

The Human Rights Summer Course at the EUI in Florence

By Florence Feyerbacher

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A. Introduction

[1] From 17th to 28th of June 2002, the thirteenth session of the Academy of European Law (1) took place at the European University Institute in Florence [<http://www.iue.it>]. Each summer, the Academy organizes a summer course (2) comprised of a two-week human rights (3) and a two-week European Union Law course.(4) For the first time this year, the participation in only either one of the two courses was possible.

[2] The Human Rights Course is divided into one main course and various specialized courses focusing on one particular aspect of human rights law each year. In 2002, all courses were centred around the question of the binding character of human rights law on non-state actors, in particular international organizations and multinational corporations.

B. The General Course

[3] The general course, entitled "Human Rights between Idealism and Realism", was conducted by Prof. Dr. Christian Tomuschat (Humboldt University, Berlin) (5) . In his course, Professor Tomuschat delivered a general introduction to human rights law, which was particular helpful for those course participants, who didn't have an explicit human rights background, but were rather knowledgeable in international law in general or, even, in other subjects such as political science or economics. His course introduced the attendants to such elemental questions as the universality of human rights and problems concerning the implementation of human rights at national level. Furthermore, the course addressed the work and function of political and expert bodies in the human rights field as well as the supervision of compliance by international tribunals and the enforcement by third states, international organizations and by NGOs. In addition, Prof. Tomuschat elaborated on problems concerning human rights in armed conflict and concluded by introducing the participants to the regimes of criminal prosecution of and civil litigation against human rights violators. As the topic of the general course was very broad, many important questions could only be touched upon briefly and it would have been desirable, to hear from an insider and expert as Prof. Tomuschat a little more on "how it really works" and where and why it sometimes doesn't seem to work at all. Nonetheless, Tomuschat's course was conducted in a very cooperative manner, as he did not lecture from his desk, but left a lot of room for discussion, while clearly expressing his personal opinion on recent questions of human rights. For the short time given, Prof. Tomuschat gave an excellent introduction to human rights law in today's world and was often torn himself between idealism and realism. Hopefully soon, his course will be published in the Academy's series.(6)

C. The Specialized Courses

[4] The first specialized course, each of which was comprised of three lectures of two hours each, was held by Prof. Olivier De Schutter from the Université Catholique de Louvain. His course focused on "Corporate Accountability for Human Rights Violations in the European System". Although also in this lecture the complexity of the topic would have deserved a broader elaboration, Prof. De Schutter managed to touch upon essential topics such as the EU and human rights in third states as well as civil and criminal liability of multinational corporations under EU law. Highly interesting were Prof. De Schutter's arguments on the dilemma between the promotion of human rights within the EU on the one hand, and the accusation of economic protectionism on the other. In addition to possible legally binding solutions and their deficits, Prof. De Schutter introduced the participants to the idea of *voluntary* contributions of multinational corporations to the promotion of human rights by the development of voluntary codes of conduct, for which he named various examples of already existing codes and guidelines. This first, highly interesting specialized course was concluded by an analysis of EU member states as economic actors addressing the usefulness of market incentives and the case-law on ethical clauses in public procurement.

[5] Under the title "Multinational Corporations and International Human Rights Law: The New *Lex Mercatoria*", Prof. Ralph Steinhardt(7) from the George Washington University introduced a highly controversial thesis to the participants. Pursuant to his thesis, Steinhardt argued that multinational corporations will soon come to the conclusion that the compliance with human rights standards lies within their own interest and will therefore comply with them. His flow of arguments derives from *lex mercatoria* as a set of rules developed by merchants on the basis of what was considered and recognized by them to be in their own interest. (8) Steinhardt argued that multinational corporations will realize that also the compliance with human rights standards will soon be considered in the interest of a company and thereby lead to compliance with human rights. As examples, Steinhardt named various initiatives using the representation of human rights compliance as a marketing tool in order to increase the sale of the relevant products, such as "the ethical banana". In addition, various initiatives, *i.e.* 'Social Accountability 8000', and business principles, *i.e.* 'Caux Round Table Principles for Business or OECD Guidelines', were named in order to support this thesis. Although it seems desirable that Steinhardt's thesis truly works, it led to highly controversial debates among the

course participants and left some of them unconvinced.

