

Intro to Human Rights

What is the module about?

- The module examines the evolution, mechanisms and grounds of international human rights protection.
- It examines international human rights law as an important branch of international law; the mechanisms, bodies and procedures introduced by the United Nations and other international and regional organisations; and a significant number of substantive human rights.

Objectives

- In depth knowledge of substantive and methodological aspects of international human rights law.
- The module is informed by a diffused approach that includes, apart from the practice of the UN, insights and contributions from regional human rights mechanisms as well as from National Human Rights Institutions and NGOs.
- By incorporating discussions and developments from a plurality of sources, the course aims to explore different perspectives and responses to contemporary human rights challenges.

On completion of this module students will be able to:

- discuss and assess the concept of individual rights in international law
- describe and evaluate the legal basis and function of the UN Human Rights Council as well as other treaty bodies
- discuss and evaluate a number of overarching concepts of general international law
- identify, discuss and assess a number of substantive rights and their application in particular situations

9 Themes:

- 0 – Introduction to the Module
- 1 – The concept and sources of IHRL
- 2 – Institutional Machinery for Enforcement
- 3 – Life and Bodily Integrity
- 4 – Liberty, Security, and Refugees
- 5 – Beliefs and Expression
- 6 – Freedom from discrimination
- 7 – Socio-economic protections
- 8 – Enabling persons
- 9 – Contemporary challenges

Learning materials:

- I. Bantekas and L. Oette, *International Human Rights Law and Practice* (3rd Ed., Cambridge University Press, 2020)
- Available at the University of Leeds Library website:

- Note, however, that the UN SC might infringe human rights through some of its measures, e.g. collective sanctions, which can hinder availability of medicine, food and water to civilians, incl. children.
- Recall the importance of human rights mainstreaming (UN HRC).
 - *Their role is to help, not hinder. Needs to tailor sanctions in ways that are compatible with human rights.*
 - *Are they optimising the protection of HR across the UN?*

Reporting Procedures

- Periodic reporting: one of the few generally accepted procedural obligations by states.
- Periodic reporting is a general obligation in several IHRL treaties, e.g. ICCPR, CAT, CEDAW, CRC, CERD.
- Goals:
 - Ensure that states comply with their obligations under International Human Rights Law;
 - Opportunities for states to review their legislation and policies in light of their obligations under IHRL;
 - Opportunities for states to evaluate their progress;
 - Opportunities for widening participation through engagement with NGOs, the civil society etc.
- Reporting Procedures take a similar format across different UN treaties (*no need to discuss each one specifically*).
- Submission of state report; deliberation between UN and state under review; then recommendations.
 - *Like Universal Periodic Review.*
- Element of 'constructive dialogue' *like UPR*, instead of criticism or 'consultation'. Goal is wide engagement with civil society actors and NGOs, *not criticising states' approaches to IHRL*. Remember HRC's UPR.
- Recent trend: greater participation of civil society actors and NGOs. Important role in the review of domestic laws and the preparation of reports as part of the UN procedures.
 - *Reporting procedures work.*
- Increased participation of NGOs leads to a richer pool of information (which can limit the politicisation of reporting procedures) as well as to broader domestic dialogue on human rights.
 - *More data for both the UN and the citizens of the state under review.*

Reporting Procedures: Challenges and ways Forward

- Challenges:
 - UN treaty bodies have limited enforcement powers towards states that fail to submit their periodic reports.
 - No apparent political cost for late submissions. State-driven process.
 - *Sort of on purpose so they can uphold the goal of no confrontation - keeps as many states engaged as possible.*

- *An act that was classified in 1978 (Ireland) as inhuman or degrading might be classified today (2000) as torture as the ECHR develops its jurisprudence, and the states develop their legislation surrounding the use of force.*

Positive State Obligations

- *Parnov v Moldova* = Facts: The applicant was subjected to severe police brutality and the authorities had failed to carry out an effective investigation.
- Art 3 generates a positive state obligation to carry out an effective and thorough investigation into allegations of ill-treatment, including taking steps to secure evidence on the incident.
 - *What constitutes an effective investigation? Same as the right to life: an investigation that is capable of leading to the identification and punishment of those responsible, that is also independent, i.e. the persons responsible for the investigation must be independent from those implicated in the event.*
 - *This positive obligation exists across IHRL in relation to the prohibition of TIDT*
- Similar positive obligation to Art 2 ECHR (*the right to life*)
- If a state breaches this positive obligation, then that would lead to a violation of Art 3 ECHR.

