

goals of the day

- overview of the int'l human rights framework
- focus: freedom of expression

ESS-NE

EN-NF

- freedom of expression under the UDHR
- freedom of expression under the ICCPR
- freedom of expression under the ECHR
- scope and limitations
- some case law
- changing aspects under the conditions of digital media

nccr trade regulation O

2

3

nccr trade regulation 🧿

int'l human rights: basics

- human rights refer to the basic rights and freedoms to which all humans are entitled
- belong to individuals
- inalienable and universal rights simply by virtue of their personhood that should trump state prerogatives
- despite different value systems worldwide (cultural relativism), human rights are now a universally accepted concept of int'l law
- however still consistently violated

ES-NF

nccr trade regulation O

4

nccr trade regulation O

- human rights: history
- origins: Magna Carta 1215; the American and French revolutions, 1776 and 1789; although these rights were to apply only within the sovereign states
- after World War II, special attention due to the fascist atrocities against humanity
- UN Commission on Human Rights, est. 1946, led by Eleanor Roosevelt
- International Bill of Rights as a two-part structure, comprising a non-binding declaration and a binding covenant

EN-NF

human rights: int'l acts

- Universal Declaration on Human Rights (UDHR), 1948
- International Covenant on Civil and Political Rights (CCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (CESCR), 1966
- both entered into force only in 1976

ESS-NE

 CCPR and CESCR similar but with some important differences (first v. second 'generations' of rights / negative v. positive rights / different compliance mechanisms)

nccr trade regulation O

5

6

human rights: state obligations

- obligation to respect: requires states to refrain from interfering with the enjoyment of human rights (passive);
- obligation to protect: requires states to prevent violations of such rights by third parties; and
- obligation to fulfil: requires states to take appropriate legislative, budgetary, judicial and other measures towards the full realisation of such rights (active)

ES-NF

nccr trade regulation O

freedom of expression

- Article 19 of the Universal Declaration of Human Rights
- Article 19 of the International Covenant on Civil and Political Rights
- Article 10 of the European Convention on Human Rights
- Article 13 of the American Convention on Human Rights
- Article 9 of the African Charter on Human and Peoples' Rights

ENS NF

nccr trade regulation O

freedom of expression: art. 19 UDHR

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

nccr trade regulation O

freedom of expression: art. 19 CCPR

1. Everyone shall have the right to hold opinions without interference.

ENS NF

2. Everyone shall have the **right to freedom of expression**; this right shall include **freedom to seek**, **receive and impart information and ideas of all kinds**, **regardless of frontiers**, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

freedom of expression: art. 19 CCPR

- although CCPR binding upon the state parties, weak compliance monitoring and no effective enforcement mechanisms
- the Human Rights Committee (HRC) examines state reports on the implementation of the rights; submits Concluding Observations (political effects but no concrete remedies)
- possibilities for inter-state complaints and conciliation procedure under ad hoc Committee (never been used so far)
- individual complaints possible under the First Optional Protocol (not all states signatories-115 out of 164; US and Switzerland are not)
- decisions have only reporting character; no sanctions

nccr trade regulation O

freedom of expression: art. 19 UDHR

- Art. 19(3) expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted; these may relate either to the interests of other persons or to those of the community as a whole
- restrictions allowed only when: "provided by law"; only for one of the purposes set out in subparagraphs (a) and (b); and "necessary" for the attainment of one of those purposes.

ESS-NE

nccr trade regulation

11

freedom of expression: art. 19 UDHR

- HRC has given state parties relatively broad margin of appreciation to interpret the goals that justify restrictions and has not been very strict as to the necessity and proportionality test
- examples: *Hertzberg v. Finland* (1979) and *Faurisson v. France* (1993).

ES-NE



Rights truly operational

freedom of expression: ECHR

- the European Court of Human Rights (ECtHR) (based in Strasbourg; http://www.echr.coe.int)
- · individual and inter-State petitions
- advisory opinions concerning the interpretation of the Convention and its protocols
- since 1998, all alleged violations of human rights referred directly to the Court
- after all domestic remedies have been exhausted and within a period of six months from the date of the final decision
- ECtHR reform: Interlaken Declaration and Protocol No 14 (2010)

art. 10(1) ECHR

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

ES-NE

art. 10(2) ECHR

nccr trade regulation

16

17

18

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

EN-NF

mccr trade regulation o

freedom of expression: ECHR

"The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man".

Handyside v. the United Kingdom, (5493/72) [1976] ECHR 5 (7 December 1976)

ESS-NF

art. 10 ECHR: scope of protection

- · freedom to hold opinions
- freedom of expression
- active: freedom to express an opinion and to impart information and ideas (incl. freedom of art)
- all forms of expression, any media, any content (facts, opinions, entertainment).
 In *Groppera Radio AG* (1990, 12 EHRR 321), the Court stated that both broadcasting of programmes over the air and cable are covered by Article 10, "without there being any need to make distinctions according to the content of the programmes".
- also commercial statements covered, incl. criticism of business practices and commercial publicity
- passive: freedom to receive information
- freedom of the press and of the media





nccr trade regulation

freedom of expression: ECHR

"Freedom of expression is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'".

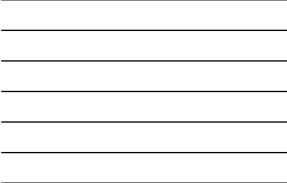
Handyside v. the United Kingdom, (5493/72) [1976] ECHR 5 (7 December 1976)

20

art. 10 ECHR: interference

- interferences with the freedom of expression permitted only when prescribed by law, adopted in pursuance of one of the objectives listed in art. 10(2) and necessary in a democratic society; all conditions must be met
- art. 10(2) objectives:
- national security
- territorial integrity or public safety
- for the prevention of disorder or crime
- for the protection of health or morals
- for the protection of the reputation or rights of others
- for preventing the disclosure of information received in confidence
- for maintaining the authority and impartiality of the judiciary.





art. 10 ECHR: licensing broadcasters • art. 10(1) notes expessly that: "This article shall not prevent States from requiring the licensing

- of broadcasting, television or cinema enterprises"
 leading case: Informationsverein Lentia and others v Austria (Appl. No 13914/88 15041/89 15717/89
- leading case: Informationsverein Lentia and others v. Austria (Appl. No 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, decision of 24 November 1993)
- Swiss case: Demuth v. Switzerland (Appl. No. 38743/97, decision of 5 November 2002)

ESS-NE

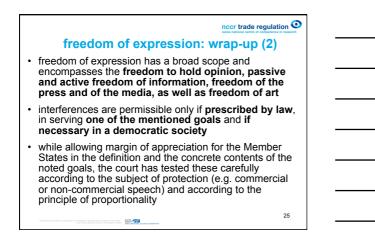
nccr trade regulation 🧿

23

freedom of expression: wrap-up (1)

- there are a number of acts on the regional and int'l levels that protect the freedom of expression
- the UDHR is the underlying act but has no binding force; the CCPR is binding upon its signatories but lacks enforcement mechanism
- the ECHR has had much impact on the evolution of human rights practice because of the ECtHR and the possibility for individuals to go to court against the CoE Member States

ES-NF







new dimensions:

- filtering (state filtering but also private filtering)
- net neutrality: discrimination of internet traffic
- interoperability of networks, devices and applications
- copyright: private ownership of information (digital rights management systems as automatic enforcement mechanisms)
- practical barriers to access (digital divide; media literacy)

ES-NE



thank you.
 contact: mira.burri@wti.org