

## International Law

Academic year 2021-2022

## Human Rights in Turbulent Times

### DI154 - Autumn - 6 ECTS

Tuesday 16h15 - 18h00

## Course Description

The course examines some of the recent challenges faced by international human rights law: claims that it is imperialistic, bureaucratic and elitist, that it distracts from the need for political solutions, that it transfers power away from democratic institutions towards unelected judges, that it should not apply in times of armed conflict, and that it should not and cannot regulate the behaviour of corporations, including the activity of social media. At the same time we will examine the examples of successful human rights campaigns and movements detailed by Gráinne de Búrca in her new book "Reframing Human Rights in a Turbulent Era" which relate to persons with disabilities, children's rights, gender justice, and reproductive rights in particular contexts. The aim of the course is to cover the international legal framework for the protection of human rights while reflecting on its strengths and weaknesses in the contemporary context.

## > PROFESSOR

[Andrew Clapham](#)

[Office hours](#)

Please book a 15 min or 30 min slot using the doodle, please do not make multiple bookings over several weeks, and please cancel a booking if you cannot make it.

The doodle is [here](#).

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## > ASSISTANT

[Fekade Alemayhu Abebe](#)

[Office hours](#)

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## Syllabus

### Course Requirements

**This course is open to law students of the Graduate Institute (MIL and PhD); it is also open to MINT students and PhD students taking international law as a minor.**

#### Class:

The class will take place on Tuesdays from 14h15 to 16h00. Students are asked to prepare each class by reading the relevant chapters and materials. Active participation in class is expected. Evaluation is by a final written test.

Final evaluation:

**Format:** Take-home examination

**Start time:** 18h00 Tuesday 16 December 2021

**End time:** 18h00 Monday 20 December 2021

- Answers should be around 2500 words in total (including footnotes).
- Answers will be graded by Professor Clapham.
- You can answer in English or French.
- Footnotes can be in a style of your choosing as long as they are consistent.
- You should spend around two hours on your answer, this is not a research project. A mock exam will be circulated by the assistant and discussed in a separate tutorial.

**Submission:** Please send your exam by email to the teaching assistant, Fekade Alemayhu Abebe. The answer should be sent as a PDF attachment.

Aim of the Course:

The course will examine the nature of human rights campaigning and the uses of human rights law. The course will cover the new book by Gráinne de Búrca *Reframing Human Rights in a Turbulent Era* which contains details of human rights campaigns related to persons with disabilities (Argentina), children's rights and reproductive rights (Ireland) and gender equality (Pakistan). At the same time there will be a complete overview of the international legal framework for the protection of human rights. The course explains the relevance of international human rights law, the roles of the UN's political bodies and its expert mechanisms and treaty bodies, and the legal techniques that are used to limit or derogate from human rights as well as the role of the judiciary in balancing competing rights while leaving a margin of discretion to policy makers.

While this is a course about how to use human rights law, some attention will be paid to the contemporary critique of human rights. One critique (Hannum et al) is that the UN's human rights arrangements try to do too much by going too wide: new economic rights, international criminal justice, the behaviour of corporations etc is weakening the framework in the face of authoritarian governments. Hopgood from a different angle would add that the institutions are just too ineffective and removed from the realities facing people around the world. A second critique complains that the judicialization of human rights impoverishes political debate and policy making, the issues are too important to be left to judges (Sumption and Biggar). Third, the feminist and queer critiques highlight the problematic nature of the public/private, peace/war, normal/crisis divides on which human rights often depend (Engel and Kapur). Fourth, one should consider what have been called Third World Approaches to International Law (TWAAIL) concerned not only with how norms are created (Matua) but also with the effects of Western or neo-colonial intervention (Mamdani). Lastly, Moyn and others complain that the human rights movement does not go far enough in tackling inequality and social justice. Many of the critiques referred to by de Búrca are reprised in J. Snyder, L. Vinjamuri and S. Hopgood eds <https://www.cambridge.org/core/books/human-rights-futures/02DEEF5C27ADAD5B107988EEA8E60D56> (2017). Students are invited to find their own responses but the course will offer examples of the human rights machinery in action which are not necessarily fully taken into account by these meta critiques.

Among the book length critiques of human rights we will reference are;

- Hurst Hannum's *Rescuing Human Rights: A Radically Moderate Approach* (2019) Cambridge University Press,

- Jonathan Sumption's *Trials of the State: Law and the Decline of Politics* (2019) Profile Books
- Steven Hopgood's *The Endtimes of Human Rights* (2013) Cornell University Press
- Nigel Biggar's *What's Wrong With Rights?* (2020) Oxford University Press
- Ratner Kapur's, *Gender, Alterity and Human Rights: Freedom in a Fishbowl*, (Elgar, 2018)
- Engle, *The Grip of Sexual Violence in Conflict*, (Stanford University Press, 2020)
- Makau Matua's, *Human Rights Standards: Hegemony, Law, and Politics*, (State University of New York, 2016)
- Mahmood Mamdani's, *Saviours and Survivors: Darfur, Politics, and the War on Terror*, (2009) Doubleday
- Samuel Moyn's, *Not Enough: Human Rights in an Unequal World*, (2018) Belknap Press,

The links to the relevant chapters will be available on the moodle. For short stimulating argumentative essays on the state of human rights see:

<https://www.openglobalrights.org/english/>

## Course Materials

The course materials in addition to the books mentioned above include:

- D. Moeckli, S. Shah, and S. Sivakumaran (eds), *International Human Rights Law* (3rd edn Oxford University Press, 2018)
- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, (2<sup>nd</sup> edn Oxford University Press 2019.)

