

HUMAN RIGHTS PERSPECTIVES, PROGRAMS AND POLICIES

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1. Context of the Problem

Visions and perspectives like that of human rights have and allow for an interdisciplinary interpretation angle and approach for analysis. Since this paper cannot cover the whole rapidly expanding range of human rights themes and subjects, it will attempt to give an analytical tool, a methodology to those interested in this field and are open to connect the discipline of law with larger policy ramification to explain successes or failures, but also problems around the institutionalization processes of human rights.

It will attempt to cast some light on and offer a comprehensive framework for the better understanding of conflicts and anomalies that surround the area of universal, international and common human rights. This will be shown through a multilevel policy process analysis about the implementation of these human rights in modern and postmodern western culture, primarily focusing on the EU, the United States, international institutional bodies and the role they play. A multilevel analysis of the implementation of policy processes is the methodological tool to provide a tentative model for the disciplines of legal, policy, social science and international relations. This study will pursue that aim from a number of different viewpoints, angles of interpretation or simply called perspectives.

Whereas Hungary has often drawn international critic during the recent years in the area of human rights – mainly since its new constitution, its Fundamental Law and accompanying legislations to implement them are in place – it has not been alone in this. There are also other countries, societal groups and strata across our western culture that struggle to gain answers and explain the reasons for social debates, conflicts and mutual misunderstandings relating to human rights.

So is Germany, where members of government offices and tens of thousands of private citizens struggle with the effects of secret U.S. surveillance and its human rights consequences (not only the diplomatic ones). At the same time, in the same country, national media is getting over the scandal of paedophile practices of high seated political party functionaries – that took place during the 1980's – with great ease in an election year. It is England where public safety is contrasted or even played out against the human rights of terrorists,¹ and parliamentary and public debate is introduced about cancelling out (abrogating) the Human Rights Act of 1998, or even leaving the European Human Rights Court's jurisdiction all together. It is in quiet and prosperous Austria where referenced

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¹ <http://www.rt.com/news/un-internet-privacy-resolution-353/> (17 December 2013).
<http://www.gatestoneinstitute.org/4056/human-rights-public-safety> (27 November 2013).
http://www.globalgovernancewatch.org/spotlight_on_sovereignty/recent.asp?id=857&css=print (8 March 2012). http://www.publicserviceeurope.com/article/2434/britain_should-have-six-month-trialseparation-from-eu (19 September 2013).



academic critic of the practice of an Asian religious community causes criminal punishment for a politically and socially active practicing lawyer.² The sentence was based on anti-discrimination legislation and on a subparagraph of the anti-terrorism law, namely on *religious defamation*, *hate speech* and *incitement* for potential violence. So far, the public has been familiar with such lines of argumentation „only” in the context of „islamophobia” and gender mainstreaming,³ but not in the context of rational critic of an Asian religious community’s practice. Where else can and will a criminal law’s subparagraph lead through the expansion of legal categories like tolerance, defamation, hate speech and incitement?

Stepping beyond the positive law perceptions of our days and the corresponding legal processes, on the one hand and without attempting to answer the question about the nature of universal human rights at large (the Universal Declaration of Human Rights did not do it either), this paper attempts to shed more light on what sort of dynamics is behind the conceptual expansion and more importantly, the institutionalization of human rights, nationally, internationally, and globally. In doing that, this paper proceeds in an interdisciplinary fashion where one will become aware of the axiomatic relevance of other disciplines in societal and institutional processes for human rights implementation. It is not difficult to put forth the thesis, that the functional and structural properties of our themes are interrelated in a multidimensional way. Functions in human rights debates will be perceived in this paper as an inevitably dynamic ethical, social and political bifurcation of all public and democratic participants who, while addressing human rights, are also simultaneous creators of societal consent and ethos. In doing so, they inevitably include and subscribe to larger (even transcendental) visions and apply consciously or unconsciously held presuppositions (axioms, or arbitrary givens) that frame everything else that has something to do with their temporary and future community life. Structures (institutions), although, by their nature are less dynamic than functions, expressing the same (but long term) willingness and commitment to better one’s and others’ life according to principles and “helpful rules”, that somewhere in inner consciousness they call and/or accept as good for every human being. This paper will start with postulating three somewhat arbitrarily selected but relevant and hopefully helpful starting points or angles that present themselves as non-negligible in the analysis of the manifestations of functions and structures in human, societal and international relations. They will be connected to the human rights’ problematic fields. The first one is the *institutional – ideological* dimension, namely, the philosophical view on the nature of the change in human institutions.⁴ The second one is the *geopolitical – international* or *power political* dimension. This one deals with competition, harmony and diplomacy between nations. In doing so, it weighs and evaluates power relationships between participants differently; according to economic, military, demographic, geographic, and other dimensions. For example at the moment, China has different power advantages and different proportions than the EU or the USA. The third one is the *sociological* angle; this is the *phenomenological*, empirical dimension. On its basis, the gathering of data for quantification or qualification can be a fruitful branch of knowledge that if applied honestly recognizing all its limits in its potential to explain, is a helpful reality based angle of analysis. In a certain sense, of course, everyone – including the observer – remains a part of social

² <http://www.kreuz-net.at/index.php?id=315> (17 November 2013).

³ *Terrorismuspräventionsgesetz* [The Austrian Terrorism Prevention Law of 2010]. 119/ME XXIV. §283 (1).

⁴ Grass, David: Multiculturalism in World History. *Foreign Policy Research Institute*, Vol. 5 (September 1999) No. 8.

reality. In this viewpoint, however, what is being studied and researched is dependent on the perspectives of those who order or finance the targeted research. Moreover, the quantified and qualified data usually offers itself for further and different interpretations. Highlighted and elevated subject matters of the past decades were being connected to human rights, one example being the so called „health rights”. The health mandates of national governments were under fire from supra-national (like the EU) or sub-national nongovernmental groups (NGOs).⁵ Other times, the perception – coming partly from abroad – that it is necessary to regulate women’s social and health situation, for example in the Ukraine was monitored by non-governmental agencies. It reveals that gathered facts are not randomly arising and tells about the basic assumptions (presuppositions, axioms) of the researchers, politicians or NGO activists. They select the phenomena for quantificational research and usually interpret it with their preconceived bias in place.⁶ Therefore, also the sociological viewpoint can never promise full objectivity, this being in direct contrast with what current tendencies in the legal and policy sciences are attempting to use it for. We live in an era, where, since the second half of the 19th century, the assumptions of materialism, relativism, progressivism and scientism had come to dominate the majority of the academia as well as the academic domains. The solutions to the gained data, as a rule, are usually argued and called for an increase for more centrist social control and regulations with the aim of more economic or social or health justice, in other words, for more equality.⁷ In short, the results of research are also impacted *a priori* by the philosophical/ideological premises of the authors. And this is a tendency across the disciplines including law/public policy and the fields of human rights. Furthermore, other dimensions, namely the actual levels and/or stages of affirmation, application and implementation in the policy process add to the complexity of the human rights debate. What the author calls the *six P’s Model*, helps readers to illustrate the actual stages/levels in the implementation process of the human rights agenda. The „*six P’s*” in this model of policy implementation process are the *perspectives, principles, programs, policies, processes and practices*. This is how a legal, political, social, economical subject matter (human rights suppose to be touching all of these dimensions) will reach general public and society at large. Before further elaboration on the *six P’s policy process model*, it is useful and recommendable to make a couple of further generalizations (thereby introducing secondary assumptions/axioms) that further help to appreciate the role of it as an explanation model for policy analysis relative to implementation, institutionalization and conflicts around human rights themes. In this scrutiny, illustrations

⁵ <http://www.globalgovernancewatch.org> [spotlight_on_sovereignty/recent.asp?id=124&css=print] (28 April 2010).

⁶ <http://www.globalgovernancewatch.org> [spotlight_on_sovereignty/recent.asp?id=123&css=print] (28 April 2010). See also <http://www.turtlebayandbeyond.org> [2011/turtle-bay-un/warning-cedaw-may-cause-severe-schizophr...] (11 November 2011) and <http://www.turtlebayandbeyond.org> [2012/human-rights/governments...] (12 September 2012).

