The concept of international criminal justice standards (Lecture №1)

1. The concept and essential features of international human rights standards in criminal justice

- Humanity’s yearning for respect, tolerance and equality goes a long way back in history, but the curious thing to note is that, although our societies have in many respects made great strides in the technological, political, social and economic fields, contemporary grievances remain very much the same as they were hundreds, even thousands of years ago. As to the protection of the rights and freedoms of the individual at the international level, work began in the nineteenth century to outlaw slavery and to improve the situation of the sick and wounded in times of war.
- 1.At the end of the First World War, several treaties were concluded with the allied or newly created States for the purpose of providing special protection for minorities.
- 2. At about the same time, in 1919, the International Labour Organization (ILO) was founded for the purpose of improving the conditions of workers. Although the initial motivation of the ILO was humanitarian, there were also, inter alia, political reasons for its creation, it being feared that, unless the conditions of the ever-increasing number of workers were improved, the workers would create social unrest, even revolution, thereby also imperilling the peace and harmony of the world.

- Following the atrocities committed during the Second World War, the acute need to maintain peace and justice for humankind precipitated a search for ways of strengthening international cooperation, including cooperation aimed both at protecting the human person against the arbitrary exercise of State power and at improving standards of living.
- The foundations of a new international legal order based on certain fundamental purposes and principles were thus laid in San Francisco on 26 June 1945 with the adoption of the Charter of the United Nations. In the Preamble to the Charter, faith is first reaffirmed “in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.
- Secondly, the Preamble also, inter alia, expresses the determination “to promote social progress and better standards of life in larger freedom”

- With the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights on 10 December 1948, the rather terse references to “human rights and fundamental freedoms” in the Charter acquired an authoritative interpretation. The Universal Declaration recognizes civil, cultural, economic, political and social rights, and, although it is not a legally binding document per se, since it was adopted by a resolution of the General Assembly, the principles contained therein are now considered to be legally binding on States either as customary international law, general principles of law, or as fundamental principles of humanity. In its dictum in the case concerning the hostages in Tehran, the International Court of Justice clearly invoked “the fundamental principles enunciated in the ... Declaration” as being legally binding on Iran in particular with regard to the wrongful deprivation of liberty and the imposition of “physical constraint in conditions of hardship”.

- As already explained, it was the tragedies of the two World Wars that compelled the international community to create a world organization with the purpose of furthering peace and justice, inter alia by encouraging the promotion and protection of human rights and fundamental freedoms. The all-too-evident lesson to be drawn from the Second World War was that, when a State pursues a deliberate policy of denying persons within its territory their fundamental rights, not only is the internal security of that State in jeopardy, but in serious situations there is a spillover effect that imperils the peace and security of other States as well.
- This hard-won lesson has been confirmed on numerous occasions since in every part of the world. Effective protection of human rights promotes peace and stability at the national level not only by allowing people to enjoy their basic rights and freedoms, but also by providing a basic democratic, cultural, economic, political and social framework within which conflicts can be peacefully resolved. Effective protection of human rights is consequently also an essential precondition for peace and justice at the international level, since it has inbuilt safeguards that offer the population ways of easing social tension at the domestic level before it reaches such proportions as to create a threat on a wider scale.

- As a reading of, in particular, Article 1 of the Charter of the United Nations and the first preambular paragraphs of the Universal Declaration and the two International Covenants makes clear, the drafters were well aware of the essential fact that effective human rights protection at the municipal level is the foundation of justice, peace and social and economic development throughout the world. More recently, the link between, inter alia, the rule of law, effective human rights protection and economic progress has been emphasized by the SecretaryGeneral of the United Nations in his Millennium Report, where he emphasized that

"It is now widely accepted that economic success depends in considerable measure on the quality of governance a country enjoys. Good governance comprises the rule of law, effective State institutions, transparency and accountability in the management of public affairs, respect for human rights, and the participation of all citizens in the decisions that affect their lives. While there may be debates about the most appropriate forms they should take, there can be no disputing the importance of these principles".

- The third preambular paragraph of the Universal Declaration of Human Rights states that "... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law" (emphasis added).

This means that, in order to enable the human person fully to enjoy his or her rights, these rights must be effectively protected by domestic legal systems. The principle of the rule of law can thus also be described as an overarching principle in the field of human rights protection because, where it does not exist, respect for human rights becomes illusory. It is interesting in this respect to note that, according to article 3 of the Statute of the Council of Europe, "every Member State ... must accept the principle of the rule of law".

This fundamental principle is thus legally binding on the 43 Member States of the organization, a fact that has also influenced the case-law of the European Court of Human Rights.

- Consequently, judges, prosecutors and lawyers have a crucial role to fulfil in ensuring that human rights are effectively implemented at the domestic level. This responsibility requires the members of these legal professions to familiarize themselves adequately with both national and international human rights law. Whilst their access to domestic legal sources should pose no major problem, the situation is more complex at the international level, where there are several legal sources and a case-law rich in many respects. With some modification, the next section will follow the hierarchy of legal sources as they appear in article 38 of the Statute of the International Court of Justice. Although one might disagree with the classification of sources in this provision, it serves as a useful starting point.