## Handouts will be distributed to students during each class.

My small book *Human Rights: A Very Short Introduction* (2nd edn, Oxford University Press, 2015) may also be a useful reference. This book is available for purchase (cost price) (5 CHF) from Fekade Alemayhu Abebe in the International Law Department. The website contains links to all the materials referenced in the book and can be accessed [here](#).

The book is also available in Thai, and the first edition is available in Korean, Turkish, Arabic (pdf available [here](#)), Swedish and German. I have some copies in Turkish and Korean which I am happy to make available.

I may also refer to Chapters from the *International Human Rights Law Lexicon* (2005) which I co-wrote with Susan Marks. The full text is available [here](#). Each entry has as for the Very Short Introduction a series of links to the material cited.

<http://www.internationalhumanrightslexicon.org/>

You can also find this book in Italian: *Lessico dei diritti umani* (Vita e Pensiero, 2009) in the library and available from me should anyone wish to have a personal copy.

The entries are as follows

- [Arms](#)
- [Children](#)
- [Culture](#)
- [Death Penalty](#)
- [Democracy](#)
- [Detention](#)
- [Development](#)

- [Disability](#)
- [Disappearance](#)
- [Education](#)
- [Fair Trial](#)
- [Food](#)
- [Globalisation](#)
- [Health](#)
- [Housing](#)
- [International Crimes](#)
- [Media](#)
- [Privacy](#)
- [Protest](#)
- [Racism](#)
- [Religion](#)
- [Sexuality](#)
- [Terrorism](#)
- [Torture](#)
- [Universality](#)
- [Victims](#)
- [Women](#)
- [Work](#)

For further reading students will be referred to relevant primary sources and scholarship. For **treaties** and other related documents see the University of Minnesota Human Rights Library (in [English](#)) and (in [French](#)) as well as limited documents in Arabic, Russian, Chinese, Japanese, and Spanish.

**Further optional background material** on international human rights might include:

- P. Alston and R. Goodman, *International Human Rights*, (Oxford: Oxford University Press, 2013)
- Bantekas and L. Oette, *International Human Rights Law and Practice*, 2nd edn, (Cambridge: CUP, 2016)
- P. Lauren, *The Evolution of Human Rights: Visions Seen*, 3rd ed., University Pennsylvania Press, Philadelphia, 2011 (Historical account of the human rights movement).
- S. Sheeran and N. Rodley, (eds), [Routledge Handbook of International Human Rights Law](#), (Abingdon: Routledge, 2013) reserved in the library with the seminar books and available online through the library.

**The principal journals devoted to international human rights law are:**

- *Journal of International Criminal Justice (JICJ)*
- *Human Rights Law Review (HRLR)*
- *European Human Rights Law Review (EHRLR)*
- *Human Rights Law Journal (HRLJ)*
- *Human Rights Quarterly (HRQ)*
- *Review of the International Commission of Jurists (Rev ICJ)*
- *Harvard Human Rights Journal (Harv HRJ - formerly Harvard Human Rights Yearbook)*
- *New York Law School Journal of Human Rights (NYLSJHR)*
- *Sur - International Journal on Human Rights* (Founded by academics from the

Global South, in English Spanish and Portuguese)

- *Business and Human Rights Journal (BHRJ)*
- *Human Rights and International Legal Discourse (HRILD)*
- *African Human rights Law Journal (AHLJ)*

Most **international law journals** contain articles on international human rights law. Among these are:

- *African Journal of International & Comparative Law (AfrJICL)*
- *American Journal of International Law (AJIL)*
- *International & Comparative Law Quarterly (ICLQ)*
- *European Journal of International Law (EJIL)*
- *International Legal Materials (ILM)* is a useful journal which reproduces documents (treaties, case reports and other documents of international legal significance).

**Class 1: Tuesday 21 September 2021**  
**Thinking about the Role of Human Rights Thinking and Considering the**  
**Twitter/Facebook Bans on Donald Trump and His Suit against Facebook et al**  
**claiming a denial of his freedom of expression**

**Desires and rights, the downside to rights, some contemporary context**

### Legal Text

- [Facebook Oversight Board ruling on the ban on President Trump 2021](#) [and please consider the comparisons with this case of Tong Ying-kit from Hong Kong](#)

### Readings

- G. de Búrca *Reframing Human Rights in a Turbulent Era* Chapter 2 The effectiveness of human rights
- A. Clapham, *Very Short Introduction*, [Chapter 1](#), ([links to documents mentioned in Ch 1](#)).
- C. Tomuschat, *Human Rights: Between Idealism and Realism*, [Chapter 1](#) (3rd edn.), pp. 1-11.