⁷ Council on Foreign Relations (CFR): *The Global Human Rights Regime. Issue Brief*, Publ. 5 July 2012. 31. <http://www.cfr.org> [human-rights/globalhuman-rights-regime/p27450] (16 November 2012). elly, James P.: *International Law Limitation on Democratic Entrepreneurship. Conference Presentation, Common Sense Society Summer Leadership Academy*, Budapest, Hungary 29 July 2012. Cf. further, Bolton, John: *The Theory Behind the EU Is Simply Wrong, Ottawa Citizen*, 15 October 2012, <http://www.ottawacitizen.com> [touch/story.html?id=7392382] (20 October 2012). Fonte, John: *Global Governance vs. the Liberal Democratic Nation-State: What Is the Best Regime? Encounter at 10: The Power of Ideas. The 2008 Bradley Symposium*, 4 June 2008.

from a *phenomenological-sociological* viewpoint will be emphasized, later followed by the *institutional-ideological* and *geopolitical-international* perspectives.

2. The Phenomena of Institutionalization: Before and After of the Public Debate

First, there is a watershed difference relative to any subject matter as to whether its institutionalization is in the process of being embedded *de facto* into everyone's everyday life. If this is the case it is not merely a topic for academic, media driven or democratic debate on institutions, international relations for the public in search for a better ethos. Rather, such embedding would mean its arrival at legal, military, regulatory and police power dimensions and who would really want this. Prior to that, the democratic public avenues were still open and intact for influencing the process but afterwards, this is largely not the case anymore. The daily effects of institutionalization are experienced and perceived by the public, far too often, differently from the elites in the power centres. Hence, democratically speaking, the line between the two stages, this is to say *before* or *after* institutionalization of *protective* (legal) and *promoting* (administrative) new mechanisms, cannot be viewed indifferently and left to its own dynamics. That is to say, the implementation of policy process that is predominantly guided by the „few” and their supposedly special knowledge got detached from the consent and ethos of the “many”. The stakes are too high for our culture and civilization and this fact plays a crucial role regarding the effects of human rights for the majorities or sub-cultural minorities in modern democracies. This is simply the sociological reality, although, there remains an interrelationship between the subsequent early stages – perspective, principles, and programs of intended institutionalization (debated more or less in public or arguably even secretly⁸) – and the legally increasingly binding phases of policy, process and practice. One can rather easily picture a good example of that with the help of the *six P's policy implementation model* relative to the introduction of the Human Rights Act in the United Kingdom and that what it became in the next 14 years. As indicated above, the change of its interpretation relative to its substance or even the potential abrogation of it is rising on the horizon.⁹ Therefore, with regard to the socio-political and legal dimensions of policymaking, from a democratic process point of view, it is not negligible to distinguish between the different stages of implementation, especially when so-called *new instruments* are introduced into society. Even in their target group or environment, they often have unforeseen consequences, not to mention the unintended effects with all the other non-target groups or strata of society – this in the short term as well as in the long run. This is why in our case, the process of implementing human rights through some sort of institutionalization, cannot be left only to the political elites, but it will not do justice to the public at large either, if only selected NGO groups consent or speak

⁸ <http://www.bild.de/politik/ausland/europaesche-parlament/csu-politiker-protest-sex-bericht-33776266.bild.html> (17 December 2013).

⁹ Pinto-Duschinsky, Michael: *Bringing Rights Back Home. Making human rights compatible with parliamentary democracy in the UK*. <http://www.policyexchange.org.uk> (10 June 2012). Justice Lady Arden: Peaceful or Problematic? The Relationship between National Supreme Courts and Supranational Courts in Europe. The Annual Sir Thomas More Lecture, 10 November 2009. <http://www.guardian.co.uk/law/2011/dec/14/lord-irvine-human-rights-law/print> (18 January 2012).

„scientific truth” and wisdom from a single issue movement’s perspective.¹⁰ Not to mention that also the civil society NGOs can be exploited by other elites ideologically or opportunistically. NGOs might well present themselves as democratic, but can only represent a special segment or interest of the multifaceted society in which other groups might not have their single issue or scientific representation. At the institutional table, around which big business and big NGO’s lobby big supranational governments and international organizations, have a place – others with their legitimate empirically or historically argued concerns do not.¹¹ If the „single issue” movements or the „new science’s evolving interpretations” purport to be holistic in their impact and they claim for the need of institutionalized application of their „findings”, this will not make them less but rather more dangerous, democratically speaking. At the same time, they would weaken or even contradict their own justifications for existing as non-governmental entities because they increasingly demand governmental implementation of their conclusions without the democratic process.¹² Many participants at this conference come from nations that from their recent history remember well at the single issue movements of the 20th century, whether it is the proletariat or the Arian movements, or it is reductionist or holistic in the application of their findings. The scientific argumentations of those days – scientific materialism or Eugenics – that went hand in hand with the movements – justified the recreation of society in a social engineering fashion at the prize of enormous cruelty but nevertheless, „scientifically”.¹³ Additional elements from the sociological (societal-empirical) point of view help to make an easy transition to the institutional ideological viewpoint that will be subsequently elaborated in more details.

The human rights umbrella attempts to cover or purports to include ever increasing number of life functions and their protections.¹⁴ In any meaningful sense, they need an institutionalized network of structures that connect and interlink them. The introduced or to be introduced mechanisms/instruments for *monitoring, reporting, evaluating, recommend, regulating, sanctioning*¹⁵ etc. in the implementation (understand institutionalization) process appear to (or at times even surprise) the observers and participants of the debate — at the different levels, nationally, regionally or „sub-culturally”. On these levels namely additional distinctions are present and further differentiations needed to take place in the „six P’s”

¹⁰ CFR: *op. cit.* 9. See further, Steinberg, Gerald: *Freedom of Expression*. UN Human Rights Council. <http://www.stonegateinstitute.org> [2851/freedom-of-expression-unhuman-rights-council]. Bhagwati, Jagdish: *Verteidigung der Globalisierung* [In Defense of Globalisation]. Pantheon, München, 2008. 74-78., 90-93. and 174-178.

¹¹ Cf. in detail, Bhagwati: *ibid.*

¹² UN Adopts Roadmap for International Environmental Governance <http://www.globalgovernancewatch.org> [spotlight_on_sovereignty/recent.asp?id=144&css=print] (28 April 2010). Kern, Soeren: *EU Proposal to Monitor “Intolerant” Citizens*. <http://gatestoneinstitute.org> [4036/eu-intolerant-citizens] (27 November 2013).

¹³ Tuomala, Jeffrey C.: Nuremberg and the Crime of Abortion, *University of Toledo Law Review*, Vol. 42 (Winter 2011). Neuhaus, John Richard: The Return of Eugenics, 1-28. In: Neuhaus, John Richard (ed.): *Guaranteeing the Good Life: Medicine & the Return of Eugenics*. Eerdmans Publ., Michigan, 1990.

¹⁴ CFR: *op. cit.*; *Human rights and international law undermined by “a la carte” application, warns UN Expert*, <http://www.ohchr.org> [EN/NewsEvents/Pages/Display/News.aspx?NewsID=12719&LangID=E] (3 December 2012).

¹⁵ CFR: *op. cit.* 22-24. See further, U.S. Citizens Are Plugged Into the Matrix of Human Rights Governance, <http://www.globalgovernancewatch.org> [spotlight_on_sovereignty/recent.asp?id=141&css=print] (28 April 2010).

policy process – *perspectives, principles, programs, policies, processes and practices*. When one talks about the pre-suppositional/philosophical phase of the process which gives shape to a particular vision of society, it is worth mentioning that it is a *perspective*. Something of a clear line like Willy Brandt's „North and South” (UN Development Report) epitomized such during the 1980's.¹⁶ Brandt delineated a teleological (but materialistic) vision of a common heritage of mankind. In an empirically sounding language, he articulated a vision for a commonly owned peaceful globe. He „scientifically” backed up this vision and called for a solution – which was to be *global institutionalization*, flowing from the materialistic definitions of interconnectedness and interdependence. Surprisingly few new elements are in his theory on the perspectives, principles and program levels relative to equality, freedom and brotherhood as we knew these concepts since *Rousseau, Hegel* and the revolutionary classics. The theory simply rolled the centrism and the redemptive role of the state further from nationalism, socialism, national socialism and international socialism. By means of instrumentalizing, the so-called *common problems and needs*, our *common humanity* had to be saved *not through classical cooperative efforts based on interrelatedness and inter-nationally interlinking mutual interest*, but from the perspective of *socialistic interdependence and interconnectedness*. The latter was materialistically defined based on some sort of determinism – labour, environmental and oppression theories of the *periphery* and sub-societal groups – applied for a „Spaceship Earth” *common home*, in an impersonal material universe. Of course, it was written by an international socialist; hence, reductionist by definition, through its very materialistically defined listing of „common needs,” as were also other key „independent commissioners” in international organizations of the 20th century. *Olof Palme, Gro Harlem Brundtland, Sean MacBride* who authored subsequent UN Commission Reports to the same effects, were cut up in the same stream of collectivistic approach to life, hence, the designation „Commonism”¹⁷ for their updated and global collectivistic ideology is succinctly well justified. The trend to absolutize the economic, social and multicultural rights proceeding functionally under the vocabulary of *common needs* and *common problems* is nothing new. During the subsequent stages in implementing this perspective of the world and its future „salvation” *on the principles and programs levels*, this old/new ideology of „Commonism” began to be institutionalized gaining shape and structure in common Principles (through the 1995 Commission on Global Governance) and common Program throughout the 1990's leading up to the New Millennium Declaration as its Program and Manifesto. This further propelled the implementation of the „new” perspective on the policy levels from the next decade onward founding new agencies, financial potentials, offices, projects and staffs in the realms of environment, health, military and human rights. They were based on international documents and resolutions like the 2004 UN report on „perceived new threats” or the adaptation of the „Responsibility to Protect” doctrine but were quickly expanded from classical humanitarian and human rights categories to functionally argued social and environmental needs (health, women, environmental refugees, unaccompanied children refugees, etc.). Subsequently, one arrived and has to deal

¹⁶ Brandt, Willy: North-South: A Program For Survival, Report of the Independent Commission on International Development Issues. The MIT Press, Cambridge, Massachusetts, 1980.

