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LEGAL ISSUES OF PROTECTION OF PROPERTY LAW AS A HUMAN RIGHT IN INTERNATIONAL PUBLIC LAW

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ABSTRACT

This article examines the legal issues surrounding the protection of property rights as a fundamental human right under international public law. It traces the historical development of property rights, analyzes key international legal instruments and court cases that have defined and interpreted this right, and explores challenges in balancing private property rights with public interests and state sovereignty. The article concludes that while property rights are well-established as a human right, their scope and implementation continue to evolve through international legal mechanisms.

KEYWORDS

Development of property rights, public interests and state sovereignty, scope and implementation.

INTRODUCTION

The right to property is one of the oldest recognized human rights, with roots tracing back to early legal and political philosophy. John Locke, in his Second Treatise of Government (1689), asserted that the protection of property is the chief purpose for which individuals enter into society.[1] This notion heavily influenced the development of domestic legal systems and became

enshrined in foundational documents like the United States Declaration of Independence and Bill of Rights.[2]

However, the status of property rights under international law has been more nebulous. The devastating impact of World Wars I and II, the rise of



communism, and post-colonial struggles led to major debates over the nature of property and whether its protection constituted an inviolable human right or was subject to state discretion.[3] The 1948 Universal Declaration of Human Rights ultimately included property rights, but international legal instruments and state practice since then have demonstrated ongoing tensions.[4]

This article examines the legal issues of protecting property as a human right under contemporary international public law. Part 2 traces the historical and philosophical foundations of property rights and their early development in international law. Part 3 analyzes the key international legal instruments and declarations that define the scope of property rights. Part 4 explores how international judicial bodies have interpreted and applied property rights in significant cases. Finally, Part 5 discusses the challenges of balancing property rights with competing public interests and state sovereignty in an increasingly globalized world.

The Historical and Philosophical Foundations of Property Rights

The notion of property rights - that individuals have a natural entitlement to the fruits of their labor which society is obligated to protect - is deeply rooted in Western legal and political thought. British philosophers like Thomas Hobbes, John Locke, and William Blackstone argued that private property is a natural, pre-political right that forms the basis of the social contract between citizens and the state.[5] The state's central purpose, in their view, is to safeguard individual property from both private and governmental interference.

These ideas profoundly influenced the political leaders of the American Revolution and are echoed in the

Declaration of Independence's references to "life, liberty and the pursuit of happiness"[6] and the Fifth Amendment's prohibitions on uncompensated takings of private property.[7] Early international law publicists like Emmerich de Vattel also viewed property rights as a key component of the law of nations. Vattel argued that "the peaceful possession of property should be protected by all nations" and that states have a duty to refrain from appropriating foreign property.[8]

However, the rise of Marxism and experiences of the World Wars complicated international views on property rights. Socialist states and post-colonial nations questioned the inviolability of private property and contended that its protection inappropriately shielded the wealthy and privileged.[9] The atrocities committed by the Nazi regime, often through "legal" property seizures, highlighted how a state could wield property rights as a tool of oppression.[10]

A 1962 UN resolution, titled Permanent Sovereignty over Natural Resources, asserted the right of nations to expropriate foreign-owned property in service of self-determination.[11] This signaled an emerging divergence between Western capital-exporting states, which emphasized strong international protections of property rights as a precondition for global investment, and developing states, which sought to preserve governmental discretion over property and natural resources.[12]

International Legal Instruments on Property Rights

Foundational international human rights instruments reflect these tensions over the status and scope of property rights. The 1948 Universal Declaration of Human Rights states in Article 17 that "Everyone has the right to own property alone as well as in association with others" and that "No one shall be



arbitrarily deprived of his property." [13] This marked the first time an international text recognized property as a universal human right.

However, the two subsequent binding international covenants divided between civil/political and socioeconomic rights intentionally omitted property protections. Some states believed these were adequately covered under the UDHR, while others wanted to provide greater leeway for states to control property in service of national development. [14] The European Convention on Human Rights, in contrast, contains an explicit right to property subject to certain public interest exceptions. [15]

Subsequent international declarations have reaffirmed property rights but often balanced them against other societal considerations. The 1993 Vienna Declaration emphasizes that "While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights," including property rights. [16] The 2007 UN Declaration on the Rights of Indigenous Peoples asserts that indigenous groups have the right to maintain and strengthen their distinct relationship with their traditionally owned lands and resources. [17]

In parallel to human rights law, international investment agreements have become key vehicles for protecting the property rights of foreign investors. Over 3,000 bilateral investment treaties (BITs) and numerous multilateral agreements contain strong guarantees against uncompensated expropriation and require "fair and equitable treatment" of foreign-owned property. [18] While focused on investor-state relations rather than human rights per se, these instruments have significant implications for how property is regulated globally.