According to article 38(1) of the Statute, the sources are:

- “international conventions”;
- “international custom, as evidence of a general practice accepted as law”;
- “general principles of law recognized by” the community of nations;
- “judicial decisions and the teachings of the most highly qualified publicists ... as subsidiary means for the determination of rules of law”.

Without seeking to be exhaustive, the next section will set forth the essential characteristics of the main sources of international human rights law. However, it should be noted at the outset that in international human rights law, judicial decisions, and also quasi-judicial decisions and general comments adopted by monitoring organs, take on special relevance in understanding the extent of the legal obligations of States.

International treaties

- In the human rights field, the most important tool for judges, prosecutors and lawyers to consult, apart from existing domestic law, is no doubt the treaty obligations incumbent on the State within whose jurisdiction they are working. A “treaty” is generally a legally binding, written agreement concluded between States, but can also be an agreement between, for instance, the United Nations and a State for specific purposes. Treaties may go by different names, such as convention, covenant, protocol, or pact, but the legal effects thereof are the same. At the international level, a State establishes its consent to be bound by a treaty principally through ratification, acceptance, approval, or accession; only exceptionally is the consent to be bound expressed by signature. However, the function of signature of a treaty is often that of authenticating the text, and it creates an obligation on the State concerned “to refrain from acts which would defeat the object and purpose” of the treaty, at least until the moment it has “made its intention clear not to become a party” thereto.

- Once a treaty has entered into force and is binding upon the States parties, these must perform the treaty obligations “in good faith” (pacta sunt servanda). This implies, inter alia, that a State cannot avoid responsibility under international law by invoking the provisions of its internal laws to justify its failure to perform its international legal obligations. Moreover, in international human rights law, State responsibility is strict in that States are responsible for violations of their treaty obligations even where they were not intentional.
- Human rights treaties are law-making treaties of an objective nature in that they create general norms that are the same for all States parties. These norms have to be applied by a State party irrespective of the state of implementation by other States parties. The traditional principle of reciprocity does not, in other words, apply to human rights treaties.

- The fact that human rights treaties have been concluded for the purpose of ensuring effective protection of the rights of the individual takes on particular importance in the course of the interpretative process. In explaining the meaning of the provisions of a human rights treaty, it is therefore essential for judges to adopt a teleological and holistic interpretative approach by searching for an interpretation that respects the rights and interests of the individual and is also logical in the context of the treaty as a whole.
- Examples of law-making treaties in the human rights field are the two International Covenants on Civil and Political and on Economic, Social and Cultural Rights, which will be considered in further detail below. Suffice it to mention in this regard that the Committees created under the terms of each treaty to monitor its implementation have by now adopted many views and comments which provide valuable interpretative guidance to both national and international lawyers.

- A general principle of law, as a source of international human rights law, is a legal proposition so fundamental that it can be found in all major legal systems throughout the world. If there is evidence that, in their domestic law, States adhere to a particular legal principle which provides for a human right or which is essential to the protection thereof, then this illustrates the existence of a legally binding principle under international human rights law. Judges and lawyers can thus look to other legal systems to determine whether a particular human rights principle is so often accepted that it can be considered to have become a general principle of international law.
- Domestic law analogies have thus, for instance, been used in the field of principles governing the judicial process, such as the question of evidence.

International human rights law and international humanitarian law: common concerns and basic differences

- Although this Manual is aimed at conveying knowledge and skills in human rights law, rather than in international humanitarian law, it is important to say a few words about the relationship between these two closely linked fields of law.
- Whilst both human rights law and international humanitarian law are aimed at protecting the individual, international human rights law provides non-discriminatory treatment to everybody at all times, whether in peacetime or in times of war or other upheaval. International humanitarian law, on the other hand, is aimed at ensuring a minimum of protection to victims of armed conflicts, such as the sick, injured, shipwrecked and prisoners of war, by outlawing excessive human suffering and material destruction in the light of military necessity. Although the 1949 Geneva Conventions and the two Protocols Additional thereto adopted in 1977 guarantee certain fundamental rights to the individual in the specifically defined situations of international and internal armed conflicts, neither the personal, temporal nor material fields of applicability of international humanitarian law are as wide as those afforded by international human rights law.In that sense, humanitarian law is also less egalitarian in nature, although the principle of non-discrimination is guaranteed with regard to the enjoyment of the rights afforded by this law.

- What it is of primordial importance to stress at this stage is that, in international and non-international armed conflicts, international human rights law and humanitarian law will apply simultaneously. As to the modifications to the implementation of human rights guarantees that might be authorized in what is generally called public emergencies threatening the life of the nation, these will be briefly referred to in section 2.8 below and in more detail in Chapter 16.

…….International human rights law is applicable at all times, that is, both in times of peace and in times of turmoil, including armed conflicts, whether of an internal or international character. This means that there will be situations when international human rights law and international humanitarian law will be applicable simultaneously……