International Law

Academic year 2019-2020

**Do human rights need rescuing?**

DI016 - Printemps - 6 ECTS

Wednesday 14h15 - 16h00

**Course Description**

This course will cover the basics of contemporary international human rights law while addressing the contemporary critiques which suggest that human rights need rescuing, saving or rethought for a ‘post human rights world’. Topics will include the extension of human rights law to cover the obligations of non-state actors, the prohibition on torture, the protection of the right to life, the problem of arbitrary detention in times of armed conflict, the rights of persons with disabilities, the balancing of competing rights, economic social and cultural rights, discrimination, and the issue of the death penalty.

**PROFESSOR**

Andrew Clapham

Office hours

**ASSISTANT**

Hiruni Nadezhda Alwishewa

Office hours

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**Syllabus**

**Course Requirements**

This course is open to law students of the Graduate Institute (MIL and PhD); if there are still places available, it is also open to PhD students taking international law as a minor and to MIA and MDEV students.

**Class:**
The class will take place on Wednesdays from 14h15 to 16h00 in room S8. 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:**
The final evaluation will consist of a written test. In the written test students will have to answer two questions, an essay question and a legal opinion based on a set of imagined facts. It will be a 2 hour test and it will take place on Wednesday 27 May 14.00 to 16.00. Further details on the test will be provided during the semester and some questions are addressed at the end of this syllabus.
Aim of the Course:
The course will examine the argument that human rights need to be rescued. The criticism of the international approach to human rights comes from various directions. The course will cover at least two book length critiques as well as press reports. One critique (Hannum et al) is that the UN’s human rights arrangements try to do too much: new economic rights, international criminal justice, the behaviour of corporations etc is weakening the framework in the face of authoritarian governments. Hopgood 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). Lastly Moyn and others complain that the human rights movement does not go far enough in tackling inequality and social justice. 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. In particular I will detail some of the work of the UN Commission on Human Rights in South Sudan.

Among the book length complaints about human rights we will study are


The links to the relevant chapter will be available on the moodle.

There is also an ongoing debate among international historians those interested are invited to consider the work of Samuel Moyn including his latest book *Not Enough: Human Rights in an Unequal World* 2018 (Harvard University Press). An alternative critique comes from M. Matua, *Human Rights: A Political and Cultural Critique*, (Philadelphia: University of Pennsylvania Press, 2002). We might also mention the work of Eric Posner, for one essay see his ‘The case against human rights’.

Course Materials

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


Handouts will be distributed to students during each class.


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.

Some references may be made to the *International Human Rights Lexicon* (Oxford University Press, 2005) which also has a companion website:
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.

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 on international human rights might include:


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)
- New York Law School Journal of Human Rights (NYLSJHR)
- Sur - International Journal on Human Rights
- Business and Human Rights Journal (BHRJ)

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

- African Journal of International & Comparative Law (AfJICL)
- 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).
Readings

The contemporary critique

- BBC (Geneva Correspondent) ‘Are we heading towards a 'post human rights world'?'
- Hannum, Rescuing Human Rights Preface and Chapter 1.
- The new US Commission on Unalienable Rights
  - See the Speech by Sec of State Pompeo especially on the ‘explosion’ of rights at the UN and hypocrisy of other states at the UN Human Rights Council.
  - See the Response to the Commission from the Economist 8 August 2019.

Introduction to Human Rights

- A. Clapham, Very Short Introduction, Chapter 1, (links to documents mentioned in Ch 1).
- 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)

Class 2: Wednesday 26 February 2020

History of Human Rights in International Law and the Issue of International Criminal Law

Readings

- Hannum Rescuing Human Rights Chapter 2
- 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
Additional reading


Optional on the History Debate

- S.-L. Hoffmann, ‘*Human Rights and History*, Past and Present (2016) (online version)

Optional on the Question of Reporting Conflict Related Sexual Violence


Class 3: Wednesday 4 March 2020
The Human Rights Council and the High Commissioner

(This week may involve streaming of part of the debate from the Council depending on the timetable)

Readings

- Hannum *Rescuing Human Rights* Chapter 5
- Universal Periodic Review (UPR): You can navigate and find background documents on the site for UPR (http://ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx). Please look at some of the UPR reports, and the webcasts. Every state has been reviewed at least twice so you might start with your own state.

Further Optional Reading

- UPR Info – *Beyond Promises – The Impact of UPR on the Ground*.
Class 4: Wednesday 11 March 2020
Human rights as legal rights under international law

Readings

- The UN Declaration on the Rights of Indigenous Peoples 2007. Please consider the circumstances of the adoption of this Declaration.

