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ESSAY

POLITICS, ECONOMICS AND HUMAN RIGHTS IN INTERNATIONAL COOPERATION: A PUBLIC DISCOURSE IN GERMANY

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An individual facing a crowd of people mostly unknown to her is always well advised to make a disclaimer. Allow me to make two.

The first one is on the topic of this lecture; some of you might have come here with an expectation that I will dwell on a maxim of Mark Twain: "Morals consist of political morals, commercial morals, ecclesiastical morals, and morals."

This is only true insofar as my aim is to prove Mark Twain wrong. I may, however, not succeed in convincing you that Germans—and others, for that matter, but I am of course not entitled to discuss others—always manage to avoid errors in a consistent effort to subordinate political and commercial morals to the universal morals of human rights.

However, this is not a discourse about the German position on human rights that is unequivocal and unwavering and in no way different from that of the United States of America or others. It is about our serious and persistent commitment to enhancing the implementation of human rights worldwide and about the obstacles that must be overcome in this way.

The second disclaimer is that I am not a lawyer, but a diplomat. I am not attempting to win a case, but to generate more knowledge about, and understanding for, my country. Therefore, I am at a certain disadvantage facing experts; but, I am also free to remain vague where it is not up to international law but to the future to show what, or who, is right or wrong.

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Germany's relationship with human rights is not as young as some may believe. It did not start with our historical guilt accumulated in twelve years of unheard-of terror against humans and the basic values of humanity. Nor did it commence with the process of learning, of democratization and of internationalization we went through after World War II, and parallel to which, on the international level, human rights were codified in a number of multi-lateral conventions and pacts, mainly created in reaction to the nightmares of the Nazi terror and in an attempt to prevent their repetition.

The young democratic Germany that joined these conventions and pacts did not have to start from scratch, but took up scattered but powerful traditions in German history and culture: the "Edict of Potsdam" of 1685, by which the *Große Kurfürst* (the Great Elector) of Brandenburg opened the gates to French Huguenots persecuted in their own country; the *Preußisches Allgemeines Landrecht* of 1794, granting everybody freedom of faith and of conscience; the social laws of Bismarck; but, also the ideas of Lessing, Kant and many others, as well as of those who often risked their freedom and even their lives trying to establish a humane and democratic system in fragmented feudal Germany, and who in many cases eventually emigrated to the more promising shores of America.

After World War II, the free part of Germany, under the guidance of generous victors, returned for good to its better traditions. This was done with the multiple goals to forever ban the murderous spirits of the recent past, to pave a path into freedom for the part of Germany under siege by another totalitarian system and to eventually assume a new role and new responsibility in an international community of free and democratic countries with high standards of respect for, and protection of, the dignity of man.

Article 1 of the Basic Law of the then Federal Republic of Germany, which later became the Constitution of United Germany, stipulates the inviolability of the dignity of man. Thus, it made human rights the foundation of our political, social and legal system. Additionally, it makes it unequivocally clear that human rights begin at home. In the implementation of this principle, we make no distinction between German and other nationals, between majority and minority or between different minorities.

In the domestic context, one of the most difficult challenges emerged after reunification; how could justice be done for the victims of human rights violations by the Communist regime of the German Democratic Republic (GDR), and is justice actually served by holding individuals accountable for the crimes of a collectively irresponsible system. Our courts are acting on the grounds of the principle that today we can only prosecute crimes against humanity, which at the time were criminal offenses as well. This may seem questionable as an acknowledgment of a dictatorship, and it

certainly is. On the other hand, with a view to a totalitarian system with an omnipresent secret service, *Stasi*, where almost everyone was involved in the criminal network strangling individual rights, and where a majority of citizens were at the same time both perpetrators and victims, where does one draw the line? It is, however, possible at least to a certain extent to do justice even under the obviously restrictive guideline mentioned above.

Just one example is the famous *Schießbefehl*, an alleged order mandating that every person trying to flee to the West must be shot. This order did not really exist, at least not as an inevitable obligation. First, no member of the "National People's Army" had to serve on the border to the West if he did not so desire. Second, it was, of course, possible to shoot and intentionally fail to hit one's target. Thus, we had several judgments where former border guards, who killed people attempting to climb over the Berlin wall, were sentenced for murder. Ever since reunification, we have been working on doing justice while knowing that it can never be complete, but, that the ultimate goal is reconciliation among all citizens in our country on the grounds of human rights for all.

