

Seminar 7: Human Rights, Business and Development in the Globalised World

I. Human rights as universal values and binding law

1) The universality of human rights

- see for more details special material from the course Human Rights and Globalization

a) The Western origin and the global spread of the human rights idea

- a concept rooting in Western philosophy and first implemented in Western countries
- the global spread of the concept after the end of the Second World War
 - 1945: human rights recognised as binding universal values in art. 1, 55 Charter of the United Nations
 - 1948: Universal Declaration of Human Rights (UDHR)
 - 1966: International Covenants on Civil and Political Rights (ICCPR) and Economic, Cultural and Social Rights (ICESCR)
 - since 1945: spread of the human rights idea predominantly in the West
 - since 1989: spread of the human rights idea in the former East after the decline of communism
- growing support of the idea in the era of globalisation
 - in almost all developing and newly industrialised countries, also in the Global South
 - 1993: World Conference on Human Rights in Vienna with 170 states
 - 2012: ASEAN Human Rights Declaration (AHRD)

b) The universal claim of the human rights idea

- a change-orientated concept
 - aiming to *overcome*, *not preserve* the traditional customs and values in the countries
- a concept unavoidably colliding with rigid conservative thinking
 - in *all* cultures and civilisations in almost all countries
- a concept with universal claim for all human communities
 - in all countries, *regardless* of their civilisation, culture, religion and ideology

c) Historical challenges to the human rights idea

- denial by totalitarian ideologies
- rejection for the time being by historical relativism
- rejection, dilution or sabotage by *cultural relativism*
 - esp. the "*Asian values*" doctrine (LEE KUAN YEW, Bangkok Declaration 1993)

d) The grown global consensus: Human rights are universal but their design and balancing can vary in detail

- the UDHR as global expression of universal values of mankind
- protection of an absolute minimum standard of essential human rights by ius cogens public international law as inherent limit of sovereignty
- world-wide commitment to global legal minimum standards in global human rights treaties (ICCPR, ICESCR, CEDAW, CRC, ICERD, CAT etc.)
- geo-regional commitment to higher or additional regional minimum standards in geo-regional human rights treaties (ECHR, ACHR, ACHPR)
- nevertheless freedom of the sovereign state to define its own h.r. regime
 - also in times of globalisation - as long as the international minimum standards are met...

2) Human rights as binding law

- see for more details special material from the course International Human Rights Law
- not merely political principles, but binding law that a lawyer can work with
 - called *human rights* (as political-philosophical concept and in human rights treaties) and *fundamental rights* (when anchored as legal positions in constitutions and laws)

- directly applicable legal norms that address to all public institutions
 - *all law must be interpreted "in the light of"* (in conformity with) them
 - effective *enforcement* is a *primary mission of the courts* but can be supported by special institutions
 - an elaborate *dogmatic structure* makes freedom rights operational:
 - a. scope/sphere of protection (Is the right concerned?)
 - b. encroachment/interference (Is the right affected?)
 - c. legality of the encroachment (Is it justified by the right's limits?)
 - in particular: Are the "limits of limits" (notably the principle of proportionality) respected?
- directly binding only on public institutions, not private persons, but must be *taken into due account* by the legislator when making law and the courts when interpreting and applying it (→ *indirect horizontal effect*)
- state must not only respect them but *also protect* them against private encroachments
 - doctrine of *positive obligations* (European Court of Human Rights) resp. *duties of protection* (German Federal Constitutional Court)

II. The impact of effective human rights protection on development

- A country's development benefits in a variety of ways from effective human rights protection:
 1. *greater political stability* through greater trust in the state and its institutions
 2. *reduced social tensions* through rational, structured and transparent conflict-resolution mechanisms for social conflicts
 - government institutions can focus more on development than on crisis management
 - this allows them to develop and implement more effective long-term strategies
 3. *greater investment security*
 - which attracts domestic and foreign investors
 4. *higher productivity* in numerous sectors, thanks to a healthier, more motivated, more focused and, thus, more productive workforce, and less labour conflicts and strikes
 - makes the country more attractive to responsible investors
 5. *greater social dynamism* and *stronger economic growth* resulting from the *empowerment of indigenous communities* and *women's empowerment*
 6. a more open society, enabling *greater creativity* and a *stronger spirit of innovation*
- Since some effects will only become apparent in the medium or long term, effective human rights protection is particularly important for sustainable, long-term development.

III. Globalisation and human rights in developing countries

1) Globalisation as a chance for strengthening human rights

- via the country's development, the promotion and stabilisation of the economy, the rising living standards and the better funding for public institutions and services
- via the education of highly qualified human rights experts within the framework of intern. political, legal and scientific cooperation
- as a consequence of the deepening cross-cultural dialogue fueled by the intensifying professional, scientific, cultural and social exchange
- as a consequence of the fact that in the globalised world the good reputation of a country with regard to universal ethics can play an important role - even for business

2) Special human rights problems caused by (economic) globalisation

- some problems have already been discussed and addressed in recent years
 - however, the World Trade Organisation has long ignored them and is still criticised for focusing lopsidedly on free trade (→ *human rights blindness of the WTO*)
- an international race to the bottom with regard to labour standards (→ social rights)
 - triggered by the strong global competition, which enables "global players" to exert pressure on the governments in both, the developed and developing countries, to create "investor-friendly" conditions

- rise of extreme exploitation such as keeping workers in slavery-like conditions
 - see, for example, the Foxconn case in the 2010s in China
- rise of exploitation of children as labour force (in violation of children's rights)
- rise of human trafficking (in violation of workers's, women's and children's rights)
- rise of violations of the rights of indigenous peoples
 - e.g. by mining or slash-and-burn land clearance (destruction of habitats, displacement), e.g. for the palm oil industry
- violations of local neighbours' rights by/in favour of foreign/exporting companies
 - illegal land expropriation, abuses by security forces, health damages by pollution etc.