The Prohibition of TIDT in cases of 'forced disappearances'

- *Velásquez Rodríguez v Honduras* (I-ACtHR)
 - According to the I-ACtHR, even though it had not been shown that the applicant was physically tortured, his kidnapping and imprisonment by state authorities constitute a failure of the Honduras to ensure the absolute prohibition of TIDT (para 187 of the judgment).
 - *Forced disappearances also violate the prohibition of TIDT.*
- Similar approach followed by the ECtHR (*but with an extra dimension*)
 - If the state authorities fail to sufficiently investigate the disappearance of a person, then under certain circumstances the uncertainty, doubt and apprehension suffered by the victim's close family members can amount to degrading treatment under Art 3 ECHR.
 - *The families of the individual missing would be victims of TIDT - distress caused by a failure of state authorities. Must be severe enough.*
 - See *Kurt v Turkey* and *Gongadze v Ukraine* (ECtHR).

Evidence obtained by torture

- Art 15 UN Convention Against Torture:
- '[...] Any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.
 - *Only as evidence of the torture that took place.*
- Consider also *A (FC) v Secretary of State* [2005] UKHL
 - The HoL unanimously held that evidence obtained by torture by officials of a foreign state without the participation of British authorities was not admissible

- Issues with agreement with Turkey in 2016. €3bn (£2.3 bn) financial aid to Turkey to help Syrian migrant communities
 - *Not a successful agreement - despite the huge amount of money being paid by the EU to Turkey to ensure good protection of refugees without them going to other EU countries, this has not been implemented well.*
 - *Many refugees are mistreated, and in recent months Turkish authorities have opened the borders so more refugees are entering the EU without any real regulation or protection.*
- Various cases brought before the ECtHR for a possible violation of Art. 3 ECHR (example below).

M.S.S. v. Greece and Belgium (ECtHR, 2011) App. no. 30696/09

- Afghan asylum seeker who fled Kabul in 2008,
- entered the European Union through Greece and travelled on to Belgium where he applied for asylum
- According to the Dublin rules, Greece was held to be the responsible Member State for the examination of his asylum application. Therefore, the Belgian authorities transferred him there in June 2009 where he faced detention in insalubrious conditions before living on the streets without any material support
- **Para 254: The conditions the applicant in this present case faced were particularly serious: months living in extreme poverty/unable to cater for basic needs: food, hygiene, place to live.**
- Additional factors: fear of being robbed & attacked & total lack of any likelihood of his situation improving.
- Para 262: the Greek authorities could have substantially alleviated the applicant's suffering by examining the applicants' asylum request promptly.
- Para 263: taking into account a number of factors including the obligations on the Greek authorities as set out in the Reception Directive, the authorities' lack of action to resolve the situation for the applicant, the prolonged uncertainty and the humiliating living conditions the applicant experienced.
- **Violation of Art. 3 ECHR. Sending the applicant back to Greece, the Belgian authorities exposed him to detention and living conditions there which were in breach of that article.**
- *Both Greece and Belgium in violation.*
- *Example of how the ECtHR interprets the obligations on states in the implementation of the Dublin Regulations, in particular with reference to the refugee crisis that has been prevalent in the EU for years now.*

- Temporary special measures is one of the means to realise de facto or substantive equality for women.
- These measures can include support programmes, allocation of resources, preferential treatment, targeted recruitment, hiring or promotion, quota systems etc. - *positive discrimination is justifiable - encouraged*.
- Art 6 to 16 requires states 'shall take all appropriate measures'. The Committee considers that states are obliged to adopt and complement temporary special measures in relation to any of these articles if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of the overall goal of substantive equality.
 - *States are obliged to engage in affirmative action.*

Substantive equality

- Article 5
- States Parties shall take all appropriate measures:
 - (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; [my emphasis added]
- *Sheer scope and scale of substantive equality attempted to achieve - need to eliminate prejudice across society.*

Discrete focus of CEDAW

- **Article 16**
- Right to choose a spouse - *prohibiting forced marriage and coercion (not really mentioned in other civil rights treaties in IHRL)*
- right to choose a family name, a profession and an occupation;
- Equal rights over property (*including its enjoyment*)

Disadvantages of CEDAW

- Does not deal with violence against women.
- Does not address inter-sectionality of discrimination (*e.g. the disadvantages that black women face are not the same as white women*). *Need to focus on these specific issues in order to fully eliminate gender discrimination / inequality.*
- Does not deal adequately with women's socio-economic rights (*access to food, housing etc.*). *If they don't have access to these rights, there is the question of whether they can fully exercise their civil and political rights.*
- Reservations - *provides for a wide ranging, flexible approach to reservations.*

Reservations

- More reservations to CEDAW than to any other human rights treaty.
- The UK has entered a comprehensive reservation to CEDAW permitting it to apply all UK legislation and rules of pension schemes affecting retirement pensions, survivor's

L29&30 / Socio-Economic Rights

Historical Context

- The drafters of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) were divided between two main ideological camps: a socialist and a Western liberal camp.
- Representatives from socialist countries pushed for justiciable, immediately enforceable socio-economic rights, such as the right to work, health, food, water, adequate living standards.
- Liberal democracies favoured more limited state interference in socio-economic provision. Free-market economics in combination with a social safety net (dominant ideology) plus technical questions are how ESC rights could be specified and implemented.
- The debate finally led to two separate instruments: the ICCPR and the ICESCR. Different implementation mechanisms, i.e. the Committee on Economic, Social and Cultural Rights (CESCR) was created many years after the Human Rights Committee, and the Optional Protocol (*No 1*) to the ICESCR, which establishes the competence of the CESCR (*the Committee*) to receive and consider communications against states, came into force only in 2013. (*Decades after Optional Protocol No 1*).

