Module Outline and Reading List

International Human Rights Law
LW990

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Module Coordinator: Justin Pettit

MA in the Theory and Practice of Human Rights 2011-2012
Module Outline:

Week 1:  Introduction to Law and Legal Reasoning
Week 2:  Introduction to International Law and Sources; Customary International Law
Week 3:  Sources - Treaties and Soft Law
Week 4:  International Legal Personality
Week 5:  Jurisdiction, Immunities and State Responsibility
Week 6:  The Use of Force and the Protection of Human Rights
Week 7:  UN Human Rights Institutions and Processes: the Charter based Human Rights System
Week 8:  UN Human Rights Institutions and Processes: the Treaty Bodies
Week 9:  Regional Human Rights Institutions and Processes: Europe
Week 10: Regional Human Rights Institutions and Processes: The Americas
Week 11: Regional Human Rights Institutions and Processes: Africa
Week 16: Equality and Non-Discrimination
Week 18: Minorities and Indigenous Peoples
Week 18: Freedom of Thought, Conscience and Religion, and Freedom of Expression
Week 19: Freedom of Association and the ILO
Week 20: Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment
Week 21: The Right to Life and Unlawful Killings, and Enforced Disappearances
Week 22: States of Emergency and (Counter-) Terrorism; Armed Conflicts
Week 23: Refugees and Internally Displaced Persons
Week 24: Economic, Social and Cultural Rights – Focus on the Right to the Highest Attainable Standard of Health and the Right to an Adequate Standard of Living
Week 25: Redress and Transitional Justice
**Aims and Objectives**

The first term of LW990 aims to provide students with an overview of the basic principles of international law that are essential for further study, research and effective practice in the field of international human rights law. During this term students will also gain knowledge of the international and regional human rights institutions and processes.

By the end of the first term, students should feel comfortable analysing legal materials (legal instruments, jurisprudence and commentaries), constructing legal arguments and engaging in legal research pertaining to human rights.

In the second term the core module aims to provide students with an analytical, critical and contextual introduction to international human rights law. The module is designed to provide a solid legal foundation on the basis of which students will pursue their more specialised optional modules and human rights research.

While the scope and depth of the subject does not permit the International Human Rights Law module to cover all relevant issues, it aims to familiarise students with the major contemporary features and debates within international human rights law. Further, it also provides students with an opportunity to develop their analytical skills in relation to the international law of human rights.

**Teaching and Assessment**

Teaching consists of lectures and discussion groups. In both terms one and two, each student is expected to attend the weekly lecture (2 to 4 hours). In addition, each student is expected to participate in a fortnightly two-hour discussion group. While the lectures are delivered to the whole group, the discussion groups are delivered to smaller groups so as to facilitate discussion. Thus, each discussion group is repeated.

Students should come to the discussion groups ready to discuss the concepts and ideas covered in the lecture and the readings. During the discussion groups all students are expected to participate in general discussions, role-play exercises, case studies and presentations. Please make sure that you do the essential reading for the discussion group. The topics of discussion and the readings for the discussion group will be made available.

The module is assessed by way of two take home exams. Each exam consists of a combination of a compulsory “fact” question and of an essay question to be chosen among a selection of titles, each counting for 50% of the final mark. The first exam will be distributed during the final week of term one. You are expected to return your answer script to the law postgraduate office by 15.45 hrs on the first day of the spring term. The second take home exam will be distributed in the last week of the second term and should be returned to the law postgraduate office by 15.45 hrs on the first day of the summer term. Each take-home exam counts for 50% of the final overall module mark.
Readings

Each week you are required to do the ‘essential readings’ listed on the reading list. If you have the time or have a particular interest in a specific area, please also read some of the materials listed in the ‘further readings’ section. The ‘further reading’ is also there to assist you in your independent research.

This outline provides ‘Essential Readings’, ‘Instruments’, ‘Cases’ and ‘Further Readings’ in relation to each module topic. Students are expected to read all the ‘Essential Readings’, ‘Instruments’ and ‘Cases’. They should use their best endeavours to read as much material as possible before the relevant class. Students should consult the ‘Further Readings’ as necessary.

A pack of the materials that form the readings for the module will be provided at the beginning of the year, which includes only some of ‘the Essential Readings’ of the module that are not easily accessible online or in the library.

Additionally, a list of basic websites has been included at the end of this outline. It provides students with a comprehensive list of international law and international human rights law links accessible through the internet.

Recommended Books

All students should purchase a copy of Dixon, McCorquodale and Williams, Cases and Materials on International Law (5th edition, Oxford, 2011). This book can be purchased at the university bookshop or it can be found in the library at JX 3091.D5. Students are also advised to purchase, Steiner, J., Alston, P., and Goodman, R., International Human Rights in Context: Law, Politics and Morals (Oxford, 3rd ed. 2007). This book can be purchased at the university bookshop or it can be found in the library at JC 571.S7. We will use these books throughout the first term and it will also be of use during the second term.

You may also wish to purchase a compilation of international human rights laws. Brownlie, I., Basic Documents on Human Rights (6th edition, Oxford, 2010) (available in the library at JC 571.B2) provides a good compilation of basic instruments. However, it is not essential that you purchase this book as you can find all the relevant human rights instruments on the web (go to: www.ohchr.org then click on ‘your human rights’ and ‘international law’).

The cases which are referenced in the reading list can be found in full in the library or there are links on the LW990 internet site to summaries.

There is an ever-growing literature on the subject of international human rights so that it would not be possible to list all here. Nor is there one text recommended for this module. The list below does not exhaust all the issues to be addressed during the lectures and seminars. Nevertheless, it provides the students with a good range of sources to consult during the year. This list is divided into core legal texts and some recent books offering wider perspectives on international human rights law.
Core Legal Texts


Other Texts


**Journals**

There are a large number of high quality international law journals in the library. The following are particularly useful:

- **AJIL**  American Journal of International Law
- **EHHR**  European Human Rights Reports
- **EJIL**  The European Journal of International Law
- **HRLJ**  Human Rights Law Journal
- **HRQ**  Human Rights Quarterly
- **ICLQ**  International and Comparative Law Quarterly
- **IHHR**  International Human Rights Reports
- **IRRC**  International Review of the Red Cross and Crescent
- **JICJ**  Journal of International Criminal Justice

**Internet resources**

The Reading list for this module can be found on the University of Essex website in the Course Materials Repository. The Web site for this module contains useful links to many of the Readings and other resources.

A website has been designed to help students find on-line Reading materials for each one of the sessions and to provide them guidelines for writing among other things. The website can be accessed on or off campus but a valid password is required. Students can access it by going to the following web address: [https://courses.essex.ac.uk/lw/lw990/](https://courses.essex.ac.uk/lw/lw990/)

Students are strongly advised to familiarise themselves with the Lexis Library, Hein Online and Legal Journals Index, which contain a rich pool of articles on international law/human rights law. To access these databases, go to the University homepage ([www.essex.ac.uk](http://www.essex.ac.uk)), click on library services, click on ‘E-Resource and Database menu’ where you will find all of the databases. In week 2, Caroline Checkley, a librarian specializing in human rights law, will run a session on accessing and searching the library’s various e-resources. The session will also include introductions to other important internet-based resources, including those of the United Nations, international and regional courts, and other case law repositories.