IV. International business and human rights in developing countries

- see for more details special material from the course Human Rights and Globalization

1) The traditional focus of human rights law on public institutions

- Private persons are not directly bound to human and fund. rights (no direct horizontal effect).
 - only few exceptions (e.g. the direct prohibitions of slavery, human trafficking, human organ trade in art. 5, 3 of the Charter of Fundamental Rights of the European Union)
- However, private persons, including enterprises, are bound indirectly, via the provisions of criminal, civil and admin. law (*indirect horizontal effect*). If they encroach on the rights of others, the state must intervene to protect the victim (→ *duties of protection*).

2) The impact of global enterprises on human rights

- can be strong, directly and indirectly, due to their enormous financial & economic power
 - threatening to cease activities can force a state to pass laws that serve their interests but violate h.r.
 - if they treat employees, neighbours, local customers with disregard for h.r., state may not intervene appropriately
 - state authorities may even violate h.r. themselves in order to attract or keep global investors
- topic problem: the abuse of power by global digital service providers
 - who encroach excessively on the privacy of their users
 - who facilitate attacks of their users on others by not blocking them

3) The responsibility of enterprises in the field of human rights

- given their potential impact, global enterprises have a *political & ethical responsibility*
 - to avoid negative effects of their activities on h.r.
 - to respect h.r. standards themselves (without intervention of the state)
 - to urge their partners in the host state to respect h.r. (even if it increases the costs) and
 - to refrain from taking any advantage from h.r. violations in the state
- awareness of this corporate responsibility has risen considerably in the last two decades

4) Approaches to implement the responsibility of enterprises in the field of human rights

a) Possible approaches

- to generally extend the direct horizontal effect of h.r. to private persons with special economic power
- to introduce more clauses with direct horizontal effect into human rights treaties
- to regulate h.r. responsibilities of transnational enterprises in a new h.r. treaty
- to promote the self-commitment of enterprises in binding agreements and certify "h.r.-aware enterprises"
- to prohibit the import of goods produced in violation of h.r.
- to introduce domestic criminal and civil liability of enterprises and their management for h.r. committed or fostered violations abroad

a) Current approaches

- raising awareness
 - see the UN FORUM ON BUSINESS AND HUMAN RIGHTS (since 2012)
 - see the BUSINESS AND HUMAN RIGHTS JOURNAL (Cambridge, since 2016)

- UNHRC resolution "Guiding Principles on Business and Human Rights" of 2011
 - political guidelines (not legally binding)
 - 31 principles stressing (a) the duty of protection of the state, (b) the corporate responsibility to respect human rights and (c) the need of the citizen to have access to effective judicial remedies and other state-based and also non-state-based grievance mechanisms
- self-commitment of transnational enterprises
 - by the development of own h.r. policies (→ compliance)
 - by binding agreements
 - see now the International Accord for Health and Safety in the Textile and Garment Industry of 2021, a binding agreement between global brands, retailers & trade unions to secure safe & healthy working conditions in the garment industry in Bangladesh, Pakistan and other countries, signed by more than 300 companies
- preparation of a UN Treaty on Business and Human Rights
 - by a UNHRC working group
 - in a lengthy process since 2015 (already 12th session in October 2026; third revised draft already from 2021)

V. In particular: legislation on corporate human rights due diligence in supply chains

1) Due diligence legislation in individual states

- laws in the developed countries that oblige domestic enterprises above a certain size (based on turnover and/or workforce)
 - to carefully screen their foreign suppliers for potential h.r. abuses in the foreign manufacturing process or even the whole value chain throughout all business relationships
 - and to document that internally and/or in annual reports
- a new development still in progress
 - first: sect. 54 UK Modern Slavery Act of 2015 on transparency in the supply chain
 - requires domestic businesses to make annual statement on steps taken to prevent slavery & human trafficking in their supply chain
 - other examples, with slightly different approaches, in France (2017), Australia (2018), Netherlands (2019), Norway (2021), Switzerland (2020) and Germany (2021)
- due diligence legislation is expected to be softened in EU member states after EU has regulated due diligence in a directive of 2024 but then softened the directive in 2025

2) Due diligence legislation of the European Union

- a) **The Corporate Sustainability Due Diligence Directive (CSDDD) of 2024, as amended in 2025** (Directive 2024/1760)
 - due diligence obligations of companies with more than 5.000 employees and annual turnover of more than 1.5 billion € with regard to actual & potential adverse impacts of their operations on h.r. or the environment
 - companies must identify and address actual and potential adverse impacts in their own operations, those of their subsidiaries and in their supply chains
 - they are supported by complaints and notification procedures, monitoring and public communications
 - legislation in the member states must ensure that companies take appropriate measures
 - the Directive was significantly watered down with an amendment of December 2025
 - scope of application reduced to companies of 5.000 instead of 1.000 employees with turnover of 1.5 billion instead of 450 million €
 - full application postponed to 2029
 - due diligence obligations watered down in substance (risk-based "scoping" approach instead of mapping the entire supply chain)
 - the Directive originally provided for a harmonised European regime of *civil liability of companies for damage caused* by intentional or negligent due diligence failure (see art. 29(1)); this has been abandoned

b) Flanking due diligence legislation

- EU Forced Labour Regulation (Regulation 2024/3015)
 - prohibits import and export of goods made with forced labour
- the EU Regulation on Deforestation-free Products (EUDR) of 2023 (Regulation 2023/1115)
 - prohibits not only import of products linked to deforestation but also of products resulting from breaches of local laws (e.g. laws protecting indigenous communities, adat law)
 - also softened in December 2025