalized in politics, the more – arguably – they lose their universality. Let me explain.

Models of exclusion and inclusion

<u>From a declaration to binding treaties</u>

As is well known, it was a disappointment that the outcome in 1948, despite all efforts, was only a non-binding declaration and not a binding treaty. International human rights protection reached this stage only in 1966 with the completion of the drafting of the two UN Covenants, which came into force another decade later. Certainly, a treaty means much more than a general declaration, as it sets out rights and obligations in a binding way. But treaties are not universally valid, but only for those States that ratify them. For example, the USA has not ratified the Covenant on Economic, Social and Cultural Rights, while China has not ratified the

Covenant on Civil and Political Rights. If one looks at the extent to which the world's population is actually included in the protection of those treaties, it becomes obvious that almost one fourth (i.e. 1.6 billion people) is excluded from political and civil rights and one eighth (500 million) from economic, social and cultural rights. For the rest, the enforcement of crucial provisions is often not possible because of sometimes very broadly worded reservations like the exclusion of all norms contradicting sharia law. Furthermore, protection varies in effectiveness depending on whether or not states have also accepted individual complaints procedures. Thus, instead of universality, the result of the elaboration of binding treaties is a hierarchisation of international protection. For example, while those living in Denmark have the highest international protection, those living in St. Kitts are excluded from any international protection whatsoever. The higher and better the level of international protection, the more often those living in crisis areas, are excluded. This applies for instance to Cuba, South Sudan or Saudi Arabia. No international human rights treaty protects them.

Regionalisation of human rights

Opposed to the concept of universal applicability is the concept of territorially limited applicability of regional human rights treaties. Regional human rights treaties such as the European Convention on Human Rights and the Inter-American Convention on Human Rights apply only to the states that are located in a certain area and form part of the specific treaty system. The States' responsibility is restricted to those within their jurisdiction. However broadly this concept may be interpreted - and this is a matter of intense dispute in the interpretation of the Convention - there are always complaints to which the Convention does not apply, which are outside. This is true, quite obviously, for all human rights violations that occur under the jurisdiction of Russia after 16 September 2022, as since then Russia is no longer a member of the Convention. People living there simply have worse human rights protection than those who are still within the system, be it in Azerbaijan or in Turkey. The functioning of the mechanism of exclusion v. inclusion is also demonstrated with famous inadmissibility decisions such as in the case of Saddam Hussein v. 21 European countries, i.e. those who had taken part in the invasion of Iraq. When Saddam Hussein was captured by American soldiers and then handed over to Iraqi authorities for trial, he tried to bring his case to the Strasbourg Court. The Court, however, did not consider it "to be established that there was or is any jurisdictional link between the applicant and States in question." The same fate befell the victims of the NATO attack on Belgrade, whose complaint was declared inadmissible in Bankoviv v. Belgium and others.

The mechanism of the Convention is that some are "in", and others are "out". Especially in the case of migration law, it is very clear what this exclusion and inclusion means in practice. Those refugees who manage to come under the jurisdiction of a Convention state have, according to the case law of the ECtHR, extensive rights to protection and care; those who do not manage to cross the Mediterranean or come on the Balkans route and remain in their home countries cannot claim any rights at all, however bad their situation may be.

This means that progress in international human rights protection - and the ECHR system with a court accessible to all with individual complaints is certainly progress – also comes at a high price in terms of inequality. Rights may be universal, but in some regions they are enforceable, in others they remain theoretical.

The development of ever higher standards

Many human rights documents contain a clause stating that if there is another treaty with a higher level of protection, the latter applies. Thus, there is no "race to the bottom" in human rights protection, but a "race to the top". Since the ECtHR defined the European Convention on Human Rights as a "living instrument", it has further developed the human rights protection from

year to year and has increasingly placed all areas of social life under the Court's control. This development - which again is understood as an important element of progress – has many consequences.

It is taken as an inspiration for many international treaty bodies as well as the two other regional courts. The same is interestingly true for national supreme and constitutional courts. One famous example is the influence on the Japanese Supreme Court which quoted the Strasbourg Court's jurisprudence on the discrimination of children born out of wedlock and followed a similar approach. High human rights protection systems can thus be understood as trend-setters.

Many of the new standards are also used for identity-building. One famous example is the speech of the President of the European Council, van Rompuy, who argued that protection against "discrimination on the basis of gender and sexual orientation… is something that *distinguishes* Europe from many other parts of the world."

Yet, the standards the courts set become more and more controversial and are often no longer followed by member States. This is especially true when it comes to hard-fought positions between different political parties. This can be exemplified by two problem areas – migration and family law.