Students can seek further advice from Caroline. [checkc@essex.ac.uk](mailto:checkc@essex.ac.uk)
Useful web sites

The LW990 Web page contains extensive links to relevant web sites. However, some of the most important web sites are:

The United Nations: www.un.org
The International Court of Justice: www.icj-cij.org
The Inter-American system: http://www.corteidh.or.cr/index.cfm and http://www.cidh.oas.org/DefaultE.htm
Asia Human Rights Mechanism group: http://www.aseanhrmech.org/
African Charter site: http://www.achpr.org
The Council of Europe: www.coe.int
European Court of Human Rights Database: http://www.echr.coe.int/echr/en/hudoc/
The Organisation for Security and Cooperation in Europe: www.osce.org
HURIDOCS : http://www.huridocs.org/?set_language=en
Unifem: http://www.unifem.org/
Legal Research on International Law Issues Using the Internet: http://www.lib.uchicago.edu/~llou/forintlaw.html

Further information

The module is taught by a teaching team made up of academics from the Department of Law. However, if you have any questions about the module, please direct them in the first instance to the module coordinator Justin Pettit (jkpett@essex.ac.uk) or the module director Judith Bueno de Mesquita (jrbuen@essex.ac.uk). Please note that Justin’s consultation time is every Wednesday from 10.00 to 12.00 in room CB50, Judith’s office hours are on Thursdays from 14.00-15.00 (5S.6.11). Please note that Judith works on a part-time basis, her normal work days are Wednesdays-Fridays.

Please note that overall general administration of the MA is the responsibility of the Human Rights Centre Education Programme Secretary Emma Revill (room 4SB.5.17) ecrix@essex.ac.uk.
**Week 1: Introduction to Law and Legal Reasoning**

**Introductory Session to Law for Students enrolled in MA in Theory and Practice of Human Rights**

Dr. Noam Lubell

During the first week of term, all students will have 3 hours of introduction to Law on Friday 7 October, 14:00 – 17:00. This session is essentially designed to help students without a law background to understand basic concepts of law. Although it will be beneficial to all the students, those who have a background in law can opt out of this session.

The session will be dynamic since it will combine role plays and team work with brief lectures so as to make sure that the session builds on existing knowledge and that people grasp key concepts and principles that will be essential to make sense of International Human Rights Law. Among the issues that will be discussed are: reading and understanding law; how to find what is relevant legally speaking and legal reasoning; constructing legal arguments.

**Essential readings:**

Since this session will take place during the induction week (3-7 October), students are not expected to come having prepared the session. Nevertheless, a classic book to understand law is the one by William Twining, *How to Do Things with Rules* (London, Butterworths, 1999, 4th edition).
Week 2: Introduction to International Law and Sources; Customary International Law

Dr. Noam Lubell

Essential readings:

Malanzuck, ‘Introduction’ pp. 1-8
Dixon, McCorquodale and Williams, Chapter 1, pp. 1-17
Steiner, Alston and Goodman, pp. 3-17

Issues:

What is international law?
What is international human rights law?
What do international lawyers consider to be a right?

A. The relationship between international and national law

Essential readings:

Malnczuk, Chapter 4 ‘International law and municipal law’ pp. 63-74
Dixon, McCorquodale and Williams, pp. 105-131
Steiner, Alston and Goodman, pp. 1096-1099

Issues:

1. What is a monist legal system?
2. What is a dualist legal system?
3. What does this distinction mean for individuals?

Further readings:

Evans, International Law, pp. 428-444

B. The International Court of Justice
Essential readings:

Malnczuk, pp. 281-93

Chapter II and IV, ICJ Statute.

Dixon, McCorquodale and Williams, pp. 632-663

Issues:

1. What is the function of the ICJ?
2. What is the jurisdiction of the ICJ?

Further readings:

Higgins, ‘Dispute Settlement and the International Court of Justice’ pp. 186-204

Please take a look at the ICJ web site.

C. The Sources of International Law – Emphasis on Customary International Law

Essential readings:

Malanczuk, Chapter 3, ‘Sources of International Law’ pp. 35-62

Dixon, McCorquodale and Williams, Chapter 2, pp. 18-54

Steiner, Alston and Goodman, pp. 58-148

Chinkin and Charlesworth, The Boundaries of International Law, pp. 62-67

Instruments:

Article 38, Statute of the International Court of Justice (ICJ) (Dixon, McCorquodale and Williams, p.21)

Article 64, 1969 Vienna Convention on the Law of Treaties (Dixon, McCorquodale and Williams, p.37)

The Universal Declaration of Human Rights (1948) (UDHR)
Cases:

All the ICJ cases are accessed through the ICJ website [http://www.icj-cij.org/](http://www.icj-cij.org/)

*The Anglo-Norwegian Fisheries Case, UK v. Norway* (1951) Judgment of ICJ (Harris pp. 327-332)


*North Sea Continental Shelf Cases* (1969) Judgment of ICJ paras 70-101 (Harris pp. 21-27)


Issues:

1. What are considered to be the traditional sources of international law?
2. Does Article 38 of the ICJ Statute provide a complete list of the sources of international law?
3. Are the sources of international law mentioned in the ICJ statute hierarchical?
4. What are the sources of international human rights law?
5. What are the constituent elements of customary international law?
6. What acts can be considered to constitute state practice?
7. What does the term *opinio juris* mean?
8. What is meant by the term ‘persistent objector’?
9. What is meant by the term ‘regional custom’?
10. What approach does the International Court of Justice follow when attempting to identify the creation, change and modification of customary international law?
11. Who is bound by customary international law?
12. What is the relationship between treaty law and customary international law?
13. Which international human rights norms can be considered to be customary international law?
14. What does the term *jus cogens* mean? Is this term useful?
15. What is meant by an obligation *erga omnes*?
16. What is the difference between customary international law and general international law?
Further readings:

Akehurst, ‘Custom as a Source of International Law’ (1974-5) 47 BYIL pp. 1-54


Charney, ‘Universal International Law’ (1993), 87 AJIL pp. 529-551

Czaplinski, ‘Sources of International Law in the Nicaragua Case’ (1989) 38 ICLQ, pp. 151-166


Brownlie, *Principles of Public International Law*, Chapter 5

Cassese, *International Law*, Chapter 6


**Week 3: Sources - Treaties and Soft Law**

Dr. Noam Lubell

**A. Law of Treaties**

**Essential readings:**

Malanczuk, pp. 130-146

Dixon, McCorquodale and Williams, Chapter 3, pp. 55-100


Steiner, Alston and Goodman, pp. 1124-1155 – on reservations


**Instruments:**


Human Rights Committee *General Comment 24*.

**Cases:**


*Rawle Kennedy v Trinidad and Tobago*, UN Human Rights Committee, 7 International Human Rights Reports 315 (2000) (Dixon, McCorquodale and Williams, p. 79)

*Belilos v. Switzerland*, European Court of Human Rights Series A (1998), Vol. 132 (Dixon, McCorquodale and Williams, pp. 73-74)

**Issues:**

1. What is the function of a treaty in international law?
2. Under international law who is able to enter into a treaty?
3. What is meant by the term *pacta sunt servanda*?
4. What is the difference between signature and ratification of a treaty?
5. What is the approach to the interpretation of treaties and why is it necessary to have an approach?

6. What is meant by a reservation to a treaty and what is the effect of a reservation of a treaty?

7. How may a state legally justify non-adherence to a treaty obligation?

8. How would you distinguish an international human rights treaty from other international treaties?

9. Is it possible for states to make reservations in respect of international human rights law treaties?

10. What are the consequences, if any, of a reservation to an international human rights law treaty?

11. Twelve states have ratified the (hypothetical) 1995 Convention for the Protection and Preservation of Golden Crabs. The Golden Crab is an inhabitant of the seabed of Mediterranean States. Article 1 stipulates “No party shall catch more than 300 Golden Crabs per annum in its coastal waters”.
Consider the legal consequences of the following acts

(a) State A caught 2,000 Golden Crabs last year. State A argues that due to States’ diligence in protection measures in the 1990s the population of Golden Crabs is no longer at critically unsustainable levels. Indeed, the species has repopulated in such number that if not caught the Crab will wipe out fish stocks.

