

JUS 5710/JUR 1710

International Human Rights Law: Institutions and Procedures

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**INTRODUCTION:
THE INTERNATIONAL BILL OF RIGHTS
BACKGROUND**

Today

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- Expectations
- Introduction to human rights
- Practical information – see web page
 - Course content and learning outcomes
 - Required readings
 - Lectures and seminars
 - Mock Exam and Assignments?
 - Exam

Expectations

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- What are your expectations?
- What is your interest in human rights?
- What is the background for this interest?
- How can this course be useful to you?

Introduction to human rights

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- UN Charter
- The International Bill of Rights
 - Other International Instruments
 - Obligations – implementation, monitoring and enforcement
- Historical background
- Sources

UN Charter (1)

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- **Article 1 of the Charter of the United Nations (1945): “
The Purposes of the United Nations are:**
 - **1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, ...**
 - **2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;**
 -
 - **3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and**
 - **4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.**

UN Charter (2)

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- **Article 55**
 - With a view to the creation of conditions of stability and well-being, ... *the United Nations shall promote:*
 - c. **universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.**
- **Article 56**
 - *All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55*

Obligations (1)

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- *Namibia case*, ICJ, Advisory Opinion, I.C.J. Reports 1971, p.57,para.131 (<http://www.icj-cij.org/docket/files/53/5595.pdf>)
- *To establish ... and enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitutes a denial of fundamental human rights is **a flagrant violation of the purpose and principles of the Charter.***

International Bill of Rights

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- The Universal Declaration of Human Rights (UDHR) adopted by the GA RES 217 (III) on 10 December 1948
 - 58 member states – eight abstentions
- On 16 December 1966, the text of the two international covenants were adopted (GA RES 2200 XXI) by consensus (122 member States) with no abstentions:
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Covenant on Civil and Political Rights (ICCPR) and
 - The Optional Protocol to the ICCPR

GA RES 217 (III)

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217 (III). International Bill of Human Rights

A

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

GA RES 217 (III): UDHR

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ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

GA RES 217 (III)

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C

FATE OF MINORITIES

The General Assembly,

Considering that the United Nations cannot remain indifferent to the fate of minorities,

Considering that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises,

F

PREPARATION OF A DRAFT COVENANT ON HUMAN RIGHTS AND DRAFT MEASURES OF IMPLEMENTATION

The General Assembly,

Considering that the plan of work of the Commission on Human Rights provides for an International Bill of Human Rights, to include a Declaration, a Covenant on Human Rights and measures of implementation,

Requests the Economic and Social Council to ask the Commission on Human Rights to continue to give priority in its work to the preparation of a draft Covenant on Human Rights and draft measures of implementation.

*Hundred and eighty-third plenary meeting,
10 December 1948.*

The Universal Declaration of Human Rights

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- **Legal status:**
 - A declaration by the GA – not legally binding?
 - General principles of law or custom?
 - Customary law or not?
 - ✦ All rights?
 - Jus cogens?
- **The Vienna Declaration and Programme of Action, Preamble:**
 - Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights
 - (adopted by the World Conference on Human Rights Conference 25 June 1993)

International Bill of Rights

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- International Covenant on Civil and Political Rights (ICCPR) – in force 1976 - 114 State parties
- Optional Protocol to the ICCPR – in force 1976 - 114 State Parties
- On 15 December 1989, the text of the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty was adopted – in force 1991 – 75 State Parties
- International Covenant on Economic, Social and Cultural Rights (ICESCR)- in force 1976 – 114 State Parties
- On 10 December 2008, the text of the Optional Protocol to the ICESCR was adopted. NOT yet in force - 40 signatories and eight State Parties (ten accessions or ratifications are required)

Universal Human Rights?



- Universal Declaration of Human Rights, 10 December 1948, General Assembly adopted resolution 217 (III) entitled “International Bill of Human Rights, vote 48 to none 8 abstentions
 - Interdependence of human rights
- Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF. 32/41 (1968). (84 states)
 - Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. , para. 13
 - Legislative phase
- Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 to 25 June 1993, UN Doc. A/CONF.157/23 (1993). (171 States)
 - All human rights are universal, indivisible and interdependent and interrelated.,. and respect for cultural diversity, para. 5
 - Implementation phase
 - ✦ Better coordination – the UN High Commissioner for Human Rights

International Bill of Rights

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- The ICESCR and the ICCPR
- Two separate treaties and optional protocols for individual complaints procedures
- Differences in their content and in the provisions on their realization

The two Covenants

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ICCPR

- **Article 2.1**
- Each State Party to the present Covenant undertakes **to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant**, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR

- **Article 2.1**
- 1. Each State Party to the present Covenant undertakes **to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources**, with a view to **achieving progressively the full realization of the rights** recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Compare with the ECHR

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- Article 1 of "European Convention of Human Rights":
- *The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention*

