

Cases

Ireland v UK-(Freedom from Torture)

Facts: Several acts of terrorism were perpetrated in the U.K. by members of the Irish Republican Army (IRA). Several members were arrested and detained in the U.K. afterwards. The interrogation practices applied to the arrested members included wall-standing, hooding and deprivation of sleep and food. The applicant is the Government of the Republic of Ireland which claimed that the extrajudicial detention infringed Article 5 (right to liberty) and that the interrogation practices amounted to torture and inhuman or degrading treatment in violation of Article 3 of the Convention.

Issue: Under CAT need Severe pain and suffering. What is severe enough in order to be torture?

Outcome: It was held that the interrogation techniques were applied in combination, with premeditation and for hours at a time, causing at least intense physical and mental suffering and acute psychiatric disturbances, so they amounted to inhuman treatment in violation of article 3.

Context: Severe pain and suffering. What is severe enough in order to be torture? European court case: Ireland v UK 1976. Rare instance of interstate case. Over UK's treatment of terrorist suspect. The UK was using white noise, hoods, withholding food and water and used together and Ireland said this amounted to torture. European Commission found had indeed engaged in torture. UK appealed to European court said breach of article three but wasn't torture but amounted to inhuman treatment.

Quinteros v Uruguay-(Freedom from Torture)

Facts: Disappearance of Elena Quinteros kidnapped by Uruguayan authorities. Case brought by her mother. Various violations found but first case where they found a violation with regard to the pain and anguish of her mother resulting from her daughters disappearance was a violation of article 7. Doesn't specify if it is torture or if it is inhumane and degrading. Don't think treatment of mother falls within definition of torture in CAT as lack of intention.

Issue: Under the CAT, what can be classified as severe pain and suffering? Mental anguish not just physical pain but to what extent is mental anguish?

Outcome: *Here the Committee found a violation as regards the disappearance victim but it also found that there had been a breach of Article 7 in relation to the mother of the victim because of the anguish the disappearance of her daughter had caused her. The Committee did not specify whether the suffering of the mother was inhuman or degrading treatment or whether her situation amounted to torture*

Soobramoney v Minister for Health-(ESC rights)

Facts: Soobramoney suffered from kidney failure and needed kidney dialysis constantly.. Western province wasn't able to provide kidney dialysis for everyone who needed it so rationed it on the public purse and prioritised people who had acute kidney conditions rather than like Mr S who had a chronic condition and would need it for the rest of his life. Here he didn't have enough money to pay for it and couldn't get it on the public purse.

Issue: Right to health case

Outcome: SA court decided there was no breach of right to health here as Western Province's policy was a rational allocation of its scarce resources with regard to kidney dialysis. Limitation of right to health (same in pretty much every other country- rationing of public health resources). This was the first case in South Africa in which the Constitutional Court had to decide on the constitutional right to health care for everybody in light of the problem of scarce resources for the funding of the health care system. The Court accepted that rationing of resources is integral to health service delivery in the public sector even though this might support ongoing inequities between the private and public sector. However, the Court implied that there

might be grounds for the challenge of executive policies if such policies were unreasonable or if they were not applied fairly and reasonably.

TOPIC 4: Enforcement of Human Rights

Domestic Enforcement: States have obligations to respect, protect and fulfil various human rights obligations that they have and that includes duty to enforce their human rights obligations to provide a remedy at home. Efficacy of domestic enforcement varies from state to state. Eg. if you perceive a breach you can go to court in Germany or UK. Can also be gaps in enforcement. Aus has a lot of very big gaps. Human rights in many countries have constitutional status so potential for very strong domestic enforcement of rights. Some countries are monist countries- when the country becomes a party to a treaty, that treaty pretty much becomes part of domestic law. A lot of countries are dualist eg. Australia. International law can't be enforced in domestic courts, has to translate treaty into domestic law. Eg. Aus hasn't translated ICCPR into domestic law so no domestic remedy to breach of ICCPR. Has translated Convention on elimination of racial discrimination into domestic law, Racial Discrimination Act.

International level: Not efficient when comes to enforcement, domestic remedies are much better. There are four main ways of enforcing:

1. **Shame:** Main way. Could have a report written about the abuse. Syria been spoken about a lot but not complying. Main way in which international law is enforced is through the process of the mobilisation of shame. Public condemnation arising from public scrutiny, doesn't have to come from UN but also NGO's. States care what other states care and do respond, doesn't mean they comply but they do care which means shame means something. Can also galvanise the opposition inside a country. More helpful in countries that don't suppress the opposition. In Aus condemnation of issue of asylum seeker galvanise opposition within the ALP. Can eventually simply deprive a country of friends. Eg. Chile. Puts pressure on govt to change. Problems with shame: it is uneven, powerful countries get away with a lot more than countries who are less powerful. Can be affected by politics eg. Aus would be hesitant to criticise Indonesia. Also issue of backlash eg. Criticism of China leading up to Olympics. Reaction inside China was very angry. Chinese people weren't interested in why people were protesting but just angry, so arguably counter productive. Eg. Israelis automatic backlash, idea that UN is inherently biased.
2. **Sanctions:** Much rarer. Economic sanctions are legal as opposed to the use of force. Strongest sanctions are those imposed by the security council. Has done this with regard to Iran to try and reign in its nuclear program not for humanitarian program. More powerful than shame but not as powerful as use of force. Shaming can encourage other states to stop trading though eg. shaming of south Africa encouraged Aus to impose its own sanctions. Types of Sanctions:
 - Economic sanctions
 - Sports sanctions: not playing sport with a country. Most famously South Africa. Unlikely to work on their own. Depends on country.
 - Diplomatic sanctions: Withdrawing an ambassador or cutting diplomatic ties altogether.
3. **Use of Force:** Very very rare. Illegal in international law to use force against a state. Article 2(4): All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence.... Exceptions- Article 51: Self Defence (not relevant when protecting a state's own citizens against a breach of human rights). Article 42 of

UN charter: Security Council can authorize the use of force against a country. When it can get the 9 votes without a veto it has enormous power. If it deems that state is threatening "international peace and security". It has done this in the past- Iraq (1991) Somalia (1992) Haiti (1994) Libya (2011).

4. **Humanitarian Intervention:** very rare, part of use of force. Largely believed to be illegal but forceful interventions have happened that have arguably improved human rights. Bangladesh 1970, Uganda 1979, Cambodia 1979, Kosovo 1999, Iraq 2003? R2P-Responsibility to protect. States have responsibility to protect their own citizens (part of tripartite duties). What happens when a state starts attacking its own people? Responsibility of international community to protect? Not all human rights abuses but in the most extreme situations. Maybe rather than ch 7 Security Council has a right to intervene, maybe a responsibility to intervene? Still open questions. Humanitarian intervention often doesn't work .

International Criminal Law: Since 1992 many more criminal tribunals and now a permanent standing international court (ICC). Punishing the perpetrators rather than the entire country. Only has jurisdiction over the gravest human rights abuses like crimes against humanity and genocide. Not things like mass censorship which is a human rights abuses. Not seen to be very efficient. Only a handful of prosecutions. Not feasible to rely on this.