Irish Centre for Human Rights School of Law

2022/2023, Semester 1

**International Human Rights Law LW5117**

**Date/Time/Location:** Tuesday 11 September – 28 November 2023, 11am-1pm (Dillon Theatre)

**Credits:** 10 ECTS (24 teaching hours)

**Lecturers:** Dr Gerard Maguire

**Email: TBC**

**Office Hours:** TBC

**Aim:**

The course aims to provide students with a general introduction to the sources, systems, and foundations of international human rights law. It also aims to include a critical lens that will give students the skills to apply the law utilising a robust understanding of the origins, impacts, and power of international human rights law.

This module aims to examine the history and development of the human rights discourse and movement, especially since 1945, and to investigate the legal framework of the United Nations and of regional systems with regards to the promotion and protection of human rights. Students will be encouraged to consider and analyse human rights provisions, standards and remedies which are available under the current international and regional human rights systems and to apply them to real life scenarios.

The overarching aim of the module is to provide an overview of the academic and policy debates in the field of international human rights law and practice, and to help students to develop the tools and thinking necessary to understand and apply the normative and doctrinal principles of human rights law to current issues, as well as to reflect critically on the possibilities and limits of human rights discourse.

**Learning Objectives:**

* Be able to conduct effective research in the field of international human rights law.
* Be familiar with the major universal and regional systems of human rights law, their relationships to each other, and the legal value and authority of declarations, decisions, judgments, and other materials generated by them.
* Be comfortable with general concepts of public international law, to the extent that they are relevant in the field of human rights.
* Develop an awareness of the primary areas of concern within the field of international human rights law and other relevant branches of international law, and the ways in which human rights are promoted and protected.
* Understand the critiques of human rights law and be able to critically engage in human rights analysis and debate.
* Begin to apply international human rights law to various minority groups and diverse situations of marginalization.
* Have the knowledge necessary to begin to utilize international human rights law as a tool to achieve social justice and address issues of unequal power and privilege.

**Teaching Methods:**

Classes will include discussion-based lectures, guest presenters, and small group exercises. The format will vary each week. **Students are expected to have completed all reading prior to class and should be prepared to contribute to discussions.**

**Text:**

[Rhona K.M. Smith, *Texts and Materials on International Human Rights*, 4th Edition (2020](https://www-taylorfrancis-com.nuigalway.idm.oclc.org/books/mono/10.4324/9780429273476/texts-materials-international-human-rights-rhona-smith) [Routledge). [Full text available as an ebook through NUIG library website.]](https://www-taylorfrancis-com.nuigalway.idm.oclc.org/books/mono/10.4324/9780429273476/texts-materials-international-human-rights-rhona-smith)

**Alternative Book**

[Bantekas, Ilias. *International Human Rights Law and Practice*. (2020, Cambridge). [Full text available as an ebook through NUIG library website.]](https://search.library.nuigalway.ie/permalink/f/3b1kce/TN_cdi_askewsholts_vlebooks_9781316998540)

Please note that in prescribed readings only one of the above needs to be read. Both options are provided for convenience and availability.

Additional readings as listed below.

**Assessment:**

**20% Problem Question** (1,500 words), DUE 2nd Nov 2023 via Canvas

Students should utilize the ILAC answer method when attempting the problem which will be covered in class. For ease, the following headings should be considered.

I – Issue(s), highlighting the dispute and issues central to the question.

L – The law relevant to the question/scenario.

A – Application, applying relevant law to the situation and parties involved.

C – Conclusion, Advise/suggestions for outcome for parties involved

**Problem Question**

In a fictional country called "Veridian," a longstanding conflict between the majority ethnic group and a minority indigenous community has escalated into widespread violence and displacement. Reports of human rights abuses, including arbitrary detentions, disappearances, and extrajudicial killings, have emerged. The Veridian government has been accused of turning a blind eye to these abuses and failing to protect the rights of the minority Indigenous population. International human rights organizations are urging action to address the situation.

Using the ILAC method, analyze the potential legal and ethical implications of this scenario from the perspective of international human rights law.

