



## *Syllabus*

# **INTERNATIONAL HUMAN RIGHTS LAW - 62410**

*Last update 04-10-2017*

HU Credits: 3

Responsible Department: law

Academic year: 0

Semester: 1st Semester

Teaching Languages: English

Campus: Mt. Scopus

Course/Module Coordinator: Prof. Yuval Shany

Coordinator Email: [yshany@mscc.huji.ac.il](mailto:yshany@mscc.huji.ac.il)

Coordinator Office Hours: on request

Teaching Staff:  
Prof Yuval Shany

Course/Module description:

*The course proceeds in three segments. The first segment introduces the idea of*

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human rights from an historical, philosophical, analytical and critical perspective. The focus of this segment is on the development of international human rights law within the UN system and its implications for international law and politics. The second and main segment of the course is devoted to the study of key international human rights notions and concepts and their application in specific human rights instruments and contexts. Among the issues discussed in this segment are right relativism/absolutism, extra-territorial application of human rights, positive/negative obligations, derogations and reservations, group rights and the application of human rights at times of war. The third and last segment of the course explores the right enforcement mechanisms that have been put in place at the global, regional and national levels.

*Course requirements:*

*Students must read all the course's reading assignments*

*Attendance in 75% of class sessions is mandatory*

*Course/Module aims:*

- 1. To introduce student to the main trends, dilemmas and principles of international human rights law.*
- 2. To encourage students to think critically about human rights at the theoretical level and about the practice of its implementation at the national and international level.*
- 3. To lay the foundation for advanced courses and research work in the field of international human rights law*

*Learning outcomes - On successful completion of this module, students should be able to:*

- 1. Recognize and distinguish main international human rights norms and institutions.*
- 2. Examine the different generations of rights and assess critically the usefulness and validity of such distinctions.*
- 3. Investigate main substantive dilemmas underlying the field of human right law.*
- 4. Identify main historical trends in the development of international human rights law.*
- 5. Critically evaluate the effectiveness of international human rights law.*
- 6. Appraise the interface between international human rights law and international politics.*
- 7. Reflect on the lessons drawn from international human rights law about the domestic human rights situation.*

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Attendance requirements(%):

75%

*Teaching arrangement and method of instruction: lecture*

Course/Module Content:

*Course Program*

*Part I □ The Foundations and Structures of International Human Rights Law*

*Topic 1:*

*E-Team □ A Film on the work of Human Rights Activists*

*The class explores the factual reality in which human rights work occurs, the challenges confronted by human rights NGOs, the political context in which they operate, their successes and failures..*

*Topic 2:*

*Self-Determination*

*The class discusses the emergence of the modern state system and the rise of the principle of self-determination, as an overarching framework for the application of international human rights.*

*Topic 3: Historical Origins*

*This class describes some of the international legal institutions predating international human rights law: the laws of war, protection of aliens, protection of minorities and international criminal law. It then discusses the links and differences between these institutions and international human rights norms and procedures.*

*Topic 4:*

*Ideological Foundations*

*This class explores the concept of "human rights" in law and philosophy, and discusses the normative differences between "civil rights", "constitutional rights" and "human rights". The second part of the class will explain the tensions between human rights and the classic structures of the international legal system.*

*Topic 5:*

*The Charter and the Declaration*

*The class discusses the place of human rights in the post-World War Two order and explores the basic principles of universality, inalienability and right-balancing introduced in the 1948 Universal Declaration of Human Rights. These notions will be contrasted against ideas of right v. duties, cultural relativism and right absolutism*

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## *Part II □ Human Rights Norms*

### *Topic 6 (two classes)*

#### *The ICCPR Framework Provisions*

*This class discusses framework provisions of the International Covenant on Civil and Political Rights: the jurisdictional clause, the existence of positive obligations, the incorporation clause and the derogation clause. Through this prism, the promise and limits of human rights law will be critically evaluated. Special attention will be afforded to the question of the applicability of human rights in times of armed conflict.*

### *Topic 7*

#### *The Prohibition against Torture*

*This class addresses the prohibition against torture under international law as a paradigmatic example of right absolutism. It discusses the moral and policy arguments in favor of the absolute ban on torture and the interpretative pressures this construction generates.*

*Readings:*

### *Topic 8*

#### *Economic and Social Rights*

*The class discusses the development of second generation rights and discusses the traditional criticism directed against recognizing such rights or their justiciability. Special attention will be afforded to the principle of indivisibility and to recent reforms in ESR monitoring procedures.*