### [Critique from various perspectives](#)

- [BBC \(Geneva Correspondent\) 'Are we heading towards a 'post human rights world'?](#)
- [Makau W. Mutua 'Is the Age of Human Rights Over?' in Routledge Companion to Literature and Human Rights, ed. Sophia A. McClennen and Alexandra Schultheis Moore \(London and New York: Routledge, 2016\), pp. 450-458](#)
- [Hannum, \*Rescuing Human Rights\* Preface and Chapter 1. Thandabanthu Nhlapo, 'The African customary law of marriage and the rights conundrum', in Mahmood Mamdani, \(ed\), \*Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture\*, \(David Philips, 2000\) 136-48.](#)
- [Sari Kouvo book review of Ratna Kapur's \*Gender, Alterity and Human Rights: Freedom in a Fishbowl\* \(supra\)](#)
- [Philip Alston, 'The Populist Challenge to Human Rights' 2017 \*Journal of Human Rights Practice\*](#)
- [David Kennedy, "International Human Rights Movement: Part of the Problem?" \(2002\) 15 \*Harv. Hum. Rts. J.\* 101](#)
- [F. Mégret, \*Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes\* \(2012\). In: Beneyto J., Kennedy D. \(eds\) \*New Approaches\*](#)

to [International Law](#). T.M.C. Asser Press, The Hague, The Netherlands

- Eric Posner, '[The Case against Human rights](#),' *The Guardian* (4 December 2014).
- Moyn '[Human Rights Have lost their Monopoly as a Framework for Reform](#)

### *Introduction to Human Rights*

- S. Besson, '[Justifications](#)' in D. Moeckli, S. Shah, and S. Sivakumaran (eds), *International Human Rights Law* (3rd edn Oxford University Press, 2018) 22-40.
- M-B. Dembour, '[Critiques](#)', in D. Moeckli, S. Shah, and S. Sivakumaran (eds), *International Human Rights Law* (3rd edn Oxford University Press, 2018) 41-59.
- The [Appeal From Amnesty International](#) in Response to Populist Attacks on Human Rights 2017

### **Optional**

- The view from moral philosophy of law Tasioulas '[Making Human Rights Ordinary Again: A Response to Ignatieff](#)' responding to Ignatieff's *The Ordinary Virtues: Moral Order in a Divided World* (2017)

<p style="text-align: center;"><b>Class 2: Tuesday 28 September 2021</b> <b>History of Human Rights in International Law</b> <b>and the Issue of International Criminal Law</b></p>
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### **Legal Text**

[C.R. v UK](#) 1995 (European Court of Human Rights)

### **Readings**

- Clapham, *Very Short Introduction*, [Chapter 2](#), ([links to documents mentioned in Ch 2](#)).
- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, Chapter 1 ("[Origins and Universality](#)"), pp. 3-27
- A Clapham '[Human Rights and International Criminal Law](#)' *The Cambridge Companion to International Criminal Law*, edited by William Schabas, (2017)
- P. Gaeta and A.G. Jain, '[Individualisation of IHL rules through criminal responsibility for war crimes and some \(un\)intended consequences](#)', in D. Akande and J. Welsh, ((eds)), *The Individualisation of War*, (Oxford: OUP, 2021) (forthcoming).[ck link]
- Alicia Elaine Luedke "'[That thing of human rights](#)' discourse, emergency assistance, and sexual violence in South Sudan's current civil war' (2018) *Disasters*, 42: S99-S118.

### **Additional reading**

- Hannum *Rescuing Human Rights* [Chapter 2](#)
- E. Bates, "'[History](#)'" in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, Oxford University Press, Oxford,[chk for 3<sup>rd</sup> edn]
- A. Anghie 'International human rights law and developing world perspective' in S. Sheeran and N. Rodley, (eds), [Routledge Handbook of International Human Rights Law](#), (Abingdon: Routledge, 2013) 109
- R. Coomaraswamy 'The contemporary challenges to international human rights' in S. Sheeran and N. Rodley, (eds), [Routledge Handbook of International Human Rights Law](#), (Abingdon: Routledge, 2013) 127
- C. Tomuschat, *Human Rights: Between Idealism and Realism*, [Chapter 2](#), pp. 12-29.

### Optional on the History Debate

- S.-L. Hoffmann, '[Human Rights and History](#)', *Past and Present* (2016) (online version)
- S. Moyn, '[Response to Viewpoint: The End of Human Rights History](#)', *Past and Present* (2016) (online version)
- L. Hunt, '[The Long and the Short of the History of Human Rights](#)' *Past and Present* 2016.

<b>Class 3: Tuesday 5 October 2021</b> <b>The Human Rights Council and the High Commissioner</b>
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### Legal Text

- [Report](#) of the UPR Working Group on Switzerland
- You can **alternatively** read the report from your **own state** which you should find [here](#) (click on the name of the state and then on report of the working group in Outcome of the Review)

### **Outcome of the review:**

**Report of the Working group :**

[العربية](#) | [中文](#) | [English](#) | [Français](#) | [русский](#) | [Español](#)

Addendum :

[العربية](#) | [中文](#) | [English](#) | [Français](#) | [русский](#) | [Español](#)

Decision on the outcome :

[العربية](#) | [中文](#) | [English](#) | [Français](#) | [русский](#) | [Español](#)

Report of the thirty-seventh session of the Human Rights Council:

[English](#) Advance Unedited Version

### Readings

- Rosa Freedman, "[The Human Rights Council](#)" in F. Mégret and P. Alston, (eds), *The United Nations and Human Rights: A Critical Appraisal* (OUP, 2020) 181-238.
- I. Seiderman, 'The UN High Commissioner for Human Rights in the age of global backlash', vol. 37 *NQHR* (2019) 5-13.
- Andrew Clapham, '[The High Commissioner for Human Rights](#)' in F. Mégret and P. Alston (eds), *The United Nations and Human Rights : A Critical Appraisal* (Oxford University Press, 2020) 667-707.
- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, Chapter 8 ("[Charter Based Bodies](#)", only section II), pp. 235-243
- Hopgood [Challenges](#) to the Global Human Rights Regime: Are Human Rights Still an Effective Language for Social Change? *SUR - International Journal On Human Rights*, v. 11, n. 20, Jun./Dec. 2014
- Clapham, *Very Short Introduction*, [Chapter 3](#), ([links to documents mentioned in Ch 3](#)).
- Institution Building Package 2007(HRC [res 5/1](#)), paras 1-128; Review 2011 ([GA res 65/281](#)).

## ***Reframing Human Rights in a Turbulent Era***

- G. de Búrca *Reframing Human Rights in a Turbulent Era* Chapter 5 Using international human rights law to mobilize for children's right and reproductive rights in Ireland

### **Further Optional Reading**

- UPR Info – [Beyond Promises – The Impact of UPR on the Ground](#).
- I. Bantekas and L. Oette, *International Human Rights Law and Practice*, pp. [93-101](#).
- Hannum *Rescuing Human Rights* [Chapter 5](#)

<p style="text-align: center;"><b>Class 4: Tuesday 12 October 2021</b> <b>Human rights as legal rights under international law</b></p>
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### **Legal Texts**

- The ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, ([English](#), [French](#))
- State of [Palestine v Israel, communication submitted to CERD, admissibility decision CERD/C/100/5, 12 December 2019](#) (English, Spanish, Russian)

### **Readings**

- L. Helfner, '[Rethinking Derogations from Human Rights Treaties](#)' 115 *AJIL* (2021) 20-40
- K.W. Abbott & D. Snidal, "[Hard Law and Soft Law in International Governance](#)", 54(3) *International Organization* 421, 2000, pp. 421-456.
- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, Chapter 2 ("[Notions and Sources](#)"), pp. 31-76.
- O. De Schutter, "[The Status of Human Rights in International Law](#)" in: C. Krause and M. Scheinin (eds.), *International Protection of Human Rights: A Textbook*, 2nd ed., 2012, pp. 39- 58.
- Clapham, *Human Rights Obligations of Non-State Actors*, [Chapter 3](#), pp. 85-107.

### **Critique and Response**

- Eric Posner, "[The Twilight of Human Rights Law](#)" *OpenGlobalRights*, November 25, 2014
- Beth Simmons, "[Twilight or Dark Glasses? A Reply to Eric Posner](#)" *OpenGlobalRights*, November 25, 2014
- Tasioulas '[Saving Human Rights from Human Rights Law](#)' 52(5) *Vanderbilt Journal of Transnational Law* 1167, 2019, pp. 1167-1208

### **Additional reading**

- C. Chinkin "[Sources](#)" in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 3<sup>rd</sup> edn Oxford University Press, Oxford, 2018, pp. 63-85.
- The [UN Declaration on the Rights of Indigenous Peoples 2007](#). Please consider the [circumstances of the adoption of this Declaration](#)

**Class 5: Tuesday 19 October 2021**  
**(i) The Issue of Universality (ii) Torture (the substantive law)**

**Legal Text**

- [Case R v Reeves Taylor](#) UK Supreme Court 2019

**Readings**

- '[Torture](#)' in *International Human Rights Lexicon*.
- Hannum *Rescuing Human Rights Chapter 7* (Universality is Not Uniformity)
- N. Rodley, '[Integrity of the Person](#)', in S. Shah, S. Sivakumaran, and D. Harris, (eds), *International Human Rights Law*, 2nd edn, (Oxford: Oxford University Press, 2014) 174-84 (not the whole chapter)
- Clapham, *Very Short Introduction*, [Chapter 4](#), ([links to documents mentioned in Ch 4](#)).
- UK and Canadian Guidelines ([links to documents in Ch 4](#), VSI).
- S. Marks & A. Clapham, *International Human Rights Lexicon: "Universality"*, pp. 385-398.
- Clapham and P. Gaeta '[Torture by Private Actors and 'Gold-Plating'](#) the Offence in National Law: An Exchange of Emails in Honour of William Schabas' in *Arcs of Global Justice: Essays in Honour of William Schabas*, edited by Margaret M. deGuzman and Diane Marie Amann, Oxford University Press, OUP, pp 287-295, (2018).
- Follow up: [Dismissal of the case against Mrs Taylor](#) 2019 and [NY Times](#) and fuller coverage by [BBC](#).
- For alternative approached to accountability for extraterritorial crimes see the Trial of Jungle Jabbah [here](#)

**Additional optional reading (i)**

- Gurmendi Dunkelberg, "'[Their Way of Punishing](#)' Corporal Punishment by Indigenous Peoples and [the Prohibition of Torture](#)", vol. 33 *Netherlands Quarterly of Human Rights* 4, (2015) 382-404.