¹⁷ The author has not met a better definition than the one the Dutch-Canadian International Relations Professor described as “Commonism” in his groundbreaking study of the post *Iron Curtain* ideological/institutional global trends in the early 1990s. See: Bom, Philip C.: The Coming Century of *Commonism*. Policy Press, Washington D.C., 1992.

with these issues at the level of policies, processes, and practices and not merely at the perspectives, principles and programs levels. We see gradual institutionalization epitomized in the institution of the new UN Human Rights Council,¹⁸ and through other attempts to control national polity through global environmental governance processes.¹⁹ The distinction of the former stages of perspectives, principles and programs and later stages (policies, processes and practices) make a big difference and have a great significance *from a democratic point of view* for the content and expansion of human rights. The top down, distanced, indirect and *globally egalitarian* nature of the program is collectivistic. Instead of the classically democratic manner of introducing new mechanisms (by means of democratic debate closer to the people), the all inclusive (health, wealth, sex, security, environment, communication and finance) way of implementing it, is not without complications and controversies. Its proportionally increasing potential for abuse is as much a democratic as a scientific concern, as well. The everyday dilemma will often presents itself that when one thinks that s/he is talking about public policies, others still expound on the levels of the principles and perspectives. When some talk about the (legislative, judicial) processes to bring about new administrative mechanisms, others already talk about the practice – results, feedback or the desire to correct the process in the first place. The analogical request of relating the subject matter to the right level seems like a banal point to even bring up. At the same time, however, the media barrage, with regard to the practice or failure of human rights policy applications depicted in the evening news (i.e., on the failure of multicultural policies, refugee tragedies or sex trade) pressures politicians to urgent actions for the „problem“. Similarly with regard to economic problems, the nondemocratic at times even secretive natured policy negotiations and decisions of the elites (i.e. in the Council of the EU about the creation of financial institutions beyond the European Central Bank), obscure the real issues – the creation and purpose of unaccountable new institutions that undertake wealth distribution through unlimited credit supply.²⁰ As a result, the public is confused, frustrated or largely left in the dark.²¹ The legal theory behind such phenomena is especially questionable. Signed treaties or agreements complemented and accompanied by „new“ interpretations beyond the ones earlier agreed upon content and subject matters by the politicians and their narrow circle of experts to make the earlier not concretized programs operational, blurs the indications of what level of implementation of policies the daily debate is aimed at and how the public could orient itself or react democratically. The applied public procedure is unable to offer a clear *cause and effect* explanation and justification for the new regulating mechanisms. And exactly this is the critical problem in selling the

¹⁸ UNGA: President on Draft Resolution on the Human Rights Council (A/60/L.48), 15 March 2006. avel, Václav: A Table for Tyrants. *New York Times*, 10 May 2009. <http://www.nytimes.com> [2009/05/11/opinion/11havel.html?_r=1&partner=rss&emc=rss] (19 May 2009). *The U.N. Human Rights Commission: Can It Be Rescued?* American Enterprise Institute (AEI), <http://www.aei.org> [events/filter.evntID.785/summary.asp] (9 October 2004).

¹⁹ <http://www.un.org> [apps/news/printnews.asp?nid=41160] (17 February 2012) and see <http://www.un.org> [apps/news/story.asp?NewsID=42401&Cr=devel...] (12 September 2012), as well.

²⁰ <http://www.imf.org> [external/pubs/ft/survey/so/2011/NEW120911A.htm] (19 December 2011) and <http://www.money.cnn.com> [2011/10/25/news/international/europe_crisis_talks/index.htm?cnn=yes&hpt=i] (26 October 2011).

²¹ *Die kleine Slowakei wird zur Gefahr für die gesamte EU-Rettung* [The Small Slovakia Will Be A Danger For the Saving Package Whole EU]. *OÖ Nachrichten*, 3 October 2011. 6.

Martino, Peter: *The Gigantic Eurozone Ponzi Scheme*. <http://www.hudson-ny.org> [2509/eurozone-ponzi-scheme] (27 October 2011).

inflated human rights concepts to a constitutionally speaking still democratically operating public. This theme is recognized but only partially addressed by global law, global governance and human rights experts as well as by the broader academia.²²

Viewing the campaign program of a president or party, and later viewing a connected policy before and after reinterpretation, adaptation or adjustment by experts, one already deals with a new subject matter, without the democratic consent about it.²³ The enormous new expansions of competences through the newly created *European Stabilisation Mechanism* (ESM) or *European Financial Stability Facility* (EFSF) credit monopolies are good examples of this „spill over” functionalism – instead of maintaining competences within the constitutionally or treaty authorized role for the European Central Bank (ECB).²⁴ In other realms one can recognize that – be it rights of immigrants, social or gender minorities, environmental refugees, religious fundamentalists, or terrorists – all these are regularly presented in the face of the democratic public in the name of stabilizing and improving the human social dimensions of the weak and exploited. Here again, it is a very crucial need to differentiate between the corresponding stages in the public debate and levels of implementation in the public policy process. Perspectives are not yet policies, principles are not legislative or judicial processes to bring about administrative results, and this is properly so. Principles are not the realization and the bringing about for example equality or multiculturalism. To achieve such results – at any prize or at any means at the expense of the democratic procedure – is not legally justified, because the underlying principles are different from the common and current constitutional ethos of the governed. This fact remains often hidden from the public’s sight first. Party or government programs, constitutionally speaking, should first look at fundamental principles and perspectives as guidelines, while processes and practices look at the policies that are derived from the political consent of the democratic legislators. One can see, for example, the different home security policies or their abuse in different countries, where the *policy is separated from principles* or where democratic policy application is *interrupted from undemocratic law making* by the judicial branch. The facts that terrorists are made millionaires in England, just to leave the country,²⁵ or the US government bugs closest allies and their civilian populations are

²² Cf. Bork, Robert: *Coercing Virtue – The Worldwide Rule of Judges*. The AEI Press, Washington D.C., 2003. 1-7, 45-51. and Pinto-Duschinsky: *op. cit.* See further, Garapon, Antoine: *A globalizáció mint jogi kibívás* [The Globalisation As A Legal Challenge]. Symposium, French Institute, Budapest, 1 December 2011. Kuby, Gabriele: *Globális Szexuális Forradalom* [The Global Sexual Revolution]. Kairosz, 2013. 80-90; Lord Judge, former UK chief justice, said: “European court is not superior to UK supreme court”. <http://www.theguardian.com/law/2013/dec/04/european-court-uk-supreme-lord-judge/print> (12 December 2013). Current Supreme Court justice, Lord Sumption, in his lecture speaks to the same effect: http://www.globalgovernancewatch.org/docLib/20131204_lord_sumption_lecture.pdf (17 December 2013).

²³ Good but disquieting examples were also the secretive negotiations by the heads of states or ministers about the *packages* for Greece by the so-called Troika of the IMF, ECB and EU in 2012 and 2013. See to that effect Jordans, Frank: German minister rejects more time for Greece. *Associated Press*, 26 August 2012, <http://www.boston.com/news/world/europe/2012/08/26/report-ger...> (11 September 2013).

²⁴ Henkel, Hans-Olaf: *Die Euro-Liigner* [The Euro Liers]. Wilhelm Heyne, München, 2013. 160-166. Stevis, Matina: Bank Supervision: A Lot Like Love. *The Wall Street Journal*, 16 October 2012, <http://blogs.wsj.com/brussels/2012/10/16/bank-supervision-a-lot-like-love/tab/print/> (20 October 2012).