Concerning migration, the wording of the relevant international treaty norms is very careful. The UDHR does not guarantee the "right to asylum", but only the "right to seek and to enjoy in other countries asylum from prosecution". The Geneva Refugee Convention acknowledges in the preamble that "the grant of asylum may place unduly heavy burdens on certain countries" and emphasizes that "all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States." Yet, the European Court of Human Rights has developed a jurisprudence based on Article 2 and 3 which could be interpreted as a "human right to stay" for those who face inhuman treatment or dangers for their life, if returned to their country of origin. As this right is understood to be absolute, it applies, unlike the Geneva Convention, even to potential war criminals and terrorists. That may be a very generous and laudable approach, but it is not shared by all. This is proven by some Convention States' explicit non-implementation policy as well as by political debates that do not consider it as a taboo to ignore the Court's position. Outside Europe, comparable binding pro-asylum positions are missing.

Family law is another sensitive matter. While the understanding of marriage and family has changed fundamentally in some societies, this is not true for all societies; at least the process is unfolding at a very different speed. Thus, once again, the newly created standards by the European Court of Human Rights concerning, for example, same-sex partnerships are not universally shared. The wording of the relevant provisions on family protection in the UDHR does not even allow for such a dynamic interpretation. Unlike in the ECHR there is no "right to respect for family life", but only the guarantee not to "be subjected to arbitrary interference with his privacy, family, home or correspondence..."

On the national level, the respective positions are represented by more left- or more right-wing political parties. It may be wishful thinking that all accept the same new concepts of "family", but this assumption does not stand the reality test, neither in Europe nor worldwide.

Thus, higher standards might mirror progress, but, once again, they come at a high price – the loss of universal acceptance.

Another development linked to ever higher standards is worth considering. Many of the legal guarantees have become so differentiated and detailed, for example in criminal procedure law,

that they can hardly be addressed as general human rights standards. Rather, in large parts it is already a matter of a harmonisation of legislation. In this way, legal rules, for which there is by no means a consensus that they must be one way and not another, are subsumed under "human rights".

Thus, it is undeniable that human rights standards around the world are becoming more and more diverse and divergent. As a consequence, it is no longer clear what is a human rights standard and what is not.

Negligence of social rights

Last but not least, it is obvious that social standards have not been and are not being developed in the same way as standards concerning freedom rights. Thus, there are no binding interpretations of any of the codifications of social human rights. The European Social Charter is a toothless tiger. The individual complaint procedure before the International Covenant on Economic, Social and Cultural rights has only been ratified by 26 States; the conclusions of the supervising body are not binding. Even if, to a certain extent, social rights are derived from freedom rights, despite the ever-repeated mantra of the inseparability of the different types of human rights, a real disparity has emerged: civil and political rights are taken more seriously than economic, social and cultural rights.

Loss of trust in hard cases

What is particularly problematic, however, is that - in addition to this development of ever higher standards not accepted by all - the human rights system of the ECHR as well as the other human rights systems are often unable to provide effective remedies for the most essential human rights violations.

This applies, for example, to human rights violations during war. As is well known, the ECHR system was originally created to prevent domestic developments towards authoritarian rule, which can easily turn into aggression against other states. International human rights protection was thus understood as a means to prevent wars. This has clearly not been successful. Not only have wars repeatedly broken out between Convention states - Turkey v. Cyprus, Azerbaijan v. Armenia, Russia v. Georgia, Russia v. Ukraine - but the Convention system has also been unable to redeem corresponding claims for damages. In the few cases where compensation payments were set, they were never implemented.

But even in cases of simple but fundamental human rights violations, the system proved ineffective. The example of the case of Osman Kavala illustrates this in a special way. The Court held that the famous Turkish businessman and philanthropist had been arbitrarily detained and sentenced; it even considered that the state's actions constituted abuse of power. Nevertheless, there was no reaction from the Turkish side. Therefore, the so-called “nuclear option” was chosen, and the Committee of Ministers brought proceedings against Turkey to the Court under Article 46 (4) of the Convention, a procedure considered to be the prelude to an exclusion from the Convention system. Turkey was condemned. But nothing happened. The judgment remained without any consequences. Osman Kavala is still in detention. His continuing suffering illustrates the gap between aspiration and reality. Thus, the impression for the outside world is that new human rights are invented and permeate all areas of social life while the most basic violations of human rights such as arbitrary detentions and other forms of misuse of power can neither be prevented nor effectively sanctioned.

Distribution of praise and blame

Another facet of the narrative of progress in human rights enforcement is that states that do not respect human rights are pilloried internationally. “Shame and blame” is to be used to improve

the human rights situation in the respective countries. Yet, the story of the distribution of praise and blame for good and bad human rights records can be told from different perspectives.

The common narrative is that what counts is effectiveness. If a State does not protect the human rights of those under its jurisdiction other States have the right – and perhaps even the duty – to criticize, perhaps even to sanction the “human rights sinner”. Thus, a bad human rights record can even have a direct impact on the balance of trade; the country in question becomes a “dirty child” in the international arena. This can be seen as a positive development as it means that human rights matter.

