

*What do High Definition Television, Beauty Contests and
Digital Multiplexes have to do with Human Rights?*

Human Rights Considerations for Spectrum Management Policy

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For the:
European Master's in
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2010

The thesis is a bibliographical study on the human rights implications of spectrum management policy and some complementary regulatory policies. It focuses in the opportunities provided by the digital transition for an increase of diversity in the broadcasting sector, and the reasons why bad policy can lead to such opportunities being wasted. Also focuses in the State obligations under International Human Rights Law as spectrum manager and the need to eliminate discretion in the assignment and renewal of frequency concessions as well as the imperative to democratize the access to the spectrum.

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Foreword

In my short career as a professional on the legal field I have had on several occasions the opportunity to talk to first year law students or other groups unfamiliar with International Law (IL) about International Human Rights Law (IHRL). It is almost a golden rule that, in such situations, I will always find myself faced with one or more disbelievers who would be quick to point out that IL is not really law and therefore not worthy of serious academic study. The rationale behind this position is in most of the cases the same, that IL is no more than a list of moral recommendations and that international relations depend not on law but on the real and effective power of the parties involved. Being able to anticipate this type of reaction I have prepared a stock response. As quick as these arguments are raised I am to point out first that domestic law is also always subject to a bigger or lesser degree to the influence of real power, and that unfortunately in developing countries such as mine and even in developed ones people with economic and political power are sometimes able to escape the force of law. However, I always remark, I am yet to listen this being raised as reason for criminal law to stop being taught in law schools.

Secondly, I add, we tend to hear about IL, only when it fails, normally in the most politicized areas of IHRL and International Humanitarian Law. Then I proceed to explain how whole areas of our life are ruled by international law without us noticing only because IL does work properly in these areas. My main two examples are always International Air Space Law and International Telecommunications Law (ITCL). I am glad to say that my stock response has so far served my purposes well. Once I inform my audiences about how it is because of IL that we can travel by airplane safely knowing that no plane from other nation is going to crash on us by traveling the same route in an opposite direction or that no TV signal is going to interfere with the plane radars and how without international law things we take for granted such as making and receiving telephone calls to other countries would not be possible they tend to be more open to listen to what I have to say.

With this being said we still have some road to travel before we can say IHRL is as effective as, let's say, ITCL. The reasons for this disparity are difficult to determine, for example one could argue that while in the case of ITCL there is a convergence of political and economic interest, of the interest of Governments, businesses and users, in the case of IHRL there is a divergence of these interests and instead of driving each other they in turn impair each other. This kind of popular wisdom probably holds truth in most cases; however it is not in every case that the interest of businesses and people would diverge with regard to social rights. It is not always the case that human rights would limit the power of the State against individuals, in some cases it could even enhance it. With regard to ITCL it has historically been an area of the law obscured to the general population and even to law professionals, its generation and development being left primarily to specialized technicians. However, the advent of the information society and the resulting consumer awareness and activism movements have resulted in increased familiarity and interest of the general public in ITCL. This has contributed to shattering, to a degree, the illusion of absolute convergence of interests.

However, one truth remains, that while ITCL is a necessity because international and even domestic telecommunications would not be possible at all without international legal regulation IHRL is not seen by all as a necessity, we human rights activist would, of course, argue it is. However many would claim that what we call human rights are at best, moral or philosophical ideas that should not be enforced by law and specially, not imposed by international law as such ideals vary from time to time and place to place. This kind of thinking is probably the real and unfortunate reason IHRL is still yet to become a transparent form of international regulation so rarely an issue of conflict as to be taken for granted.

The study at hand relates the point of convergence between ITCL and IHRL. The object of our study is the radio/electric spectrum, the natural medium through which a significant and ever increasing percentage of telecommunications are conducted. Our aim is to analyze the obligations of States under IHRL when managing this natural resource.

Key List

ACHR – American Convention on Human Rights

ACHPR --- African Charter on Humans and Peoples Rights

ACMA --- Australian Communications and Media Authority

AMARC --- World Association of Community Radio Broadcasters

AHRPS --- African Human Rights Protection System

Argentina Case --- The controversies surrounding the adoption of Law 26.522 regulating the Audiovisual Communication Services in the whole territory of the Republic of Argentina, which is currently suspended pending a court decision.

Armenia Case --- The case of Meltex Ltd and Mesrop Movsesyan v. Armenia decided by the European Court of Human Rights the 17 of June of 2008.

Art. 19 Campaign --- The XIX Article 19 Global Campaign for Free Expression.

BCI --- Broadcasting Commission of Ireland

CB --- Community Broadcasting

CBs --- Community Broadcasters

CoE --- Council of Europe

Committee of Ministers --- The Committee of Ministers of the CoE

CRTC --- Canadian Radio-Television and Telecommunications Authority

ECHR --- European Convention on Human Rights

ECrHR --- European Court of Human Rights

EHRPS --- European Human Rights Protection System

EPRA --- European Platform of Regulatory Authorities

ESCR --- Economic, Social and Cultural Rights

FCC --- United States Federal Communications Commission

FoE --- Freedom of Expression

FoE Defenders --- the UN Special Rapporteur on Freedom of Opinion and expression, the OAS rapporteur, the OSCE Representative on Freedom of the Media and (since 2006) the African Commission on Human and People's Right Special Rapporteur on Freedom of Expression when issuing a joint declaration.

IACHR --- Inter American Commission of Human Rights

IACrHR --- Inter American Court of Human Rights

IAHRPS --- Inter-American Human Rights Protection System

Ibid --- reference is the same as in the preceding footnote

ICCPR --- International Covenant on Civil and Political Rights

ICESCR --- International Covenant on Economic, Social and Cultural Rights

IHRL --- International Human Rights Law

IL --- International Law

Infra, section (number) --- discussed below in section (number)

IRR --- International Radio Regulations

ITCL --- International Telecommunications Law

ITU --- International Telecommunications Union

Joint Declaration, (Year) --- Joint Declaration of the FoE defenders of (year)

Mexico Case --- The controversies relating the 2006 reforms to the Mexican Federal Law of Radio and Television and the Mexican Federal Law of Telecommunications which lead to the interposition of the Unconstitutionality Action 26/2006 before the Mexican Supreme Court of the Nation and the subsequent decision of the Court regarding that action.

NEMBC --- Australian National Ethnic and Multicultural Broadcasters Council

OAS Rapporteur --- The Organization of American States Rapporteur on Freedom of Expression

Ofcom --- United Kingdom Office of Communications

OSCE --- Organization for Security and Cooperation in Europe

PSB --- Public Service Broadcasting

PSBs --- Public Service Broadcasters

RtI --- Right to Information

SSP --- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “San Salvador Protocol”

Supra, note (number) --- reference can be found above in footnote (number)

UHRPS --- Universal Human Rights Protection System

UN --- Organization of the United Nations

UNESCO --- UN Educational, Scientific and Cultural Organization

Venezuela Case --- The controversies surrounding the 2007 decision by the Venezuela Government not to renew the frequency concession of private television station Radio Caracas Television (RCTV).

*** All the cited websites were accessed for the last time the 24 of May of 2010**

*** All the quotes from the Court decision of the Mexico Case have been translated from Spanish to English by the Author**

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