

Materials and questions for homework assignments

Below you will find the materials for each session of the coming weeks together with the questions that you will have to address, in preparation, in advance (see Course Outline Section VI.a).

For most sessions, I am assigning both reading (chapters, articles) and audio materials (podcasts). By default, all materials will be *mandatory* for preparation unless they are explicitly designated either as *optional*, *complementary* or *alternative*. In the case of alternative materials, you will be able to rely on them fully to answer the reading questions.

Last updated: 3 May 2021

I/1 – INTRODUCTION

To read (optional):

- Christine Chinkin, "Sources", chapter 4 in *International Human Rights Law* [22 pp.]
[I recommend this chapter as a recap to everyone. However, it will be a particularly useful primer for those of you who have not completed SSCLAWJ208 Introduction to Public International Law]

I/2 – HUMAN RIGHTS IN PANDEMIC TIMES

To read:

- Vera Lúcia Raposo, "Quarantines: Between Precaution and Necessity. A Look at COVID-19", *Public Health Ethics* (2021), available at <http://doi.org/10.1093/phe/phaa037> (open access)

To listen to:

- "Coronavirus and human rights 28 days later", *Better Human Podcast*, E3, 24 April 2020 [1:12:12]

To answer:

- What has been the impact of the COVID-19 pandemic on human rights worldwide?*
- How do public health considerations influence the enjoyment of individual human rights?*
- Provide an example of a control measure (not mentioned in the article) that you find excessive in terms of its human rights consequences. Explain your standpoint briefly.*

2/1 – HISTORY

To read:

- Ed Bates, "History", chapter 1 in Daniel Moeckli et al., *International Human Rights Law* (Oxford University Press, 2017) [17 pp.]

To listen to (optional):

- "The Holocaust, Human Rights and the Dying of the Light", *Better Human Podcast*, E10, 20 January 2020 [52:04]

To answer:

- *In the history of human rights, France and the United States are often regarded as particularly important. Which events in these countries stand out and why are they considered to be relevant?*
- *Even before the end of World War II, principles relevant to human rights law were being developed in international law. What were those and how do they relate to (later) human rights law?*
- *Broadly speaking, what was the legal and political significance of the UDHR at the moment of its proclamation?*

2/2 – RIGHTS AND OBLIGATIONS

To read:

- Frédéric Mégret, "Nature of obligations", chapter 5 in *International Human Rights Law* [23 pp.]

To read (complementary):

- Sarah Joseph and Sam Dipnall, "Scope of application", chapter 6 in *International Human Rights Law* [21 pp.]

To listen to (complementary):

- "Emergency Pandemics and the Limitations of Human Rights with Dr Patrycja Dabrowska-Klosinska: Are we legally prepared?", *LawPod*, 13 December 2018 [24:13]

To answer:

- *In your own words, what differentiates international human rights law from other branches of public international law?*
- *Provide an example (that is not mentioned in the book) of a limitation to an established human right. In doing so, explain briefly how it satisfies the tripartite test discussed by Mégret.*
- *States can be (but are not necessarily) responsible under international human rights law for the actions of private parties. Generally speaking, when will they be?*

3/1 – CIVIL AND POLITICAL RIGHTS

To read:

- Theo van Boven, "Categories of rights", chapter 7 in *International Human Rights Law* [12 pp.]
- Nigel S. Rodley, "Integrity of the person", chapter 9 in *International Human Rights Law* [20 pp.]

To listen to (alternative):

- "Torture: An Expert's Confrontation with an Everyday Evil", *On Human Rights*, 21 November 2017 [51:49]

To answer:

- *The prohibition of torture is the prime example of a jus cogens norm. What are the legal consequences of designating it as such a rule?*
- *How does the right to life compare to the prohibition of torture and other cruel, inhumane and degrading treatment? Describe briefly one commonality and one difference.*
- *In practice, how does the UN Special Rapporteur on Torture go about fulfilling his mandate?*

3/2 – ECONOMIC AND SOCIAL RIGHTS

To read:

- Asbjorn Eide, "Adequate standard of living", chapter 10 in *International Human Rights Law* [21 pp.]

To listen to (alternative):

- "The Curious Case of Social and Economic Rights", *Better Human Podcast*, E3, 28 October 2019 [1:02:26]

To answer:

- *What is the reason for, and implication of states' obligation to achieve a 'progressive realization' of economic and social rights?*
- *Some of the same economic and social rights are enshrined in a number of legal instruments (treaties). What are the possible merits of having such a multiplicity of legal guarantees?*
- *Economic and social rights are sometimes assumed to be 'programmatic' rather than concrete and actionable. Would you agree? Answer in reference to a specific right.*

4/1 – EQUALITY AND NON-DISCRIMINATION

To read:

- Daniel Moeckli, "Equality and Non-Discrimination", chapter 8 in *International Human Rights Law* [15 pp.]
- Human Rights Committee, CCPR General Comment No. 18: Non-discrimination, 10 November 1989 [3 pp.]