### *Topic 9*

#### *Minority Rights*

*The class discusses the justifications for developing group rights and the tension group and individual rights. Special attention will be given to the following categories of group rights: rights of national minorities and the rights of indigenous peoples.*

## *Part III Human Rights Institutions*

### *Topic 10*

#### *The Charter and Treaty Bodies*

*This class introduces the different institutions and procedures created under UN auspices to advance human rights reasons: the Charter bodies (including the Human Rights Commission and Council and the Special Rapporteurs) and the Treaty Bodies. Their work, and the political context in which they operate, will be critically assessed.*

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### Topic 11

#### Regional Arrangements

*The class will discuss the emergence of regional arrangements for human rights protections in Europe, the Americas and Africa, and explore the advantages and disadvantages of promoting human rights on a regional basis. Particular attention will be given to recent trends in the work of the regional human rights courts.*

### Topic 12

#### Domestic Enforcement

*The class will explore the role of national courts as international human right law enforcers, focusing in particular on the utilization of criminal law, in the context of universal jurisdiction cases, and tort law, in the context of Alien Tort Claims and the recent state immunity cases in Europe.*

### Topic 13

#### Critical Perspectives

*The class will examine some of the main criticisms that have been leveled against the human rights movement, challenging its effectiveness and legitimacy and exposing its alleged biases.*

### Required Reading:

#### Course Program

#### Part I □ The Foundations and Structures of International Human Rights Law

##### Topic 1:

##### E-Team □ A Film on the work of Human Rights Activists

*The class explores the factual reality in which human rights work occurs, the challenges confronted by human rights NGOs, the political context in which they operate, their successes and failures..*

##### Topic 2:

##### Self-Determination

*The class discusses the emergence of the modern state system and the rise of the principle of self-determination, as an overarching framework for the application of international human rights.*

##### Readings:

□ *International Covenant on Civil and Political Rights 1966, article 1*

□ *Malcolm Shaw, International Law (7th ed) 142-162, 183-193*

##### Topic 3: Historical Origins

*This class describes some of the international legal institutions predating*

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*international human rights law: the laws of war, protection of aliens, protection of minorities and international criminal law. It then discusses the links and differences between these institutions and international human rights norms and procedures.*

*Readings:*

□ Philip Alston and Ryan Goodman, *International Human Rights* (2012) 90-134 (hereinafter: 'IHR')

*Topic 4:*

*Ideological Foundations*

*This class explores the concept of "human rights" in law and philosophy, and discusses the normative differences between "civil rights", "constitutional rights" and "human rights". The second part of the class will explain the tensions between human rights and the classic structures of the international legal system.*

*Readings:*

Philip Alston and Ryan Goodman, *International Human Rights* (2012) 490-508 (hereinafter: 'IHR')

*Topic 5:*

*The Charter and the Declaration*

*The class discusses the place of human rights in the post-World War Two order and explores the basic principles of universality, inalienability and right-balancing introduced in the 1948 Universal Declaration of Human Rights. These notions will be contrasted against ideas of right v. duties, cultural relativism and right absolutism*

*Readings:*

□ *Mellet v. Ireland*, Human Rights Committee Views of 31 March 2016, para. 9

□ *A, B and C v. Ireland*, Eur. Ct. HR Judgment of 16 Dec. 2010 (Grand Chamber), para. 167-268

□ *The Universal Declaration of Human Rights*, Dec. 10, 1948

*Part II □ Human Rights Norms*

*Topic 6 (two classes)*

*The ICCPR Framework Provisions*

*This class discusses framework provisions of the International Covenant on Civil and Political Rights: the jurisdictional clause, the existence of positive obligations, the incorporation clause and the derogation clause. Through this prism, the promise and limits of human rights law will be critically evaluated. Special attention will be afforded to the question of the applicability of human rights in times of armed conflict.*

*Readings:*

□ Human Rights Committee, General Comment 31 (2004).

□ Human Rights Committee, Draft General Comment 36 (2007).

□ *Velasquez Rodriguez v. Honduras*, I/A CHR judgment of 29 July 1988, 147-188.

□ Yuval Shany, *Taking Universality Seriously: A Functional Approach To Extraterritoriality in International Human Rights Law*, 7 *The Law & Ethics of Human Rights* (2013) 47.