(b) State B considers the treaty void because when it signed and ratified the treaty it mistakenly thought the subject of protection was the Gold Crab. The Golden Crab is a delicacy of State B, and it is highly important to B’s economy that more than 300 of the species can be caught for food, whereas the shores of B are not home to many Gold Crabs.

(c) State C has caught 300 Golden Crabs in its own coastal waters, but has also proceeded to catch thousands of the species in the coastal waters of the other Parties. State C argues that this interpretation is completely consistent with the ordinary meaning of the provision.

(d) In 2001 all parties to the 1995 treaty have negotiated the Convention for the Protection and Preservation of Coastal Seabed Species and Their Habitats. Article 1 of the 2001 Convention stipulates, “It is forbidden to catch any species listed in Annex I”. Annex I lists, inter alia, the Golden Crab.

(e) State D is complaining against State E in that the latter State has been catching Golden Crabs in the area beyond the 3 mile limit, and hence has taken higher catches than the 300 allowed under the Convention. State E interprets the term “coastal waters” to mean to the extent of 3 miles. State E claims that this interpretation of the term “coastal waters” is consistent with the general discussions during the negotiations. In this regard, State E adduces the travaux préparatoires as evidence that this was the meaning States were adopting for the Convention. State D interprets the term “coastal waters” to mean the waters to a distance of 12 miles from a State’s baselines. State D argues that this interpretation is consistent with international practice in general in that “coastal waters” are always defined as 12 miles. State D
acceded to the Convention, and was not present at the discussions. No definition of “coastal waters” was included within the treaty.

**Further readings:**


Chinkin, *Human Rights as General Norms and a State’s Right to Opt Out* (British Institute of Comparative Law, 1997)

Charlesworth and Chinkin, pp. 96-122


**B. Soft Law: Declarations, UN Resolutions, Guidelines and Principles**

**Essential readings:**

Malanczuk, pp. 54-55

Dixon, McCorquodale and Williams, pp. 48-52


**Instruments:**


**Issues:**

1. What is soft law?
2. Are soft law standards binding upon states?
3. What is the value of soft law?

**Further readings:**


**Week 4: International Legal Personality**

Dr. Noam Lubell

**Essential readings:**

Malanczuk, Chapter 5, Chapter 6

Dixon, McCorquodale and Williams, Chapter 5, pp.132-174

Steiner, Alston and Goodman, pp.1385-1432


**Issues:**

1. Who are considered to be the subjects of international law?
2. What are the requirements of statehood in international law?
3. What is mean by the term ‘international legal personality’?
4. Who can be held responsible for a violation of international law?
5. Is the government of a stable, unrecognised entity (e.g. Transdniestra) capable of having rights and obligations in international law? Does it make a difference to your answer to know whether the entity is part of a sovereign state?
6. If the states are subjects of international law what is the role of individuals in international law?
7. What status do international organizations have under international law?
8. What is meant by the term ‘non-state actor’?

**Further readings:**

Chinkin and Charlesworth, pp. 124-137


Week 5: Jurisdiction, Immunities and State Responsibility

Dr. Noam Lubell

Essential readings:

Malanczuk, Chapter 7, Chapter 8; Chapter 17

Dixon, McCorquodale and Williams, Chapter 8 pp. 273-303; Chapter 9, pp. 304-345; and Chapter 11, pp. 394-440

Steiner, Alston and Goodman, pp. 1226-1237

Issues:

1. Do States need positively to identify a ground for the exercise of jurisdiction or are they free to exercise jurisdiction unless international law prevents them from doing so?
2. When international law allows the exercise of jurisdiction is a State obliged to exercise it?
3. Which national authorities are immune from the exercise of jurisdiction by a foreign State
   a. in civil proceedings?
   b. in criminal proceedings?
4. Does sovereign or diplomatic immunity act as a bar to international proceedings?
5. In what circumstances, if any, will a State bear legal responsibility for the acts of
   a. a company in its jurisdiction?
   b. a non-State armed group?
6. What are the forms of, and limits to, State responsibility?

Further reading:

Behrami and Behrami v. France (application no. 71412/01) and Saramati v. France, Germany and Norway (no. 78166/01).

Week 6: The Use of Force and the Protection of Human Rights

Dr. Noam Lubell

Essential readings:

Malanczuk, pp. 306-341

Dixon, McCorquodale and Williams, Chapter 15, pp. 570-625


Instruments:

Articles 1, 2(4), 2(7), 51, Chapters VI and VII, UN Charter.

Security Council Resolutions 688, 1368, 1373, 1441 and 1674

2005 World Summit Outcome, General Assembly Resolution 60/1, UN Doc. A/RES/60/1, paras. 138-139.

Cases:


Caroline Case 29 BFSP 1137-38 (Dixon, McCorquodale and Williams, p. 576)

Issues:

The use of force under international law

1. Under what circumstances can States use force?
2. What limitations does the UN Charter place upon States wishing to use force in self-defence?
3. Does the UN Charter permit anticipatory self-defence?
4. What was the legal basis for the US/UK intervention in: a) Afghanistan (2001) and b) Iraq (2003)?

**The role of the Security Council in the maintenance of peace and security**

1. Article 24 of the UN Charter confers primary responsibility for the maintenance of international peace and security on the Security Council. What powers does the Security Council have to discharge this responsibility and how have these powers been exercised in practice?
2. What role does article 24 leave for the General Assembly in the field of international security?
3. What is the relationship between articles 2(4), 2(7) and Chapter VII of the UN Charter?

**Humanitarian intervention / Responsibility to Protect**

1. What is ‘humanitarian intervention’?
2. Do States have a right to humanitarian intervention under international law?
3. What was the legal basis for the 1999 NATO led bombing campaign against the Federal Republic of Yugoslavia?
4. Is ‘responsibility to protect’ the same as ‘humanitarian intervention’? If not, what are the differences?
5. Could the following intervene militarily without the consent of Sudan to address the situation in Darfur:
   a. the Security Council
   b. the African Union
   c. a coalition of willing States

**Further readings:**


Chesterman, *Just War or Just Peace* (2001), pp. 45-87

Byers ‘Terrorism, the Use of Force and International Law after September 11’, (2002) 51 ICLQ, pp. 401-414


Simma, ‘NATO, the UN and the Use of Force: Legal Aspects’; and Antonio Cassese, ‘Ex injuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?’ both in 10 EJIL (1999) pp. 1-30

Steiner, Alston and Goodman, pp. 648-703

Editorial Comments, ‘NATO’s Intervention in Kosovo (A collection of comments)’, (1999), 93 AJIL, No. 4, pp. 824-860


*Saramati and Behrami* cases from week 5
Week 7: UN Human Rights Institutions and Processes: The Charter Based Human Rights System

Professor Sir Nigel Rodley

Essential readings:


Read a recent annual report of the Special Rapporteur on Torture and the Special Rapporteur on the Right to Health, as well as a report of one of their recent country visits; available online here for torture and here for health

Documents:


General Assembly Resolution 60/251, 3 April 2006, establishing the Human Rights Council.


Go to the OHCHR website and register for the Human Rights Council Extranet, go to UPR webpage and peruse some UPR outcomes.
**Issues:**

1. In 2006, the Commission on Human Rights was replaced by the Human Rights Council? Why? What are the key differences between the two bodies?
2. What are the strengths and weaknesses of the 1503 and 1235 procedures?
3. What is the significance of the development of thematic special procedures?
4. What was the role of the Sub-Commission on the Promotion and Protection of Human Rights, as compared with that of the Human Rights Council Advisory Committee?

