

HUMAN RIGHTS LAW

Sciences Po, Euro-North American-Campus, Reims.

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COURSE DESCRIPTION

- The course offers an in-depth understanding of how Human rights came to existence, how they are protected on the Internal, regional and international planes.
- It explains how those level of protection interacts with one another whether as complementary or concurrent mechanisms.
- The aim of the course is both to learn how the rules and mechanisms aimed at protecting Human rights function as well as to acquire the capacity to apply them to particular cases in your future careers.
- Issues such as the birth, evolution but also political critics of Human rights as well as their main threats will be studied. The flaws in human rights' protection will be discussed.
- The breakthrough of International criminal law and criminal justice will be tackled. The current flaws of International criminal law will be described, possible improvements envisioned.

OBJECTIVES

- The main objective of this course is to enable you to fully understand whether and how can one secure effective protection of his/her Human rights depending on their specific situation. In particular, the course is designed to show the students the methods of control used by top courts in day-to-day protection of Human rights.
- A practical approach will be valued.
- A moot court based on a real case of either the ECHR, or ICJ will be scheduled on week 12.

BIBLIOGRAPHY

- Human Rights, between Idealism and realism, 3 rd Edition, Christian Tomuschat, Oxofrd University Press.
- Human Rights in the world community, University of Pennsylvania Press, 1992 XIII 450 p
- D. Harris & S. Livingsonte, the Inter-American System of Human rights, Clarendon Press Oxford, 1998, XXV-581
- International criminal law Review since 2001

READINGS:

- Each week, I'll provide you with a list of noteworthy readings. (Case law or scholarly works)
- It's highly recommended that you read the materials prior to attending class. It will enable you to have a better understanding of how Human rights law functions in practice. It will improve the quality of the discussion while in class.
- Of course, not all of the readings suggested below are mandatory. Each week, I'll specify which are mandatory or optional.

DETAILED OUTLINE**TITLE I: GENESIS OF HUMAN RIGHTS****CLASS I. THE BIRTH OF HUMAN RIGHTS**

- History of the development of human rights
 - o Athens/ Rome: Natural law
 - o Jus gentium
 - o Habeas corpus
 - o French & American Declaration
- Generations of human rights
 - o 1st Generation: Civil & political rights
 - o 2nd Generation: Economic, social cultural rights
 - o 3rd Generation

Readings:

- Human Rights at the Dawn of the 21st Century, Mary Robinson, President of Ireland, Human rights Quarterly, 15, (1993à 629)639
- Justiciability of Economic, Social and cultural Rights, should there be an International complaints mechanism to adjudicate the rights to Food, water, Housing and health? The American Journal of International law, Vol 98 No 3, Jul 2004 pp 462-500, Michael J. Dennis & David P. Stewart

CLASS II. EVOLUTION, CRITIC & THREATS TO HUMAN RIGHTS

- Evolution
 - From limiting State power on the individual sphere to requesting State protection
- Critics
 - Philosophical critic
 - Burke
 - Marx
 - Nietzsche
 - Arendt's concerns
 - Political critic
 - Libertarian critic
- Threats
 - Terrorism & Human rights how to strike the right balance?
 - Extremism

Readings:

- The “Aporias of Human rights” and the “one Human Right”: regarding the coherence of Hannah Arendt's Argument, Christoph Menke, Birgit Kaiser and Kathrin Thiele vol 74 No 3 Hannah Arendt's Centenary: Political and Philosophical Perspectives, Part I (Fall 2007) pp. 739-762

TITLE II: NATIONAL PROTECTION OF HUMAN RIGHTS

CLASS III. NATIONAL PROTECTION OF HUMAN RIGHTS: CORE MECHANISMS

- Revolution of the 2nd Part of the 20th century: State are no longer entirely free in the relationships to their citizens.
- State sovereignty as the first & most effective protection of Human rights.
- Lack of State sovereignty as a potential threat to human rights
 - o UN General assembly Resolutions
 - o UN security council resolutions
- Right of intervention of the UN to protect Human rights in a country?
- Humanitarian intervention?

