



# International Human Rights Protection

## International Economic Law

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### Objectives

- Understand the conceptual differences between international human rights protection and international trade law
- Identify possible conflicts
- Discussion of current examples



## „Trade and ...“ issues

- Trade and environment
  - Sustainable development as an objective in WTO law and international environmental law
  - Multilateral environmental agreements (MEAs)
  - International agreements with provisions on embargos, import bans, facilities, technology transfer
  - Unilateral measures of the member states
- Trade and finance
- Trade and human rights
- etc.



## How do human rights enter the WTO?

- Article XX GATT, XIV GATS
- Interpretation of WTO law (Art. 31 VCLT)
- Discussion on PPMs and like products
- Social labelling schemes (TBT)
- Conditionality in General System of Preferences (GSP) programmes



## International human rights protection

- Starting Point: Protecting human dignity
- Influence of Immanuel Kant
  - Core concept: Freedom of human beings
  - State activities must be oriented towards promoting human dignity and freedom



## Existing human rights regimes (1/2)

- UN Instruments
  - Universal Declaration of Human Rights 1948
  - UN Covenants of 1966:
    - International Covenant on Economic, Social and Cultural Rights (ICESR)
    - International Covenant on Civil and Political Rights (ICCPR)
  - Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)
  - Convention on the Rights of the Child 1989
  - Convention on the Rights of Peoples with Disabilities 2008



## Existing human rights regimes

(2/2)

- UN Instruments contd.
  - Protocols on Trafficking
    - Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children, November 2000, UN Doc. A/55/383 (supplementing the UN Convention against Transnational Organized Crime)
    - Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, (UN Doc. A/RES/54/263) (supplementing the Convention on the Rights of the Child)
- ILO Fundamental Conventions
- Regional Instruments
- National Instruments



## Human Rights and WTO law

(1/2)

- Article 3.2 DSU
  - No new obligations must be created by DSB
  - Interpretation according to general principles of international law
- Article 11 and 13 DSU
  - Objective assessment of the facts
  - Right to seek information



## Human Rights and WTO law

(2/2)

- WTO law as a self-contained regime?
  - AB in US – Gasoline: WTO system cannot be construed in “clinical isolation” of general sources of public international law
  - AB in US – Turtles: VCLT is the key to finding additional sources for the interpretation of the GATT.
  - Panel in Korea – Government Procurement: Principles of customary international law can be employed to fill unintended gaps in the WTO agreements
- Conclusion
  - VCLT applicable
  - Principles of public international law including human rights instruments important for interpretation of WTO law



## Resolution of conflicts

- Interpretation
- Conflict rules
  - Hierarchy of norms in international law?
  - *ius cogens*
  - Article 30 VCLT
  - Article 103 UN Charter



## Reconciling trade and human rights

- Historical similarities
  - Four Freedom Address of F.D. Roosevelt, January 1941
  - Atlantic Charter
  - Bretton Woods Conference
- Development of independent legal regimes (fragmentation)



## Conceptual differences

	Human Rights	WTO law
<b>Subjects</b>	<ul style="list-style-type: none"> <li>• States, Individuals</li> <li>• (NGOs)</li> </ul>	<ul style="list-style-type: none"> <li>• States only</li> </ul>
<b>Structure of rights and obligations</b>	“to respect, protect and fulfil (and promote)”	<ul style="list-style-type: none"> <li>• Mainly negative obligations</li> <li>• Limit national sovereignty</li> </ul>
<b>Motives</b>	Human dignity	<ul style="list-style-type: none"> <li>• Instrumentalization</li> <li>• Foster prosperity (economisation)</li> </ul>
<b>Dispute settlement</b>	<ul style="list-style-type: none"> <li>• States, individuals</li> <li>• Direct effect for some provisions</li> <li>• Optional protocols</li> </ul>	<ul style="list-style-type: none"> <li>• States only</li> <li>• Direct effect controversial</li> <li>• Mandatory</li> </ul>



## Examples and outlook

- Consideration of human rights in dispute settlements
- WTO-Cases
  - Conflict diamonds
  - Preferential Programs for developing countries
- Role of multinational corporations
  - Rights and duties
  - International responsibility