**Further readings:**

Steiner, Alston and Goodman, pp. 735-835


**Week 8: UN Human Rights Institutions and Processes: The Treaty Bodies**

Professor Sir Nigel Rodley

**Essential readings:**

Steiner, Alston and Goodman, pp. 844-924


**Documents:**


Peruse documents on treaty body reform on the OHCHR website. Available [here](http://example.com).

**Instruments:**

All the core international human rights instruments are available [online](http://example.com)

*International Convention on Civil and Political Rights*, especially articles 28-45 and *Optional Protocol*

**International Convention on the Elimination of All Forms of Racial Discrimination**, especially articles 8-14

**Convention on the Elimination of All Forms of Discrimination against Women**, especially articles 17-22 and **Optional Protocol**

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, especially articles 17-24 and **Optional Protocol**

**Convention on the Rights of the Child**, especially articles 43-45

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, especially articles 72-78

**Convention on the Rights of Persons with Disabilities**, especially articles 34-39, and **Optional Protocol**

**International Convention for the Protection of All Persons from Enforced Disappearance**, especially articles 26-36

**Issues:**

1. How effective do you consider the periodic reporting system to be for monitoring State compliance with international treaties?
2. How can treaty bodies improve on the reporting system, in particular what of the proposed single consolidated state report to be examined by the different Committees?
3. Do proposed reforms that would lead to the creation of a single treaty body represent a better institutional arrangement for dealing with State reports, inquiries into practices of violations of human rights, or individual complaints?
4. How useful are the investigative powers of some Committees?
5. Why have the interstate complaints procedures not been used?
6. What is the value of General Comments?
7. What is the utility of individual complaints procedures?
8. What are the main differences between treaty bodies and Charter-based bodies?

**Further readings:**


There are three regional systems of human rights protection in the wider Europe: the Council of Europe established in 1949 with the institutions of the European Court of Human Rights and Committee of Ministers; the European Communities now the European Union (EU), which embraces 27 States; and the Organisation on Security and Co–Operation in Europe (OSCE), which embraces 56 participating States in the wider Europe as well as the United States and Canada. The main elements of each of these systems as well as their interaction will be outlined in the whole group presentation and are looked at in more detail in several of the optional courses. However the focus in this week will be on the European Convention on Human Rights (ECHR).

The Council of Europe’s European Convention represents the oldest of the regional systems of international human rights protection. It has developed to permit direct access to a regional court, which can make a binding award against the states by individuals complaining of human rights violations by their own or another Government in 47 countries, covering the whole of Western and Eastern Europe, except Belarus. It began more classically with an optional system of complaints to a Commission that could report, but not decide. Then there was (also optional) jurisdiction by a Court, but only the Commission or a concerned state could refer a case to the Court. How has the system evolved? How does it work? What is its significance for the legal status of the individual under international law? How has it been affected by the enlargement of the EU and what is the significance of EU accession to the Convention?

The Convention is now in crisis because of the enormous increase in its membership and the consequent increase in its case load. The Court has now a backlog of over 100,000 case files. A reform to tackle the longer term problem came into force in 2010 with the ratification of Protocol 14. See the Court site below for discussion of this and other reforms. The Committee of Ministers is similarly facing a significant delay in its supervision of the execution of judgments issued by the Court.

**Essential readings:**


Hampson, F. “The Future of the European Court of Human Rights” in ‘Strategic Visions for Human Rights: Essays in Honour of Professor Kevin Boyle’, (Gilbert, Hampson & Sandoval Eds), pp. 141-166

Please spend at least one hour on each of the main websites to gain a measure of the work of the EU, the Council of Europe and the OSCE in human rights and related activities.

**Instruments:**


Interlaken Declaration, 19 February 2010.


**Cases:**


**Issues:**

1. Are regional mechanisms more effective than universal systems in protecting human rights?
2. By what means was the European Court of Human Rights established?
3. What is the jurisdiction of the European Court of Human Rights?
4. Who can bring a case before the European Court?
5. What are the consequences of the finding of a violation of human rights by the European Court?
6. How can the European Court of Human Rights survive its crushing backlog of cases?

**Further readings:**


Council of Europe: European Commission of Racism and Intolerance (ECRI). Available online

The European Union Agency for Fundamental Rights (FRA). Available [online](#)


**Week 10: Regional Human Rights Institutions and Processes: the Americas**

Dr. Par Engstrom

The lecture aims to familiarise MA students with the work of the Inter-American Commission and the Inter-American Court, making them aware of their most prominent features to protect human rights. The session will provide students with an overview of the work carried out by these bodies since they were established, in diverse areas such as civil and political rights, economic social and cultural rights, reparations and transitional justice.

**Essential readings:**


**Instruments:**

- **OAS Charter** (1948).
- **American Declaration on the Rights and Duties of Man** (1948).


Cases:


Issues:

1. What are some of the differences between the OAS system and that of the Council of Europe regarding complaint procedure, structure, subject matter, applicable instruments and style?
2. How does the Commission deal with individual complaints of human rights violations?
3. What is the nature and scope of the advisory and contentious jurisdiction of the Inter-American Court of Human Rights? What is the relationship between the Commission and the Court?
4. How effective is the OAS system compared to that of the Council of Europe?

Further readings:


Medina, C., *Convención Americana: Teoría y Jurisprudencia* (Santiago de Chile, Universidad de Chile, 2005).


Week 11: Introduction to the African Human Rights System: History, Core Rights and Main Mechanisms

Mr. Tshepo Madlingozi

Part 1: The notion of human rights in Africa; overview of the development of the African human rights system; the political landscape and institutional architecture

This first session will provide an introduction to the concept of human rights in Africa. It will also place the African human rights system, holistically, in its historical context. It will examine the OAU and its evolution into the AU; the African Economic Community (AEC), New Partnership for Africa’s Development (NEPAD), the African Peer Review Mechanism (APRM), and their role in human rights promotion and protection. It also examines the Regional Economic Communities (RECs) and their role in realising human rights

Essential readings:


Instruments:

OAU/AU treaties
The African Charter on Human and Peoples’ Rights
1969 OAU Convention governing the Specific Aspects of Refugees Problems in Africa
Charter of the Organization of African Unity
Constitutive Act of the African Union
New Partnership for Africa’s Development (NEPAD)
Regional Economic treaties and Protocols

Compendium of African sub-regional human rights documents, full text online

Cases:

Mike Campbell and Others v Zimbabwe, SADC Tribunal, 28 November 2008,

Koraou v Niger, ECOWAS Court, 2008

Issues:

1. It would be wrong to say there was an ‘African’ conception of human rights. Human rights by their very nature and as defined in international law are universal. Discuss
2. The legal protection of human rights is founded in the West and has been yet another requirement imposed on African states. Discuss.
3. Were human rights protected in traditional African societies? Is “human rights” a Western concept? What was the impact of colonialism on human rights in Africa?
4. Human rights played little part during the creation of the OAU but they have considerable significance in the African Union’s Constitutive Act and the Regional Economic Communities constitutive treaties. This indicates increased attention to the issue by African states. Do you agree with this statement?
5. Describe the extent to which human rights were of interest to African states when they established the OAU and to the OAU during its development over the past 40 years.
6. Should Regional Economic Communities be involved in the promotion and protection of human rights in Africa?
7. Does a real danger of overlapping and conflicting mandates between regional and sub-regional human rights mechanisms arise?