Readings:

- S/RES/688/(1991) April 5, 1991
- S/RES/1894/(2009) Nov 11 §5
- Should international law recognize a right of humanitarian intervention to support and reflect a pluralistic understanding of sovereignty? *Chris O'Meara International & Comparative Law Quarterly (2017)*

CLASS IV. NATIONAL PROTECTION OF HUMAN RIGHTS: JUDICIAL REVIEW

- Protection of Human rights by norms protected in the Constitutional block
 - o Constitutional review system
 - o American vs. European system of constitutional review
 - o Compliance of Statutes, treaties with Human rights in elevated to the Constitutional value.
- Protection of Human rights by treaties rendered applicable in national orders
 - o Direct effect of a treaty provision
 - Conditions (signature, ratification, ratification by a sufficient number of states)
 - Precise & unequivocal provision without reservation
 - Effects
 - o Primacy of Human rights treaties over statutes, regulations.
 - Conditions
 - Effects
 - Examples
- Protection of human rights Customary International law

- Conditions of applicability before the judge.
- Effects
- Examples (France, US, Germany, UK, Italy)

Readings:

- Constitutional council of France Decision no. 2010-14/22 QPC of 30 July 2010 Mr Daniel W et al. [Police detention]
- House of Lords of the United Kingdom: Jones v. Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia) and others [2006] UKHL 26
- European Court of Human Rights: Case of Jones & others v. The United Kingdom, Judgment 14 January 2014 (Applications nos 34356/06 & 40528/06)
- United States Supreme Court: Boumediene v. Bush, 553 U.S. (2008)

TITLE III. REGIONAL PROTECTION OF HUMAN RIGHTS

CLASS V. THE COUNCIL OF EUROPE

- The European convention on human rights
- Effective protection by the European court of human rights
 - o How is judicial review conducted?
 - Absolute right: whether a restriction has occurred?
 - Proportionality: necessary restriction in accordance with law?
 - o The living instrument doctrine
 - o Subsidiarity principle
 - National margin of appreciation.
 - Exhaustion of all national recourses
- The European Social charter of 1961, and the revised European social charter 1996

Readings:

- European convention on Human rights November 4, 1950;
- European social charter of 1961 revised 1996
- European Court of Human Rights: Case of Jones & others v. The United Kingdom, Judgment 14 January 2014 (Applications nos 34356/06 & 40528/06)
- European Court of Human Rights, Du Roy Malaurie v. France October 3, 2000, Chamber
- European Court of Human Rights, Navalnyy v. Russia November 15, 2018 Grand chamber

CLASS VI. EUROPEAN UNION LAW

- Rights protected
- Charter of fundamental rights of the European Union
- Implementation mechanisms
- Judicial protection
 - o Landmark cases to the Charter of fundamental rights
- Should the EU become a member of the Council of Europe?
 - o Decision
 - o Possible implications.

Readings:

- ECJ, 26 février 2013, *Stefano Melloni c. Ministerio fiscal*, C-399/11.
- Charter of fundamental rights of the European Union

CLASS VII. INTER-AMERICAN PROTECTION OF HUMAN RIGHTS

- Charter of the organization of American states (April 30, 1948)
 - o Non-Binding at the beginning
- Creation by the organization charter of the Interamerican commission on human rights
 - o Aim
 - o Powers to investigate Human rights in countries & establish reports.
 - o Receive & examine petitions from individuals concerning primary rights
- Interamerican convention on Human rights, Signed Nov 22, 1969
 - o Justification > rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality
 - o Implementation > Interamerican commission on Human rights
 - Petitions from individuals
 - Petitions from States (if target state so agreed)
 - o Judicial protection
 - InterAmerican Court of Human rights
 - Complaint filed by commission or State (if target states so agreed)
 - Deciding the case and/or referral the General assembly of Organization of American States
 - Possibility of rendering an advisory opinion on any interpretation of the Convention
 - State can ask for opinion of the court on consistency of envisioned Statute with the Convention.

Readings:

- American Convention on Human rights
- Charter of the organization of American states
- D. Harris & S. Livingstone, *The Inter-American System of Human Rights*, Clarendon Press Oxford, 1998, XXV-581; excerpts
- Inter American court of human Rights, Judgment October, 25 2012, *Case of the Massacres of El Mozote and nearby places v. El Salvador (Merits, reparations and costs)*, Série C n° 252, spéc. §§ 209-302

CLASS VIII. ARTICULATION OF NATIONAL & INTERNATIONAL PROTECTION OF HR.

- State responsibility to protect Human rights
- Failure to protect human rights triggers international responsibility
- International responsibility of the State is not exclusive of that of the individuals.
- European law protection as a subsidiary principle
- International criminal justice as a subsidiary principle
- Humanitarian intervention?

Readings:

- ICC Statute of 1998
- Draft Articles on State responsibility for international wrongful acts
- ICJ, Feb 2007, Convention on prevention and repression of genocide (Bosnia-Herzegovina v. Montenegro, Rec ICJ, 43 p.120 § 182.