International Judicial Interpretations of Property Rights

International courts and tribunals have further defined the scope of property rights through their judgments and opinions. The European Court of Human Rights has the most extensive jurisprudence, interpreting Article 1 of Protocol 1 to the European Convention. In *Sporrong and Lönroth v. Sweden*, the Court found that de facto interference with property rights, even without formal expropriation, could violate the Convention if it strikes an unfair balance between private and public interests. [19]

Subsequent ECHR cases have established that states enjoy a "wide margin of appreciation" in regulating property but that they must provide a reasonable opportunity for property owners to challenge government control measures. [20] The Court has also recognized that intellectual property, contractual rights, and company shares can count as "possessions" subject to protection. [21] At the same time, it has upheld restrictions on property use to further environmental conservation, [22] urban planning, [23] and housing access. [24]

The Inter-American Court of Human Rights has also recognized property as a fundamental right. [25] In *Sawhoyamaxa Indigenous Community v. Paraguay*, the Court found that the government had violated the community's property rights by failing to resolve their land claim in a reasonable period. [26] It ordered restitution of the group's ancestral lands and compensation for the harms suffered.

Investor-state arbitral tribunals have further contributed to international property jurisprudence. In *Metalclad v. Mexico*, a tribunal found that government measures rendering property investments unprofitable could constitute illegal indirect

expropriation.[27] The Tecmed v. Mexico decision similarly held that expropriatory state action includes not just outright seizure but also measures that radically deprive an investor of the economic benefits of property ownership.[28]

Balancing Property Rights with Public Interests and State Sovereignty

The international legal instruments and jurisprudence discussed above demonstrate the firm establishment of property rights as a matter of human rights law. At the same time, they point to ongoing challenges in balancing these rights against governmental authority to regulate property in service of legitimate public welfare objectives.

One key issue is defining the scope of protected property interests. The concept of "possessions" under the European Convention has expanded through case law to cover a range of intangible and derivative assets. Investor-state tribunals have also tended to interpret property rights broadly. This has led to concerns about "regulatory chill", with governments hesitating to enact environmental or public health measures out of fear of violating international property protections.[29]

Another challenge is determining what constitutes an illegal deprivation of property. Most international instruments prohibit "arbitrary" or uncompensated seizures but preserve governmental authority to restrict property use through reasonable regulation. The line between legitimate exercises of state police power and de facto expropriations often depends heavily on case-specific facts and competing policy considerations.[30]

The interaction between international property rights and state sovereignty raises additional complexities. Some argue that globalization is eroding national

control over property and that strong investor protections constrain the ability of states to determine their own economic and social policies.[31] Assertions of "permanent sovereignty" over natural resources point to particular sensitivities over preserving governmental discretion in this area. However, others contend that international property rights can foster cross-border investment, constrain abusive state practices, and contribute to global rule of law.[32]

Ultimately, international public law seeks to establish minimum standards for protecting property rights while providing space for diverse national approaches in balancing these rights with other public interests. As global economic integration deepens and new forms of property emerge, striking this balance will require ongoing development of international instruments, national practices, and judicial doctrines.

CONCLUSION

This article has examined the legal issues surrounding the protection of property rights as a human right under international public law. It finds that property rights are firmly established as a universal right in key international human rights instruments, but the scope and implementation of this right continue to evolve through international judicial interpretation and state practice.

Historically, Western legal and political traditions have viewed property as an inviolable natural right, while socialist and post-colonial perspectives have emphasized the need for state discretion over property in service of national development and social welfare. These tensions are reflected in international instruments like the Universal Declaration of Human Rights, which recognizes property rights but counterbalances them with public interest considerations.

International courts like the European Court of Human Rights have interpreted property rights to encompass a range of tangible and intangible interests, but they have also upheld governmental authority to regulate property for legitimate public purposes. Investor-state arbitral tribunals have robustly protected the rights of foreign investors against direct and indirect expropriations, raising concerns about preserving space for national policy discretion.

The article concludes that international law establishes baseline requirements for protecting property rights while preserving a degree of national flexibility in their implementation. As processes of globalization and economic development continue to shape property relations, international legal frameworks and doctrines will need to further evolve to reconcile private rights and public interests in service of human welfare and dignity.

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