²⁵ http://www.publicserviceeurope.com/article/2434/britain_should-have-six-month-trialseparation-from-eu (19 September 2013).

manifestations of these trends. Other example can be illustrative for the separation of policy from principles, too. What effected the introduction of policies, for example, due to illegal immigration in the USA or the „fortress Europe” phenomena in Morocco, Malta, Italy and Greece, were the pursued *unclear policy objectives* that are examples of blurred, hidden (or for the public confusing) original perspectives, abandoned principles and programs that have to do with both human rights and democratic procedures. *Constitutionally speaking, the latter has to be not only transparent but also limited in delegating power and jurisdiction.* The results are often just the opposite of what politicians, parties and governments democratically promised and worked out in the political democracy with their people in an ethically bound national or continental community, in a consent based common ethos.

Since there is a lack on corresponding judicial *checks and balances* instruments for the international policy making capacity of the decision-makers, even systematic analysis on the daily, weekly, monthly basis of a policy speech for the nation of a US president or an EU commissioner help relatively little. By the time societal groups become aware of the *de facto* processes and institutional situation surrounding them – and this is one of the important theses of this section in the paper – they are not on the level desired by logical and legitimate public expectation anymore, but on a far more advanced regulatory stage, out of control by the democratic public. Even if something admittedly went foul in the implementation process, as a result of applying principles and program details – held to be feasible and worthy so far – the turning around of decisions and going back to a democratic debate on the programs, principles and perspectives levels will be largely given up, usually, not even tried.²⁶ Due to the special interests’ activism, politically, economically, and ideologically, that interest might well governmentally or non-governmentally proceed in the social realms or in business and financial sectors. Stable lobby structures and well financed bureaucracies are in place to carry on the dynamics of further regulations, institutionalizations as norms toward a higher supranational level of cutting the next deal, passing the next regulation form, of which the beneficiaries will be the few and those who have to bear the financial and mental sacrifices with a more regulated and more expansive daily life will be the many. Interestingly, the beneficiaries of the effected chaos (the lack of a balance in social harmony and the deficit economically and democratically), in spite of the empirically measurable negative results, will be those who cry for even more supranational or global regulating mechanisms, as international public policy solutions.²⁷ A good example of the past decade would be the admitted failure of two generations of western multiculturalism in Germany and France (in the words of *then-President Sarkozy* and *Chancellor Merkel*). Another one is the euro crisis based on non-productive placing of irresponsibly printed money and credit supply for and through the big financial institutions of the West. In both (multiculturalism and Euro-crisis) the realization of the supposed to be solutions only lifted the problems to the next level without sufficient democratic mandate, legitimacy and – most importantly – control. The problems simply became „Europeanized” or even globalized – economic and immigration problems crying out for European and global economic and multiculturalist solutions. The same took place with continental and global

²⁶ White, Jamey: Quack Policy Abusing Science in the Cause of Paternalism. *The Institute of Economic Affairs*, Publ. London, 2013. <http://www.iea.org.uk/sites/default/files/in-the-media/files/IEA%20Quack%20Policy.pdf> [2 January 2014].

²⁷ Morris, Julian: NGOs and Development. *Institute of Economic Affairs*. Blackwell Publ., Oxford, 2010. 1-5. See further, Bolton: *op. cit.* and Kuby: *op. cit.*

centrist overhaul for the financial sectors (new role for the IMF as global central banker, and new structures for rolling further the EU credit snowball through undemocratic new instruments and institutions like the ESM, EFSF). This occurred in place of the originally agreed upon principles and policy limits of leaving the European Central Bank in charge of financial stability which were originally spelled out in the ECB's Charter in line with the relevant principles in the EU Treaty. As a result of giving up on these principles of the Charter of the ECB and the Treaty, a substantial negative change could impact the Euro's financial potentials; however, by this time, in a regimented, uncompetitive and social redistribution focused common economic realm. Is this *in lieu* of the original vision (perspective) of the EU or the Founding Fathers, or is it rather in line with *Willy Brandt's* global „communism“ for which to sustain and carry on, even *founding principles, programs and original policies* (as in the case for the role of the ECB) can be sacrificed? All this can be justified by the supranational administrative bureaucracy on the basis of vaguely defined new common problems and unpredictable policy recommendations usually of an egalitarian or libertarian nature.²⁸ The supranational administrations undemocratically can alter or reinterpret treaties and connected original policies with the help of „judicial law-making“. They adopt unwarranted and not specifically stated new processes and practices, and ignore or reinterpret principles „in an evolving fashion“. ²⁹ What really takes place is thereby the *creation of new principles without democratic process or checks and balances or the guarantee of reversibility*.³⁰ On top of that, the concentration of competences in new undemocratic instruments of supranational and continental (global) levels still does not fulfil their roles and promises. The result is that a once liberty accustomed society is administered from levels far above the nation state. Once the people of liberal democracies could get rid of their national leaders and periodically change the direction of failed policies. Today they still can do that if they are allowed to make use of the constitutionally guaranteed democratic processes. However, if through supranational global regimes and corresponding regulatory mechanisms, their constitutional playing fields are hollowed/emptied, including the playing fields of their national leadership to regulate in the realms that are viewed by their voters as the most important ones, then the culture, society or civilization arrived at *administrative global governance* instead of being a democratic or constitutional representative republic. In the national ethos based democratic context of our culture, such a tendency towards administrative governance at the expense of classical Western legal categories of liberties, order, rights and duties is not to be underestimated.³¹

3. Instrumentalizing the Language of Human Rights for Larger Policy Objectives

One factor that makes it more difficult to recognize this trend is exactly that many of the regulations and the simultaneous shift towards supranational and global levels are presented in the name of human rights as *comprehensive common human security issues*. The undifferentiated

²⁸ White: *op. cit.*

²⁹ Lord Sumption: *op. cit.* and Lord Judge: *op. cit.*

³⁰ Bork: *Coercing...*, 73-84; Woods, Thomas: *How the Catholic Church Built Western Civilization*. Regnery Publ., Washington D.C., 2005. 147-150.

³¹ Manent, Pierre: Democracy without Nations? *Journal of Democracy*, Vol. 8 (1997) No.2, 92-102. Manent, Pierre: The Return of Political Philosophy. *First Things*, Vol. 103 (May 2000) 15-22.

way of tactics through such communication is really an abuse of our civilization's hard fought over predilection for liberties and order, rights and duties, subsidiarity and jurisdiction, checks and balances. While the reality of human rights vocabulary is flowing out of our legal traditions and it is a natural expansion of it, *the new contents that subsume* the other classical legal branches – parts of constitutional law, criminal law, international law, family law, etc. – are regrettable and not justifiable, and call for constant differentiation to be corrected.

There are exceptions where the regional or national or local trends flow in the face of the above described global trends. Such exceptions *in* and *outside* of the West and EU are Hungary, Switzerland, Poland, Czech Republic, Sweden – just to name a few. To some extent, especially in a geopolitical and ideological sense, Russia is also amongst those who currently shows adherence to local and national precedents for the maintenance of classical international law concepts instead of neo-utopian *global law* visions. They are in that sense fresh air in the post-Willy Brandt era of “communistic” global institutionalism tendencies in place of classical international cooperation that he and other socialists successfully abandoned. If the scope of new „commonism“ requires definition, then it reasonably could be described as a revolutionary egalitarian institutionalism within the axioms of a naturalistic worldview, which by instrumentalizing international institutions and operationalizing human needs phenomena with the help of human rights vocabulary, determined to collectivize, redistribute and manage all spheres of life for the first time in history, on a global scale.³² Thereby, it simultaneously shows the positions of philosophical poverty and that it is a natural elongation and extension of 19th and 20th century collectivistic and „redemptive” approach to life. It is revolutionary not in the sense of speed, suddenly killing countless people, but rather in substance by rewriting the human quality what it means to be human. In this context, the above mentioned nations – the exceptions at the top of this section – are even more underscoring the point that international relations can be done differently on the basis of different perspectives, principles with corresponding programs and policies, largely with a focus on the still available reservoirs of nationally mandated powers for international cooperation. Was not that the principled vision of the European Communities' Founding Fathers, a community and union of nations?

