

Lecture 3: Human rights in international economic relations

I. The economic globalization 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 a globalised world the good reputation of a country with regard to universal ethics (openness, human rights, protection of the environment etc.) can play an important role - even for business

II. Special human rights problems caused by the economic globalization (overview)

- an international race to the bottom in the area of labour standards (and, thus, social rights), triggered by the strong global competition which enables big global companies as "global players" to exert pressure on the governments in both, the developed and the 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' rights, women's rights 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)
- violations of the rights of local neighbours by or in favour of foreign or exporting companies (illegal expropriation of land, abuses by security forces, health damages by pollution etc.)

III. The respect for human rights as a possible precondition for accepting a state as partner in international trade and economic cooperation

1) Background

- in the world order of sovereign states, the states are free to decide with whom they will or will not enter into any kind of economic relation and whom they will or will not allow to join their multilateral economic agreements and organisations; there is no right of the individual state to be admitted
- if necessary, conflicting obligations under the WTO agreements or free trade agreements can be canceled by termination or withdrawal
- states and their associations are free to insist on a sound legal commitment to h.r. which may even include the submission under certain control mechanisms
- they are also free to restrict or cut economic ties with states disregarding universal h.r. standards; in serious cases, that may even be their expected reaction under the concept of *responsibility to protect* (→ lecture 3)

2) Human rights protection *in* and *via* trade and economic cooperation

- measures taking human rights into consideration in the shaping of economic relations can pursue two differently ambitious goals:

a) Prevention of globalization-related human rights violations

- precautions to prevent exploitation and abuse occurring in the globalization-triggered economic process itself (e.g. exploitative working conditions in the export-orientated industries, child labour, human trafficking, violation of indigenous rights for growing palm trees for palm oil)
- basic idea: free trade must not undermine h.r. and globalization must not lead to a deterioration of the h.r. situation
- a widely discussed approach

b) Encouragement of compliance with universal human rights standards in general

- e.g. by insisting on a minimum of effective h.r. legislation and enforcement as a general precondition of entering into closer economic relations
- e.g. by banning imports from countries in case of systematic serious h.r. violations (e.g. systematic torture, forced disappearance, total suppression of freedom of expression, severe discrimination of women or ethnic minorities or state-backed religious intolerance; example: economic sanctions against Taliban Afghanistan)
- basic idea: globalization must be used as a chance to strengthen human rights
- a rarely used approach vividly rejected by neo-liberals and authoritarian leaders

3) The human rights blindness of the World Trade Organization

- the WTO is criticised by academics, civil society and trade unions for focusing lopsidedly on free trade and ignoring the impact of trade liberalisation on labour standards and h.r.
- the text of the WTO agreements does not refer to h.r. at all
- in the practice of the WTO dispute settlement, h.r. play, if at all, a minor role
- CRITICS argue that in a globalised world, trade, economic growth, labour rights and h.r. are deeply intertwined and must all be taken into account
- DEFENDERS argue that trade restrictions purporting to ensure h.r. standards would in fact often be disguised protectionist measures preventing developing countries from developing
- it is discussed to *add a labour rights and human rights clause* to the WTO agreements, but the necessary consensus of all member states is unlikely - except, maybe, if a high number of them threaten to otherwise leave the WTO and replace it by something new

4) Options and instruments

a) Reform of the WTO (→ see above)

b) Requiring the ratification of the core global human rights treaties as a precondition for the conclusion of trade agreements

- usually not necessary anymore, since most states have ratified most of them
- however, with further development, the ratification of the optional protocols to these treaties on the control mechanism of individual complaint could be demanded

c) Human rights clauses in free trade agreements

- linking respect for h.r. and the access to the lucrative foreign market - an instrument with great potential, especially to strengthen h.r. in the newly industrialised countries
- an instrument not used in the past but nowadays used in bilateral trade agreements by the EU, the USA and Canada
 - the EU uses an "essential elements" clause on human rights, democratic principles and (often) rule of law in its framework agreements and free trade agreements with third countries that enables it to take appropriate measures and even suspend the agreement in case of serious breach under art. 60 of the Vienna Convention on the Law of Treaties, opening the path to dialogue and cooperation on h.r. issues; the clause does not set new standards but reaffirms the commitment of the parties to their obligations under intern. law
 - see, for example, art. 1(1) of the EU-Korea Framework agreement of 2010
 - the USA and Canada use clauses focusing more narrowly on specific rights (e.g. labour rights)

- so far, even the EU has never suspended trade preferences on the basis of such a clause but used the *clause as a legal basis to address human rights issues* with its partners in more constructive ways (without being stopped by the principle of non-interference...)
 - problem: the vagueness of the human rights clauses (→ when exactly is it violated?)
 - problem: how to achieve the integration of such a clause in agreements with economic super powers, such as China?
- d) Suspension of membership of countries with systematic h.r. violations in international financial transaction systems**
- in particular exclusion from SWIFT
- a serious step which can cripple the economy of a country, discussed for Russia after the attack on Ukraine
- e) Suspension of travel connections to places with systematic h.r. violations**
- a possible sanction to hinder human rights violating regimes from making money with tourism and intern. business
 - e.g. closure of land borders, suspension of flight and ferry connections, destination bans for domestic cruiseships, landing and overflight bans for aircrafts en route from/to such locations
- f) Domestic legislation on human rights due diligence** (see → lecture 5)
- obliging domestic enterprises to carefully screen their foreign suppliers for potential h.r. abuses in the foreign manufacturing process, or even to conduct h.r. due diligence throughout all business relationships in the value chain
 - examples in Britain, France, Netherlands, Australia, Norway, Switzerland and Germany; in preparation: a human rights due diligence directive of the European Union

IV. Further reading

- *Schutter, Olivier de*: International Human Rights Law. Cases, Materials and Commentary, 3rd edition 2019, p. 541 ff.
- *Zamfir, Ionel*: Human rights in EU trade agreements. The human rights clause and its application, European Parliamentary Research Service Briefing, 07.2019, [www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI\(2019\)637975_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf)
- *Joseph, Sarah*: Human Rights and International Economic Law, in: Marc Bungenberg; Christoph Herrmann; Markus Krajewski; Jörg Philipp Terhechte (editors), European Yearbook of International Economic Law 2016, p. 461 ff., https://doi.org/10.1007/978-3-319-29215-1_18
- *Joseph, Sarah*: Blame it on the WTO? A Human Rights Critique, 2011
- *Prickartz, Anne-Carlijn; Staudinger, Isabel*: Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements, Europe and the World: A law review 2019, <https://doi.org/10.14324/111.444.ewlj.2019.12>
- *Titiyevskaia, Jana; Zamfir, Ionel; Handeland, Cecilia*: WTO rules: Compatibility with human and labour rights, European Parliamentary Research Service Briefing, 03.2021, [www.europarl.europa.eu/RegData/etudes/BRIE/2021/689359/EPRS_BRI\(2021\)689359_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689359/EPRS_BRI(2021)689359_EN.pdf)