Further readings:

Akinyomi, AB, ‘The Organization of African Unity and the Concept of Non-Interference in the Internal Affairs of Member States’, 46 BYIL (1972-1973) 393

Amate, COC, Inside the OAU: Pan-Africanism in Practice, 1986


Quashigah, EK and Ofakor, OK, Legitimate governance in Africa : international and domestic legal perspectives, Kluwer Law, 1999, Chapters 1 and 2


Ebobrah, S ‘Critical issues in the human rights mandate of the ECOWAS Court of Justice’ (2010) 54(1) Journal of African Law 1

Part 2: The African charter on human and Peoples’ Rights: core rights

The session provides a critical overview of the development of the African human rights norms. It will look in general at the rights in the African Charter and the other regional human rights treaties comparing those contained with other international instruments. It looks specifically at limitations (‘claw-back’ clauses); individual duties; and indivisibility/socio-economic rights. The ‘peoples’ rights in the African Charter are also considered in this seminar.

**Essential readings:**


**Instruments and Cases:**


*Communication 241/2001, Purohit and Moore v The Gambia*, Sixteenth Annual Activity Report,
Communications 137/94, 139/94, 154/96 and 161/97, International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v Nigeria, Twelfth Activity Report,


Communication 279/03; 296/05, Sudan Human Rights Centre on Housing and Evictions v Sudan
28th Activity Report of the African Commission

Communication 276. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya (CEMIRIDE v Kenya)

African Commission Guidelines for National Periodic Reports, Second Annual Activity Report, See Murray and Evans, Documents of the African Commission

**Issues:**

2. What are the socio-economic rights protected under the African Charter? Do these rights entail state obligations to ‘fulfil’?
3. Regional human rights norms protect the rights of individual. Discuss.
4. The approach of the African Commission to contentious rights has been commendable and should be examined closely. Discuss.
5. Do you support the ‘implied rights’ theory embraced by the Commission in the Ogoniland (SERAC) case?
6. Of all the international and regional treaties on human rights the Africa Charter takes the most sensible approach to group rights. Discuss.
7. Does the right to development as enshrined in the African Charter have any legal significance?

**Further Reading:**


Klabbers, J and R Lefeber, Africa: Lost between self-determination and uti possidetis, in C Brolmann et al, Peoples and Minorities in International Law, 1993 at 37


Part 3: The main mechanism for the promotion and protection of human rights in Africa: the African Commission on Human and Peoples’ Rights

This last session examines the work of the African Commission, how it operates and in particular the communications and state reporting functions. The appointment of special mechanisms will also be considered.

Essential Reading:


**Instruments and Cases:**

Articles 47-59, and 62 ACHPR

**Rules of Procedure of the African Commission**

See the guidelines on the Commission’s website with respect to state reporting and communications.

**Resolution on Granting Observer Status to National Human Rights Institutions in Africa**

Guidelines to National Periodic Reporting under Article 62 of the African Charter on Human and Peoples’ Rights (Amended Guidelines)

**Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human Rights with the African Commission on Human and Peoples’ Rights**

**Issues:**

1. The reporting procedures under the ACHPR are really not useful as an enforcement mechanism at all and should no longer be used. Discuss.
2. Comment on the failure of the Commission to make public the Concluding Observations adopted after the examination of state reports.
3. What effective steps can be undertaken against states that fail to report?
4. The regional human rights bodies do not suffer from lack of powers to enforce the rights in the Charter and other human rights treaties, just an inability to exploit them to their full potential. Discuss.

**Further Reading:**


Week 16: Equality and Non-discrimination

Lorna McGregor

It can be argued that the central engine for such achievements as there have been in the advancement of human rights as a universal idea has been the struggle for equality of treatment of all human beings. Certainly the norms of equality in the Charter and the Universal Declaration were seized upon by those who suffered discrimination initially on grounds of so called race and gender. The equality struggle continues on both these fronts but also on other grounds including religion or belief and those that have emerged later such as disability, sexual orientation and age. Equality is not a simple concept in theory or practice but it expresses, along with the linked concept of non–discrimination, a fundamental principle of international human rights and humanitarian law.

As the topic is particularly large and fast-moving, this class will first examine some of the general principles on equality and non-discrimination before looking at three specific in which equality and non-discrimination continue to present challenges: gender, disability and sexual orientation.

Essential readings:

General


On Disabilities

OHCHR, ‘Forgotten Europeans, Forgotten Rights; The Human Rights of Persons Placed in Institutions’ (2011)

On Gender
Banda, F., Project on a Mechanism to Address Laws that Discriminate Against Women, Commissioned by OHCHR/Women and Gender Unit, 2008. Available online


UN Entity for Gender Equality and the Empowerment of Women (look at the website)
On Sexual Orientation


Instruments:

African Charter on Human and Peoples Rights, Articles 2, 3, 18(3) – (4) and 28

American Convention on Human Rights, Articles 1 and 24


European Convention on Human Rights, Article 12 and Protocol 12

ICCPR, Articles 2, 3, 26;

ICESCR, Articles 2(2) and 3

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

UDHR, Articles 1, 2(1) and 7

International and Regional Documents

CEDAW Committee, General Recommendation No. 25, on Temporary Special Measures (2004).

Economic Social and Cultural Rights Committee, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) (2009)


UN Human Rights Committee, General Comments Nos. 18 and 28

**Jurisprudence**

**On Disabilities**

*Farcas v. Romania* (Application No.32596/04), Admissibility decision of the European Court of Human Rights, 30 September 2010

**On Gender**


*Opuz v Turkey* (Application No. 33401/02), Judgment of the European Court of Human Rights


IACtHR, *Case of González et al. (‘Cotton Field’) v. Mexico* (Preliminary Objection, Merits, Reparations and Costs) Judgment of 16 November 2009

**On Sexual Orientation**

*Naz Foundation v Government of NCT of Delhi and Others*, WP(c) No. 7455/2001, High Court of Delhi, 2 July 2009.

**Further readings**


Cook, Rebecca and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives (University of Pennsylvania Press, 2011)

Council of Europe, ‘Discrimination on grounds of sexual orientation and gender identity in Europe’ (June 2011)
**Kiyutin v. Russia**, (Application No. 2700/10), Judgment of the European Court of Human Rights, 10 March 2011 (on discrimination of persons living with HIV)

**Issues:**

1. CEDAW requires governments to take extensive action against gender discrimination. Many states have made substantial reservations to the convention. What is the effect of and validity of the reservations?
2. Will the new optional complaint mechanism to CEDAW really make a difference?
3. Is the freedom of sexual orientation a universal right?
Week 18: Minorities and Indigenous Peoples

Professor Geoff Gilbert

Most if not all states are composed of, on the one hand, a majority population and, on the other, national or ethnic, religious, linguistic or cultural minorities. Such communities sometimes think of themselves as “nations”. Some of these even aspire to independent statehood. International law guarantees individuals protection against discrimination as well as equality in law and in fact. But how can this be achieved in principle and in practice? What function do “minority rights” serve? To what extent does international law recognise special rights for persons belonging to minorities and indigenous peoples? To what extent does it recognise rights inhering in the minority group or indigenous community as a whole or per se? What is the specific content these rights? And can a "national minority" invoke the right to self-determination to claim separate statehood?