In Germany, as in any other modern democracy, human rights begin at home, but they do not end there. When the post-war international community—worldwide and on the European level—concluded a number of pacts on human rights in a consensual reaction to the terrible crimes committed against humanity by Nazi Germany, our joining of these pacts was one of the most important steps towards rebuilding our country and working our way back into the family of man. Today, side by side with other free countries, we find ourselves confronted with the daily challenge of helping to establish human rights in other countries ranging from totalitarian states to fledgling democracies. In this respect, we have achieved significant progress in recent years as far as the principle is concerned.

Although certain regimes continue to fervently protest against the attempt to push for universal implementation of human rights as against an alleged interference with their national sovereignty, it has become a common understanding that this noble crusade for the sake and the protection of the individual transcends, by its very nature, the limits imposed on activities between states and on the level of states. The Vienna Conference on Human Rights in 1993 confirmed that the universality of human rights cannot and must not be impeded by national border toll stations along the international roads on which ideas travel. More difficult to dismiss is the accusation of imposition of values of one culture upon another culture; a topic that this essay will address later.

While there is no doubt among like-minded countries as to the principle of universality of human rights, there is much doubt and

disagreement as to the most promising strategies and methods to be adopted in order to achieve this principle. Traditional diplomacy and international resolutions seem all too often useless instruments, and measures are being called for that really hurt, such as sanctions and economic boycotts. When a country persistently violates human rights while booming with international trade and foreign investments, the economic partners have to ask themselves—and are being asked by others—whether they are feeding the devil at the expense of the tortured innocent, and helping to stabilize a regime that should rather be abolished.

Germany is often accused, not only by our foreign friends, but also by human rights activists in our own country, of a contradictory and even schizophrenic policy towards countries such as China and Iran. We do not deny this for a country with one out of three jobs dependent on exports, and unemployment twice as high as that in the United States. In a global environment where literally nobody feels they can afford to forego trade with China, substantial, even vital economic interests are at stake. But, do we really trade and betray our human rights policy for our companies' bottom lines? Are we trapped in an insurmountable conflict between what we want ideally and what we need practically? Are we insincere and inconsequent?

Some American politicians, and perhaps all of you, would be quite happy if I simply answered this question "yes" and ended my remarks here. It is, however, not that simple. First, there is the latent friction between the ideal and its implementation in reality—as Schiller says: "Thoughts can exist so easily together but objects in a space will soon collide." But, there is also the experience that reality can be made a vehicle for the ideal and the need to find out how far we get with this.

When the Berlin wall and the Communist Block collapsed, not very many people remembered the decisive contribution the Conference on Security and Co-operation in Europe (CSCE) process and German *Ostpolitik* made to undermining the foundations of this system. The CSCE, in the Helsinki Act of 1975, for the first time in the Cold War, set up a framework for economic cooperation, cultural exchange and a series of "confidence building measures" in the field of security between the two antagonistic blocks. This opened legal access to East European countries for goods, information and ideas from the West. This food for thought became dynamite and eventually helped to free the people from Soviet rule. The Federal Republic of Germany, in her own interest, was not only a supportive player in this process, but paralleled the process with a change in policy and politics towards the German Democratic Republic, characterized by the attempt to bring about *Wandel durch Annäherung* (Change through Approach). Personally, I do believe the role of this policy in preparing the sweeping

changes in world politics is still underestimated. However, I mention it here mainly to illustrate our conviction that you have to be in touch and in continuous dialogue with people you want to convince.

This method can fail, as our “critical dialogue” with Iran has failed—for the time being. If one looks at politics as a segment of history, it is easy to understand that strategy is better than short term tactics and a total rupture should only be the very last measure if everything else fails. Totalitarian regimes are often less vulnerable to any kind of sanctions than are their people. An example is Saddam Hussein’s resistance to international pressure while the poor, sick and children of Iraq bore the pain of sanctions until, for humanitarian reasons, the sanctions were partly lifted. On the other hand, economic cooperation builds networks of direct personal contacts which in many cases serve as an infrastructure for new ideas and developments. In South-Africa, German and other Western companies had quite some time before the abolishment of Apartheid introduced non-discriminatory social standards for their workers in accordance with their own standards. Since these companies were important to the economy of the country, their activities were tolerated despite being illegal under Apartheid rules. At the same time, the German government in harmony with others continued to put pressure on the Apartheid regime, pursuing a policy of “carrot and stick.”