**80% Research essay** (4,500 words, excluding footnotes and bibliography), DUE 18 Dec 2023 via Canvas

\*\*\*You MUST choose **ONE** of the essay questions listed below\*\*\*

1. Explore the concept of universality in human rights law. Compare and contrast the universal and regional systems of human rights protection. Examine the strengths and limitations of both approaches in promoting and safeguarding human rights.
2. ‘One of the main challenges with the solidifying the rights of Indigenous Peoples in international law is the lack of international agreement on a universal definition.’ Discuss.
3. Discuss the concept of climate justice in the context of intergenerational equity and the rights of future generations.
4. Analyze the evolution, challenges, and impact of Children's Rights within the framework of International Human Rights Law.

The **criteria for the assessment of the research essay** are as follows:

Topic and research question

* Have the key issues in the research question been identified?
* Is the essay discussion relevant to the research question?
* Is there evidence of reflection on, and application of themes, discussed in class, in so
* far as they are relevant to the essay?

Research

* Has an appropriate range of primary and secondary sources been examined?
* Have up-to-date sources been used?
* Is the research material well understood?
* Is the material relied on authoritative?

Structure

* Does the essay show evidence of planning?
* Does it have a coherent, systematic structure organised around a central argument or arguments?
* Does it have a well-crafted introduction, which sets out the structure of the essay and indicates what your main argument or arguments will be?
* Does it have a well-crafted conclusion?

Analysis

* Does the essay make a point about the law, rather than merely describe the law?
* Does the essay avoid unsubstantiated generalizations?
* Has the research material been analyzed for persuasiveness of argument, accuracy?
* Are opposing points of view discussed or otherwise adequately dealt with?

Style

* Is the essay written clearly and concisely?
* Is there appropriate and accurate citation?
* Word length & Style guide
* Does the essay keep to the word limit? Footnotes are not counted in the word count.

Not all of the criteria are of equal weight. Originality will be rewarded.

**Topic Timeline**

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| **Week No.** | **Date** | **Topic** |
| 1 | 12th Sept | Introduction to International Human Rights Law; Historical development, evolution and goals of international human rights law |
| 2 | 19th Sept | The Sources of International Human Rights Law; Article 38 ICJ Statute; Treaties; Custom; Jus Cogens; General Principles; Judicial Decisions; Academic Commentary; Limitations on, and Derogations from, Human Rights |
| 3 | 26th Sept | The UN Charter-Based Human Rights System; UN Charter Provisions on Human Rights; UN Charter Bodies and the Protection of Human Rights; The Responsibility to Protect Doctrine; Universal Periodic Review |
| 4 | 3rd Oct | The UN Treaty-Based Human Rights System; 9 core UN Human Rights Treaties; Treaty-Monitoring Bodies; Individual Complaints Mechanisms |
| 5 | 10th Oct | Regional Human Rights Systems; Regional Protection of Human Rights; Fragmentation; Focus on the Council of Europe and the European Convention on Human Rights |
| 6 | 17th Oct | Civil and Political Rights; Focus on the Right to Life; Freedom from Torture; Right to Liberty; Right to a Fair Trial; The War on Terror |
| 7 | 24th Oct | Economic, Social and Cultural Rights; Focus on Progressive Realisation of ESC Rights; Justiciability of ESC; The Protection of Culture |
| 8 | 31st Oct | Group Rights; The Right to Self-Determination; The Rights of Indigenous Peoples |
| 9 | 7th Nov | Guest Lecture: Professor Roja Fazaeli ‘Religion and Human Rights’ |
| 10 | 14th Nov | Fourth Generation Human Rights; People and Planet; the rights of future generations |
| 11 | 21st Nov | Human Rights and the Rights of the Child |
| 12 | 28th Nov | Module Review and Essay Preparation |

**Reading Guide:**

*[\*\*\*Links provided to NUIG Library, where possible. Readings will also be available on Canvas. Please get in touch with the lecturers if you have any issues accessing the readings.\*\*\*]*

# Week 1 – Introduction to International Human Rights Law

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapters 1 and 3
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapters 1 and 2
* Gordon, “The Concept of Human Rights” (1997) 23 *Brook J. Int’l Law* 689