[6] The first week of the human rights course was concluded by Prof. Dr. August Reinisch (9) from the University of Vienna. Reinisch's lectures focused on "The Changing International Legal Framework for Dealing with Non-state Actors", being largely based on the debates during the course. Reinisch addressed three different aspects of human rights: firstly, the substantive law, secondly, the procedure and thirdly the institutions, networks as well as judicial and non-judicial fora. Reinisch also analysed various codes of conduct aiming at human rights compliance and raised the question of who will monitor the implementation of such codes. Furthermore, in a discussion between some course participants and Reinisch an attempt was made to define accountability within the human rights framework.

[7] Prof. Philip Alston's (New York University/European University Institute) (10) lecture addressed the question: "Are the International Financial Institutions Bound by Human Rights Law?". During his specialized course, Prof. Alston offered the participants a very critical analysis of the current IMF and Worldbank human rights policies and of the difference between "doing human rights" and being *truly bound* by human rights law. As three elemental criteria for a true human rights approach, Alston firstly named human right norms, secondly indivisibility and empowerment and, thirdly accountability. Only if all three elements are fulfilled, Alston concluded, an organization has a true human rights approach. Besides his introduction to the work and functioning of IMF and Worldbank, Alston described the lack of a human rights policy and the various detailed policies on single aspects of human rights, criticizing the lack of transparency and cooperation as well as the negligence of social aspects by both IMF and Worldbank. Furthermore, Alston alluded to the contradictory behaviour of these financial institutions by proclaiming the universality of human rights while, at the same time, denying the applicability of human rights to themselves. Alston distinguished between two options of human rights compliance: limited implementation and full integration. Pursuant to Alston, human rights obligations must be extended to three levels: On the first level, the international financial institutions shall not violate human rights by direct involvement; on the second level, complicity with human rights violations committed by states must be prohibited; on the third level, these institutions shall promote human rights by means of a non-sanction, thus positive approach. Alston concluded that also the Worldbank and the IMF shall establish an order, similar to the UN Secretary General's bulletin on the observance of human rights law by UN troops, in order to submit their projects to internationally recognized human rights standards.

[8] Prof. Celia Wells (11) from Cardiff University addressed in her specialized course the concept of "Corporate Accountability for Violations: Defining Complicity and Its Consequences". Prof. Wells elaborative approach included the subdivision of the course into various discussion groups. In these groups, various approaches were made to define complicity. In particular in these smaller groups, the course participants were able to bring their experience with national criminal law into the discussion, which served as an attempt to draw on an analogy to international human rights violations. The discussion was particularly controversial between lawyers from common law and civil law countries as well as between representatives from such countries that recognize the right to try a multinational corporation for certain violations and those legal systems that do not know such a right. The finding of the individual discussion groups was then presented before the entire group of course participants leading to further discussions.

[9] The highlight of the specialized courses was Prof. David Weissbrodt's (University of Minnesota) (12) lecture "Towards Accountability within the UN Human Rights Framework". Weissbrodt is a member of the Working group on the Working Methods and Activities of Transnational Corporations of the Sub-Commission on the Promotion and Protection of Human Rights. In this function, he elaborated a draft on "Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises" (13) and fascinated all course participants with his highly interesting description of the work of the working group, the elaboration procedure of the draft, and the difficulty in agreeing on certain formulations and even single words. Prof. Weissbrodt got his listeners excited from the very first minute of his presentation and actively involved them in discussions, e.g. on how they would approach various aspects in this code of conduct. He closely worked on the original text of various UN documents and treaties, encouraged students to develop analogies and fostered a vivid debate on the means of implementation and enforcement. Prof. Weissbrodt's lecture excellently concluded the two week course on human rights and left all participants curious as to the further development of the draft code.

