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Human rights actors I: The primary role of states

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Human rights actors: Overview

- The primary role of states (part I)
 - The nature of human rights obligations
 - The “special character” of human rights obligations
 - Implementation of human rights obligations: The state duty to respect, protect, and fulfil
 - Remedies for violations of human rights obligations
- International institutions and other non-state actors (part II)
 - The UN human rights system, other important international organizations
 - The role of private actors



The nature of human rights obligations (I)

- General public international law
 - Traditional concept of state sovereignty
 - Principle of consent and “state voluntarism”
- Human rights law
 - “Special character” of human rights obligations
 - Respect, protect, fulfil
 - “Margin of appreciation”
 - Domestic implementation



The nature of human rights obligations (II)

- Form and function of human rights – an inherent tension?

“In human rights treaties the two elements of ‘form’ and ‘function’ appear to be fundamentally at odds with one another. On the one hand, the form in which the rights are expressed – the treaty – supposes that human rights are merely the incidental subject of a contractual bargain between states. Individual ‘right-holders’ are therefore simply the fortuitous beneficiaries of a regime that is otherwise concerned with promoting the rights and interests of states. The teleology of the regime on the other hand – focused as it is on individual or group ‘human rights’ – supposes that the treaties are quasi-constitutional in character.”

Matthew Craven, *Legal Differentiation and the Concept of the Human Rights Treaty in International Law*, EJIL 11 (2000), pp. 489-519.

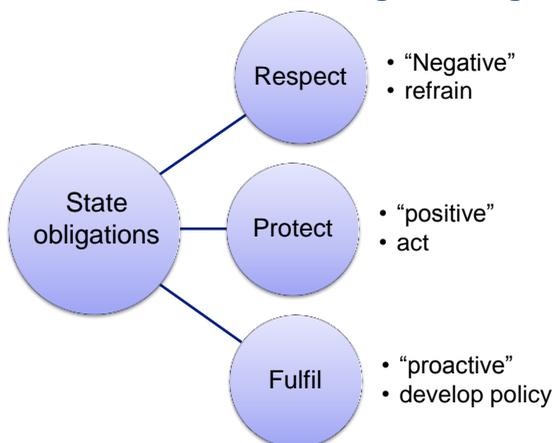


The “special character” of human rights obligations

- The “special character” of human rights obligations
 - Obligation of states towards individuals rather than between states
 - Right-holders are partial subjects of international law
 - Not based on reciprocity
 - Fundamental human rights obligations as obligations erga omnes norms (ICJ in Barcelona Traction)



Implementation of human rights obligations (I)





Implementation of human rights obligations (II)

- The state obligation to **respect**
 - “Negative” obligation not to take any measures resulting in a violation of human rights
 - States should not consciously violate rights
- The state obligation to **protect**
 - “Positive” obligation to ensure that persons within a state’s jurisdiction do not suffer from human rights infringements
 - To a certain extent, this duty encompasses acts from third parties (so-called indirect horizontal effect of human rights)
- The state obligation to **fulfil**
 - Proactive engagement resulting in a greater enjoyment of rights
 - Policy-oriented



Implementation of human rights obligations (III)

- The margin of appreciation doctrine
 - Uniform implementation of human rights among the states is difficult considering their different cultural, geographic and historical backgrounds
 - “Margin of appreciation” doctrine introduced by the ECtHR to give states a certain leeway without undermining the core content of specific human rights
 - States and domestic courts are often better suited to take into account local peculiarities, thus increasing their legitimacy
 - Controversial beyond the European context



Implementation of human rights obligations (IV)

- Reservations in human rights treaties
 - Common state practice: e.g. 38 out of 165 states made over 200 reservations to the ICCPR
 - Reasons: different interpretation, incompatibility with domestic law, safeguard against expansive interpretation of certain rights
 - Admissibility: “object and purpose” of the treaty must not be undermined
 - ⇒ Dynamic and debated subject
 - ⇒ Illustrates the tension between state sovereignty and the protection of individual human rights through the establishment of minimal standards.



Remedies for violations of human rights obligations

- Traditional inter-state mechanisms of general international law inapt due to the “special character” of human rights obligations
- More “decentralized” enforcement of human rights law, e.g.
 - Periodic review and reporting mechanisms (e.g. UPR, ICCPR, ICESCR)
 - Mostly optional individual complaint mechanisms (regional human rights courts, UN human rights bodies)
 - Domestic judicial remedies
 - Non-judicial mechanisms (e.g. OECD National Contact Points, Permanent Peoples’ Tribunal, access to remedy provided by private actors)



Obligation to respect: El-Masri v. Former Republic of Macedonia (ECtHR, 13.12.2012, no. 39630/09)

- Facts of the case: German national of Lebanese origin held in isolation and ill-treated in a Skopje hotel for 23 days, then transferred to CIA agents and brought to a secret detention facility in Afghanistan, where he was further ill-treated for 4 months.
- ECtHR found violations of Article 3 (torture), Article 5 (unlawful detention), Article 8 (right to respect for private life) and Article 13 (effective remedy for complaints) of the ECHR



Obligation to respect: El-Masri v. Former Republic of Macedonia (ECtHR, 13.12.2012, no. 39630/09)

- “Mr El-Masri’s treatment at Skopje Airport at the hands of the CIA rendition team – being severely beaten, sodomised, shackled and hooded, and subjected to total sensory deprivation – had been carried out in the presence of State officials of ‘the former Yugoslav Republic of Macedonia’ and within its jurisdiction [...] Those measures had been used with premeditation, the aim being to cause Mr El-Masri severe pain or suffering in order to obtain information. In the Court’s view, such treatment had amounted to torture, in violation of Article 3.”



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State obligation to protect: O’Keeffe v. Ireland (ECtHR, 28.1.2014, no. 35810/09)

Relevant rights: Freedom from torture and inhuman and degrading treatment (Article 3) and right to an effective remedy (Article 13)



Source: Cork Independent, 30 January 2014