# Dembour, “What Are Human Rights? Four Schools of Thought” (2010) 32(1) *Human Rights Quarterly* 1.

**Week 2 – The Sources of International Human Rights Law**

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 2
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapters 1 and 2
* Further Reading:
* Fenwick, “The Sources of International Law” (1918) 16 *Michigan Law Review* 393
* Simma and Alston, “Sources of Human Rights Law: Customs, *Jus Cogens* and General Principles” (1988) 12 *Australian Yearbook of International Law* 82
* Kennedy, “The Sources of International Law” (1987) 2 *American University Journal of International Law and Policy* 1

**Week 3 – The UN Charter-Based Human Rights System**

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 4
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapter 3
* Stahn, “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?” (2007) 101(1) *American Journal of International Law* 99

**Week 4 – The UN Treaty-Based Human Rights System**

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapters 5 and 7
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapters 4, 9 and 10
* Bayefsky, “Human Rights and Direct Petition” (2001) 95 *American Society of International Law Proceedings* 74

**Week 5 – Regional Human Rights Systems**

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 6
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapters 5 and 6
* The European Convention on Human Rights, <https://www.echr.coe.int/Documents/Convention_ENG.pdf>

**Week 6 – First Generation Rights (Civil and Political)**

* Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 8
* Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapter 13
* Morris McDonnell *et al*, “Torture in the Eyes of the beholder” (2011) 44 *Vand. J. Transnat'l L*. 87 201
* Ahmad Qureshi, “The Use of Force against Perpetrators of International Terrorism” (2018) 16(1) *Santa Clara Journal of International Law* 1, available at: <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1223&context=scujil>

# Week 7 – Second Generation Rights (Economic, Social and Cultural Rights)

# Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 9

# Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapter 21

# O’Keefe, “The Right to Take Part in Cultural Life under Article 15 of the ICESCR” (1998) 47 *International and Comparative Law Quarterly* 47

# Polymenopoulou, “Cultural Rights in the Case-Law of the International Court of Justice” (2014) 27 *Leiden Journal of International Law* 447

# Week 8 – Third Generation Rights (Group Rights)

# Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 10

# Smith, *Textbook on International Human Rights Law*, 9th ed., Oxford University Press (2019), Chapter 19

# United Nations Declaration on the Rights of Indigenous Peoples, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

* Maguire, ‘Indigenous Peoples, a Challenge to the UDHR. In Higgins, Adanan, Doherty and Doyle (eds.), the Universal Declaration of Human Rights at 70; A Review of Successes and Challenges (Dublin: Clarus Press, 2019)
* Higgins, Noelle and Maguire, Gerard "Language, Indigenous Peoples, and the Right to Self-Determination” (2019) 31(2) *New England Journal of Public Policy*
* Maguire, Gerard “A Genocide by Any Other Name; Cultural Genocide in the Context of Indigenous Peoples and the Role of International Law” (2018) 4 *Strathclyde Law Review*

# Week 9 – Guest Lecture: Professor Roja Fazaeli ‘Religion and Human Rights’

# Readings will be posted on Canvas

# Week 10 – Climate Justice (People, Planet and Future)

# Norton, “Environmental ethics and the rights of future generations.” *Environmental Ethics* 1982 4(4) 319-337.

# [Skogly, “The Right to the Continuous Improvement of Living Conditions and Human Rights of Future Generations-A Circle Impossible to Square?” 2021](https://eprints.lancs.ac.uk/id/eprint/151988/1/Skogly_CILC_and_Future_Generations_final.pdf)

# Maguire, "Human Erosion: Indigenous Peoples and Well-Being in the Anthropocene." *Irish Studies in International Affairs*, vol. 31, 2020, p. 113-130

# [Responding to Climate Change in Small Island Developing States (UN)](https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=960&menu=1515)

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# Week 11 – Human Rights and International Criminal Justice

# Bantekas and Oette, *International Human Rights Law and Practice* (3rd ed, CUP, 2020), Chapter 12

# Additional Readings will be posted on Canvas

# Week 12 – Module Review and Assessment Preparation