Critique and Response

- Beth Simmons, "Twilight or Dark Glasses? A Reply to Eric Posner" OpenGlobalRights, November 25, 2014
- Tasioulas ‘Saving Human Rights from Human Rights Law’ forthcoming Vanderbilt Journal of Transnational Law

Additional Reading


Class 5: Wednesday 18 March 2020
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

Readings

- Hannum *Rescuing Human Rights* Chapters 3 and 4
Geneva-based regimes:
- The Work of [Geneva Call](#), please peruse the website.
- The International Code of Conduct for Private Security Service Providers See their [site](#) and the [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/](#)

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**Class 6: Wednesday 25 March 2020**

(i) The Issue of Universality  
(ii) Torture (the substantive law)

**Readings**

- Hannum *Rescuing Human Rights Chapter 7* (Universality is Not Uniformity)
- ‘Torture’ in *International Human Rights Lexicon*.
- UK and Canadian Guidelines (links to documents in Ch 4, VSI).
- Significant new [Case R v TRA](#) UK Supreme Court 2019
- 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](#)
- [World Court Statute](#) (draft)

**Additional optional reading (i)**


**Additional optional reading (ii)**

**Case Studies**

- *Case of Evans v. United Kingdom, Judgment*, Grand Chamber, ECtHR, 2007 (*English, French*).
- *Italian Crucifix Case of Lautsi v. Italy*, Grand Chamber, Judgment, ECtHR, 18 March 2011 (*English, French*).
- The US Senate Select Intelligence Committee *Study on CIA Interrogation and Detention Program* (you are not expected the read the whole executive summary, the link is to the *New York Times* which seems the fastest way to access the report, but there are many other ways to access it).

**Class 7: Wednesday 1 April 2020**

**Deprivation of Life and Liberty, and the Relationship with International Humanitarian law**

**Readings**

- A. Clapham, *Very Short Introduction*, Chapter 5, ([links to documents mentioned in Ch 5](#)).

**Opinion piece**

- Petreus *Human rights law is harming Britain’s armed forces* *The Times* 2018

**Case Studies**

- *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).
- UN Human Rights Committee *General Comment 35 on Liberty and Security of the Person* (2014).
- UN Human Rights Committee *General Comment 36 on the Right to Life* (2018)
- *General Comment 3* on Article 4 (Right to Life) of the African Charter on Human And Peoples' Rights.
Readings

(i) National Law


(ii) Transnational Actors and the issue of extraterritoriality


Case law

- European Court of Human Rights Jones & Ors v United Kingdom, (2014).
- See also the case from the Supreme Court of Canada R. v. Hape, 2007 SCC 26 on extraterritoriality under the Charter.
- European Court of Human Rights Jaloud v the Netherlands (2014).
- USA position:
  - Human Rights Committee Concluding Observations 2014
  - Committee Against Torture Concluding Observations 2014

Further reading

- The International Law Commission's Work on Immunities for International Crimes 2018 especially Article 7 and for the explanations of vote see here
- Bellinger and Goodman debates on extraterritorial surveillance in Just Security and Lawfare (links are inter alia here and here)
Class 9: Wednesday 22 April 2020
Balancing Rights, Privacy and Non-Discrimination (with a special emphasis on (i) persons with disability and (ii) sexual orientation and gender identity)

Readings

- Hannum *Rescuing Human Rights* Chapter 6 (women sex and gender)
- Clapham, *Very Short Introduction*, Chapters 6 & 8, (links to documents mentioned in Ch 6, links to documents mentioned in Ch 8).

Case Law

- ECtHR, *Osmanoğlu and Kocabaş v. Switzerland*, App N 29086/12, third section, 10 January 2017

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*

Class 10: Wednesday 29 April 2020
International-law making, the UN Charter bodies (except the Human Rights Council) and the use of force

Readings

- Hannum *Rescuing Human Rights* Chapter 8 (Human Rights Hawks)
Use of force

- 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), and the UK 2018 position on humanitarian intervention in the context of the use of force to counter chemical weapons.

Additional Reading


Class 11: Wednesday 6 May 2020
The role of the UN Treaty Bodies and the ICJ (with a special emphasis on Economic Social and Cultural Rights and complaints concerning sex discrimination and the death penalty)

Readings

- Clapham, Very Short Introduction, Chapters 7 & 9, (links to documents mentioned in Ch 7: links to documents mentioned in Ch 9).
- 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)
Additional readings

- C. Tomuschat, *Human Rights: Between Idealism and Realism*, Chapters 12 and 13, pp. 214-77; also Chapter 14, pp. 279-86.

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<th>Class 12: Wednesday 13 May 2020</th>
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<td><strong>The role of Regional Systems</strong></td>
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Readings


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 Atala Riffo and Daughters v. Chile, IACHR, 2012 *(in English and in Spanish)*

Additional Readings

- *Brazil ordered to pay $5m to workers formerly enslaved on cattle ranch* January 2017
Readings

- Hopgood, “Human rights: past their sell-by date” OpenGlobalRights, 2013
- Hannum Rescuing Human Rights Chapters 9 and 10.
- 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 Saudia Arabia (Jamal Khashoggi) List

NGOs

- Amnesty International
- Human Rights Watch
- International Commission of Jurists
- NGO Coalition for the ICC

Additional readings

The final exam will be organized as follows:

- Students will have two hours to answer the questions.
- There will be one essay question and one scenario presented where students will be asked to write a legal opinion or memorandum providing advice. Both questions should be answered and equal time should be given to each question.
- Bilingual language dictionaries are allowed (not law dictionaries etc).
- The answers may be written either in English or in French.