**Additional optional reading (ii)**

- Case of *Nait-Liman v. Switzerland*, Grand Chamber, Judgment, ECtHR, 15 March 2018 ([English](#), [French](#)) (discussion of universal civil jurisdiction to bring civil claims for torture, and see Art 14 CAT treaty)

**Case Studies**

- *Case of Evans v. United Kingdom, Judgment*, Grand Chamber, ECtHR, 2007 ([English](#), [French](#)) (thinking about universality in the context of frozen embryos).
- *Italian Crucifix Case of Lautsi v. Italy*, Grand Chamber, Judgment, ECtHR, 18 March 2011 ([English](#), [French](#)).

**Class 6: Tuesday 26 October 2021**  
**Deprivation of Life and Liberty, and the Relationship with International Humanitarian law**

**Legal Texts**

- UN Human Rights Committee [General Comment 36 on the Right to Life](#) (2018)
- UN Human Rights Committee [General Comment 35 on Liberty and Security of the Person](#) (2014).

**Readings**

- A. Clapham, *Very Short Introduction*, Chapter 5, ([links to documents mentioned in Ch 5](#)).
- M. Milanovic, '[Extraterritorial Derogations from Human Rights Treaties in Armed Conflict](#)', in N. Bhuta, (ed), *The Frontiers of Human Rights: Extraterritoriality and Its Challenges*, (Oxford: OUP, 2016) 55-88.
- A. Clapham '[Human Rights in Armed Conflict: Metaphors, Maxims, and the Move to Interoperability](#)' *Human Rights and International Legal Discourse* 2018.
- S. Sivakumaran 'International Humanitarian Law' in D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 503-520.

**Opinion piece**

- Petreus '[Human rights law is harming Britain's armed forces](#)' The Times 2018

**Case Study (detention in non-international armed conflict)**

- [Serdar Mohammed](#) UK Supreme Court 2017.
- Clapham '[Detention by Armed Groups Under International Law](#)' (2017)

**Additional Readings**

- [Report](#) (Drones) of the UN SR on Summary or Arbitrary Executions, Alston (2010).
- [General Comment 3](#) on Article 4 (Right to Life) of the African Charter on Human And Peoples' Rights.
- Clapham, '[The Complex Relationship between the 1949 Geneva Conventions and International Human Rights Law](#)', in A. Clapham, P. Gaeta, and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, (Oxford, 2015).

**Class 7: Tuesday 2 November 2021**  
**(i) National Law and the issue of immunities (ii) The issue of extraterritoriality**  
**(iii) thoughts on aggression**

**Legal Texts**

- [Jones & Ors v United Kingdom](#), (2014) European Court of Human Rights.
- ECtHR, [Georgia v Russia \(II\)](#), App no 38263/08 (2021), especially paras 105-175.
- [Resolution 6 amending the Rome Statute for the ICC Adopted at the Kampala Conference 2010](#)

## **Readings**

### *(i) Immunities*

- Clapham *Brierly's Law of Nations, An Introduction to the Role of International Law in International Relations*, 7th ed., Oxford University Press, ([Chapter 6, § 11](#)).
- [The International Law Commission's Work on Immunities for International Crimes](#) 2018 especially Article 7 and for the explanations of vote see [here](#)

### *(ii) The issue of extraterritoriality*

- L. Raible '[Extraterritoriality between a rock and a hard place](#)' *QIL* 2021
- M. Milanovic [Drowning Migrants, the Human Rights Committee, and Extraterritorial Human Rights Obligations](#) 2021
- M. Milanovic '[Repatriating the Children of Foreign Terrorist Fighters and the Extraterritorial Application of Human Rights](#)' 2020
- S. Joseph and S. Dipnall, "[Scope of Application](#)" in D. Moeckli, S. Shah & S. Sivakumaran (eds), *International Human Rights Law* (OUP, 2018) 110-131.

## **Case law**

- See also the case from the Supreme Court of Canada [R. v. Hape](#), 2007 SCC 26 on extraterritoriality under the Charter.
- ECtHR, [Ukraine v Russia \(Re Crimea\)](#), App no 20958/14 and 38334/18 (2021) [Grand Chamber Decision] especially paras 276-352.
- ECtHR, [Jaloud v The Netherlands](#), App no 47708/08 (2014), paras 112-156.
- OHCHR, "[Italy failed to rescue more than 200 migrants, UN Committee finds](#)" (27 January 2021) (full decision available [here](#))
- ECtHR, "The investigation by the German authorities following a lethal airstrike in the context of NATO operations in Afghanistan did not breach the Convention" (16 February 2021) [Court press release re *Hanan v Germany*; full decision available [here](#)]

### **USA position:**

- [Fourth Periodic Report of the United States of America to the United Nations Human Rights Committee concerning the ICCPR](#), see esp. paragraphs 504-55.
- [Human Rights Committee Concluding Observations](#) 2014
- [Committee Against Torture Concluding Observations](#) 2014
- Bellinger and Goodman debates on extraterritorial surveillance in *Just Security* and *Lawfare* (links are inter alia [here](#) and [here](#) )

### **The Particular case of Gaza:**

E. Benvenisti, '[The International Law of Prolonged Sieges and Blockades: Gaza as a Case Study](#)', vol. 97 *International law Studies* (2021) 969-94. esp 986-94

## **Further reading**

- C. Kreß, '[On the Activation of the ICC Jurisdiction over the Crime of Aggression](#)', vol. 16 *JICJ* (2018), pp. 1-17.