The two covenants

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- The obligations under the ICESCR have been interpreted to include:
 - obligations to **respect**, to **protect** and to **fulfil** (including to facilitate and to provide)

see General Comment 12: *The right to adequate food (Art.11)* (U.N. Doc. E/C.12/1999/5, para. 14)

5. **All human rights are universal, indivisible and interdependent and interrelated.** The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. ...it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

See The Vienna Declaration and Programme of Action, World Conference on Human Rights (1993), (U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993))



Major human rights treaties (1)

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- **Nine major treaties** are included in the UN treaty system and “treaty bodies” monitor their implementation:
- In addition to the ICCPR and the ICESCR and the optional protocols, the major human rights treaties address either specific groups or categories of persons, **or** specific issues:
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**
- **Convention on the Rights of the Child (CRC)**
- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).**
- **Convention on the Rights of Persons with Disabilities (CRPD)**

Major human rights treaties (2)

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- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**
- **International Convention for the Protection of All Persons from Enforced Disappearance (CPED)** (in force 23 Dec 2010)

The methods

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- The treaty bodies use a number of methods to monitor the State compliance with the treaties:
 - A. State reporting:
 - B. Interstate communications
 - C. Individual Communications
 - D. Investigative mechanisms

Monitoring, implementing and enforcing human rights

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- Procedures in UN system
 - Charter based
 - Treaty based

Actors involved

States

Individuals

NGOs

National Institutions

Historical background and international law

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- **Traditionally a law among nations**
 - Only states were subjects of the law, having rights and obligations
 - The treatment of individuals was within the domestic jurisdiction of the State
- **Exceptions:**
 - Humanitarian intervention
 - Minorities
 - Slaves
 - Workers
 - International humanitarian law
 - Aliens
 - Diplomats

Early examples of protection of individuals or groups

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- Humanitarian intervention
 - ✦ 17th century
 - ✦ The use of force to stop the maltreatment by a state of its own nationals
 - ✦ Maltreatment shocking the community of nations
- Art. 4.h. of the Constitutive Act of the African Union (2000)
 - ✦ The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;
- Slaves/slavery
 - ✦ 19th century
 - ✦ From the prohibition of slave trade to slavery
- Art. 8 ICCPR
 - 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
 - 2. No one shall be held in servitude.
 - 3.(a) No one shall be required to perform forced or compulsory labour...;

Sources (1)

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- Article 38.1 Statutes International Court of Justice:
- The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b. **international custom**, as evidence of a general practice accepted as law;
 - c. **the general principles of law** recognized by civilized nations;
 - d. subject to the provisions of Article 59, **judicial decisions** and **the teachings** of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Sources (2)

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- Art. 53 Vienna Convention on the Law of Treaties (1969): *Treaties conflicting with a peremptory norm of general international law (“jus cogens”)*
- A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.
- A peremptory norm of general international law is **a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.**

Sources (3)

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- Acts of international organizations
- Binding or non-binding?
- UN Charter in Chapter VII:
 - Threats to the peace, breaches of the peace and acts of aggression
 - The decisions by the Security Council are binding upon the Member States (Article 25)
- Declaration and resolutions etc, "Soft law"?
 - New non-binding concerns of int.org
 - ✦ Building-blocks for customary law ?
 - The UDHR

Exam

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- 30 November kl. 10:00
- Written 4 hours
- Two parts: Short questions and essay questions
- Announcement of results: 11 January 2013

- Mock Exam posted on the webpage
- Handed in 10 October 2012
- Discussed in class

Course content and learning outcomes

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- **Course content**
 - Focus on the **institutions, treaties and practices** of intergovernmental organisations, in addition to international criminal tribunals
 - Provide a perspective of both the **normative standards** defining international human rights and **the means by which they are monitored and implemented.**
- **Learning outcomes**
 - **a good understanding of different aspects the institutions and procedures at universal and regional levels,**
 - **giving you the ability to describe and critically analyze the achievements and shortcomings of the international protection of human rights in relation to .**

Readings

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- Three books:
 - Burchental, Thomas et.al, *International Human Rights in a Nutshell*, 4th.ed. (2009)
 - *Economic, Social and Cultural Rights. A Textbook. Second Revised Edition*, Asbjørn Eide, et.al.(eds.), (2001)
 - Smith, Rhona, *Textbook on International Human Rights*, 5th. Ed. (2012)
 - Article and reports
- UN and regional treaties, UN and regional documents, relevant decisions and cases to support the text books
- Recommended readings

Lectures and seminars

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- **Lectures:**
 - **The United Nations**
 - **Regional systems**, in Europe, in the Americas, and in Africa
 - **Selected rights:** Self-determination, Right to life and Freedom from torture, Minority rights and the right to Development and Economic, Social and Cultural Rights
 - **International Humanitarian Law and International Criminal Tribunals**
- **Seminars and guest lectures:**
 - **Lars Løvold: The Rights of Indigenous Peoples and Climate Change**
 - **Odd Isungset: Case study on Norway: Freedom of expression and its regulation - From Rushdie to Mohammed**

Lecturers and Administration

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- **Maria Lundberg**
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