In dealing with countries where human rights are violated, Germany acts in solidarity with its friends, and in permanent and close coordination with others—in particular, with the other member states of the EU. At the same time, Germany tries to assess each case in accordance with its own “merits” or rather deficits. However, we take no case lightly. The decision-making processes of the political leadership is accompanied, and often guided, by a very open and quite controversial discussion in the public, parliament, the media and in human rights activist organizations.

I will briefly refer to a prominent voice, the President of the Federal Republic of Germany, Professor Roman Herzog. Before being elected President, Professor Herzog was President of the German Constitutional Court, the highest guardian of our constitution, which is based on the core principles of human rights.

In an article in the weekly *Die Zeit* last September, President Herzog, in light of legitimate concerns and potential risks, chose a double approach of unequivocal commitment to the universal enforcement of human rights and of careful reassessment of the methods to be adopted on this path.

First, he recalls that there has been a historical consensus on the basics of human rights for a millennium and throughout the greatest religions and philosophical systems. Therefore, there is no point to the accusation that human rights activists are trying to

impose alien cultural values upon other cultures. Additionally, he dismisses, as misleading, the assumptions that we have only the alternative between silence and interference, and that speaking up for human rights and maintaining economic relations are mutually exclusive, referring to the positive experience with the CSCE process mentioned earlier.

President Herzog also emphasizes that the definition of human rights has not been established once and for all and that the international catalogues of human rights are not identical. However, there are common denominators in the basic rights protecting life, health and freedom of the individual, and there is no question that the international community defends these wherever they are endangered. Things become more complicated, says President Herzog, with respect to democratic structures which in many cases are only emerging and often do so under tremendous difficulties. The President contends that the right way to deal with this has not yet been found. However, we can and should use the eagerness of most of these countries to establish a strong market economy. A market economy, among other things, presupposes certain freedoms in vocational training and the possibility to conclude agreements, to invest and transfer funds. Economic freedoms, although limited, can thus become a stepping stone on the path to wider political freedom, particularly when they are complemented by the freedom of thought. Again, this could be enhanced by aiming at the economic and competitive ambitions of the respective countries through encouraging them to allow for freedom of science and research. President Herzog's conclusion is simple. He states that any policy can prove to be wrong, but that any rigor is already wrong. This conclusion leaves room for real life.

There are voices trying to refute President Herzog's logic. However, these critics adopt an academic approach on a different wave length that, therefore, does not really invalidate any of Herzog's deliberations. The voices refuting his logic are characteristic of the attitude of the theorist versus the pragmatist.

The following points summarize my own conclusions:

The defense of human rights is the cornerstone of our country's structure and policy; but, beyond the basic rights of the individual, the very definition of human rights is not yet universal and needs to be further developed and harmonized.

Such harmony can only be achieved through continuous international interaction and cooperation in a number of fora that already exist on European and global levels, such as the UN.

The universal implementation of human rights cannot in most cases be achieved by a rigorous "either-or" strategy, but must use pressure as well as opportunities. The individual ratio of both must be assessed and reassessed in light of experience, success

and failure. In this process, too, we need as much international discussion and harmonization as possible.

At the same time, countries must set up and further develop stronger and additional instruments for enforcement of human rights. Efforts have been made within the OSCE—the organizational structure that emerged from the CSCE process—with a High Commissioner for National Minorities and an Office for Democratic Institutions and Human Rights, within the UN with a Commissioner for Human Rights, and within the International Court dealing with war crimes in former Yugoslavia. These emerging structures need to be strengthened and complemented to be more universally effective.

Finally, we must be constantly aware that we are working in a field located between theory and practice, and that we need to enhance the process of permanent interaction between ideas and facts. Thus, not only that the thoughts will continue to exist easily together, but that objects that collide in space will be shifted and even changed through the very force of ideas, so that in an ideal future they may no longer clash.

