

Chapter 3 | Lesson 3

Human Rights

Historical Development

- originally – **nationalism**
- modern ‘human rights law’, only **post 1945**
- **UN Charter**
 - general obligations requiring UN Member States to respect human rights
 - creation of a Human Rights Commission
- Numerous **UN international instruments**
 - Universal Declaration of Human Rights
 - Genocide Convention 1948
 - Convention on the Political Rights of Women 1952
 - Standard Minimum Rules for the Treatment of Prisoners 1957
 - Convention on the Elimination of All Forms of Racial Discrimination 1965
 - International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights in 1966
- European Convention on Human Rights
- Inter-American Commission on Human Rights in 1960
- American Convention on Human Rights in 1978

Sources of Human Rights

- **variety** of sources; **many** kinds of **materials**, both **international** and **national**
- over twenty important multilateral treaties
- legally binding obligations for the parties (states)
- **enforcement different from treaty to treaty**
 - ECHR: institutions of their own (European Court of Human Rights)
 - person alleging a violation of his/her human rights under the ECHR first has to litigate in the national court system;
 - he/she will eg have to call upon the German Constitutional Court (BVerfG) as the last instance in the national court system before he/she can appeal to the ECtHR
 - others: complaints filed with the appropriate political or juridical institutions by states against states
 - some complaint systems also include human rights organisations as complainants.

Sources of Human Rights

- **Other examples:**
- **UN Charter**
 - binding upon almost every country in the World
 - various UN sponsored human rights conventions (Int'l Covenants of Civil and Political Rights, Economic, Social, Cultural Rights, Convention on Racial Discrimination etc).
- not legally binding 'other sources' (**'soft law'**)
- **Universal Declaration of Human Rights 1948**
- international declarations, resolutions, and recommendations regarding international human rights adopted by the UN or other int'l organizations or conferences
- establish broadly recognized **standards** invoked in connection with human rights
- **moral authority**
- standards could **develop into customary public int'l law**, then legally binding

Sources of Human Rights I ‘Soft Law’

- Other examples:
 - 1975 Final Act of the Conference on Security and Cooperation in Europe (**Helsinki Accord**)
 - UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
 - UN Declaration on the **Rights of the Child**
 - Standard Minimum Rules for the **Treatment of Prisoners**

Sources of Human Rights I National Layer

- **national statutes** and Constitutions – fundamental rights
 - note: **sometimes limited to citizens**
 - **citizens’ rights do not bind the state** with respect to its treatment of foreigners
 - strong tendency in interpretation of Austrian fundamental to open these fundamental rights, that were formerly considered rights of citizens only, to non-nationals of Austria
- **Jurisdiction by national and international institutions**
 - Example: European Court of Human Rights in Strasbourg

Enforcement of Human Rights

- **key problem: enforcement of human rights**
 - example: **ECHR** before the institutions in Strasbourg (ECtHR)
 - main effect of human rights treaties: reduction of the sovereign powers of the Member States
 - ECtHR reluctant to give the human rights a wider scope and meaning than a national court in the same situation
 - tendency to be rather conservative in the interpretation of human rights
 - Treaties other than the ECHR:
 - generally, much less effective enforcement system
 - example: **Inter-American Court of Human Rights**
 - consent to jurisdiction by a few states
 - generally open only to states as complainants and not to individuals
 - **no enforcement – heavily rely on the voluntary compliance by states**

Enforcement of Human Rights

- possible actions:
 - within the national systems of the state concerned (direct application of the Member State itself)
 - by other states in the course of international relations (one state trying to directly exercise its influence on the violating state)
 - by international bodies (institutions like int'l courts, commissions or committees created by the human rights convention to deal with complaints by states, human rights organizations and/or individuals)