Human Rights College Tour

**Can Human Rights change the world or do human rights need to be changed?**

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NB. This lecture mainly focuses on civil and political rights, as laid down in the ECHR and interpreted by the ECourtHR.

1. History: even a long time ago fundamental rights, basis rights, constitutional rights, human rights: at national level laid down in Constitutions, Basic Laws (compare French Declaration, US Constitution). However: not everybody could benefit (only tax-payers, no women, no slaves etc).
2. History: after World War 2: Universal Declaration (1948); reference to Four Freedoms: freedom of expression, freedom of religion, freedom from fear, freedom from want. Non binding instrument (common standard of achievement, incitement to take progressive measures at regional and national level). As a result: ICCPR (1966), ICESC (1966), plus all kinds of specialized international conventions, resolutions, recommendations: right of self determination, rights of indigenous peoples, prevention of discrimination, rights of women, rights of the child, rights of older persons, rights of persons with disabilities, marriage, right to health, right to work and to fair conditions of employment, freedom of association, slavery, rights of migrants, nationality, war crimes, humanitarian law etc. When a State ratifies a HR treaty it assumes obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.
3. History: European level. After the Universal Declaration (1948): ECHR (1950) and other European regional instruments (European Social Charter (1961, revised 1996). Plus CPT, ECRI, Minorities; plus resolutions and recommendations.
4. Only ECHR: Supranational Court. Other treaties: self report system, or other control mechanism. System ECHR: it should be done at the national level (subsidiarity): Art. 1 (obligation to respect human rights), 13 (right to an effective national remedy), 35 (need to exhaust domestic remedies), 46 (binding force and execution of judgments). Execution: supervised by Committee of Ministers Council of Europe. Brighton Declaration: The full implementation of the Convention at national level requires States Parties to take effective measures to prevent violations. All laws and policies should be formulated, and all State officials should discharge their responsibilities, in a way that gives full effect to the Convention. States Parties must also provide means by which remedies may be sought for alleged violations of the Convention. National courts and tribunals should take into account the Convention and the case law of the Court. Collectively, these measures should reduce the number of violations of the Convention. They would also reduce the number of well-founded applications presented to the Court, thereby helping to ease its workload. As far as the execution is concerned: Brighton Declaration: Each State Party has undertaken to abide by the final judgments of the Court in any case to which they are a party. Through its supervision, the Committee of Ministers ensures that proper effect is given to the judgments of the Court, including by the implementation of general measures to resolve wider systemic issues. The Committee of Ministers must therefore effectively and fairly consider whether the measures taken by a State Party have resolved a violation. The Committee of Ministers should be able to take effective measures in respect of a State Party that fails to comply with its obligations under Article 46 of the Convention. The Committee of Ministers should pay particular attention to violations disclosing a systemic issue at national level, and should ensure that States Parties quickly and effectively implement pilot judgments. However, history has until now shown that the Committee of Ministers does not push to the very end, to ensure that a proper execution is done. Similarly: in recent decades almost no inter-State complaints. See statistics: 95% inadmissible, still many judgments in which violation has been found.
5. Did HR-protection succeed? Four Freedoms??? Freedom from fear, freedom from want (right to housing, food, basic needs, work)??? At world level: no, just read the papers. Even Security Council is unfit/unwilling to stop human rights violations at the national levels. There does not exist an international HR-police. Positive development: specialized international criminal courts and the ICC. ***Positive: one will never know what would have happened if no HR Declaration and the following treaties and texts at World or Regional level would have been adopted. At least now those who violate human rights know that in the end they can be held responsible.***
6. Did HR-protection succeed? At European Level? *NB ECHR is considered to be the world’s most successful HR-protection system. However, it only deals with the rights laid down in the ECHR and not with most economic, social and cultural rights*. See judgment in case Airey v. Ireland (1979): The Court is aware that the further realisation of social and economic rights is largely dependent on the situation - notably financial - reigning in the State in question. On the other hand, the Convention must be interpreted in the light of present-day conditions (above-mentioned Marckx judgment, p. 19, para. 41) and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals (see paragraph 24 above). Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention. ECHR most certainly has had a positive impact on HR situation in the member States. ECHR until collapse Soviet system only for Western States. Remember: East Germany (1953), Hungary (1956), Czechoslovakia (1968) and the dissolution of former Yugoslavia. Only the last event caused the international community to take military action in the region. Even in ‘Western Europe’ things could go wrong. Greek Colonel Regime just withdrew its membership of the Council of Europe (1969). Now: 47 States (all of Europe, except Belarus (and Vatican)). Execution of judgments: in general States sufficiently aware of need to quickly execute. Structural difficulty: non ‘peacetime’ cases. Four problem areas: Cyprus (1974) , Moldova/Transdnestria, Nagorno Karabakh (Armenia versus Azerbaijan) , Georgia-Russia (Abkhazia and Southern Ossetia). In all four cases: only a political solution will really work out.
7. Extra problem: times of economic crisis. Economic difficulties may have impact on the possibility of States to take necessary measures in order to prevent HR violations, to execute judgments of the Court, to prevent people from situations of poverty. Court has made it clear that insufficient resources will not normally justify failure to secure Convention rights and freedoms. However, the ‘right not to be poor’ is not included in the ECHR. The Court seems to accept that Art. 3 ECHR may in the end also have an impact on the positive obligation to provide the minimum requirements to stay alive. See judgment in case M.S.S. v. Belgium and Greece (2011): 263.  In the light of the above and (..)the Court considers that the Greek authorities have not had due regard to the applicant’s vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.
8. Extra problem (at least in Europe, but apparently the same happens at the moment in South America): tendency to ask more attention for national sovereignty. Reluctance to accept supranational control.
9. What trends in the coming 10 years? Difficult to say. Much depends on the economic situation, including the environmental/climate situation; on the real political will to prevent HR violations, on the real political will to combat corruption; on the real political will plus the possibility to effectively control international companies and on a more fair division of property. There might be a growing tendency to ask the Security Council to agree on measures in regions where the official Government is constantly violating core human rights or is unable to effectively combat others violating core human rights.
10. HR doctrine outdated? No, the whole HR range (civil and political, plus economic, social and cultural rights) still corner stone. (compare: Geneva-Conventions of 1949 and their additional Protocols laid down humanitarian law. Still, they could in itself not prevent new wars or violations of humanitarian law. Still: the provisions are at least term of reference. Those who violate know what risk they take and that in the end they can be held responsible. ICC, Yugoslav Tribunal, Sierra Leone, Rwanda, Lebanon). Also: cornerstone for policy by Ministry of Foreign Affairs: need for development aid.
11. Strategies? NGO’s and press as a public watchdog. Political action at national levels. In the end: bringing those responsible for HR violations to justice/mobilization of shame. Distinction CP and ESC barrier? Not always real distinction. Still, ESC has so much more financial consequences, that it would not have worked out to combine them right from the beginning.
12. Make existing HR work better? Yes. Do not break down existing HR doctrine and develop new HR. It might well be that States are no longer prepared to accept the international commitments and to accept the international control mechanisms.