Protection of Human Rights in Europe: Concepts and Origins Part One

"Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation." (Mary Robinson)

Class Summary: The historical development of human rights protection in Europe

After World War II, the main players in Europe Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom signed the Treaty of London that established the Council of Europe.

In order to create a political and legal environment common to all European countries, since 1989, the Council of Europe has admitted most of the countries of Central and Eastern Europe, and it supports their efforts to implement and consolidate reforms accordingly. The Council of Europe is an institution independent of the European Union (EU) and it has functions different from those of the Union. Unlike the Treaties that established the European Union, the Convention's tasks are succinctly explained in its Preamble "to promote the signatories' belief" in "individual freedom, political liberty and the rule of law." The Council of Europe should not be confused with the Council of the European Union. Unlike the Council of Europe, the Council of the European Union is the EU's main decision-making body. The Council of Europe's permanent headquarters are in Strasbourg, France. Its main statutory bodies are: the Committee of Ministers, made up of the member States' foreign ministers, and the Parliamentary Assembly, composed of delegations from the member states' parliaments.

The so-called 'purpose' of human rights in Europe, as perceived by the founding members was to guarantee that mechanisms were in place to ensure that the travesities of the world wars would never occur again. The founding members wanted to have a common ethos which would bind all of the members together so as to assure that they would act in mutual respect of one another. Human rights in this way were perceived and conceived of as being tools which, had already been in existence (at least theoretical) but now there were Institutions and instruments (and later Conventions, regulations, directives) which were tasked with the role of upholding these basic standards e.g. Right to Life, Right to Privacy etc.

Present day conceptions of human rights still have their founda-

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tions in the what the founding members set out but it is their usuage and implementation which has evolved over the years since 1950. It is in light of this that the readings and assignments will provide the students with a grounded knowledge of the development of human rights.r

1   What are Human Rights?

At a most basic level human rights can be defined as norms that help to protect all people everywhere from infringements of their political , legal and social rights. A generally accepted basis is that human rights are values which are universally accepted and available for all by virtue of being a human being. Human Rights can be divided into three main categories. The first is political and civil, second are social, cultural and economic and the third category are what are known as third generation rights such as the right to health or clean environment. The traditional interpretation of rights was first con- ceived of as being political and civil. The language of the European Convention on Human Rights predominantly focuses on first gen- eration rights. It was over time that arguments were mounted for the inclusion of social, cultural and economic rights as well. It was viewed that both these first and second generation rights are interwo- ven and without the recognition of the other it would not be possible to talk about effective protection of human rights. A template for the drafting of a 'european' concept of human rights was found in the Universal Declaration of Human Rights.

The International Bill of Rights

The first development in this area was the Universal Declaration of Human Rights (hereinafter referred to as the UDHR). The UDHR was adopted on the 10th of December 1948. Eleanor Roosevelt, Rene Cassin and Joseph Malik were instrumental actors in the drafting of the UDHR. Eleanor Roosevelt was the chairperson. Before Eleanor Roosevelt even took up her chair position, Franklin Roosevelt in his famous Four Freedoms speech stated that,

> "We look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression everywhere in the world. The second is freedom of every person to worship God in his own way—everywhere in the world. The third is freedom from want . . . everywhere in the world. The fourth is freedom from fear . . . anywhere in the world."[1]

Franklin Roosevelt's speech indicates that he saw no reason why these four freedoms should not become the basis of a new world

[1] Franklin D. Roosevelt, "The Four Freedoms" (speech), State of the Union address to Congress, Washington, D.C., January 6, 1941, www.americanrhetoric.com/speeches/fdrthefourfreedom

order.

These "four freedoms"were then later incorporated into the UDHR. The adoption of the UDHR was not without its obstacles. The UDHR was adopted with consensus there were 8 abstentions.

It is important to note that the status of the UDHR is not legally binding it is a General Assembly Declaration. It is now considered by many to be customary international law. It adopted for the first time a holistic approach to rights including both civil and political and economic, social and cultural rights.

Following the adoption of the UDHR, the UN Commission on Human Rights started to draft two international covenants on human rights:the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), these three instruments together are considered to form the basis of the International Bill of Rights.

It is with the development of the UDHR that we first seen the emergence of the concept of Universal rights for all human beings. These universal rights inspired by the UDHR have led the United Nations to develop several other instruments which have further enshrined thematic areas of human rights protection.

At the regional level these universal rights were given further credence.

At the European level the European Convention for the Protection of Human Rights and Fundamental Freedoms(ECHR (1950)) as well as 14 other protocols were established in reaction to the atrocities of WWII. There has since developed a complex system of human rights protection at the European level which are binding upon all of the Member States. The ECHR protects civil and political rights.

The ECHR goes further than the UDHR as it imposes binding obligations upon the Member States to provide domestic remedies with regard to a number of rights and refined the definition of such rights.

The ECHR was followed by the European Social Charter in 1961 and entered into force in 1965 which deals with social, economic and cultural rights. The Social charter puts claims rather than restrictions on States.

Importantly the ECHR established the European Court of Human Rights (ECtHR). The ECtHR is a permanent court whereby individuals and Member States can have access when domestic remedies have been exhausted without effective redress.

Reading Task

Please click on the hyperlink to access the required reading.

1. **Natural Right and Civil Community: The Civil Philosophy of Hugo Grotius**

2. **Capabilities and Human Rights**

Self-Check Questions

1. What is the Council of Europe, and why was it founded?

2. Which bodies within the Council of Europe, are directly involved in the promotion and protection of human rights?

3. Why is it important to maintain a human rights system in Europe? Discuss.

4. Why is the Universal Declaration of Human Rights important?

5. What does the universality of Human Rights imply?

6. Define and describe the three generations of Human Rights (with examples).

7. What are the main sources of Human Rights?

Definitions/Key Terminology

- Natural law

- Natural rights

- Legal postivism

- Utilitarinism

- Declaration

- Convention

- Universal

- Cultural relativism