



University of  
Zurich<sup>UZH</sup>

Institute for International Law

## Introduction: Foundation, history and general concept of human rights

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## Organisational issues

- Mandatory reading assignments, course syllabus and slides are regularly posted on:  
<http://www.ivr.uzh.ch/institutsmitglieder/kaufmann/vorlesungen/humanrights.html>
- Exam at the end of the term, form (oral or written) will be announced by the end of March
- Recommended books:
  - Daniel Moeckli/Sangeeta Shah/Sandesh Sivakumaran (eds.), International Human Rights Law, Oxford 2010
  - Andrew Clapham, Human Rights: A Very Short Introduction, Oxford 2007
  - Blackstone's International Human Rights Documents collected by Sandy Ghandhi, 8th edition, Oxford 2012



## Overview

- General concept of civil and political rights
  - From the Universal Declaration of human rights to the ICCPR and the ICESCR
  - Relationship between the UDHR and the ICCPR
  - Key features of the ICCPR
  
- General concept of economic, social and cultural rights
  - Origin and legal foundations
  - Overview of the key features of the ICESCR



## Legal nature of the UDHR

- Resolution of the UN General Assembly 1948
  - Formally non binding recommendation, develops into soft law
  - Authoritative interpretation of the UN Charter?
  - Customary international law?
  - Being reflective of a dynamic modern aspect of general principles of law
  
- Supported by the great majority of states
  
- Special moral and normative status





## From the UDHR to the ICCPR and the ICESCR

- Political environment hinders the development of a single comprehensive human rights instrument
- ICCPR and ICESCR as binding treaties
  - Legal obligations for the parties
  - Each covenant establishes a distinct enforcement system (monitoring mechanisms)
  - General principles of international law apply, e.g.
    - Interpretation
    - Reservations
- ICCPR and ICESCR as complementary treaties, not as alternatives



## Relationship between UDHR and ICCPR (1/4)

- Individual rights as the basis for both instruments
  - Group or collective rights as exception
  - Emphasis is on rights of the individual, obligations are generally imposed on the state
- ICCPR takes up many rights from the UDHR
  - More detailed
  - Right to own property is missing in the ICCPR
- Different legal nature
  - ICCPR as treaty law
  - UDHR as customary international law (controversial) or soft law



## Relationship between UDHR and ICCPR (2/4)

### Art. 28 UDHR

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### Art. 2 (1) ICCPR

Each State Party to the present Covenant undertakes to **respect** and to **ensure** to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.



## Relationship between UDHR and ICCPR (3/4)

- General limitation clause in the UDHR: Art. 29 (2)
- Detailed limitation clauses for states' obligations under the ICCPR
  - Public emergency (Art. 4)
  - Specific limitation clauses
    - Public safety, order, health or morals (eg Art. 18, 19)
    - Limitations necessary in a democratic society (eg Art. 21, 22)
- Different structure of remedies
  - UDHR stops with declaration of rights
  - ICCPR provides detailed remedy mechanism



## Relationship between UDHR and ICCPR (4/4)

### ➤ Capital punishment

- Art. 5 UDHR bans cruel, inhuman or degrading punishment. No reference to death penalty:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

- Art. 6 para. (2) ICCPR provides minimal procedural guarantees when death penalty is imposed:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.



## Key features of the ICCPR (1/2)

### ➤ Protected rights

- Main categories of individual rights protected by the ICCPR
  - Physical integrity of the individual
  - Procedural fairness
  - Equal protection and non discrimination
  - Freedoms of expression: belief, speech and association
  - Right to political participation
- Collective rights protected by the ICCPR
  - Right to self-determination (Art. 1)
  - Minorities' right to enjoy their own culture (Art. 27)



## Key features of the ICCPR (2/2)

- Two-fold mechanism for monitoring
  - General concept for UN human rights instruments
    - Treaty-based organs
    - Charter-based organs
  - For the ICCPR
    - Human Rights Committee: based on the ICCPR
    - Human Rights Council: mandated by the UN Charter
- Close relationship with the UN system
  - Annual Report by the Human Rights Committee is submitted to the UN General Assembly
  - Funded by the annual budget of the General Assembly



## Origin of economic, social and cultural rights

- Industrialisation in Europe (“Manchester liberalism”)
  - Economic exploitation of workers
  - Impoverishment
  - States take measures to address social problems, eg. Bismarck in Germany (concept of the welfare state)
  - Different levels of state obligations
- Working conditions as an international concern: foundation of the ILO in 1918
- Four freedom speech by F.D. Roosevelt (1941): freedom from want



## Overview of the ICESCR

- Nature of protected rights
  - Individual entitlements
  - State obligations to act
  - Objectives to be achieved incrementally
- Structure of the Covenant
  - Part I: Right of peoples to self-determination (Art. 1)
  - Part II: State obligations (Art. 2-5)
  - Part III: Individual substantive rights
    - Economic rights (Art. 6-8)
    - Social rights (Art. 9-12)
    - Cultural rights (Art. 13-15)
  - Part IV: Implementation
  - Optional Protocol adopted on 10 December 2008