Essential readings:


Instruments:

ICCPR, article 27; ICERD articles 1-3; and CRC, article 30

Human Rights Committee, General Comment 23(50) (1994)

UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

UN Declaration on the Rights of Indigenous Peoples (2007)


CSCE Copenhagen Document of the Meeting on the Human Dimension (Chapter IV, 1990)
Cases:

Lovelace v Canada, HRC Communication No. R.6/24
Kitok v. Sweden, HRC Communication No. 197/1985
Lubikon Lake Band v. Canada, HRC Communication No. 167/1984
Apirana Mahuika v. New Zealand, HRC Communication No. 547/1993
Ignatane v. Latvia, HRC Communication No. 884/1999
Sejdić and Finci v. Bosnia and Herzegovina (Application No. 27996/06), Judgment, European Court of Human Rights, 22 December 2009

Issues:

1. Many States are composed of, on the one hand, a majority population and, on the other, ethnic, religious or linguistic minorities. Such minorities often think of themselves as nations. Some of these even aspire to independent statehood. International law guarantees individuals against discrimination by virtue of this minority status. To what extent does it recognize special rights for them? To what extent does it recognize rights inhering in the minority group as a whole?

2. Can a “national minority” invoke the right to self-determination to claim separate statehood?

Further readings:


Hannum, H., Autonomy, Sovereignty and Self-Determination (University of Pennsylvania Press, 1996). Limited preview available online

Week 18: Freedom of Thought, Conscience and Religion, and Freedom of Expression

Mr. Scott Sheeran

A. Freedom of Conscience, Religion and Belief

The experience of persecution and discrimination on grounds of holding beliefs considered unacceptable or heretical is sadly not a bygone phenomenon in the world. Intolerance towards others because of their beliefs is a major international concern and is the focus of the mandate of a Special Rapporteur of the UN Human Rights Council. No treaty on religious discrimination has ever been adopted by States although one exists in draft. (Compare the relative ease with which the Conventions on racial and sex discrimination were agreed). The international standards on freedom of religion and belief, nevertheless, are reasonably well articulated. There remain areas of uncertainty, for example, over the limits of the right to promote one’s convictions and to convert others to them. The international standards protect all beliefs including not only religious but atheistic and agnostic as well as the individual right not to have any belief. The problems largely lie in the resistance of states and their peoples to embrace the implications of these standards in practice.

The relationship between state and religion is a highly contentious issue in some countries in particular as to the duty of states to act with neutrality between religious faiths. The most publicised issue in that context in recent years in Europe, but not only in Europe, has been over public display of religious symbols (the Islamic headscarf) raising the question of the link between secularism and human rights. A final issue raised in this session is on the issue of conscientious objection to military service: Is there a recognised right to refuse to serve in the military when conscripted to do so?

Essential readings:


Instruments:

Article 18 ICCPR and equivalent guarantees in regional instruments especially Article 9 ECHR

Article 14 ICESCR

Human Rights Committee, General Comment 22

The 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, ILM, (1982). Available online
UN Special Rapporteur on Religious Intolerance. Available online

Cases:


Further readings:


B. Freedom of Expression

Freedom of Information was declared to be the "touchstone of all the freedoms to which the United Nations is consecrated" in an early G.A. Resolution. It is certainly a touchstone of democratic society. In a political system in which every elector has in principle the right to be heard the right to speak one’s mind, to communicate, to receive and to impart information and ideas, can be termed a functional right of democracy. The right embraces not only the individual right of freedom of expression but freedom of media of all sorts. However, it does not explicitly, as presently formulated in international law, extend to "freedom of information" i.e. the right to know information held by public authorities. However, in 2006 the Inter-American Court became the first international human rights tribunal to hold that such a right was part of the guarantee of freedom of expression. Access to information laws are a feature of an increasing number of states in all world regions.
The issues are legion including the impact of new technologies such as the Internet and media pluralism, but inevitably a concern is with the limits of speech. What of hate speech? How should this form of speech be responded to? What of limits on speech by reason of national security? Or where speech is offensive to religion (The Danish Cartoons and Defamation of Religions controversies)? And there are many other questions. The seminar will cover the parameters of the freedom mainly by reference to Articles 19 and 20 of the ICCPR. However, the most developed international jurisprudence is to be found in the regional courts: Inter-American and European.

**Essential readings:**

See the Special Rapporteur on Freedom of Expression. Available [online](#)

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, [A/HRC/11/4 30](#) April 2009, especially Chapters III and IV.


**Instruments:**

*ICCPR*, Articles 19 and 20

*ICERD*, Article 4

Relevant Articles of the Regional Conventions.


**Cases:**

*Handyside v. United Kingdom*, (Application No. 5493/72), Judgment of the European Court of Human Rights, 7 December 1976


Lingens v. Austria, (Application No. 9815/82), Judgment of the European Court of Human Rights, 8 July 1986


The Jewish Communities of Oslo and Trondheim, Kirchner, Paltiel, the Norwegian Antiracist Centre and Butt v. Norway, CERD Communication 30/2003, 25 August 2005

Issues:

1. How should hate speech be responded to?
2. Is Defamation of Religion a human rights concept?
3. Are limits on speech legitimate in the contexts of counter terrorism and national security?

Further readings:


OHCHR, Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR): Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. Available online


Mukong v. Cameroon, HRC Communication No. 458/199, 21 July 1994


Week 19: Freedom of Association and the ILO

Professor Sheldon Leader

The Structure and Function of the International Labour Organisation

Essential readings:

The best way of getting a general introduction to the ILO is via its website. See particularly “About the ILO”. at http://www.ilo.org/public/english/about/index.htm. Look at the organizational chart and the constitution.

For the special mechanisms for enforcement of the right to freedom of association, see http://www.ilo.org/public/english/standards/norm/enforced/foa/index.htm

For a summary of the relevant decisions by the ILO Freedom of Association Committee, relevant to the discussion below, please consult the Digest of Decisions 2006


Human Rights Watch, ‘Israel: New Anti-boycott Law is a Threat to Freedom of Expression’. Available online

The Right to Freedom of Association

Instruments:

ILO Freedom of Association Committee, Decisions 277, 280 and 287 (Extracts of decisions of the ILO Freedom of Association Committee will be made available to the class.)

Issues:

1. What (if anything) is altered in our understanding of the status of the right to freedom of association as a result of its inclusion in the ILO’s declaration on fundamental principles and rights at work?
2. Provide in your own words a definition of the right to freedom of association.

3. “If you interpret the right of freedom of association so as to accord exclusive bargaining rights only to a union with the majority of membership for a given class of employee, deemed the most representative union, then you penalise minorities who might be among the worst off in the workplace.” What does the ILO Freedom of Association Committee think about this? Digest 2006, paras 309 ff

4. Union security provisions are arrangements whereby an employee cannot have a job without belonging to a trade union. Is this, in your view, compatible with the right to freedom of association? What does the ILO Freedom of Association Committee think? Paras 363 ff and cf paras 324, 480

5. What would the ILO’s attitude be towards a trade union that gives public support to the Labour Party? What is the appropriate scope of a union’s political activity according to it? Digest Chapter 9.

6. What, if any, restrictions should a trade union be entitled to place on membership in the light of an individual’s political beliefs and practices? Compare the decision by the European Court of Human Rights in Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom (application no. 11002/05) with the Digest para 212.

7. What is the legitimate restriction on the objectives of a permissible strike, according to the ILO?

Further readings:

S. Leader., Freedom of Association (New Haven, Yale University Press, 1992)

Week 20: Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Professor Sir Nigel Rodley

Essential readings:


Instruments:

UDHR, article 5.

ICCPR, articles 7 and 10.

American Convention on Human Rights, article 5.

Inter-American Convention to Prevent and Punish Torture

African Charter, article 5.

UN Convention against Torture (1984) and Optional Protocol

Rome Statute of the International Criminal Court, article 7.

