

# INTERNATIONAL, EUROPEAN AND INTER-AMERICAN HUMAN RIGHTS PROTECTIONS

Seminar Leader: Dr. Sutherland, Zoe

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Course dates: 31 Aug - 18 Dec 2020

Course schedule: Tuesdays 15:45 - 17:15; Wednesdays 10:45 - 12:15

Location: SR5 P24

Office Hours: Wednesdays 12:15-14:00, otherwise by appointment throughout the week

Credits: 8 ECTS, 4 US Credits

Expected Workload: 240 hours

## Course Description

This course introduces students to essential aspects of human rights and their international protection, as well as their regional protection in Europe compared with the Inter-American human rights systems. The course provides a critical understanding of international human rights law as a branch of public international law, explores rights-based approaches to social justice and how these are influenced by philosophical and historical origins of human rights, and introduces the institutional competences of the European Court of Human Rights and the Inter-American Commission and Court of Human Rights.

Students will gain skills in close reading and critically interpreting the various jurisprudence in order to develop their argumentation in assignments, including preparation for the required essay on international human rights standards for the MA in Human Rights at CEU. To this end, students will also be encouraged to identify and further their own individual research interests, through seminar papers and discussion.

## Learning Outcomes

By the end of this course, it is expected that students will;

- have gained knowledge of human rights protections in the international, European, Inter-American jurisdictions, and be able to navigate the norms and institutions, procedural and enforcement frameworks of these rights regimes,
- have gained knowledge of the workings of international human rights law as a branch of public international law, and be able to use legal reasoning,
- reflect critical thinking in their written work, including case law summaries and essays, and demonstrate a sound understanding of how argumentation works,
- demonstrate the ability to draw conclusions based on the jurisprudence and to defend those views using key human rights concepts, and

- demonstrate abilities as human rights scholars to further individual research projects which utilise rights-based social justice approaches.

## Requirements

Students are required to complete the assigned weekly reading, to actively participate in class (i.e. to demonstrate knowledge of the reading in seminar discussion and to shape relevant lines of inquiry together with fellow seminar participants), to give brief presentations based on their reading, and to submit four response papers and two assignments. Students will receive 30% of their grade for the class for participation, 20% for the response papers, 20% for a mid-term paper, and 30% for a term paper.

### Academic Integrity

Bard College Berlin maintains the staunchest regard for academic integrity and expects good academic practice from students in their studies. Syllabi should note that, instances in which students fail to meet the expected standards of academic integrity will be dealt with under the Code of Student Conduct, Section 14.3 (Academic Misconduct) in the Student Handbook.

### Attendance

Attendance at ALL classes is expected. More than two absences (that is absences from two sessions of 90 minutes) in a semester will significantly affect the participation grade for the course. Students should consult the Student Handbook for regulations governing periods of illness or leaves of absence.

### Assessment

Students will receive 30% of their grade for the class for participation, 20% for the response papers, 20% for a mid-term paper, and 30% for a term paper.

### Assignments

The assignments for this course consist of four response papers, a mid-term and a term paper. The response papers will take the form of case law reviews (1,000 words each). The mid-term assignment is "Describe a human rights challenge in your country (or place of residence) from the past year (within 400 words). Discuss this issue from the perspective of relevant international and regional human rights standards (within 1100 words). Write a maximum of 1500 words." The term paper assignment is to re-draft the mid-term following feedback and discussion from the instructor and seminar as a whole.

### Policy on Late Submission of Papers

Essays that are up to 24 hours late will be downgraded one full grade (from B+ to C+, for example). Instructors are not obliged to accept essays that are more than 24 hours late. Where an instructor agrees to accept a late essay, it must be submitted within four weeks of the deadline and cannot receive a grade of higher than C. Thereafter, the student will receive a failing grade for the assignment.

## Grade Breakdown

Students will receive 30% of their grade for the class for participation, 20% for the response papers, 20% for a mid-term paper, and 30% for a term paper.