This study is not going to deepen the debate on to what degree the „commonist“ themes are relevant or primarily human rights focused because exactly the regional and global governance ideas are such to purport that everything is related to everything else.³³ Such broad assumptions make „scientific” hypotheses very vulnerable and weak for empirical research with little access for scientific proof. As Robert Unger, law professor at Harvard University succinctly put it in his book *Law in Modern Society*: Having discovered that all things cause each other in social life, as in the world at large, he [the scientist] wants to find a way to represent this insight in what he says about society. Alas, his eagerness is self-defeating. The more causes he takes into account, the less he is able to distinguish discrete

³² Cf. further, Bork: *Coercing...* and Johnson, Philip E.: *Reason in the Balance – The Case Against Naturalism in Science, Law and Religion*. InterVarsity Press, Illinois 1995, 138-146.

³³ Weeramantry, C. G.: *The Lords Prayer Bridge To A Better World*. Liguori Triumph, Missouri, 2000. 188-196. and 226-228. See also, Etzioni, Amitai: *From Empire to Community*. Palgrave, New York, 2004. 19-25. and 56-65. and CFR: *op. cit.*

relationships of cause and effect. In the end, the very notion of causality flounders in ambiguity.³⁴

In our context, it is suffice to say that exactly this weak line of argumentation with concepts of *interdependence* and *indivisibility* shows the arbitrary nature of „global governance science”. Hence, for keeping or strengthening the new „human dimension”, the human rights element will be most often used (or at times abused) to justify measures that could otherwise be well placed in classical socio-economical categories such as economical, political, sociological, international political, geographical and demographical fields of research and solutions. Both, the competitive globalization by means of trade globalization and the security concepts of the free world, liberty and democracy is replaced through the operationalization of human rights for the new „human security”. The old triangle consists of *international cooperation* (including law, trade and diplomacy), *democratic procedures* (with room for real pluralism and cultural diversity), and *classical human rights* with their branches of *civil and political* as well as *economic, social and cultural rights*. These rights are though interrelated and interlinked but *not indivisibly interdependent*. This is now being subsumed by a new triangle which is composed of *administrative globalism*, *new democratic values*, and *inflated human rights concepts* with essentially an entitlement orientation.³⁵ The „human security” agenda is becoming the new integrating regime for new interest group politics. The old triangle and its institutions (UN, EU, NATO, Organisation for Security and Co-operation in Europe – OSCE, Council of Europe etc.) are *gradually replaced* under the aegis of *human security* with their *redefined administrative equivalent* by elite consent but without popular and public discussion of the voters. The phenomena are similar and correspond to judge made law – *vis-à-vis* mandated legislation – in the legal branch. The „human security triangle” and judge made law both set up a legal net with new and broader (regional, global) enforcement capacities for societal control. The new global institutional structure is complemented with big (financial and economic) monopolies and big NGOs that become new arms of the administrative globalism that instrumentalizes human rights.³⁶ The inflated „rights” vocabulary of the new interest groups adds the word „duty” for everyone else thereby forcing an uncritical acceptance on the demos. What really takes place is a brand of socialism that is finally globalized, a global and ideologically targeted distribution of wealth, managed development with the aim for a „global welfare state”. *Friedrich Hayek* in his classic *The Road to Serfdom* criticized in 1944 *only the regional equivalent of the same collectivism*, whether it is national socialist, communist or social democratic. With good reason he envisioned and warned against the potential implementation of any of the mentioned redemptive etatisms on a global scale. The applied institutionalism today functions not as procedural democracy but rather as a global net of administrative, legal, political, educational, military, police power-backed institutions, a top down communication and enforcement regime. In all these venues the presupposed substance of rights is „outcome” bound thereby affiliated with the 20th century egalitarian totalitarian concepts. Its focus is *not „inherent, enabling or procedural”* as

³⁴ Cf. Unger: *op. cit.* 12-13.

³⁵ Alvarado, Ruben: *Common Law*. [http://www.commonlawreview.com\[wordpress/\]](http://www.commonlawreview.com[wordpress/]) (17 December 2013).

³⁶ Maira, Arun: With standardised Rules of Globalisation Failing, Thinking and Acting Local Is the Only Way to Sustain Ourselves. *The Economic Times*, 9 July 2012 and <http://articles.economictimes.indiatimes.com> [2012-07-09/news/326...] (12 September 2012). See also, <http://in.news.yahoo.com> [nam-summit-democratise-global-governanc...] (11 September 2012) and <http://www.stonegateinstitute.org> [2851/freedom-of-expression-un-human-rights-council] (16 February 2012).

„independent UN expert Mr. Zayas” would like to make us believe. He and other institutional globalists attempt to obfuscate the issue with new terminology, rewriting the socialist content with classical sounding positivist and natural law terms „inherent” „procedural” and „enabling”. At the same time, they are unable to hide their ideological predisposition in favour of the predominance of economic, social and cultural rights.³⁷ Additionally, they do this, methodologically speaking, not internationally – working with classical UN legal assumptions, advocating the cooperation of nation states – but rather „commonistically” determined to implement the perspective of an egalitarian social-cultural globalism.³⁸ Structurally speaking, all this is meant to be administrative and not democratic, loaded with socialistic collectivistic content along the lines of *Brandt, Palmer, Brundtland* and *McBride*, independent commissions of the 1980’s.

Interestingly, there is a larger democratic consent for a truly human development even amongst the developing nations if their human development does not mean to be steered and regulated in a top down fashion under the umbrella of global environmental regulations of which the benefactors again are the sluggishly lagging unproductive and uncompetitive debt and credit-creating EU and USA. They would be the main beneficiaries of any global environmental governance, through the export of industry standards which would legally bind the developing countries instead of competing with them.

This rather broad multilevel analysis so far has tried to show the six P’s model’s methodological application from a sociological perspective – focusing on the phenomena of problems around human rights arguments and the democratic deficit that accompanies/correlates with the shifts on the levels in the policy processes. Then it made the transition to the institutional – ideological viewpoint that attempted to clarify much of the trend for global governance of a certain kind. This special – dominant – kind of global governance flows out of the intellectual assumptions of its promoters and their vision. Their perspectives and principles were exposed in the previous pages. One can see that their program instrumentalized human rights in this process and this, institutionally speaking, weakens the traditional branches of law, changes their roles and turns them into administrative agencies, departments and executives of a new global structure. This trend, in turn, in the absence of checks and balances and less and less political democracy, is not potentially neutral or harmless for traditional western values and principles. Simultaneously with this trend, there is the creation and shaping of the new global *common habitat* and global society. Within their scope, the human kind is holistically and principally focused on regarding common problems on every level and in every discipline. The solutions are supposed to secure human security (environmentally, economically, socially, health and gender-wise) through mandatory common ethical rules, common education, common global law and new interest groups dictated political process, backed by a common military and police to enforce it. Of such are *pilot projects* the democratisation of Afghanistan or the European Arrest Warrant.³⁹

³⁷ Cf. de Zayas, Alfred: DEIOOrder. Expert Charter is World Constitution. *Statement at the 67th session for the General Assembly*. Third Committee Item 69, New York, 2 November 2012. and see also, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12732&LangID=E>] (12 January 2013).

³⁸ <http://www.turtlebayandbeyond.org> [2012/abortion/playing-human-rig..] (11 September 2012).

³⁹ <http://www.schreibfreiheit.eu> [2011/06/02/der-europaische-haftbefehl-offnet-die-ture-zur-christenverfo...] (25 October 2013) and Kuby: *op. cit.* 119-120. See also, <http://www.stonegateinstitute.org> [2734/criminalize-free-speech] (7 January 2012).

So far, an attempt was made to show how policy levels vertically and the relevant disciplines horizontally relate to each other and that they are interlinked. Then the study examined the phenomena of democratic deficit from an ideological and institutional point of view that accompanied the policy level shifts to bring about an arguably „more human security” in a „more human global society” for all, always beyond the nation-state concept.⁴⁰ This functionalist approach, it had been argued, presents itself holistically. The traditional constitutional, historic, religious values of the United Kingdom, Hungary, Russia or others seem to have no place in this, at least less than enough for self-determination. While degrading the old values and human rights principles to second class negligible local particulars – or even to dangers – they simultaneously create new universals. This is an obvious contradiction of the publically justified human rights terms because in theory all human rights are said to be interconnected and indivisible, however here we experience a new hierarchy of human rights.⁴¹ Accordingly, the *matrix of human rights, human development, and participatory group activism* preoccupied with an *outcome directed* western faith in *human welfare security* ideals. The substance instead of the procedure emphasis of the IOs (inter-governmental organizations) and NGOs is well expressed by the United Nations Research Institute for Social Development: „...the performance of many countries in promoting basic rights, public services and the well-being of citizens is inadequate. Many new democracies retain elements of authoritarian practices and seem unresponsive to voters’ interests. It is not enough for countries to be democratic: the substance or quality of their democracies is equally important.”⁴² (Italics added)

Now, the present paper would like to focus on the last remaining angle of analysis, namely, the geopolitical-international one, which will confirm the trends that we saw on the policy formulation processes so far. It will however validate those trends in a more strategic sense and with long term indications.

