

Human Rights Seminar Winter 2018/2019

We Have Come a Long Way The Universal Declaration of Human Rights at 70

On 10th December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. Although not a legally binding instrument *per se*, the Declaration, in the 70 years of its existence, has both inspired and provided the framework for numerous legally-binding human rights treaties. Prominent examples are the two UN Human Rights Covenants of 1966 as well as the various UN special conventions on universal human rights, such as the conventions on racism, the discrimination against women or torture. In legal terms, the world has thus made substantial progress in the sphere of human rights. Moreover, despite the fact that not all nations have ratified every human rights convention, the core of human rights is recognized as customary international law.

This legal situation stands in stark contrast to the human rights situation of many people in the world today. Lack of implementation of and compliance with human rights constitutes *the* major shortcoming of the international protection of human rights, even though the most important aspect of these rights in practice is their actual implementation, not their normative definition. In this context, the former UN Secretary-General Kofi Annan emphasized in his final speech before the UN Commission on Human Rights in 2005 that “the era of declaration is now giving way, as it should, to an era of implementation” [U.N. Secretary-General, Address to the UN Commission on Human Rights (7th April 2005), <http://www.un.org/sg/STATEMENTS/index.asp?nid=1388>].

For a long time, international law scholars have largely neglected the compliance record of States with international law as a field of research. In this regard, Louis Henkin’s famous dictum of 1968, stating that most States comply with most international law norms most of the time, often seemed to be sufficient. However, particularly in the area of human rights, both the UN and the States were aware of the need for special monitoring mechanisms. For this reason, all human rights treaties establish treaty bodies composed of independent experts. They help to ensure the implementation of human rights as well as encourage the States’ compliance with the treaties. Moreover, at a regional level, human rights courts have been installed that can even issue legally-binding judgements. In addition, the (former) UN Commission on Human Rights also developed several instruments, such as the institution of the Special Rapporteur. Most recently, today’s Human Rights Council developed the Universal Periodic Review.

At the occasion of the 70th anniversary of the Universal Declaration of Human Rights, we will together explore why, despite this range of compliance mechanisms, people all around the globe are still *de facto* without rights and why fundamental human rights are still not always adhered to.

A first mandatory meeting will take place on Monday, July 16th, 6.30 pm in room GER/054.

Compliance – Theoretical Foundations

- 1. Compliance Theories: Why do States Follow International Law?**
- 2. Compliance and International Human Rights Law: Does the Ratification of Human Rights Treaties Lead to Better Human Rights Compliance?**

General Human Rights Treaty Bodies

- 3. Human Rights Committee – The First Treaty Body?**
- 4. The Social and Economic Rights Committee – The Power of Subjective Rights?**

Specific Human Rights Treaty Bodies

- 5. The Committee on the Elimination of Discrimination against Women – The Influence of NGO Participation**
- 6. The Committee on the Rights of the Child – Does Size Matter?**
- 7. The Committee on the Rights of Persons with Disabilities – The Importance of National Human Rights Institutions**
- 8. The Committee on the Elimination of All Forms of Racial Discrimination – The Effects of the State Complaint Mechanism**
- 9. The Committee Against Torture – The Importance of Follow-up-Procedures**
- 10. The Subcommittee on Prevention of Torture – The Effects of Preventive Action**

Charter Based Mechanisms

- 11. The Human Rights Council – An Improvement to the Human Rights Commission?**
- 12. The Universal Periodic Review Mechanism – A Mechanism to Foster Compliance?**
- 13. The Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises – The Implementation of the “Protect, Respect, Remedy” Framework**
- 14. The Independent International Commission of Inquiry on the Syrian Arab Republic – A Futile Exercise?**
- 15. The Special Rapporteur on the Human Rights of Migrants – The Impact of Fact-Finding and Public Shaming**

Non UN Treaty Based Mechanisms

- 16. Inspections of the Organisation for the Prohibition of Chemical Weapons – The Importance of Fact Finding**
- 17. The International Committee of the Red Cross – Its Effect on Compliance with International Humanitarian Law**

Full Judicial Protection through International and Regional Courts

- 18. The European Court of Human Rights – Can there be too much Success?**
- 19. The Inter-American Court of Human Rights – Progressive but Ineffective?**
- 20. The Court of Justice of the European Union – A Human Rights Institution?**
- 21. The International Criminal Court – Justice vs. Peace**
- 22. The International Court of Justice – Its Contribution to Human Rights Compliance**

The National Level

- 23. The Role of National Human Rights Institutions in Fostering Compliance with Human Rights**
- 24. The Role of National Courts in Enforcing Human Rights – The Example of Germany**

List of possible (!!) guiding questions

a) Taking stock

- What has the institution achieved so far (to the benefit of the individual, but also in terms of compliance, progressive development of obligations, ...)?
- What were the initial expectations (objective of the treaty, preamble etc.)? How were they met? Can different stages of development in the history of the monitoring body be identified?

b) Actors

- How significant is interaction with other bodies/committees?
- What is the contribution of the various domestic institutions of the State Parties (esp. the executive, courts, parliaments, specific compliance structures)? What is the role of civil society?

c) Shortcomings/criticism

- Which topics are currently especially problematic?
- What are the general shortcomings of “your” institution (judging on the basis of the objective and purpose of the treaty, the mandate of the organ, ...)?
- What/who is responsible for these shortcomings (norms? States? The monitoring organ? ...)? Which role do the different legal cultures of the State Parties play?
- Which factors are responsible for the success/failure of “your” institution? Are there any specific lessons learned?
- Are there any particular compliance difficulties of individual states due to specificities of their domestic legal order and their legal culture? What is the significance of regional differences?
- Are there specific problems and risks of a “progressive development“ of State Parties’ obligations?

d) Outlook/prospects

- Which suggestions can be made to rectify these shortcomings in the future (strengthening of civil society, ...)?