Normative Arguments for and against ESC Rights

- ESC rights involve broad assertions to housing, education, work, healthcare etc. Such entitlements involve a broad redistribution of a society's resources, more so than civil and political rights. Resolving such questions in the courts instead of the democratic process is problematic (e.g. A. Neier, 'Social and Economic Rights: A Critique' (2006) 13 *Human Rights Brief* 2).
 - However, civil and political rights also require significant resources, e.g. the right to liberty requires ensuring adequate prison conditions, *or the right to a fair trial*. Why do we not find judicial involvement problematic there?
- ESC rights are infeasible because they are concerned with outcomes, e.g. a certain level of healthcare. Civil and political rights are feasible because they are only concerned with processes, e.g. no harm principle (*controlling actions*) (see e.g. M. Cranston, D. Kelley)
 - However, ESC rights, especially basic material provisions, are necessary conditions of agency (see e.g. James Griffin).
 - Also, the maximal realisation of the right to life, for instance, is also infeasible - *can't protect everyone's lives*. ESC rights, like civil and political rights, motivate further social action. The feasibility of rights is not a condition for people to have rights.
 - *Not distinguishable from civil and political rights*.
- Real rights involve an exact correspondence with precise correlate duties, i.e. the right to life corresponds with a duty on others not to kill. However, it is unclear who has a duty to act in order to protect or implement ESC rights (e.g. Onora O'Neill)
 - However, all human rights can generate either perfect or imperfect obligations (or both), e.g. the right to fair trial imposes an imperfect obligation on the state and

contraception and reproductive health information violates the state obligation to provide adequate health services and can be discriminatory against women (CtEDAW, Inquiry concerning the Philippines, 22 April 2015).

- Second is the state obligation to provide certain basic resources on which, at the very least, minimum essential levels of health directly depend. According to CESCR, GC 14, paras. 43 and 44, examples are:
 - Access to health facilities without discrimination;
 - Access to essential food that is 'nutritionally adequate and safe', i.e. ensuring 'freedom from hunger';
 - Access to basic shelter, clean water, essential drugs;
 - Immunisation against major infectious diseases and measures to prevent and control their spread;
 - Monitoring public health, including the use of health indicators and benchmarks; appropriate training. *Helps to see what standard of healthcare needs to be achieved.*
- All the above are minimum core obligations. They are non-derogable and must be complied with immediately, i.e. they are not subject to progressive realisation.
- *Some of these have very little economic impacts on states, e.g. the right to health care without discrimination.*

International Assistance and Cooperation

- In para. 14 of General Comment 3 (1990), the CESCR held that 'international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all states' which is 'particularly incumbent upon those states which are in a position to assist others in this regard.'
- This obligation is reiterated in the context of the right to health. In para. 45 of General Comment 14, the CESCR repeated that it is 'incumbent' on states in a position to assist to provide 'economic and technical' assistance in order to 'enable developing countries to fulfil their core obligations' under the right to health.
- Does this mean that wealthy, developed countries are under an obligation to assist developing nations in the battle against Covid-19, e.g. offer technical or financial assistance to set up/improve vaccination programmes? Recall that immunisation against major infectious diseases is a core obligation.
- The way the obligation to provide international assistance is framed suggests that it is non-binding.
- However, in their 2020 statement on Covid-19 the CESCR stressed that in the context of the pandemic international cooperation is 'a matter of urgency' (para. 15); states must share 'research, medical equipment and best practices in combating the virus' (para. 19); and that states have 'extraterritorial obligations... to combat Covid-19' and must not impose limits on the exports of medical equipment unless it is absolutely necessary (para. 20).
- *Suggest that certain core aspects of international assistance might be legally binding - 'must not block exports unless absolutely necessary'.*

- Main legal document for the protection of the rights of children
- 54 articles. 196 States parties (+ 1 signatory) - *key convention in IHRL, one of the most ratified and signatories.*
- 4 key principles:
 1. Children's best interests
 2. Children's right to be heard
 3. Right to life, survival, and development
 4. Children's right to non-discrimination
- *Similar to the principles protecting other vulnerable groups (persons with disabilities).*

