



TRANSCRIPT

Source: [Louv201x] The Maastricht Principles

Well, the adoption of the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights is a very interesting experience, showing how international human rights law can be made to evolve, thanks to the mobilization of nongovernmental organizations and academic experts.

Basically, the idea of these principles being developed emerged from a finding that increasingly human rights were impacted by states other than the territorially competent state for the individuals concerned-- the result of trade liberalization, the result of investment liberalization and economic globalization, generally, but also the result of the fact that more and more states adopt unilateral measures that may have an impact on human rights outside their national territory, for example, in cases of trans-boundary pollution, where states emit large amounts of greenhouse gas emissions, accelerating climate change, resulting in human rights impacts outside their borders.

And so there was a realization that human rights could not be actually realized, could not be fulfilled without addressing also this extraterritorial dimension of human rights obligations of states, particularly in the face of economic globalization, for economic and social rights. And so some individuals took the initiative of proposing that experts work on clarifying the duties of states in this regard. And particularly instrumental in this regard was Rolf Kunneman, who was the founder of FoodFirst International Action Network, FIAN, an NGO specialized on the right to food, and who took the initiative of gathering organizations and experts to work on these principles in 2009-2011.

So the principles were developed. And it was really the hope that they would gradually clarify the duties of states to take into account the impacts on human rights outside their borders of the decisions they made at home, and that they integrated human rights considerations in negotiating trade, investment agreements, for example.

And there was some confusion here, because on the one hand, whilst you have, for example, Articles 55 and 56 of the United Nations Charter that refer to a duty to cooperate for the fulfillment of human rights and fundamental freedoms without discrimination, many human rights treaties actually refer to a condition of jurisdiction that led some human rights courts, or bodies, to limit the scope of extraterritorial obligations linked to the human rights commitments of states.

And so the subject matter was confused. The case law was moving in very different and sometimes contradictory directions. So it was necessary to restate international human rights law to provide human rights courts and human rights treaty-bodies with a summary of where international human rights law was evolving towards in order to guide future jurisprudence in this area.

And this is what was done by some experts who worked to draft these principles. And the principles were then broadly discussed, revised, modified, improved, and finally endorsed at a meeting that was held at Maastricht University at the end of September 2011. On the 28th September, 2011, they were adopted formally by a wide range of human rights organizations and academic experts, including some independent experts appointed by the Human Rights Council.

What's most interesting, in my view, in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic and Social Rights is that these principles try to surmount what is sometimes a very frustrating obstacle to the fulfillment of economic, social, and cultural rights, which is what some might call the paradox of many hands.

When one particular situation is a result of the combined action of a wide number of actors, a wide number of states, no state feels responsible to change the situation. And all states behave as though they had no role in modifying a state of things that delays the full realization of human rights. So the international environment is not shaped in accordance with the need to promote and fulfill human rights. And no state feels that has any particular responsibility to take action to change this.

So the Maastricht Principles try to provide an answer to this. For example, Principle 29 says-- and I would like to quote it-- that there is an obligation to create an international enabling environment. And this obligation is defined as such: 'States must take deliberate, concrete, and targeted steps, separately and jointly, through international cooperation, to create an internationally enabling environment conducive to the universal fulfillment of economic, social, and cultural rights, including in matters related to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation'.

Principle 30 of the Maastricht Principles relates to the coordination and allocation of responsibilities. And says, 'states should coordinate with each other, including in the allocation of responsibilities, in order to cooperate effectively in the universal fulfillment of economic, social, and cultural rights. The lack of such coordination does not exonerate a state from giving effect to its separate extraterritorial obligations'.

So the idea is that states may not remain passive. They must take action to promote, fulfill human rights also outside their national borders. And they must work towards building cooperative

mechanisms so that, gradually, states shall cooperate further for the fulfillment of human rights and the reshaping of the international economic order for it to be conducive of domestic efforts to realize human rights.

So I think the Maastricht Principles are a very interesting illustration of how international human rights evolve from the bottom up. These are human rights organizations, these are human rights academic experts who have tried to restate international human rights law and move it forward. And I think these principles respond to real need in times economic globalization, when the separate action of each state may be insufficient for real change to take place for the sake of the complete fulfillment of human rights.