## Schedule

Week	Date	Time	Topic	Assignment
1	Tues 1 Sept	15:45 - 17:15	Introduction to the Course: Human Rights Foundations	
	Wed 2 Sept	10:45 - 12:15	Human Rights Foundations, part 2	
2	Tues 8 Sept	15:45 - 17:15	Cultural Relativism, part 1	
	Wed 9 Sept	10:45 - 12:15	Cultural Relativism, part 2	
3	Tues 15 Sept	15:45 - 17:15	Human Rights Law, part 1	
	Wed 16 Sept	10:45 - 12:15	Human Rights Law, part 2	
4	Tues 22 Sept	15:45 - 17:15	Civil and Political Rights, part 1	
	Wed 23 Sept	10:45 - 12:15	Civil and Political Rights, part 2	Response paper no. 1 due
5	Tues 29 Sept	15:45 - 17:15	Economic and Social Rights, part 1	
	Wed 30 Sept	10:45 - 12:15	Economic and Social Rights, part 2	Response paper no. 2 due
6	Tues 6 Oct	15:45 - 17:15	Reservations and Derogations, part 1	
	Wed 7 Oct	10:45 - 12:15	Reservations and Derogations, part 2	
7	Tues 13 Oct	15:45 - 17:15	National Limitations of Human Rights, part 1	
	Wed 14 Oct	10:45 - 12:15	National Limitations of Human Rights, part 2	Response paper no. 3 due
Fall break				
8	Tues 27 Oct	15:45 - 17:15	The European Convention on Human Rights (ECHR), part 1	
	Wed 28 Oct	10:45 - 12:15	The European Convention on Human Rights (ECHR), part 2	
9	Tues 3 Nov	15:45 - 17:15	The European Court of Human Rights (ECtHR), part 1	
	Wed 4 Nov	10:45 - 12:15	The European Court of Human Rights (ECtHR), part 2	Mid-term due
10	Tues 10 Nov	15:45 - 17:15	The ECHR Beyond Europe: Extraterritorial Jurisdiction, part 1	
	Wed 11 Nov	10:45 - 12:15	The ECHR Beyond Europe: Extraterritorial Jurisdiction, part 2	

11	Tues 24 Nov	15:45 - 17:15	Interpreting the ECHR, part 1	
	Wed 25 Nov	10:45 - 12:15	Interpreting the ECHR, part 2	Response paper no. 4 due
12	Tues 1 Dec	15:45 - 17:15	Remedies for Rights Violations, part 1	
	Wed 2 Dec	10:45 - 12:15	Remedies for Rights Violations, part 2	
13	Tues 8 Dec	15:45 - 17:15	The Inter-American Human Rights System, part 1	Term paper due
	Wed 9 Dec	10:45 - 12:15	The Inter-American Human Rights System, part 2	
14	Tues 15 Dec	15:45 - 17:15	Individual Petitions to the Inter-American Commission, part 1	
	Wed 16 Dec	10:45 - 12:15	Individual Petitions to the Inter-American Commission, part 2	
Completion week				

## Reading List for IHRL 2020/21

### Reading

#### Week 1 Introduction: Human Rights Foundations

What do we mean when we talk about human rights? Human rights is an area of law, yet human rights discourse tends to be about demands for social justice. At the same time, the language of human rights may be appropriated to lend legitimacy to policies and interventions which themselves raise serious human rights concerns or undermine freedom and equality for all. This class aims to provoke foundational questions about the origins and nature of human rights.

#### Questions for consideration

1. What are human rights?

#### Reading

- Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford: Oxford University Press, 2015), chapter 1 'Looking at Rights', pp. 1-26.

#### Week 2 Cultural Relativism

'We are all born free and equal'. That human rights are universal is perhaps their most controversial quality. This class explores tensions between universalist and relativist arguments, and whether it's possible to reconcile the two claims.

#### Questions for consideration

1. What does cultural relativism mean?

2. When in human rights decision-making should cultural differences be respected and when not?
3. Can we achieve cultural pluralism and, simultaneously, universality of rights?

#### Reading

- Jack Donnelly, *Universal Human Rights In Theory and Practice* (Oxford: OUP, 2013) pp 93 - 118.
- Sally Engle Merry, *Human Rights and Gender Violence* (2006) in Philip Alston and Ryan Goodman, *International Human Rights* (Oxford: OUP, 2012) pp 538 – 541.
- Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford: Oxford University Press, 2015), chapter 2 ‘Historical development and contemporary concerns’, pp. 49-62.

#### Week 3 Human Rights Law

Lawyers are trained to understand that human rights are ‘interdependent, indivisible, and interrelated’. What does this mean exactly? Who is accountable for rights violations? And how does accountability work? In this class we learn about the essential characteristics of human rights, as well as classifications of rights according to the generational approach and the ‘respect, protect, fulfil’ framework.

