

1. HISTORY AND BACKGROUND

Early institutional efforts:

- Intermittent attempts throughout history to establish humanitarian limits in armed conflict – e.g. establishment of the International Committee of the Red Cross (ICRC), 1863.
- The origins of contemporary human rights discourse is in its earliest days intertwined with the development of the Common Law itself through instruments which you may already have heard of from legal history – such as the Magna Carta and 1689 Bill of Rights.
- The extent to which these instruments enshrine significant individual rights protections is highly questionable. But gradually, these developments did lead to progressive limitations being placed on notions of absolute Sovereign rule.
- In the Common Law tradition, increasing individual rights came to be enshrined in procedural protections such as trial by jury, although the notion of ‘individual rights’ in these days was far from comprehensive and universal. Note the divergent history of Continental legal systems in this period.
- **Some efforts to pursue international accountability after the first world war:** e.g. Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars, Washington DC: Carnegie Endowment for International Peace, 1914 (*set out to review the tragic events of the Balkan Wars of 1912 and 1913*)
- Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Oxford: Clarendon Press, 1919. (*contains conditions of peace, penalties, details of special tribunals to try offenders, responsibility of authors of war, degree of responsibility of members of enemy forces*)

International Military Tribunal (Nuremberg):

- **Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis**, and Establishing the Charter of the International Military Tribunal (IMT) (adopted 8 August 1945), Annex, (1951) 82 UNTS 279 (and similar Statute establishing the International Military Tribunal for the Far East and the accompanying Tokyo Charter).

- The trials were most notable for the prosecution of prominent members of the political, military, judicial and economic leadership of Nazi Germany, who planned, carried out, or otherwise participated in the Holocaust and other war crimes. The trials were held in the city of Nuremberg, Germany, and their decisions marked a turning point between classical and contemporary international law.
- Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 20 December 1945: **ARTICLE 6 LONDON AGREEMENT (which set out the jurisdiction of the Nuremberg Tribunal): Each of the following acts is recognized as a crime:**
 - **a) Crimes against Peace.** Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
 - **b) War Crimes.** Atrocities or offences against persons or property, constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
 - **c) Crimes against Humanity.** Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

The Second World War:

- The Holocaust profoundly shook the foundations of civilisation and galvanised public opinion in favour

both of the articulation of fundamental rights that we all enjoy, and acceptance of the need for limitation on a State’s freedom of manoeuvre in terms of the treatment of individuals within its own borders;

- The preamble of the United Nations Charter, adopted in late 1945, enshrined human rights as a core value although it did not articulate specific human rights in any detail (Article 2(7) of the UN Charter also contained/retained a significant echo of traditional notions of State sovereignty, as it expressly prohibits intervention in matters that are essentially within the domestic jurisdiction of any State).
- The establishment of the United Nations also created a far more effective international forum which enabled States to convene, discuss and adopt future legally-binding international instruments.
- The Nuremberg Tribunal overcame objections based on ex post facto-ism and subjected the surviving leadership of the Third Reich to criminal prosecution for Nazi enormities. The Nuremberg Tribunal articulated notions of crimes against humanity for the first time, articulating a category of crimes within general international law. This not only inspired future developments in international criminal law (which we will also look at later in the course) but also reinforced and inspired the burgeoning international human rights movement more generally.
- In terms of its formal status, this is a United Nations General Assembly resolution rather than an international treaty or other legally binding international instrument. However, it has taken on immense symbolic significance. It also inspired the creation in due course of two foundational multilateral human rights instruments (the two International Covenants), which enshrined many of these rights, although the Covenants did not come into force until several decades later

Sources of international Criminal Law:

1. Military manuals of states:

- Manuals that contain detailed information and how-to’s for procedures important to soldiers serving in the field.
- **The Army Field Manual specifically prohibits most of the so-called “Enhanced Interrogation Techniques” that the CIA used in its post-9/11 interrogation program, as well as any other**

- in that both clarify what needs to be done so that all human beings enjoy minimal standards of a decent existence.
- Poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water, and the right to education.
- The same is true of civil and political rights, such as the right to a fair trial, political participation and security of the person.
- This fundamental recognition is reshaping the international community's approach to the next generation of poverty reduction initiatives.
- Poverty is an assault on human dignity, but it can also reflect a violation of human rights when it is the direct consequence of government policy or is caused by the failure of governments to act. A human rights approach to poverty calls for a paradigm shift in how we understand and address poverty.