TITLE IV. INTERNATIONAL PROTECTION OF HUMAN RIGHTS

CLASS IX. INTERNATIONAL PROTECTION OF HUMAN RIGHTS (general mechanisms)

- Human rights & sovereignty: Overview.
- UNITED NATIONS SYSTEM (GENERAL PROTECTION)
 - o 2 § 7 of the UN Charter
 - o Chapter VII of the UN charter for purposes of protecting Human rights
 - o Human rights in the Charter Human rights)
 - o Trends (2 § 7 and the protection of Human rights). How to strike the right balance.
- United nations system (implementation)
- Humanitarian intervention?
- Case law of the International court of Justice (ICJ)

Readings:

- H. Lauterpacht: “The international protection of human rights, Rec Cours de l’academie de droit international t. 70. 1947 p.1”
- ICJ, Nov 30 2010 Ahmadou Sadio Diallo, (Republic of Guinea v. Democratic Republic of Congo, Rec ICJ, Rec 639, p. 671.)
- ICJ, March 31, 2004, Avena (Mexico v. United States of America REC ICJ 12.)
- L. Henkin, “That “S” Word: Sovereignty, and Globalization, and Human rights, Er Cetera” Fordham L. Rev 1999, p1-14 p.9

CLASS X. INTERNATIONAL PROTECTION OF HUMAN RIGHTS (specific mechanisms)

- The international covenant on civil & political rights
 - o Rights
 - o Implementation mechanisms
- The international covenant on economic, Social and cultural rights
 - o Rights
 - o Implementations mechanisms
- Specific conventions protection human rights on the international plane
 - o 1948 Convention baring genocide
 - o 1965 Convention preventing any form of discrimination
 - o 1980 Convention eliminating any form of discrimination ag. Women
 - o 1984 Convention against torture
 - o 1989 Convention on the right of children

- The human rights council
- The human rights committee
 - o Establishment of committees.
- Agencies (ILO, UNSECO)

Readings:

- International covenant on civil and political rights
- international covenant on economic, Social and cultural rights
- Th. Buergenthal, “the Evolving International Human rights System”, AJIL 2006, p.783-807.

TITLE IV. INTERNATIONAL CRIMINAL LAW: AN EFFECTIVE DISSUASION MECHANISM?

CLASS XI: Protection of Human rights by International criminal law

- AD HOC INTERNATIONAL CRIMINAL TRIBUNALS (ICTY & ICTR)
- Hybrid courts Extraordinary chambers in the Court of Cambodia (ECCC)
- The breakthrough of the Rome Statute
 - o THE INTERNATIONAL CRIMINAL COURT (ICC)
 - The Court & the UN
 - Referral of a situation to the ICC
 - ICC's jurisdiction
 - Compliance with core principles of criminal law
 - Subsidiary mechanisms.
 - Ratione materiae/ Ratione temporis/ Ratioae loci

Readings:

- The Paradoxical Relationship between Criminal Law and Human Rights Françoise Tulkens, Journal of International criminal justice 9, 2011 (577-595)
- Resolution creating ICTY UNSC Resolution 827 (1993) & ICTR 955 (1994)
- Statute of ICTY
- ICC Statute (Rome Statute 1998)
- Using Human Rights law for the purpose of defining international criminal offences – the practice of the international criminal tribunal for the former Yugoslavia, G. METTRAUX in M. Henzelin & R. Roth (eds), in le droit penal à l'épreuve de internationalization (Paris: LGDJ; Geneva: Georg éditeur; Brussels: Bruylant, 2002) p.192.

CLASS XII: MOOT COURT (real case submitted to the ECHR or ICJ)

- Study of case:
- Pleadings: Petitioner and defendant
- Opening statements
- Pleadings on both side
- Examination
- Cross examination
- Verdict

Readings: Facts from the case that we will use for the Moot court

PROFESSOR'S BIOGRAPHY

Christophe Fabre (Panthéon-Assas Paris II, Lille II, the Paris Bar School, UC Berkeley) is both an Attorney-at-law and a lecturer.

He used to clerk for the Supreme Magistrates of the Highest judicial Court of France, (Cour de cassation, Criminal chamber).

Member of the Paris Bar, he specializes in Criminal law, Constitutional law & Human Rights, cross-border litigations as well as contract law.

He is used to publishing articles in the Criminal and comparative criminal law review. (Revue de science criminelle et de droit pénal compare, Dalloz)

In addition to his practice, Christophe currently teaches Constitutional law & Human Rights law at Sciences Po, after having taught International law from 2016 to 2018.

He is a former teaching assistant in private law at University.