#### Questions for consideration

1. What are the advantages and disadvantages of the various ways of classifying human rights?
2. Which approach to classifying human rights do you prefer and why?
3. How can human rights be seen as mechanisms of accountability?

#### Reading

- Christine Chinkin, “Sources”, in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris (eds), *International Human Rights Law* (Oxford: OUP, 2012) 2nd edition, pp. 75-95.
- Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: OUP, 2006) pp 85-107.
- Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford: OUP, 2008) 2nd edition Chapter 3, pp 25-59.

#### Week 4 Civil and Political Rights

This class familiarises students with the International Convention on Civil and Political Rights (ICCPR). We will also discuss the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

#### Questions for consideration

1. What moral and political justifications are given in the preambles to the ICCPR and the UDHR for their existence? Why do you suppose there is a lack of justification?
2. Are there any concessions to cultural relativism in the ICCPR or UDHR?

3. We think of states as duty-bearers and individuals as rights-holders. Is it accurate that only states can violate human rights? Are the duties of states entirely negative, i.e. are states required to do no more than keep their 'hands off' individuals?
4. Unlike the ICCPR, CEDAW has no provision specifically addressing bodily security. What provisions would you rely on to assert a woman's human right to bodily security?

### Reading

- Excerpts from the ICCPR.
- Olivier De Schutter, *International Human Rights Law: Cases, Material, Commentary* (Cambridge: CUP, 2014) 2nd edition pp 295 – 338 on “Rights of an absolute character”.
- Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford: OUP, 2015) pp 110 – 121 on “Balancing rights – free speech and privacy”.
- Students will select a civil right to present to the class. More details will be given during the course.

### Week 5 Economic and Social Rights

This class familiarises students with the International Covenant on Economic, Social, and Cultural Rights (ICESCR). We will study case law from South Africa on housing and health.

### Questions for consideration

1. What are the differences between the ICCPR and the ICESCR?
2. Are socioeconomic rights more important than civil rights, do people need food first and free speech second?
3. Are socioeconomic rights really rights, or do they undermine political freedoms by requiring states to allocate resources in specific ways?

### Reading

- Excerpts from the ICESCR.
- *South Africa v Grootboom*, Case CCT 11/00 [2000]. Excerpt.
- *Treatment Action Campaign v Minister of Health*, Case CCT 8.02, 5 July 2002. Excerpt.
- Aryeh Neier, “What Are Rights?” in *The International Human Rights Movement* (Oxford: Princeton University Press, 2012) pp 57 – 92
- Students will select a socioeconomic right to present to the class. More details will be given during the course.

### Week 6 Reservations and Derogations

Reservations and derogations are two ways in which states can refuse the application of international human rights treaties. In this class we explore the rules applying to reservations and derogations.

### Questions for consideration

1. What is a reservation? What is a derogation?
2. To what extent do reservations and derogations undermine human rights treaties?
3. What is your assessment of the recent suspension of the European Convention of Human Rights in Turkey?

#### Reading

- Declaration contained in a letter from the Permanent Representative of Turkey registered at the Secretariat General of the Council of Europe on 21 July 2016 <http://bit.ly/2aghozl>.
- Philip Alston and Ryan Goodman, International Human Rights (Oxford: OUP, 2012) pp 1080-1083, 1096-1116, 394 – 403, 432 – 444.
- European Court of Human Rights Factsheet, Derogation in time of emergency, July 2016 [http://www.echr.coe.int/Documents/FS\\_Derogation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf).
- A and others v Secretary of State for the Home Department [2004] UKHL 56 judgment of UK House of Lords of 16 December 2004 (especially judgments of Lords Bingham and Hoffmann).

#### Week 7 Limiting and Balancing Rights

Whereas absolute rights may not be restricted under any circumstances, limited or qualified rights may if certain conditions are met. In this class we ask, what are those conditions and who decides how and when they apply?

#### Questions for consideration

1. The right to be free from torture is absolute. What are the implications of this?
2. What are diplomatic assurances? Is it ever acceptable to return someone to their country of origin or to a third country on the basis of a diplomatic assurance where the return would otherwise be prohibited?
3. Under what conditions may most human rights be restricted?

#### Reading

- Omar Othman v UK, Application No 8139/09, judgment of the European Court of Human Rights of 17 January 2012
- Hatton v UK, Application No 36022/97, judgment of the Grand Chamber of the European Court of Human Rights of 8 July 2003

#### Class 8 The European Convention on Human Rights (ECHR)

This class introduces the Council of Europe and its most important human rights instrument, the European Convention on Human Rights.