Human Rights and the Environment:

- All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation.
- Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.
- Choices made by governments and other actors that effect the environment, or that frame responses to environmental challenges, impact directly on the realization of human rights.
- The Stockholm Declaration of the United Nations Conference on the Human Environment, Stockholm (1972), and to a lesser extent the Rio Declaration on Environment and Development (1992), show how the link between human rights and dignity and the environment was very prominent in the early stages of United Nations efforts to address environmental problems.
- At the same time, protecting human rights helps to protect the environment. When people are able to learn about, and participate in, the decisions that affect them, they can help to ensure that those decisions respect their need for a sustainable environment.

10. NON-STATE ACTORS AND HR:

- Although the international human rights system is state-centric, non-state actors such as transnational corporations, civil society organisations, international organizations and armed opposition groups have all assumed major roles in relation to the enjoyment of human rights in recent years;
- Factors contributing to this development:
 - Privatization of functions previously performed by governments;
 - Ever-increasing mobility of capital and increased importance of foreign investment;
 - Expanding responsibilities of multilateral organizations
 - Enormous growth in role of transnational civil society organisations
 - The changing nature of conflicts;
 - The growth of international terrorist networks.

Transnational Corporations and Human Rights:

- Increasing size, scale and transnational reach creates also enhanced potential to promote or undermine respect for human rights:
- Scale of some MNCs completely dwarf the GDPs of states (e.g. Walmart in 2011 – sales of \$419 billion makes it larger than the economies of all but the world's 24 richest nations).

Types of HR issues in which MNC's are frequently engaged:

- Extractive industries (e.g. Shell) – often drawn into local armed conflicts when providing security for their economic assets and/or responding to local protests (including allegations of aiding and abetting international crimes);
- Compliance with international (and national) labour and environmental standards?
- IT companies – freedom of information.

Challenges in holding MNC's to account for HR violations:

- (1) Governments often loath to enforce these measures against MNCs
- (2) Cost of enforcement is high;
- (3) Intense competition for international capital discourages initiatives that may push up labour and other operating costs or which otherwise act as a disincentive for investment;

- (4) Complexity of transnational operations complicate questions of attribution of responsibility;
- (5) Differing levels of minimally acceptable standards across countries (esp. labour standards)

Responses:

- 1) Voluntary codes of conduct - e.g. 1999 Global Compact, Voluntary Principles on Security and Human Rights (2000).
- 'Voluntary' initiatives generally lack meaningful forms of accountability and rely upon public opinion and corporate altruism
- 2) Political support for binding norms almost universally lacking (e.g. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights ("UN Norms"))
- 3) Independent expert John Ruggie appointed as a Special Representative of the Secretary General on the issue of human rights and transnational corporations.
- Significantly different in approach than the Norms; culminated in Guiding Principles (GPs) on Business and Human Rights (2011). Have received significant endorsement but unclear how far it departs from volunteerism.
- Particular challenges stem from extraterritorial reach of transnational corporations and thus problems of enforcement.

Forms of individual criminal responsibility:

- Individual criminal responsibility under international criminal law (for aiding and abetting serious international crimes through financial or commercial means)
- Significant barriers (practically and legally) and few precedents post-Nuremberg (Flick case) – e.g. only pertains to individual criminal responsibility (issue of diffusion of responsibilities), availability of evidence and enforcement.
- However, some limited precedents (e.g. Taylor (SCSL), Musema (ICTR) and Van Anraat (Netherlands)).

11. HUMAN RIGHTS AND DEVELOPMENT:

1. Art. 56 of the UN Charter commits all member states to take 'joint and separate action in cooperation' with the UN for the achievement of the purposes identified in Article 55,