European Convention on Human Rights, article 3.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

Geneva Conventions, Common Article 3

Human Rights Committee, General Comment 20 and General Comment 21.


Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Principles). Available online
Cases:

*Furundzija 17-95-17/1*, Judgment, International Criminal Tribunal for the Former Yugoslavia


*Ribitsch v. Austria*, (Application No. 18896/91), Judgment, European Court of Human Rights, 4 December 1995


*Saadi v. Italy*, (Application No. 37201/06), Judgment European Court of Human Rights 28 February 2008


Issues:

1. Despite being widely resorted to, torture and similar ill-treatment are prohibited by all general human rights treaties and a number of other instruments and, if any human rights obligation is part of general international law, the prohibition of torture is one. Why?
2. What kinds of behaviour amount to torture?
3. What treatment constitutes cruel, inhuman or degrading treatment or punishment? What is the significance of the distinction?
4. To what extent does the prohibition extend to lawful sanctions, e.g. corporal punishment?
5. How do you establish that torture was taken place? What type of evidence could you use? What is the standard of proof? On whom rests the burden of proof?
6. What are the legal consequences for a state that engages in torture or other ill-treatment and for the individual perpetrators? What machinery is there to deal with the problem?

Further readings:

Ingelse, C., *The UN Committee Against Torture: An Assessment* (Kluwer, 2001)


Week 21: The Right to Life and Unlawful Killings, and Enforced Disappearances

Professor Sir Nigel Rodley

A. The Right to Life and Unlawful Killings

Essential readings:


Documents:

Optional Protocol to the ICCPR (See articles 2 and 6)


UN Code of Conduct for Law Enforcement Officials (1979). Available online

Council of Europe, Declaration on the Police (1979). Available online

UN Principles on the Restraints on the Use of Force and Firearms by Law Enforcement Officials (1990). Available online


Human Rights Committee, General Comment No. 6.

Cases:


Kaya v. Turkey, (Application No. 22729/93), Judgment, European Court of Human Rights, 19 February 1998


Soering v. United Kingdom, Application No.14038/88), Judgment, European Court of Human Rights, 7 July 1989
Issues:

1. When can law enforcement officials resort to the use of lethal force?
2. When can the legal system provide for capital punishment?
3. What are the legal consequences of non-compliance with the right to life?
4. What specific international machinery can be invoked including the Special Rapporteur on extrajudicial, summary or arbitrary executions?

Further readings:


B. Enforced Disappearances

Essential readings:


Instruments:

*UN Convention on the Protection of All Persons against Forced Disappearance.*

*UN Declaration on the Protection of All Persons from Enforced Disappearances*

*Inter-American Convention on the Forced Disappearance of Persons*
Cases:

Velasquez Rodriguez v. Honduras, Judgment, Inter-American Court of Human Rights, 29 July 1988

Kurt v. Turkey (Application No. 24276/94), Judgment, European Court of Human Rights, 27 April 1998

Timurtas v. Turkey (Application No. 23531/94), Judgment, European Court of Human Rights, 13 June 2000

Quinteros v. Uruguay, HRC Communication No. 107/1981, 21 July 1983


Issues:

1. Some governments have resorted or allowed their security forces to resort to the practice of abducting suspected (violent or non-violent) opponents subsequently denying all knowledge of or responsibility for their fate. How can such a disappearance be defined? What human rights does it violate?
2. The UN is drafting a convention against the practice; the OAS has adopted a convention against the practice. What is their purpose?
3. What are the legal consequences of “disappearance”?
Week 22: States of Emergency and (Counter-) Terrorism; Armed Conflicts

Dr. Noam Lubell

Note: States of emergency and (counter-) terrorism will be addressed in the first two hour slot, and armed conflicts in the second two hour slot.

A. States of emergency

Essential readings:
Human Rights Committee, General Comment No.29
Hampson, F., Study on Human Rights protection during situations of armed conflict, internal disturbances and tensions, Council of Europe Steering Committee for Human Rights (16th January 2001) Available online

Instruments:
ICCPR, Art.4.
ECHR, Art.15.
ACHR, Art.27.
Geneva Conventions (1949), Article 3 common to all four Conventions.

Issues:
1. Is it up to the state to determine whether or not there is a state of emergency?
2. Are restrictions on human rights inevitable during states of emergency?
3. What limitations, if any, are there on measures a state can adopt in situations of emergency with regard to potentially derogable rights?

Further Reading:
**B. Counter-Terrorism after 9/11**

Dr. Noam Lubell

**Essential Reading:**


UN Security Council Resolution 1373 (the Counter-Terrorism Committee), available [online](#).

UN Security Council resolution 1267 (the Al-Qaïda and Taliban Sanctions Committee) available [online](#).

United Nations Global Counter-Terrorism Strategy (2006), Part IV, available [online](#).


Killing Osama bin Laden: has justice been done? - Commons Library Standard Note. Available online

**Issues:**

1. Are we living in an ‘age of terror’?
2. Are human rights and security contrasting notions in need of balancing?
3. Have human rights protections been marginalised in the past decade?
4. What are some of the specific concerns arising from counter-terrorism practices in recent years?
5. Has counter-terrorism reshaped the international legal order, impacting not only on human rights but also international peace and security?

**Further Reading:**


*Hamdan v. Rumsfeld*, Decision of the US Supreme Court, 29 June 2006


*A and Others v. Secretary of State* (No 2), UK House of Lords [2005] UKHL 71


*Secretary of State for the Home Department v. AP*, UK Supreme Court, [2010] UKSC 24

*Holder v Humanitarian Law Project*, US Supreme Court, 21 June 2010


Reports of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. Available online


UN High Commissioner for Human Rights, Digest of Jurisprudence of the UN and Regional Organisations on the Protection of human Rights While Countering Terrorism. Available online


OSCE, ODIHR Activities Related to Preventing and Combating Terrorism. Available online.

Committee of Ministers, Council of Europe, Guidelines on Human Rights and the Fight against Terrorism, (Council of Europe, July 2002). Available online here and here


Ramcharan, B., Human Rights and Human Security. Available online or distributed upon request.

C. Introduction to the law of armed conflict (LOAC)

Dr. Noam Lubell

**Essential Reading:**

"International humanitarian law: answers to your questions" Read questions and answers: 1,2,4,5,6,7,10,14,16,17. Available online

*Crimes of War* Website Read the entries on: Introduction to International Humanitarian Law; Indiscriminate Attack; Proportionality; Weapons; Military Objectives

Browse the [ICRC website](http://icrc.org) and examine the issues they deal with. Read anything there you find of interest.

**Issues:**

1. What are the principal differences between international and non-international armed conflicts?
2. What are the principal differences between LOAC and human rights law?
3. How does LOAC protect civilians from the dangers of armed conflict?
4. What are the risks to the principle of distinction between military and civilian (objects and persons)?

**Further Reading**

1949 Geneva Conventions and their Protocols, Available online


The syllabus for LW803 ILAC class provides detailed readings by subject, for those seeking further information.
Week 23: Refugees and Internally Displaced Persons

Professor Geoff Gilbert

Issues:

The international protection of refugees is a separate set of guarantees for a specific group of persons, but which overlaps with international human rights law and the protection of persons in times of armed conflict. The situation of internally displaced persons fits much more within the ordinary paradigm of international human rights law except insofar as there is a developing body of customary international law that draws on refugee law in order to provide additional protection. The class will look at the strict definition of refugees under international law, non-refoulement, the status of the guiding principles on internally displaced persons, and the role of UNHCR.

Essential readings:


Instruments:

Convention relating to the Status of Refugees (1951) arts. 1 and 33

Statute of UNHCR (1950)


Protocols 1 and 2 to the Geneva Conventions (1977), arts.70 and 18, respectively.

Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

CAT (1984), art. 3

ECHR, art. 3
Cases:

Islam and Shah [1999] 2 AC 629

Saadi v. Italy (Application No. 37201/06), Judgment, European Court of Human Rights 28 February 2008


Further readings:


Week 24: Economic, Social and Cultural Rights – Focus on the Right to the Highest Attainable Standard of Health and the Right to an Adequate Standard of Living

Professor Paul Hunt and Sally-Anne Way

Note: Right to health will be addressed in the first two hour slot and the right to an adequate standard of living with a focus on the right to food, in the second two hour slot.

A. Introduction to Economic, Social and Cultural Rights


UN Committee on Economic, Social and Cultural Rights, General Comment 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) (2005)


International Commission on Jurists, Courts and the Legal Enforcement of Economic, Social and Cultural Rights, 1-22. (For an introduction to justiciability of economic, social and cultural rights). Available online


Further readings:

UN Committee on Economic, Social and Cultural Rights, General Comment 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (2009)


**Reference**

For Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, use the Treaty Bodies Database. Available online

**B. Right to Health**

**Essential readings:**

Potts, H., *Accountability and the Right to the Highest Attainable Standard of Health*, Available online


Hunt, P., Annual report of the Special Rapporteur, A/HRC/4/28, 2007 (e.g. health-related cases).

Hunt, P., Annual report of the Special Rapporteur, A/HRC/7/11, 2008 (e.g. health systems).


**Instruments:**

**ICESCR**, article 12

**Optional Protocol** to the ICESCR, UN Doc. A/63/435

**CEDAW**, articles 10-12, 14

**CRC**, article 24,

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, “**Protocol of San Salvador**”, articles 7, 10

**African Charter on Human and Peoples’ Rights**, articles 16, 18

**European Social Charter**, articles 3, 7, 11, 13

Constitution of the World Health Organisation. Available online

UN Committee on Economic, Social and Cultural Rights, **General Comment 14 on the Right to Health**.

UN Committee on the Rights of the Child, **General Comment 4 on Adolescent Health** (2003)

**Cases:**

* **Alyne Pimentel v Brazil**, CEDAW, Communication No. 17/2008, decision 25 July 2011 (maternal death)


**Issues:**

1. The right to health raises complex issues of normative content and states’ obligations. Given the notions of ‘progressive realisation’ and ‘resource availability’ in article 2(1) of ICESCR, is it possible and helpful to identify core obligations deriving from article 12 (right to health) of the Covenant which apply to all state parties no matter what their stage of economic development?
2. Can right to health cases be taken by reference to other provisions of international human rights law?
3. Can national law (statute and case-law) help to clarify the normative content of the international right to health?
4. What is the role of the UN Special Rapporteur on the right to the highest attainable standard of health?
5. In your view, what is likely to be the impact of the optional protocol to the ICESCR?

**Further readings:**


UN Commission on Information and Accountability for Women’s and Children’s Health, *Keeping Promises, Measuring Results*, 2011. Available online


C. The Right to an Adequate Standard of Living, with a focus on the Right to Food

Article 11 of the International Covenant on Economic, Social and Cultural Rights explicitly encompasses ‘food, clothing, housing, and … the continuous improvement of living conditions’, the ‘fundamental right of everyone to be free from hunger’ and requires ‘international cooperation’ to achieve this goal. This class will briefly introduce article 11 and then focus on a key element: the right to food. It will analyse contributions to the development and elaboration of the understanding of the right to food, by the international human rights system, including through the General Comment 12 of the UN Committee on Economic, Social and Cultural Rights and the work of the relevant UN Special Rapporteur. Some of the case law on the right to food will be considered to deepen the understanding of the right to food, but we will focus on the global food crisis and the implications from the perspective of the right to food.

**Readings**


**Instruments**

General Comment 12, UN Committee on Economic, Social and Cultural Rights (right to food).

General Comment 15, UN Committee on Economic, Social and Cultural Rights (right to water).

FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, available online

Cases

People’s Union for Civil Liberties v. Union of India and Ors India, Supreme Court Judgement of 2 May, 2003.

Communication 155/96 on the exploitation of oil reserves in Ogoniland, Nigeria. Judgment, African Commission on Human and Peoples’ Rights, Judgment of 27 May 2002, ACHPR/COMM/A044/1. See also the original NGO petition by CESR and SERAC.

Legal Consequence of the Construction of a Wall in the Occupied Palestinian Territory International Court of Justice, Advisory Opinion: 9 July 2004, paragraphs 130, 134, 152-153, available at:

Issues

1. Read General Comment 12. In the context of the right to food, what do the duties to respect, protect and fulfil mean?
2. From the readings, identify some key obstacles facing the realization of the right to food.
3. Are there duties of international assistance and cooperation in relation to the right to food? If so, what are they?
4. Can we address the global food crisis from the perspective of human rights?

Further Reading


Foodfirst, 12 Myths about Hunger, 12(2) Backgrounder (2006). Available online


FAO The Right to Food and Access to Justice: Examples at the national, regional and international levels, FAO: Rome. Written by C. Golay. Available online


Week 25: Redress and Transitional Justice

Lorna McGregor

The issue of remedies arises in two often confused and certainly overlapping contexts: those remedies that states are to provide domestically to avoid international responsibility for human rights violations and those that they are to provide, once having incurred international legal responsibility for a violation. The former, which will be examined briefly from the perspective of the Human Rights Committee General Comment 31 (on ICCPR article 2), consist of the whole range of legislative, administrative and judicial machinery that can avoid or repair the harm that could constitute a human rights violation. The latter, to be examined in greater detail, are the remedies that authoritative bodies, primarily international courts and treaty bodies, order or recommend that violating states implement. While reparation will be seen to consist mainly of compensation, other responses may also be appropriate, including establishment of the facts and bringing to justice individuals who have perpetrated certain kinds of harm, e.g. torture, extra-legal execution and enforced disappearance.

An important issue related to redress and reparations is the question of how to deal with the legacy of mass atrocities when a state that has undergone repression or internal or international conflict moves on towards democracy, human rights and the rule of law. The second part of the class will address the relationship between these two concepts and the problems that international human rights law faces when transitional justice processes are at stake.

Essential readings:


Instruments:

International Law Commission, Draft Articles on State Responsibility, especially articles 28-41, 48-54.


Cases:


Broniowski v. Poland (Application No. 31443/96), Judgment, European Court of Human Rights, 22 June 2004

Assanidze v. Georgia (Application No. 71503/01), Judgment, European Court of Human Rights, 8 April 2004

Velasquez Rodriguez v. Honduras, Judgment, Inter-American Court of Human Rights, 29 July 1988

Loayza Tamayo v. Peru, Judgment on Reparations and Opinion by Carlos Vicente de Roux, Inter-American Court of Human Rights 27 November 1998

Plan de Sanchez v. Guatemala, Judgment on Reparations, Inter-American Court of Human Rights 19 November 2004

Ximenes Lopes v. Brazil, Judgment, Inter-American Court of Human Rights, 4 July 2006

Issues:

1. Who can claim to be a victim for the purposes of reparation? Is it possible to say that international law applicable to reparations of individuals whose rights have been violated is based on a victim oriented approach? If not, where is the problem?
2. What kinds of reparations are necessary to provide adequate reparation to victims of gross human rights violations?
3. Should peace prevail over principles of justice and/or truth? What is the view of international law?

**Further readings:**

Peruse the website of the [International Centre for Transitional Justice](http://www.transitionsjustice.org) which contains many important articles and reports on the topic.