#### Questions for consideration

1. What are the main statutory organs of the Council of Europe (CoE)?
2. How does membership of the Council of Europe work?
3. What is the nature of rights and obligations in the European Convention on Human Rights?

### Reading

- Statute of the Council of Europe. Excerpt.
- F. Benoit-Rohmer and H. Klebes, *Council of Europe Law: Toward a Pan-European Legal Area* (Council of Europe Publishing, 2005). Excerpt.
- F. Benoit-Rohmer – H. Klebes, *Council of Europe Law. Toward a Pan-European Legal Area* (Council of Europe Publishing, 2005). Excerpt.

### Class 9 The European Court of Human Rights (ECtHR)

In this class we gain familiarity with the workings of the European Court of Human Rights. We learn about the individual complaint procedure and other procedures, such as inter-state procedures and advisory opinions by the Court.

### Questions for consideration

1. What is the structure and role of the European Court of Human Rights?
2. What are the different procedures available under the ECHR? Please consider
  - a. who can initiate these procedures,
  - b. on what issues, and
  - c. what is the possible outcome?
3. What are the grounds for declaring a complaint inadmissible?

### Reading

- European Convention on Human Rights – Section II and Protocol no. 15 and 16
- The Protocol 14 System. In: A. Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (3rd ed., OUP, 2014, OUP), 14-28. - Conditions of Admissibility. In: B. Rainey, E. Wicks, C. Ovey, Jacobs, White & Ovey
- The European Convention on Human Rights (7th ed., OUP, 2017), 28-47.
- X. v. Iceland. In: M. Janis – R. Kay – A. Bradley, *European Human Rights Law* (2nd ed., OUP, 2008), 38-41.

### Class 10 The ECHR Beyond Europe: Extraterritorial Jurisdiction

As a rule the jurisdiction of a state is confined to its territory. Jurisdiction is only extended exceptionally. In *Al-Skeini and others v UK* the ECtHR found that the ECHR applies extraterritorially.

### Questions for consideration

1. What is the concept of *ratione territoris*: how does the ECtHR define jurisdiction?
2. On the basis of *Al-Skeini and Others v. the United Kingdom*, please identify the grounds that may establish jurisdiction. Is the state always bound by the entire ECHR or can obligations be tailored to the circumstances?
3. According to Article 15 ECHR, which rights can be derogated from? Which can't?
4. How do derogations differ from limitations?

### Reading

- *Al-Skeini and Others v. the United Kingdom* [GC] 55721/07 (07/07/2011), Reports of Judgments and Decisions 2011 [edited].
- Article 15 ECHR.
- *Lawless v. Ireland* (no. 3) 332/57 (01/07/1961), A3 [edited].
- *Brannigan and McBride v. the United Kingdom* 14553/89; 14554/89 (26/05/1993, A258-B [edited].

## Class 11          Interpreting the ECHR

In this class we discuss the frameworks and principles according to which the ECHR is interpreted. The ECHR is a *sui generis* instrument, although the Vienna Convention on the Law of Treaties also influences how it is interpreted. The ECHR is a ‘living instrument’ (*Tyrer v UK*). It is

### Questions for consideration

1. What are the interpretive methods used by the Court?
2. How is the Vienna Convention on the Law of Treaties relevant to ECtHR jurisprudence? (see *the Vienna Convention on the Law of Treaties* and *Golder v UK*)
3. What is the ECtHR’s notion of ‘autonomous concepts’? (see *Engel and others v UK*)
4. What purposes do autonomous concepts serve? What is their source?

### Reading

- Articles 31-33 of the Vienna Convention on the Law of Treaties [Documentary Supplement].
- *Golder v. the United Kingdom* 4451/70 (21/02/1975), A18 [edited].
- *Engel and Others v. the Netherlands* 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (08/06/1976), A22 [edited].
- *Tyrer v. the United Kingdom* 5856/72 (25/04/1978), A26 [edited].
- The Interpretation of the Convention. In: D. Harris – M. O’Boyle – C. Warbrick – E. Bates, *The Law of the European Convention on Human Rights* (OUP, 2014), pp. 7-24.

## Class 12          Remedies for Rights Violations

The European Court of Human Rights has long recognised that states may be required to take certain actions in order to comply with their obligations under the ECHR. This is the concept of ‘positive obligations’. In this class we explore how positive obligations are conceptualised and applied in the jurisprudence. We also look at available remedies under the ECHR, as well as the supervisory mechanisms meant to ensure compliance.