**Class 8: Tuesday 9 November 2021**  
**Balancing Rights, Privacy and Non-Discrimination (with a special emphasis on (i) persons with disability and (ii) sexual orientation and gender identity)**

### ***Reframing Human Rights in a Turbulent Era***

- G. de Búrca *Reframing Human Rights in a Turbulent Era* Chapter 4 The activation of the Convention on the Rights of persons with Disabilities in Argentina

### **Legal Text**

[Advisory Opinion of the Inter-American Court of Human Rights, Oc-24/17 of November 24, 2017 Requested By The Republic Of Costa Rica Gender Identity, And Equality And Non-Discrimination Of Same-Sex Couples](#) esp paras 85-171.

### **Readings**

- E. Brems, S. O. Chaib, K. Vanhees, [“Burkini” bans in Belgian municipal swimming pools: Banning as a default option](#), *Netherlands Quarterly of Human Rights*, 2018, Vol. 36(4) 270–289.
- Clapham, *Very Short Introduction*, Chapters 6 & 8, ([links to documents mentioned in Ch 6](#), [links to documents mentioned in Ch 8](#)).
- O. de Schutter, *International Human Rights Law*, (2<sup>nd</sup> edn., Cambridge, 2014), Ch 7, [‘The prohibition of discrimination’](#), esp. pp.632-3, 675-80, 686-89, 718-23.
- McBeth, J. Nolan, and S. Rice, *The International Law of Human Rights*, 2nd edn, (Melbourne: OUP, 2017) Chapter 15 (people with disabilities)

### **Case Law**

- ECtHR, [Osmanoğlu and Kocabaş v. Switzerland](#), App N 29086/12, third section, 10 January 2017 (compulsory mixed swimming lessons at school and religious objections)

### **Case studies**

- For access to recent documents about litigation on persons with disability, see the International Disability Alliance [website](#)
- For access to recent documents about sexual orientation and gender identity, see the International Commission of Jurists [website](#)
- European Court of Human Rights judgment in [Semikhvostov v Russia](#)
- See the Third Party Intervention: [Semikhvostov v Russia joint written comments](#).
- [Eweida and Others v UK](#)

### **Additional Optional Readings**

- Chapters from *The Limits of Human Rights* Edited by Bardo Fassbender and Knut Traisbach (2019) OUP
  - 13: Between the Margins and the Mainstream: The Case of Women's Rights, *Hilary Charlesworth and Christine Chinkin*
  - 14: Women's Rights are Human Rights: A Response to Hilary Charlesworth and Christine Chinkin from a Chinese Perspective, *Bai Guimei*
  - 15: Women's Progress and Women's Human Rights, *Martha C. Nussbaum*
  - 16: The Limits of Law: A Response to Martha C Nussbaum, *Fareda Banda*

- Sumption, *Trials of the State* (2019) especially Chapter III 'Human Rights and Wrongs'
- Hannum *Rescuing Human Rights* [Chapter 6](#) (women sex and gender)

**Class 9: Tuesday 16 November 2021**  
**The UN Charter bodies (except the Human Rights Council) and the use of force**

### Legal Text

UK 2018 legal position on humanitarian intervention in the context of [the use of force to counter chemical weapons](#).

### Readings

- Hannum *Rescuing Human Rights* [Chapter 8](#) (Human Rights Hawks)
- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, Chapter 8 ("Charter Based Bodies", except section II), pp. 234-235, pp. 243-255
- Draft Articles on customary international law [provisionally adopted by the ILC](#) 2016.

### Use of force

- [UNSC resolution 2249](#) (2015).
- Letters to UNSC:
  - Syria, [S/2015/718](#); [S/2015/719](#) (both September 2015);
  - Germany, 10 December 2015, [S/2015/946](#);
  - United Kingdom, 3 December 2015, [S/2015/928](#);
- UK Government [position paper on humanitarian intervention](#) (August 2013), and the UK Attorney General's speech "[The Modern Law of Self-Defence](#)" (January 2017)
- Blog entry: D. Akande & M. Milanovic, '[The Constructive Ambiguity of the Security Council's ISIS Resolution](#)'. EJIL: Talk!, 21 November 2015.

### Additional Reading

- H.H. Koh, '[The War Powers and Humanitarian Intervention](#)', vol. 53 *Houston Law Review* (2016) 971-1033.
- Rodley, 'Humanitarian Intervention', in M. Weller, (ed), *The Oxford Handbook on the Use of Force in International Law*, (Oxford: OUP, 2015) 775-95.
- Security Council Report, [Human Rights and the Security Council - An Evolving Role](#), (New York: Security Council Report, 2016)

**Class 10: Tuesday 23 November 2021**  
**The role of the UN Treaty Bodies the ICJ and a possible World Court of Human Rights**  
**(with a special emphasis on Economic Social and Cultural Rights and complaints concerning sex discrimination and the death penalty)**

### Legal Text

- [Alyne da Silva Pimentel Teixeira](#) (deceased) v *Brazil*, CteeEDAW, Maternal Health Communication No.17/2008, 2011.