Yet, what if the critique is not based on originally universal human rights, but on rights that have been developed in certain regions of the world only and are not universally accepted?

According to critical opinions from the global South – and most often the States in the global South are considered to be the “human rights sinners” – such a mechanism of reprimand is a continuation of a colonial pattern. The “behaviour” of States is measured with a yardstick developed by others. The one measuring is the “good one”, the one being measured is the “bad, the underdeveloped one”. Thus, roles inherited from colonial times are perpetuated. This is also true regarding the problem of victimization. Those “protected”, e.g. women in Muslim countries, are considered not to be able to speak up for themselves.

On this basis, human rights are not only not considered to be universal values, but, on the contrary, they are understood as instruments of oppression. This is all the more so in the discussion about the legitimacy of humanitarian intervention.

Present-time fundamental differences

Against this background, it is no surprise that the present human rights doctrines in different parts of the world differ fundamentally. I would just like to outline a few characteristic positions by way of example.

For Europe the “Credo” is summarized in the European Convention on Human Rights, its protocols, and the case-law of the Court. The approach can be characterized as ambivalent towards universalism. On the one hand it pretends that higher European standards are compatible with universalism as the two yardsticks are not contradictory but can be used in parallel; one just goes further. This approach implicitly acknowledges a static universalism. On the other hand, according to the European approach certain new rights developed in the jurisprudence of the Court, such as LGBTQ rights, must be considered as a dynamic reinterpretation of universalism. According to this view, a static, historical universalism would not be tenable.

In the same way, the Global South does not speak with one voice either. Perhaps the lowest common denominator is that people are sceptical of standards that are touted as "universal" and rather tend toward cultural relativism. However, there are also clear opposing voices that warn that such an attitude benefits authoritarian regimes and diminish protection for those in need. Against this background they support a basically universalist approach, yet seen through the lenses of the needs of the Global South with a strong emphasis on collective rights, especially the right to development.

Particularly interesting and unambiguous, however, are the Chinese understanding of human rights developed in 2023 and the understanding of human rights that found its way into the 2023 conception of the foreign policy of the Russian Federation.

Let me briefly introduce the two concepts.

Both for China and for Russia, the interests of their own people are predominant. In the speech of the foreign minister of China in February this year this is spelled out very explicitly: “For us, the biggest human right is the happiness of the 1.4 billion Chinese people. Meeting their immediate interests is what all our endeavours are about. The 1.4 billion people have been deeply involved in the development of human rights and have benefited the most in this process. They now have a growing sense of fulfilment, happiness and security.” The UDHR is considered as “a milestone in the international human rights cause.” This applies also to the Vienna Declaration and Program of Action.

Yet, the Chinese approach is opposed to a universalist view. Thus, it is stated: “The right of all countries to independently choose one’s own path of human rights development should be respected. Blindly copying the model of others would be ill-fitted for one’s own conditions, and imposing one’s model upon others would entail endless troubles.” On this basis the criticism of the human rights situation in Hong Kong, Qingyang and Tibet from outside is rejected as “an attempt to smear China and suppress its development”.

Russia adopted in April 2023 the “Concept of the Foreign Policy of the Russian Federation”. In view of what is called “the long-term trends in the world development and the national interests of the Russian Federation”, it defines as priority “to protect the rights, freedoms and legitimate interests of Russian citizens, and to protect Russian entities against foreign illegal encroachment”, and “to promote traditional Russian moral and spiritual values, preserve cultural and historical heritage of the multi-ethnic people of the Russian Federation”. It further confirms as a goal “to consolidate international efforts to ensure respect for and protection of universal and traditional spiritual and moral values (including ethical norms common to all world religions), and counter the attempts to impose pseudo-humanistic or other neo-liberal ideological views, leading to the loss by the humankind of traditional spiritual and moral values and integrity”. This dichotomy between the “real” universal values and the imposition of rules, standards and norms by a small group of States runs through the whole document: “The international legal system is put to the test: a small group of states is trying to replace it with the concept of a rules-based world order (imposition of rules, standards and norms that have been developed without equitable participation of all interested states).”

In what might be called a declaration of war in February 2022, Putin’s speech at the beginning of the war of aggression against Ukraine explicitly refers to a different human rights conception and argues that what is considered as values by Western societies would "destroy our traditional values and impose their pseudo-values on us, which would corrode us and our people from within; these attitudes are already aggressively enforced in their countries and lead directly to degradation and degeneration as they contradict human nature itself.”

So where are we?