D. Conclusion

[10] The excellent general overview provided by Prof. Tomuschat was complimented by a set of interesting and challenging specialized courses focusing on various recent aspects in human rights law. However, the very tight schedule of the course unfortunately left very little time to prepare the classes in advance with the reading materials that had been handed out on the first day of the course. Nonetheless, the course was an overall success as it merited from the close interaction between professors and participants, fostered vivid debates and opened new perspectives on the important aspect of human rights and non-state actors.

[11] The course may not only be recommended to those who already have in-depth knowledge of human rights law, but also to those interested in the topic in general having a background in international law or international affairs.

[12] The two weeks in Florence were extremely interesting and challenging. They did not only generate new insights and perspectives on human rights law, but also enabled all participants to meet students and professionals with similar interests and to establish new contacts and networks and maybe even some friendships. The Academy made an excellent choice when composing the lecturers and also when composing the group of participants. This not being the organizers' fault, the time in Florence rushed by at tremendous speed. Not only the beautiful scenery of the Academy in the hills of Tuscany nor the excellent course, but also the wonderful composition of course participants connects the departure from Florence with the hope for a soon return.

For further information:

The Academy of European Law at the European University Institute will hold its Fourteenth Session in 2003; for further information, please visit the Academy's web site on admission (14) or contact the Academy by mail: Academy of European Law, Villa Schifanoia, Via Boccaccio, 121, 50133 Firenze; Email: academy@iue.it, telephone: 00 39-0 55-46 85-555/523 or fax: 00 39-0 55-46 85-517.

The courses are open to students in general, although mainly post-graduate students are admitted. Furthermore, also practitioners from international organisations, NGOs, human rights teachers etc. participate in the course, enriching the debates with their "hands-on-experience". In 2002, the tuition fee for the attendance of one course (either EU or human rights law) was € 320,- and for both courses € 480,-. (1) <http://www.iue.it/AEL>

(2) http://www.iue.it/AEL/summer_course.htm

(3) <http://www.iue.it/AEL/programmes/HRpro2002.pdf>

(4) <http://www.iue.it/AEL/programmes/EUlawpro2002.pdf>

(5) <http://www.rewi.hu-berlin.de/jura/ls/tms/code.htm>

(6) <http://www.iue.it/AEL/aeltoc.htm>

(7) <http://www.law.gwu.edu/facweb/rsteinhardt/>

(8) See, for a recent treatment of *lex mercatoria*, Graf Calliess, *Lex Mercatoria: A Reflexive Law Guide to an Autonomous Legal System*, in: 2 German L. J. No. 17 (1 November 2001), available at: http://www.germanlawjournal.com/past_issues.php?id=109); see also Peer Zumbansen, *Piercing the Legal Veil: Commercial Arbitration and Transnational Law*, EUI Working Paper Law 2002 (forthcoming), then available at: http://www.iue.it/PUB/EUI_WP.html, also published in 8 *European Law Journal* 430-432 (2002); cf. the contributions to Klaus-Peter Berger (ed.), *THE PRACTICE OF INTERNATIONAL LAW* (Kluwer 2001); Filip de Ly, *Lex Mercatoria (New Law Merchant): Globalisation and International Self-Regulation*, in: *RULES AND NETWORKS. THE LEGAL CULTURE OF INTERNATIONAL BUSINESS TRANSACTIONS* (Richard Appelbaum/William L.F. Felstiner/Volkmar Gessner eds.), Hart Publishing 2001, pp. 159-188.

(9) <http://www.univie.ac.at/intlaw/ar.htm>

(10) <http://www.iue.it/LAW/alston>

(11) <http://www.cf.ac.uk/claws/staff/wells.html>

(12) <http://www.law.umn.edu/FacultyProfiles/WeissbrodtD.htm>

(13) <http://www.business-humanrights.org/UN-Draft-Principles.htm>

(14) <http://www.iue.it/AEL/application.htm>