- [World Court of Human Rights Statute \(draft\)](#)

### ***Reframing Human Rights in a Turbulent Era***

- G. de Búrca, *Reframing Human Rights in a Turbulent Era* Chapter 3 Mobilizing for gender equality in Pakistan and the role of international human rights

### **Readings**

- W. Kälin and J. Künzli, *The Law of International Human Rights Protection*, Chapter 7 ("Treaty Bodies"), pp. 203-233.
- Eide, "Adequate standard of living" in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, pp. 186-207.
- Clapham, *Very Short Introduction*, Chapters 7 & 9, ([links to documents mentioned in Ch 7](#); [links to documents mentioned in Ch 9](#)).
- S. Marks and A. Clapham, *International Human Rights Lexicon*, "Work", pp. 429-449.
- Alston, "[Extreme inequality as the antithesis of human rights](#)" *OpenGlobalRights*, 2015
- N. Kristof, '[When We Kill](#)', *NY Times* (14 June 2019)

### **Case law**

- South Sudan [CEDAW Communication](#)
- *Kennedy v Trinidad and Tobago*, HRCtee, 1999 (Death Penalty) (in [English](#)) (in [French](#)).
- [Mellet v Ireland](#) (2016) HRCtee (abortion)
- [T. v. Hungary](#), CteeEDAW, Communication No. 2/2003, 2005. Domestic Violence

### **Additional readings**

- J. Connors 'United Nations' in D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 369-410 esp 396 for the flow chart.
- C. Tomuschat, *Human Rights: Between Idealism and Realism*, Chapters 12 and 13, pp. 214-77; also Chapter 14, pp. 279-86.
- S. Kadri, "[Forced to Kill: The Mandatory Death Penalty and its Incompatibility with Fair Trial Standards](#)," International Bar Association's Human Rights Institute (2016).
- P. Alston, '[Against a World Court for Human Rights](#)', *Ethics and International Affairs* (2014)
- de la Rasilla, '[The World Court of Human Rights: Rise, Fall and Revival?](#)', 19(3) *H.R.L.R.* (2019), pp. 585-603.

#### **Class 11: Tuesday 30 November 2021**

**The challenge of non-state actors at the frontiers of human rights law, with special reference to private security companies, investment law, and the obligations of armed groups under international humanitarian law and human rights law as well as prohibitions on the sale of arms to non-state actors**

### **Legal Text**

- [International Code of Conduct for Private Security Service Providers](#), other languages [here](#)
- [Nestlé et al v Doe, 2021 US Supreme Court](#)

## Readings

- A. Callamard, 'Towards International Human Rights Law Applied to Armed Groups', vol. 37 *NQHR* (2019) 85-100.
- A. Clapham '[Non-State Actors](#)' in D. Moeckli, S. Shah & S. Sivakumaran (eds.) *International Human Rights Law*, 3<sup>rd</sup> edn Oxford University Press, Oxford, 2018, 557-79.
- N. Rodley, '[Non-state actors and human rights](#)', in S. Sheeran and N. Rodley, (eds), *Routledge Handbook of International Human Rights Law*, (Abingdon: Routledge, 2013) 523- 44.
- Andrew Clapham, "[Challenging the Myths which Suggest that Human Rights Bodies Cannot Address Armed Non-state Actors in Situations of Armed Conflict: With Special Emphasis on the Case of Agnes Taylor](#)" in Gloria Gaggioli (ed), *The Role of Human Rights Mechanisms in Implementing International Humanitarian Law* (Edward Elgar, forthcoming)
- I. Bantekas and L. Oette, *International Human Rights Law and Practice*, pp.778-783.
- [Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic](#), ICSID Case No. ARB/07/26 (Award) 2016, paras. 1143-1221.
- E. Guntrip, "[Urbaser v Argentina: The Origins of a Host State Human Rights Counterclaim in ICSID Arbitration?](#)" EJIL:Talk!, February 10, 2017.

Geneva-based regimes:

- The Work of [Geneva Call](#), please use the website.
- The International Code of Conduct for Private Security Service Providers See their [site](#) and the Geneva [Academy briefing](#)
- [The Arms Trade Treaty](#)

## Additional Readings (Blackwater civil and criminal accountability for Iraq massacre)

- <https://www.thenation.com/article/blackwater-settles-massacre-lawsuit/>
- <https://www.theguardian.com/world/2018/dec/19/former-blackwater-guard-guilty-2007-massacre-baghdad>

Hannum (optional)

- Hannum *Rescuing Human Rights* [Chapters 3](#) and [4](#)

<b>Class 12: Tuesday 7 December 2021</b> <b>The role of Regional Human Rights Systems</b>
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## Legal Texts

- Case of [CESR v Nigeria 155/96](#), African Commission on Human and Peoples' Rights.
- [ASEAN Human Rights Declaration](#)

## Readings

- B. Çali, 'Regional Protection' D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 411-424
- T. Antkowiak, 'The Americas' D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 425-440
- S. Greer, 'Europe' D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 441-464

- C. Heyns and M. Killander D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, 465-481
- M. Rishmawi, '[The League of Arab States and human rights](#)', in S. Sheeran and N. Rodley, (eds), *Routledge Handbook of International Human Rights Law*, (Abingdon: Routledge, 2013) 483-504.
- N. Doyle, "[The ASEAN Human Rights Declaration and the Implications of Recent Southeast Asian Initiatives in Human Rights Institution-Building and Standard-Setting](#)", 63 *International and Comparative Law Quarterly* 1, (2014) pp 67-101.