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## Topic 7

### *The Prohibition against Torture*

*This class addresses the prohibition against torture under international law as a paradigmatic example of right absolutism. It discusses the moral and policy arguments in favor of the absolute ban on torture and the interpretative pressures this construction generates.*

#### *Readings:*

- *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 Dec. 1984, art. 1-16.
- *Ireland v UK*, ECtHR judgment of 18 January 1978, para. 96-107, 165-168.
- *Gäfgen v Germany*, ECtHR judgment of 1 June 2010, para. 80-108.
- *AHG v Canada*, Views of the HRC of 25 March 2015, para. 10.1-13 and individual opinions by Siebert-Fohr and Shany
- *HCJ 5100/94 Public Committee against Torture in Israel v Israel*, judgment of 6 Sept. 1999, para. 18-40 (per Barak J).

## Topic 8

### *Economic and Social Rights*

*The class discusses the development of second generation rights and discusses the traditional criticism directed against recognizing such rights or their justiciability. Special attention will be afforded to the principle of indivisibility and to recent reforms in ESR monitoring procedures.*

#### *Readings:*

- *International Covenant on Economic, Social and Cultural Rights*, 16 Dec. 1966, art. 1-15.
- *Committee on Economic, Social and Cultural Rights, General Comment 3 (1990)*
- *IHR*, 291-308.
- *Naidenova v. Bulgaria*, Views of the Human Rights Committee of 30 Oct. 2012, at para. 14.1-17.

## Topic 9

### *Minority Rights*

*The class discusses the justifications for developing group rights and the tension group and individual rights. Special attention will be given to the following categories of group rights: rights of national minorities and the rights of indigenous peoples.*

#### *Readings:*

- *Declaration on the Rights of Indigenous Peoples*, 13 Sept. 20 June 2006
- *Mayagna Awas Tingi v Nicaragua*, I/A CHR judgment of 31 Aug, 2001, para. 103-155
- *Paadr v. Finland*, Views of the Human Rights Committee of 26 March 2014

## Part III Human Rights Institutions

## Topic 10

### *The Charter and Treaty Bodies*

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*This class introduces the different institutions and procedures created under UN auspices to advance human rights reasons: the Charter bodies (including the Human Rights Commission and Council and the Special Rapporteurs) and the Treaty Bodies. Their work, and the political context in which they operate, will be critically assessed.*

*Readings:*

- *Olivier de Schutter, International Human Rights Law (2010) 791-801, 855-884*
- *High Commissioner for Human Rights, Strengthening the UN Human Rights Treaty Body System (2012), Introduction*
- *General Assembly Resolution 68/268 (2014)*

### *Topic 11*

#### *Regional Arrangements*

*The class will discuss the emergence of regional arrangements for human rights protections in Europe, the Americas and Africa, and explore the advantages and disadvantages of promoting human rights on a regional basis. Particular attention will be given to recent trends in the work of the regional human rights courts.*

*Readings:*

- *Handyside v. UK, ECtHR judgment of 7 Dec. 1976, para. 42-59*
- *Sunday Times v. UK, ECtHR judgment of 26 April 1979, para. 42-68*
- *Campbell v. Zimbabwe, SADC Court judgment of 28 Nov. 2008*

### *Topic 12*

#### *Domestic Enforcement*

*The class will explore the role of national courts as international human right law enforcers, focusing in particular on the utilization of criminal law, in the context of universal jurisdiction cases, and tort law, in the context of Alien Tort Claims and the recent state immunity cases in Europe.*

*Readings:*

- *Filartiga v. Pena-Irala, 630 F.2d 876 (1980)*
- *Kiobel v. Royal Dutch Petroleum, US Supreme Court judgment of 13 April 2013 (per Roberts J)*
- *Jurisdictional Immunities of the State (Germany v Italy), ICJ judgment of 3 Feb. 2012, para. 81-108*
- *Cr.C. 40/61 (Jer.) Israel v. Eichmann, 36 I.L.R. (1961) 18, para. 12-26*

### *Topic 13*

#### *Critical Perspectives*

*The class will examine some of the main criticisms that have been leveled against the human rights movement, challenging its effectiveness and legitimacy and exposing its alleged biases.*

*Readings:*

- David Kennedy, "The International Human Rights Movement: Part of the Problem?", 15 Harv. Hum. Rts. J. (2002) 99*
- Oona H. Hathaway, "Do Human Rights Treaties Make a Difference?", 111 Yale L.J. (2002) 1935, 1988-2001.*



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Additional Reading Material:

*Course/Module evaluation:*

*End of year written/oral examination 100 %*

*Presentation 0 %*

*Participation in Tutorials 0 %*

*Project work 0 %*

*Assignments 0 %*

*Reports 0 %*

*Research project 0 %*

*Quizzes 0 %*

*Other 0 %*

Additional information: