International Protection of Human Rights: Universalism and Regionalism

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The title of the collection of essays in honour of Edward McWhinney, “Multiculturalism and International Law”, reflects the interplay between universal and regional norms and values. The area of human rights is an outstanding example for this interplay, for the coexistence of universal as well as regional legal norms and cultural differences. This contribution offers some general remarks on the topic of universalism and regionalism in the international protection of human rights, dedicated to Ted McWhinney. He has taught in different regions of the world in different languages and we met for the first time many decades ago in Heidelberg, Germany.

1. Introduction

Since the end of the 2nd World War and beginning with the United Nations Charter, a great number of legal texts on the international protection of human rights have been elaborated and adopted, on the universal and the regional levels.1 The literature discussing human rights from different viewpoints has gained a dimension which excludes any reliable overall survey. Even if one concentrates on public international law, as we do here, and leave aside all

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1 A recent survey is given by Thomas Buergenthal, The Evolving International Human Rights System, 100 AJIL (2006), pp. 783-807.
philosophical and political contributions, it still remains only possible to discuss some general tendencies.

At present, there seem to be contradictory trends and tendencies in the discussion of human rights under public international law. On the one side, the protagonists of the international protection of human rights demand further improvements in this field, especially after the end of the Cold War. On the other side, human rights skepticism has gained support, especially under the pressure of international terrorism.

If we try to distinguish between universal and regional human rights law, and if we try to find out whether different standards can coexist, a first question is whether the notion of human rights excludes any regional differentiations and distinctions. Such a thesis, that human rights are per se universal, could find some support in the relevant texts. The United Nations Charter invokes human rights as the fundamental rights of all persons. In the preamble of the Charter, the peoples of the United Nations “reaffirm faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of man and woman ….” According to Article 1, the purposes of the United Nations include “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ….” This is repeated in Article 55 of the Charter.

Regional human rights conventions also underline the universality of human rights, and they add some words on regional aspirations. In the Preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms we find these words:

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective

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