### **Case law**

- AFFAIRE OSMANOĞLU ET KOCABAŞ c. SUISSE ([in French](#)) 2017
- Hacienda Brazil Verde Workers v. Brazil (2016) ([in Spanish](#))
- [Case of the Yakye Axa Indigenous Community v. Paraguay](#) 2005
- Case of [CESR v Nigeria 155/96](#), African Commission on Human and Peoples' Rights.
- Case of [Velasquez Rodriguez v Honduras](#), Judgment, IACtHR, 1988.
- Case of Atala Riffo and Daughters v. Chile, IACtHR, 2012 (in [English](#) and in [Spanish](#))
- African Court of Human and Peoples' Rights: Provisional Measures Order in the case of [African Commission on Human and Peoples' Rights v Great Socialist People's Libyan Arab Jamahiriya](#), 25 March 2011.
- ECOWAS Community Court of Justice Judgment No. ECW/CCJ/JUD/06/08 [Hadijatou Mani Koroua v Niger](#), 27 October 2008.

### **Additional Readings**

- [Brazil ordered to pay \\$5m to workers formerly enslaved on cattle ranch](#) January 2017
- Robert Spano, "Universality or Diversity of Human Rights? Strasbourg in the Age of Subsidiarity", *Human Rights Law Review*, 2014, 14, 487–502.

<p><b>Class 13: Tuesday 14 December 2021</b>  <b>Enforcement by States and the role of NGOs</b></p>
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### **Legal Text**

- [Council Regulation \(EU\) 2020/1998 of 7 December 2020](#) concerning restrictive measures against serious human rights violations and abuses

### **Readings**

- Hopgood, "[Human rights: past their sell-by date](#)" *OpenGlobalRights*, 2013
- Hannum *Rescuing Human Rights* [Chapters 9](#) and [10](#).
- R. Brett, "[Non-Governmental Organizations and Human Rights](#)" in: C. Krause and M. Scheinin (eds.), *International Protection of Human Rights: A Textbook*, 2nd ed., 2012, pp. 679-693.
- A. Clapham, "[The Use of International Human Rights Law by Civil Society Organizations](#)" published in: Sir Rodley and S. Sheeran (eds.), *Routledge Handbook of International Human Rights Law*
- K. Roth, "[Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization](#)", 26 *Human Rights Quarterly* 63, (2004), pp. 63-73.
- US Human Rights Sanctions
  - [Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act](#)

- [Examples from 2018](#) at p 4950ff
  - [Section 7031](#) Visa Bans [explained](#)
  - Executive Order [13664](#)—Blocking Property of Certain Persons With Respect to South Sudan
- 2019 [South Sudan Sanctions](#)
- [EU Future Human Rights Magnitski Sanctions](#) 2019
- UK Proposals for Magnitski sanctions and visa bans from February 2020 [FT story](#)
- [Canadian Magnitski law](#) and sanctions including individuals from Myanmar, South Sudan and Saudi Arabia ([Jamal Khashoggi](#)) [List](#)

## **NGOs**

- [Amnesty International](#)
- [Human Rights Watch](#)
- [International Commission of Jurists](#)
- [NGO Coalition for the ICC](#)

## **Additional readings**

- I. Bantekas and L. Oette, *International Human Rights Law and Practice*, pp. 638-647.
- Cl. E. Welch, "[Amnesty International and Human Rights Watch: A Comparison](#)" in: Cl. E. Welch (ed.), *NGOs and Human Rights Promise and Performance*, University of Pennsylvania Press, Philadelphia, 2001, pp. 85-118.
- N. Prouvez and N. M. L. Bovay, "[The Role of the International Commission of Jurists](#)" in: Cl. E. Welch (ed.), *NGOs and Human Rights Promise and Performance*, University of Pennsylvania Press, Philadelphia, 2001, pp. 119-140.
- K. Anderson, '[The Ottawa Convention banning landmines, the role of international non-governmental organizations and the idea of international civil society](#)', vol. 11 *European Journal of International Law* 1,(2000) 91-120.

**Class 14: Tuesday 21 December 2021**  
**Guest speaker to be confirmed.**

**Discussion on NGOs continued, general questions and Conclusions**

## ***Reframing Human Rights in a Turbulent Era***

- G. de Búrca *Reframing Human Rights in a Turbulent Era* Chapter 6 The past and future of human rights

## **Evaluation**

**Format:** Take-home examination

**Starting time:** 18h00 Tuesday 16 December 2021

**Ending time:** 18h00 Monday 20 December 2021

**Submission:** Please send your exam by email to the teaching assistant, Fekade Alemayhu Abebe. The answer should be sent as a PDF attachment.

- Answers should be around 2500 words in total (including footnotes).
- Answers will be graded by Professor Clapham.
- You can answer in English or French.

- Footnotes can be in a style of your choosing as long as they are consistent.
- You should spend around two hours on your answer, this is not a research project.