To listen to (complementary):

- "Race", *Constitutional Podcast*, The Washington Post, 21 August 2017 [53:00]
- "Discrimination in Europe", *Fundamentally Right Podcast*, 19 January 2021 [18:09]
- "Why the Court Matters: RBG's Legacy and the Fight She Leaves Behind", *Intersectionality Matters!*, 9 October 2020 [1:05:54]

To answer:

- *'Subordinate' non-discrimination provisions mainly ensure formal equality while 'free-standing' ones are more suitable to promote substantive equality. True or false? Explicate your answer.*
- *Under international human rights law, what (if any) is the legal value of having proven there to be discriminatory intent?*
- *Give an example (that is not mentioned in the book) of an instance of indirect discrimination. In doing so, explain briefly whether it satisfies the justification test that is described in chapter 8.*

4/2 – GROUP RIGHTS

To read:

- Robert McCorquodale, "Group Rights", chapter 18 in *International Human Rights Law* [22 pp.]

To listen to (alternative):

- "Robert Williams on the UN Declaration on the Rights of Indigenous Peoples", *American Indian Airwaves*, 31 August 2019 [58:33]

To answer:

- *What was the historical context in which the legal right to self-determination was created?*
- *To what extent is the right to self-determination applicable to minority groups and indigenous peoples respectively?*
- *In what sense has the Inter-American system of human rights protection been at the forefront of protecting the rights of indigenous peoples?*

5/1 – INTRODUCING THE MOOT COURT EXERCISE

To read:

- "Competition Documents: Hypothetical case to be argued", Nelson Mandela World Human Rights Moot Court, available at www.chr.up.ac.za/world-moot-documents
- "Preparing Your Memorials", University of Oxford Centre for Socio-Legal Studies, available at www.law.ox.ac.uk/content/preparing-your-memorials [including the video by Nick Friedman on drafting legal arguments]

To listen to (complementary):

- "Mooting Demystified", *The Pupillage Podcast*, 30 September 2019 [60:16]

5/2 – THE UNITED NATIONS SYSTEM

To read:

- Jane Connors, "United Nations", chapter 19 in *International Human Rights Law* [40 pp.]

To listen to (complementary):

- "Human Rights and Wrongs at the UN", *The Documentary Podcast*, BBC World Service, 21 January 2009 [23:01]
- "Inside Geneva: How the Human Rights Council Works", *The Swiss Connection*, 6 October 2019 [26:13]

To answer:

- *There are various kind of state reporting and reviewing procedures under the UN human rights system. What are the merits of such mechanisms and what are some of their challenges?*
- *What are the main differences between the 'Charter-based' complaint procedure (formerly the '1503 procedure') and the complaints mechanisms provided by UN treaty bodies?*
- *In what form are non-government organizations (NGOs) involved in the UN human rights system? Describe their role in general terms and by providing one representative example.*

6/1 – THE INTER-AMERICAN SYSTEM

To read:

- Başak Çalı, "Regional Protection", chapter 20 in *International Human Rights Law* [15 pp.]
- Thomas M. Antkowiak, "The Americas", chapter 21 in *International Human Rights Law* [14 pp.]

To answer:

- *In terms of its functions, the Inter-American Commission on Human Rights is somewhat comparable to the UN Human Rights Committee. Explain whether you agree with this statement.*
- *The Inter-American Court of Human Rights wields specific procedural devices that are important for the protection and promotion of individual rights. What are those and what is their purpose?*
- *Has the Inter-American human rights system brought about “convergence” or “divergence” (to use Çalı’s terms) in their regional protection in the Americas? Provide a brief but reasoned assessment.*

6/2 – THE EUROPEAN SYSTEM

To read:

- Steven Greer, "Europe", chapter 22 in *International Human Rights Law* [23 pp.]

To listen to (complementary):

- "The European Convention on Human Rights is working", *Better Human Podcast*, E 13, 17 February 2020 [1:03:22]

To answer:

- *What are the main differences between the human rights protection systems of the OAS and the Council of Europe? Provide a brief comparison focusing on the most salient features.*
- *In your view, has the European Court of Human Rights been an effective institution? Offer a short but reasoned assessment based on evidence.*
- *After being sidelined initially, “the profile of human rights increased in the EU” (p. 460). What have been the most important expressions of this development in legal terms?*

7/1 – THE AFRICAN SYSTEM

To read:

- Christof Heyns and Magnus Killander, "Africa", chapter 23 in *International Human Rights Law* [16 pp.]

To listen to (complementary):

- "The Human Rights Movement: A Truly Universal System? – Prof Makau Mutua", *Africa Rights Talk*, SI E1, 1 April 2019 [45:24]

To answer:

- *Which body resembles the African Commission on Human and Peoples’ Rights more, the Inter-American Commission on Human Rights or the UN Human Rights Committee? Explain your answer.*

- What are some of the real and potential merits of the African system of human rights protection?
- The assigned chapter concludes by saying that the “political will” of states is a main challenge to the African human rights system (p. 480). Illustrate this point in reference to specific examples.