4. Governance with/through Multi-Levels

Governance topics became critical and urgent with the shift from the Economic Community and the Political Union to something more than a political, economic, monetary, fiscal, and – as some envision – social union. One can legitimately ask if this topic had been dealt with earlier, from the early 1990’s on, would the EU be in such dire straits today? Historically, however, the functionalist approach (of *David Mitrany*, *Ernst Haas* and others) to policies, which was the essence of the European Community’s (and later, the Union’s) expanding institutionalization, (economic, social, fiscal and monetary etc.) postponed and avoided the structural, governance, constitutional questions. This came to haunt the post-Maastricht European Union. Recognizing this and envisioning more than

⁴⁰ Rentoul, John: “*Right of Rebuttal*” against *Straßburg*? <http://blogs.independent.cn.uk> [2011/10/25/a-right-of-rebuttal-against-strasbourg/] (7 November 2011). See further, Hannan, Daniel: *We make up the law as we go along, admits Britain’s new Euro-judge*, <http://blogs.telegraph.co.uk> [news/danielhannan/100167991/we-make...] (12 September 2012) and <http://www.express.co.uk> [posts/view/318045/EU-plot-to-scrap-Britain] (11 September 2012).

⁴¹ Bork, Robert: *Slouching Towards Gomorrah*. Regen Books/Harper Collins, New York 1997. 3-13. and Kuby: *op. cit.* 83-98.

⁴² Cf. <http://www.unrisd.org> [80256B3C005BB128(httpProgrammeAreasForResearchHome) F1729 B 1683 ...] (28 September 2009).

one scenarios for the future, analysts cannot further postpone these areas of research questions. Notwithstanding the required damage control and the standing in the midst of the current (primarily EU and USA) crisis, the question is unavoidable; how will the New Europe and the *New World* look like by 2020-2050?

4.1. *Regional European Governance Level*

In the past, governance questions relating to the Council (Heads of State) were avoided or left unanswered. They have to be asked with no delay. *Can/should the Council have both executive and legislative powers? Or should the European Parliament have exclusive legislative authority?* If so (in either case): should the Council's heads of states, be restructured and become members of the EP – just as they are leading members in their national parliaments. Perhaps they should become leaders of MEP party blocs. Relative to the European Commission, the legitimate expectation is not just to be transparent and more in public, but re-structured to become (more) democratic. Hence, should Commissioners be elected by national or European citizens? Should commissioners be restructured become ministers like in a political cabinet? And, should they be elected, either by EP or European citizens? Relative to the constitutional aspects, perhaps the grounded questions were the followings: is the Lisbon Treaty a mere treaty or a treaty of/for a new European constitution? What is/should be the relationship between a European constitutional treaty and new national constitutions, like the Hungarian Constitution?⁴³ Is it necessary to demand uniformity and conformity in the EU? Or, highlight diversity and respect our rich national and European (cultural) heritage?

4.2. *Global and Regional Governance Dimension*

One has to be aware of the difference between the EU's agenda of integration and larger regional institutions like that of the OSCE agenda of integration. The two are (inter-)related, but the OSCE is wider – it involves North-American, Euro-Asian states. Understanding the EU inevitably includes understanding these larger regional institutional strategies and ideologies which are at the core of the institutional – ideological viewpoint. In this context it will be clearer that the “New Europe” is not about a united and prosperous Europe based on her cultural heritage including her constitutional and social traditions, but about the UN and a „New World” in other words the UN in Europe. The *Charter for a New Europe* (1990) explains this.⁴⁴ Under section 2.3., the *CSCE and the World* (C meant Conference prior to the renaming) one can read the following: “The destiny of our nations is linked that of all other nations. We support fully the United Nations and the enhancement of its role in promoting international peace, security and justice. We reaffirm our commitment to the principles and purposes of the United Nations as enshrined in the Charter and condemn all violations of these principles. We recognize the growing role of

⁴³ Lady Justice Arden: *op. cit.* <http://www.guardian.co.uk/law/2011/dec/14/lord-irvine-human-rights-law/print> (18 January 2012) and <http://turtlebayandbeyond.org> [2011/abortion/former-belgian-primeminister-annoyed-over-hun...] (30 April 2011).

⁴⁴ Cf. <http://www.hri.org/docs/Paris90.html> (12 November 2012). To the same effect – a necessarily institutionalized interpretation of human rights – also see the “Paris Principles” as UN standards for “effective National Human Rights Institutions” <http://fra.europa.eu/en/publication/2012/handbook-establishment-and-accreditation-national-human...> (20 October 2012).

the United Nations in world affairs and its increasing effectiveness, fostered by the improvement in relation among our States with satisfaction.

Aware of the dire needs of a great part of the world, we commit ourselves to solidarity with all other countries. Therefore, we issue a call from Paris today to all the nations of the world. We stand ready to join any and all States in common efforts to protect and advance the community of fundamental human values.”

Why is the UN invited to have a greater/enhanced presence (prominence) in the *peaceful* and *united* Europe? Is it a strategic move, aiming at leadership „*Light of the world?*” Out of the OSCE Charter for European Security, one can read the same strategic thrust in Art. 7.⁴⁵

Under Chapter VIII in the Charter of the United Nations, we reaffirm the OSCE as a regional arrangement, as a primary organization for the peaceful settlement of disputes within its region, and as a key instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation.

There is the link in future relations of the UN, European Union, and the OSCE, in the strategic and visionary sense. Operationalized thereby are instruments, people, timeframe and geography. That now there is a *brand new* perspective for a new world, with *new principles* in space and time, globally, with a program that will have to be carried out, is unmistakably clear. These strategic sentences do not talk about European unity, prosperity, culture, and cooperation but about an outside agenda. One can read the same *perception of the world* (perspective) and strategic understanding in the High-level Tripartite Meeting in Vienna (program) between the Council of Europe, United Nations Office at Geneva and the OSCE, held in Vienna on 14 June 2010.⁴⁶

If this is the case, it can legitimately be asked what regions the EU and OSCE are being integrated into? Do the EU and OSCE integrate into one Enlarged Euro-Asian union? If so, will the „New Europe” and the OSCE become regional dimensions of a new UN’s global governance? Here, one inevitably perceives the EU in the context of New Global Regional Relations. What is the real or long-term agenda of what citizens of the nations call the EU? Is it not (merely) a federal Europe of nation-states, but an integrated ‘New Europe’ of peoples and nations in the *New World/Global Order*? Or, to put it another way, one can envision the new EU/New OSCE’s New Europe as a Model of integration for Africa and the Americas – on how to succeed in their integration. Does empirical success not even have to take place to prove the feasibility of integration paradigms? Is the whole pattern just a strategic step and stage of an ideological utopian entity for a *New Europe/EU integration with African Union and the Organization of American States (OAS)* to become *regional dimensions of a fully integrated global order* by 2020, 2040 or 2050?

In connection with the reform and restructuring of the NATO, a similar pattern of internal transformation can be traced to see a process of change in the role of military power from international defence and security to a global police power. „We cannot build a safer world unless we take democratization, development and human rights seriously,” said *Kofi Annan* at the Munich Conference on Security Policy in 2005,⁴⁷ referring to what this paper earlier highlights as the new triangle under the aegis of „human security”. There is a

⁴⁵ Istanbul, November 1999. Art. 7. <http://www.osce.org/docs/english/1990-1999/summits/istachart99e.html> [11 November 2012].

⁴⁶ http://www.coe.int/t/der/docs/DER_Inf_2010_7_Tripartite_meeting-EN.pdf [2 November 2012].

⁴⁷ http://www.securityconference.de/konferenzen/rede.php?menu_2005=&menu_konferenze... [21 February 2005].

transformation taking place on two levels – European and regional. A shift in substance is effected on all levels of the *six P's* policy processes *from an Alliance for Collective Defence of nation-states to Common Defence of European nations*. Related questions are the followings. Should the NATO disappear – wither away with the progress of EU integration and, should defence rely on the European Forces (WEF)? Logically, taking the dynamics of the integration as a clue and pattern, in a *United Europe*, NATO should disappear. However, alternatively, in the larger „*commonistic global picture*“ the strategic next step for the NATO is to become a global peace making and peace building force around the globe for global human security for all societies. This, however, will not merely copy the *Clinton/Bush* schemes of the 1990's and the new Millennium's early peace building projects, (a Kosovo or an Iraq) but goes beyond it. In the *Obama* pattern, the NATO should become a global force [‘Salvation Army’] for human security what is attempted and pushed for in Afghanistan. Current NATO Secretary-General *Anders Fogh Rasmussen* stated that NATO must „reach its full potential as a pillar of global security.”⁴⁸ This perspective is not uncontroversial and has difficulties in it.⁴⁹ A further background question can be put forth as to whether what is the *substantial* (i.e. „gender and comprehensive security”⁵⁰) or *geographical* limit for these security developments. On whose security is the priority laid? Is the goal to maintain European and Western Unity? Will this not sound familiar for the developing nations (previously called the South, the Non-allied Nations or the Periphery) and for the new or recovered ‘*real-political Giants*’ like China, Russia, Iran, Turkey and others as „imposing a Neo-Western imperialism”?⁵¹ With the elucidation of critical links and questions, this study tried to bridge over and hope to have come closer to different and alternative perspectives of international law, international relations and governance goals. Continuing from the third analytical vantage ground in this paper, namely, the „*geopolitical, inter-national or real-political*” viewpoint the following can be added.

4.3. International Law

International law traditionally deals with legal issues (including disputes) between states. New international (or world) law would deal with disputes between (and within) states, it would apply to people and corporations simultaneously.⁵² Having stated that, the question could be asked: what concept or ideal would apply/prevail at the global regional governance

⁴⁸ *Afghan priority for new NATO head*. BBC. [http://news.bbc.co.uk \[2/hi/europe/8181303.stm\]](http://news.bbc.co.uk [2/hi/europe/8181303.stm]) (17 July 2010).

⁴⁹ At least from *George Friedman's* analysis entitled “*NATO Decline and the End of Western Unity*”, one can get that sense of qualitative change. See particularly in detail, [http://www.realclearworld.com \[articles/2013/05/07/nato_decline_and_the_end_of_western_unity_1051404.html\]](http://www.realclearworld.com [articles/2013/05/07/nato_decline_and_the_end_of_western_unity_1051404.html]) (29 May 2013). It is also republished with permission of Stratford under the title: *Geopolitical Journey: Nostalgia for NATO*.

⁵⁰ Cf. High-Level Tripartite Meeting, *op. cit.*

⁵¹ *Russia Eyes Joint Drive with Turkey on Rights*. [http://www.hudson-ny.org \[2665/russia-eyes-joint-drive-with-turkey-on-rights\]](http://www.hudson-ny.org [2665/russia-eyes-joint-drive-with-turkey-on-rights]) (19 December 2011).

⁵² Secretary General: *Responsibility to Protect Faces Urgent Test 'Here and Now'*, SG/SM/14490 GA/11271, 5 September 2012, [http://www.un.org \[News/Press/docs/2012/sgsm14490.doc.htm\]](http://www.un.org [News/Press/docs/2012/sgsm14490.doc.htm]) (19 September 2012). See also, Roberts, James M. – Markley, Andrew W.: Why the US should oppose international corporate social responsibility. *The Heritage Foundation Backgrounder*, No. 2685, May 4, 2012. and Knox, John H.: *The Ruggie Rules: Applying Human Rights Law to Corporations*, August 16, 2011 draft, <http://ssrn.com/abstract=1916664> (5 June 2012).

level? Would it be traditional international law and an international customary (world) law naturally gradually evolving out of it *or* – and this is the salient point throughout this paper – global human rights law – which operationalizes meta-governance perspectives and visions on (global) society? The latter is often instrumentalized as *minority laws* of different kinds (environmental, refugee, gender, health etc.).⁵³ In the process it gains supremacy by the consent of elites (politics, media, international organizations and NGOs over traditional international law – whether it is public or private international law).⁵⁴ Out of that first follows an escalation of the human rights dimension because of the crisis of western welfare states (central banking and artificial growth plus poverty). It apparently cannot be maintained in the present form any longer. The second problem is the perceived anarchism of postmodern subjectivism: economic, cultural-ethical, psychological, environmental, legal etc. In the light of this and in the light of the tendencies and measures to deal with these realities, it can be stated that there is a *consensus on the need for human rights as justification of a meta-governance/ethical vision* for justice, equality, equity, freedom and responsibility. The crux of the matter is as to whether the spectrum of all this should be only regional (national, local, and supranational) or global?

On the other hand, there is also a conflict over the content of rights. The context; history and evolution of human rights in Poland, Hungary, United Kingdom, France or Germany, can be (and is) different. Pluralism, checks and balances, democracy, equality, freedom, historically, culturally, philosophically (theologically) developed and can differ. Academic elites mainly teach from non-static, synthetic and „evolutionary” – categorizing it „process philosophy” presuppositions (since the 1860s on in Western higher education) by the present paper.⁵⁵ In other words in a sense we all became Hegelians. Its application in legal studies „sociological law” (from the 1890s on), came to be known under different names, *legal realism*, *critical legal studies*, *communitarian law*, *public policy*, etc. but for the most part, not the *classical positivist approach* or the *laws of nature/natural law* approach with their institutional product, *the liberal democratic nation-state*.⁵⁶

Hence, law as a discipline and the rule of law as principles and methodology came to be *time and circumstances bound (relative), open-ended, sociological balancing of interests and less and less historical or precedential*. Judges play more the role of social scientists and not that much the role of crystallizing historic precedence and its message and principles – as renown legal scholars of different legal traditions – including the positivist supreme court nominee *Robert*

⁵³ *Redefining Health: Center for Reproductive Rights and Anand Grover working together*. <http://turtlebayandbeyond.org> [2011/abortion/redifining-health-crr-and-anand-grover-working-t...] (11 November 2011). Cf. further, <http://www.acc.hudson.org> [index.cfm?fuseaction=publication_details&id=6205] (13 May 2010) and *Penalising women who wear the burqa does not liberate them*, <http://commisioner.cws.coe.int> [tiki-print_blog_post.php?postId=157] (5 August 2011) and Kuby: *op. cit.* Rivers, Julian: Three principles for Christian citizens. *Jubilee Centre*, Volume 18 (March 2009) No. 1. <http://www.jubilee-centre.org/document.php?id=297> (21 April 2010).

⁵⁴ EU HR, <http://europa.eu> [pol/rights/index_en.htm] (10 November 2012). Of special interest are the sections on “universal and indivisible,” “fighting discrimination,” “a global force for human rights”. Cf. for critic of that Sumption: *op. cit.*, Judge: *op. cit.*, Bork: *Coercing...* and Pinto-Duschinsky: *op. cit.*

⁵⁵ Martin, Glenn R.: *Prevailing Worldviews of Western Society Since 1500*. Triangle Publ., Marion, Indiana, 2006. Especially important in this respect is for establishing the link between philosophy, policy and law Chapter 12 “Institutional Structure and Procedure of Process Philosophy”.

⁵⁶ Fonte: *op. cit.* and Johnson, Philip E.: *op. cit.* 179-185. See further, Berman, Harold J.: *Faith And Order: The Reconciliation of Law and Religion*, Scholars Press, Emery University 1993. 302-304. and Unger, Roberto M.: *Law in Modern Society, a Criticism of Social Theory*. The Free Press, New York, 1976. 3-6.

Bork, the historicist Harold Berman of Emory University, and Harvard University educated natural law scholar Philip Johnson – affirm. Activist judges do so in spite of written provisions in a treaty to the contrary.⁵⁷ That explains parts of the conflict on the content of Human Rights in Europe, it casts more light on the EU's disputes with Poland, Hungary, United Kingdom, Czech Republic, Lithuania or Russia. In these countries *history still plays a greater role in understanding the rather more permanent principles* on equity, liberty, equality, etc. and the judgements following from this fact, especially with regard to the nation state's competencies to set norms for its citizens.