The period since 1948 has been marked by the desire to turn the “fine words on paper” into reality: the goal was not law on paper, but law in action. Rights have been concretised in many ways and attempts have been made to create mechanisms to ensure truly effective human rights protection. The toolbox ranges from periodic reporting obligations to court proceedings with binding judgements. But the more efforts have been made to clarify in detail what the rights mean and to enforce them, the more it has become clear that there is no agreement at all. For many years, international politics has shied away from stating this clearly. But now we see, for example in the Russian doctrine on foreign policy or in the Chinese Path of Human Rights Development, but also in many scientific and non-scientific statements that “deconstruct” rights, that it is no longer taboo to deny the universality of human rights.

Against this background, I would like to conclude by asking two questions: Do we still need universally valid human rights? And, if so, what can we do about it?

The dire need for universal standards

To answer the question of whether we need universal human rights, and if so, for what, we can look back to 1948. When I said at the beginning that it seems to me that the world is on a slippery slope and sliding downwards, it can be said that in 1948 the world was not only on a slippery slope, but had already crashed. The answers as to why universal human rights are needed were written after the crash. The preamble to the UDHR is the document that gives us the answers. Human rights were called the “foundation of freedom, justice and peace”. It was hoped that they could lead to “social progress and better standards of life in greater freedom”. They should contribute to the development of “friendly relations between nations”. And they should prevent the need for rebellions against “tyranny and oppression”.

Are these goals still valid? Yes! But are they realistic? Let me play the advocatus diaboli. When it comes to peace and the development of good relations between states, we could argue that human rights were not helpful in avoiding controversies, but, on the contrary, have been instrumentalised to trigger controversies and to justify the use of force. Thus, not only the Russian government, but also the Russian Constitutional Court justified the fundamental breach of international law, the annexation of individual territories of Ukraine after the violent attack, with the need to protect human rights.

When it comes to the stability of state power and the prevention of uprisings, it is unfortunately to be noted that regimes such as North Korea or the Soviet Union have been very stable for a very long time, although, or probably precisely because, they have not guaranteed any human rights at all and have nipped any opposition in the bud.

A realistic view shows that many things cannot be achieved with human rights as hoped.

Nevertheless, I would argue that the recognition of universal human rights is now more important than ever. What we need most while we are on a slippery slope is orientation and a firm legal grip to hold on. Thus, we need reassurance that the basic principles of international law continue to apply. These include the prohibition of the use of force, the imperative of respect for territorial integrity and - respect for human rights. What we need is the traffic light in the fog. We need to know when it is “red”, when it is “yellow” and when it is “green”.

What can we do?

It is very difficult to define something with universal validity. This also applies to natural science. Think of how difficult it is to determine what a metre is or what a second is. A metre has been defined since 1983 as the length of the distance travelled by light in a vacuum during the duration of 1/299,792,458 second. A second is defined by fixing the numerical value 9,192,631 770 for the caesium frequency Δv, the frequency of the undisturbed hyperfine transition of the ground state of caesium atom 133. Don’t ask me to explain these quite sophisticated definitions in further details.

Anyhow, it has taken a very long time in natural science to agree on them, now they seem to have been universally accepted. But we don’t know if they might be changed once again due to new insights.

I think, in a similar way, this also applies to us when we want to define universally valid human rights.

In 1948, the method was to ask different people coming from different continents - from the United States, France, Lebanon, China, Australia, Chile, Soviet Union, and the United Kingdom - to work out a text and to submit this text to all states for a vote. Unanimous adoption was considered a seal of quality.

Today we see that the result is nevertheless context-bound, perspective-bound and people-bound - at another time, other people who would have approached the questions from a different perspective would probably have achieved different results.

Maybe we could do better nowadays, take diversity into account and make the elaboration process more comprehensive and democratic. But I am afraid that in the current situation it is not realistic to assume that we would reach a consensus. Nevertheless, we need a new consensus. Too many fundamental questions remain unanswered. What about human rights and the climate? What about human rights and the environment? What do human rights mean in a digital world? What does artificial intelligence mean for human rights? How do we deal with the fact that birth and death can increasingly be co-determined or exclusively determined by humans?

Against this background, we need to take a two-track approach. We must preserve what we have, the UDHR of 1948. And we must prepare the drafting of a new universal declaration. To do this, we can already draw on a great deal of material - on innovative judgments of national and international courts, especially the European Court of Human Rights, on opinions of international committees of experts, on all kinds of soft law that has emerged. All this material might be used as building blocks for new standards, might be “universalised”. But we are not yet there. We should not try to sell as “universal” what is “only” European.

Therefore, I think we should accept for orientation the “green”, “red” and “yellow” on the old-fashioned traffic light of the Universal Declaration of Human Rights and at the same time prepare a new traffic light better adapted to the 21st century. Let’s hope that there will be a window of opportunity for a new intense drafting process. For the time being we should remain modest. We should not pretend to have achieved what we have not yet achieved. Nevertheless, we should be self-confident and not give up what has been of great value to us during many decades.