### Questions for consideration

1. How did the ECtHR arrive at the concept of positive obligations?
2. What is the difference between a negative and a positive obligation? Is the difference always clear? What is the applicable test to distinguish negative and positive obligations?
3. What is the remedy of ‘just satisfaction’? What does it cover?
4. What remedies can the Committee of Ministers prescribe?
5. How do pilot judgements differ from ordinary decisions?

### Reading

- J.-F. Akandij-Kombe, Positive Obligations under the European Convention on Human Rights (Council of Europe Publishing, 2007), 7-20.
- Airey v. Ireland 6289/73 (09/10/1979), A32 [edited].
- The execution of the Court's judgments. In: D. J. Harris – M. O'Boyle – E. P. Bates – C. M. Buckley, Harris, O'Boyle & Warbrick – Law of the European Convention on Human Rights (3rd ed., OUP, 2014), 180-191. (the remaining parts of the text are optional)
- Rule 61, pilot-judgment procedure. Rules of Court.
  
- D. Haider, The Pilot-Judgment Procedure of the European Court of Human Rights (Martinus Nijhoff Publishers, 2013), 15-31.

### Class 13      The Inter-American Human Rights System

This class introduces the Organization of American States (OAS) and a brief history of the OAS mechanisms for the protection of human rights. We will compare two systems, one based on the OAS Charter together with the American Declaration of the Duties and Rights of Man, and the other based on the American Convention on Human Rights.

### Questions for consideration

1. How does the OAS protect human rights in the Americas?
2. What is the difference between the system based on the Charter and Declaration and the system based on the Convention?
3. Is the Declaration binding?
4. Which are the main human rights bodies in the continent?

### Reading

- Articles 1-21 and Article 53 OAS Charter.
- Articles 34-43 and 52-62 American Convention on Human Rights.
- Articles 1-20 Statute of the Inter-American Commission on Human Rights.
- Josef L. Kunz, "The Bogota Charter of the Organization of American States", 2 Am. J. Int'l L. 568, 1948.

### Class 14      Individual Petitions to the Inter-American Commission

We will study the procedure of individual petitions before the IACmHR. The class will present the jurisdiction of the Commission, and the conditions and requirements for the admissibility of individual petitions.

### Questions for consideration

1. What is the difference between admissibility and jurisdiction?
2. What are the admissibility requirements for individual petitions?
3. What is the jurisdiction *ratione materiae, loci, and temporis* of the IAS?

Reading

- Articles 44-51 American Convention on Human Rights
- Articles 26-47 Rules of Procedure of the Inter-American Commission on Human Rights.
- Jurisdiction *ratione loci*: IACmHR, Report No. 112/10, Ecuador v. Colombia (excerpt).
- Jurisdiction *ratione temporis*: IACtHR, Serrano Cruz Sisters v. El Salvador. Judgment. November 23, 2004. Series C No. 118 (excerpt).
- Jurisdiction *ratione materiae*: IACtHR, Hilaire v. Trinidad and Tobago. Judgment. September 1, 2001. Series C No. 80 (excerpt). 13
- Jurisdiction *ratione personae*: IACmHR, Newspaper "La Nación" v. Costa Rica, Report No. 128/01, paras. 33-38.
- Exhaustion of domestic remedies: IACtHR, Velásquez Rodríguez v. Honduras. Judgment June 26, 1987, Serie C No. 1, and Judgment of July 29, 1988. Series C No. 4 (excerpt).
- Six-month rule: IACtHR, Grande v. Argentina. Judgment. August 31, 2011. Series C No. 231, paras 44-61.
- Duplication of proceedings: IACmHR, Raquel Martín de Mejía v. Peru, Report No. 5/96, 1996, Section V.A.1.
- Laurence Burgorgue-Larsen and Amaya Úbeda de Torres, The Inter-American Court of Human Rights. Case Law and Commentary, Oxford University Press: Oxford, 2011 (Chapter 2).
- Jo M. Pasqualucci, The Practice and Procedure of the Inter-American Court of Human Rights, Cambridge University Press: Cambridge, 2013, 2d. ed.

## **Essay Deadlines**

See 'Schedule' (table above).

## **Grades Submission**

See 'Grade Breakdown' (above).

## **Library and Book Purchase Policies**

Materials will be provided by the instructor.