In revisiting the concrete European and national/international levels relative to international law too, one holds up the chain of application and implementation model of the „six P's model” for this vantage point also. This means one moves:

- 1) From Perspective (s) to Principles
 - 2) From Principles to Programs
 - 3) From Programs to Policy
 - 4) From *Policy* to *Process* (legislative, executive, judicial,
- they are also regionally and internationally interlinked)

5) From *Process* to *Praxis* (efficiency, feedback, adjustment, restructuring)

Other connected dimension to deal with in the policy making process will be the sequencing of priorities, proper nature of compromise, strategy and tactics-timing. As a thesis can be stated that due to different historic development and experiences, conflicts arise relative to international law in the material and procedural realms on all the above levels. Hence, the customary and treaty background of (historical) international law (material and procedural), including the UN-system today, cannot be regenerated so easily in sociological categories of a „new „global” law for „human security” on the basis of prioritized „common needs”. The danger of this would be the ideological interpretation of “needs”. What is the reference for needs can be critically asked. A „danger of reductionism” in the materialistically determined „common needs” agenda of „communism” is real and the globalisation of it is detrimental, it is the violation of the human spirit which is not only material, but also relational and spiritual. For human relationships and for the needs of the human spirit to be defined and nurtured – individually and in groups – the answers should be sought not only in the 19th and 20th century naturalism, neither in its Marxist egalitarian, nor in its pantheistic (called *romantic* in the West) forms.⁵⁸ The dangers of a doctrinal monopoly in the place of western traditional pluralism of worldviews, tolerance and institutions are many folds. Here, it will only be suffice to mention two. Legal procedurally speaking, this naturalist „commonist”, open-ended (spaceship earth), evolutionary methodology has its current temporary “needs” focus. If this remains the rule, the dominant doctrine will *not only complete* but inevitably *replace* classical international law. Secondly, how do we derive from *current needs* „universal human rights”? Whenever that nevertheless publically and democratically (instead of elitistically or secretly) attempted, the resulting discussion and debate of truly global standards on human rights can facilitate a

⁵⁷ Lord Sumption: *op. cit.* and Bork: *Coercing*...106-110.

⁵⁸ Gray, John: *Die Geburt al-Qaidas aus dem Geist der Moderne* [Al Qaeda and What It Means to be Modern]. Kunstman, München, 2003. 40-47.

more consent oriented theory and praxis, independently of the degree of finality of the conclusions.⁵⁹ That is one reason why it was beneficial for the international community that Russia pushed through a resolution in the UN Human Rights Council (HRC) in 2012 on family and traditional values as essential and indelible components of international human rights. It expressed a new tendency not only in geopolitical terms but also for a preference of developing UN law on the basis of the classical triangle of international cooperation, democratic procedure and classical human rights principles. The advantage of this is that as a culture or cultures, we cannot suddenly experience the old principles and values *superseded and subsumed under newly created principles*. We only experience a *complementary role* of the new dimensions, principles and values without their triumphing suppression of the others. This way the UN can be what it was envisioned for namely, a forum and organisation of *voluntarily United Nations and not fundamentally and merely united by political elites for global levelling and arbitrary entitlement for interest groups*. The German language captures this difference in a succinct way through the remarkable differentiation between the „vereinten“ „Nationen“ and the undemocratically sounding – carried out by means of elite manipulation – „vereinigten“ „Nationen“.

5. Conclusion

The critic of Hungary and others from supranational levels on human rights violations relative to the *division of branches of government, constitutional court review* of certain government decisions, *constitutionality of certain laws* including “basic laws” right under, next (or equal?) to their constitution, can be a double edged sword that *if also applied to the European Union structures* (Founding Treaties, Lisbon Treaty etc.) – as they should be –, will intensify the *questions on truly democratic reforms and processes in the EU*. This adjustment process in the long run can potentially change the communication and procedural environment giving room not just to a sort of self appointed NGO-elite (which is a sort of „insider trading”)⁶⁰ but to more balanced participation in the redistribution of European Union or national public funds.⁶¹ Many former communists (and or their family members) in Eastern Europe established their „private/public” partnership, association or NGO through public funds with an opportunistic „insider” approach to their „free societal” pluralism. Insider trading in the financial institutions is exposed and even criminally sanctioned – at least since the 2008 crisis of the world economy. However insider trading of another sort through big NGOs, big governments (national and supranational), central banking and subsidized big businesses at the expense of public funds for purposes that have no democratically legitimized mandates are looked over and rolled further in the name of human rights governance and by special interest defined „democratic values”.

⁵⁹ Cf. *Traditional Values Resolution Passes UN Council*, [http://www.wunrn.com \[news2012/09_12/09_24/092412_traditional.html\]](http://www.wunrn.com [news2012/09_12/09_24/092412_traditional.html]) (11 July 2013) and Ruse, Austin: *Following the Russians?* [http://www.thecatholicthing.org \[columns/2012/following-the-russians/print.html\]](http://www.thecatholicthing.org [columns/2012/following-the-russians/print.html]) (16 November 2012). Russia pushed through this resolution in the HRC on family and traditional values *as essential components of universal international human rights* (results of the vote taken were, pro resolution: 25, against: 15, abstained: 7).

⁶⁰ Bhagvati: *op. cit.* Chapter 4, especially the pages 76-77. and 174-178.

⁶¹ *ibid.*

With more clear and democratic structure processes and constitutional limits for the EU – which presupposes a European Union that accepts more democracy and new reforms – there will be less repercussions for current deficits in democracy and subsidiarity.

In other words, the problems around *competencies and accountability (and not only transparency) in the EU* are similar to the constitutionality questions directed at Hungary on (for example) the Fundamental Laws that in effect supposedly and arguably became parts of the new constitution of (2011).⁶² Regulative (administrative) dimension of the EU (instead of legislative processes) – like *standards, recommendations, directives, orders, or monitoring mechanisms* etc. – *that is governance* – with their insufficiently democratic character and new bureaucratic / ministrative functions and capacities – well warrant a comparison to Hungary's regulation and arguable „infringing” on the boundaries of pluralistic institutions in the name of the „public good”. For Hungary this can be the case just as much because of her communist historic context that she still attempts to leave institutionally behind, but also because of the empirically measured dimensions of corruption – in the field of public-private privileges and oligarchic monopolies (in the economy, media, bureaucracy including high public offices) – are so pervasive. However, at the same time in the EU, the limited single mandate („*Einzelermächtigung*”) or the interpretation of subsidiarity clauses, or “simplified versions of procedures” (decision-making in the Council etc.) in initiating open ended – originally not warranted – policies in the EU's founding treaties, the so-called *Flexibility Clause* in the Treaty about the Procedures of the EU, are reflections of the same legal questions but on higher levels. Legal and policy academics, international relations and social science experts have a duty to raise, discuss or partly even answer *critically directed questions also at the supranational institutions and not just at the nation states*. To this effect see the analyses and recommendations during the British presidency of the Council of Europe (2012) in the aftermath of the XIV Protocol to the ECHR and the Interlaken Declaration.⁶³

Solution in the current human rights regime dilemma could be the thorough academic differentiation of the truly interrelated and interlinked dimensions in international relations and human rights from those that are often undifferentiated and designated far too fast as *interdependent* and *indivisible* by social activists and policy makers in the egalitarian mold of the last century. Fruitful development of international law to a kind of world law can, at the same time, only take place, if the constitutional boundaries are respected, traditional values tolerated and not replaced commonistically under the „urgency education” of world disaster scenarios be it in the name of environment, discrimination, terrorism or immigration. We should continue to retain a careful distinction for the role of governments between life spheres to be *protected* and those to be *promoted*, without falling into the trap of social engineering after the failed century of socialism and unsustainable „*welfareism*” that is still in parts ongoing. Instead of a new postmodern *democratism* (on the place of political democracy) – this is to say instead of absolutizing sub-cultural group collectivism and their demands – we could again principally discern the areas of societal life for unhampered cultivation (productive use), for care (charity for the poor), and conservation of a „healthy” environment. This last aspect is especially needed also for the human spirit which transcends material needs. It is too valuable to be derived merely from the social and material environment around us in the mold of late 19th century process philosophy with

⁶² Varga, András Zs.: Beyond the Rule of Law. *Pázmány Law Working Papers*, 2012/44, <http://www.plwp.jak.ppke.hu/>.

⁶³ Cf. Arden: *op. cit.* and Pinto-Dushinsky: *op. cit.*

her since tested and found failed ideological determinisms (materialism, relativism, progressivism and scientism).

The answers to these dimensions in the context of a „new federalism” on a continental level in Europe have a high priority because of the thrust of the current governance policies are not encouraging. This paper, nevertheless also attempted to look further, beyond the European dimensions – to other regions and continents – in the context of the new „commonistic” global policy agenda formulations. These perspectives for the analyst belong together, because the nature and the praxis of currently dominant perspectives on multilevel constitutions, laws, and policies have the institutionalization of an administrative governance system as their aim. Because of its „communistic” nature, such will only repeat the unsuccessful policies of the past but for the first time in the history of the world on a global scale and will only shift the arbitrarily defined „reductionist” human problems to the global level without *checks and balances*. In this case humanity will not only be *reduced* as an object of ruling elites but also *seduced* in the name of human security and human rights to a new universal religion. It will be holistic and cosmic in nature but definitely not self-governing, pluralistic, and democratic.