10/1 – THE MOTHERS OF SREBRENICA

To read (mandatory):

- *Mothers of Srebrenica*, Hoge Raad, 19 July 2019, 17/04567, ECLI:NL:HR:2019:1284, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:1284>
- "Guide on Article 2 of the Convention – Right to life", European Court of Human Rights, available at https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, pp. 6-10

To read (complementary):

- Sofia Galani, "Terrorist Hostage-taking and Human Rights: Protecting Victims of Terrorism under the European Convention on Human Rights", 19(1) *Human Rights Law Review* (2019): 149-171

10/2 – DOMESTICATION OF HUMAN RIGHTS

To read:

- Andrew Byrnes and Catherine Renshaw, "Within the State", chapter 24 in Daniel Moeckli et al., *International Human Rights Law* (Oxford University Press, 2017): 482-499

To listen to (complementary):

- "The UK's Dark and Dangerous Constitution", *Better Human Podcast*, E 5, 25 November 2019 [57:35]

To answer:

- To what extent do international human rights have to be put down in constitutional guarantees to become effective at the domestic level?
- What is the relevance of the legislature and legislation in providing protection of human rights?
- What determines whether human rights can be enforced by domestic courts? Provide an answer that is as succinct as possible using some of the key concepts (principles) described in the chapter.

11/1 – CONFLICTING RIGHTS

To read:

- *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. (2018), available at <https://supreme.justia.com/cases/federal/us/584/16-111/#tab-opinion-3910082>

To listen to (complementary):

- "Religion, Belief and Human Rights", *Better Human Podcast*, E 14, 2 March 2020 [57:23]

To answer:

- Writing for the Court's majority, how does Justice Kennedy present this particular conflict of rights? Where does he "draw the line" regarding whose rights ought to prevail when?
- What role does the Colorado Civil Rights Commission play in the reasoning of the Court?
- Do you find the Court's judgment and reasoning to be convincing? Provide a reasoned explanation for whether and where you would differ.

11/2 – HUMAN RIGHTS CRITIQUES

To read:

- Marie-Bénédicte Dembour, "Critiques", chapter 3 in Daniel Moeckli et al., *International Human Rights Law* (Oxford University Press, 2017): 41-61

To listen to (complementary):

- "Is Human Rights a Fable? (with Professor Samuel Moyn)", *Declarations: The Human Rights Podcast*, S2 E11, 26 March 2018 [53:25]

To answer:

- To what extent is the Marxist critique still relevant today? Answer the question in reference to a concrete present-day example.
- Can you discern a common thread in the more recent critiques (i.e. the particularist, feminist and postcolonial critique)?
- What critique of human rights do you find most and least convincing? Provide a short but reasoned explanation.

13/2 – CULTURAL DIVERSITY

To read:

- Clara Rigoni, "Crime, Diversity, Culture, and Cultural Defense", *Criminology and Criminal Justice Research Encyclopedia*, Oxford University Press (2018), available at <http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-409>

To listen to (mandatory):

- Interview with Paola Pannia (our guest lecturer) - will be posted prior to the session

14/1 – HUMAN RIGHTS AND THE ENVIRONMENT

To read:

- Alan Boyle, "Human Rights and the Environment: Where Next?", 23(3) *European Journal of International Law* (2012): 613-642.

To listen to (alternative):

- "Why Climate Change is a Human Rights Emergency", *Better Human Podcast*, E8, 23 December 2019 [59:46 min]

To answer:

- *How are human rights relevant in the fight against climate change?*
- *What are the limitations of the international legal framework of human rights when it comes to environmental protection?*
- *In your view, how should activists address the climate crisis? What role do human rights play within your strategy?*

14/2 – INTERSECTIONAL AND ALGORITHMIC DISCRIMINATION

To read:

- Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", *University of Chicago Legal Forum* (1989): 139-167
- Anna Lauren Hoffmann, "Where Fairness Fails: Data, Algorithms, and the Limits of Antidiscrimination Discourse", 22(7) *Information, Communication & Society* (2019): 900-915

To listen to (complementary):

- "#SayHerName with Dr. Kimberle Crenshaw", *We The Podcast*, 11 May 2016 [50:41]

To answer:

- *What is "intersectionality"? Provide a short description of the concept and discuss, in brief, whether the law is able to adequately capture it.*
- *What is algorithmic bias and data-driven inequality and how, if at all, can the law address it?*
- *What critiques can you advance to the arguments developed by Crenshaw and Hoffmann in the readings?*

15/1 – MIGRATORY VULNERABILITY

To read:

- Moritz Baumgärtel, "Facing the Challenge of Migratory Vulnerability in the European Court of Human Rights", 38(1) *Netherlands Quarterly of Human Rights* (2020): 12-29

To listen to (alternative):

- "The Truth about Migrants", *On Human Rights*, 29 June 2019 [56:07]

To answer:

- *What is the relation between migrant vulnerability (or precarity) on the one hand, and legal (residence) status on the other one?*
- *Are migrants confronted primarily with denials of their civil and political rights or are they also struggling to enjoy their economic and social rights? Provide a reasoned answer.*
- *In your view, what are the long-term prospects for the rights of vulnerable migrants to improve?*