Children's best interests

- Any decision concerning children should be taken in their 'best interest': Art. 3(1) UN CRC - *at the core of IHRL surrounding the protection of children.*
- Art. 3(2) UN CRC
 - 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures'
 - *Children's rights do not operate in a vacuum - relational aspect.*
 - *Best interests vs decisions by adults.*
- Assessed on a case-by-case basis by courts. Detailed reasoning - *holistic evaluation.*
- Different protections for different groups of children, e.g. refugees, minorities, indigenous people - *extra obligations on states.*
- Might supersede violation of domestic law - *fundamental principle.*
- GC 11 (UN CRC) - *through the interpretation of the Committee.*
 - 2 dimensions:
 - a. Maintaining family ties
 - b. Ensuring children's development within a 'sound environment' - *children need a protective environment for their development.*
- GC 14
 - Best interests determined in a contextual and 'disaggregated' way *by the courts - each case has to be evaluated in its own specific details, as opposed to treating like cases alike - no standardised approach since this could go against the protection of their best interests.*

L2

Children's right to be heard

- Art 12 UNCRC
 - '1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

L39&40 / Development and Poverty

A. Essential Reading

- I. Bantekas and L. Oette, *International Human Rights Law and Practice* (Cambridge: CUP, 2020) 619-668 (Ch 14)
- S. Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 *Harvard Human Rights Law Journal* 325.
- Skim through the Human Development Index reports available at the UNDP website at <http://hdr.undp.org/en/data>

B. Further Reading

- A. Sen, 'Capability and Well-being', in M. Nussbaum and A. Sen (eds), *The Quality of Life* (Oxford: OUP 1993) 30-53.
- A. Sen, 'The Ends and Means of Sustainability' (2013) 14 *Journal of Human Development and Capabilities* 6.
- M. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press 2011).
- T. Pogge, *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: OUP 2007).
- 'The Capability Approach', *Stanford Encyclopaedia of Philosophy* at <https://plato.stanford.edu/entries/capability-approach/>

C. Discussion

Please reflect on the following questions.

1. Is the right to development justiciable? Should it be?
2. How is development defined by the capabilities approach?
3. What are the obstacles preventing the implementation of the right to a clean environment? What is the role of procedural rights in this context?
4. Poverty is linked with limited access to basic socio-economic protections. In addition to that, in your view what is the relationship between poverty and inadequate protection of civil and political rights? Give specific examples.

L1

The right to development

- The right to development is not just about foreign aid or charity.
- Close relationship with positive and negative state obligations.
- The notion of development is closely linked to a broader right to wellbeing, which has individual and collective dimensions.
- In this sense, the right to development has a strong 'human' dimension
- The main legal problems in this area of IHRL are linked to the quantification and the justiciability of the concepts of 'development' and individual and collective 'wellbeing'

- *Could be good - limiting military action where it's not necessary (in Libya - destabilized the country).*
- *But non-intervention could lead to more genocide.*
- *IHRL = western imposition = often non-Western countries that are targeted by these peacekeeping missions - forcibly imposed?*
 - *Torture inflicted by British in Northern Ireland - not held to sufficient account by SC because of Britain's role in the SC - only hold non-Western states to account? Hypocritical - double standards.*
 - *But is this better than nothing?*
 - *Aids the West in escaping accountability.*

Balkan wars = sent in peace keeping troops. Sat back and didn't do anything and resulted in a genocide.

Can be slow in sending peacekeeping troops - Rwanda. Resulted in genocide.

They can apply political pressure.

ICT Yugoslavia = abuses on both sides, wanted to convict people guilty of war crimes and genocide.

3. How did the Inter-American system for enforcing human rights develop, and how does this system compare with the European model? What are the merits of 'in-loco' visits compared with other arrangements for enforcement? How have changes in the politics of the two regions altered the role of each set of arrangements?

The 1948 Inter-American Conference established the Organisation of American States ('OAS') and adopted the American Declaration of the Rights and Duties of Man (ADHR). This was similar to the UDHR in the sense that it included socio-economic rights as well as similar language, but the ADHR additionally included both rights and duties. In 1969, the American Convention on Human Rights (ACHR) was adopted: it is the main legally binding human rights treaty in the Inter-American system and emphasised civil and political rights. It distinctively recognised the 'right to a name' and the 'right to nationality', reflecting regional concerns over deprivations of those rights.

The Inter-American system has two main mechanisms: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). This system has played a crucial role in limiting systematic and widespread violations of human rights (e.g. forced disappearances) and has placed emphasis on the accessibility to justice and state accountability. However, it is effectively Latin-American: the ACHR has not been ratified by the US or Canada - damages credibility since they are the most powerful states in that region. There is also an increasing caseload and lack of funding, hindering the effectiveness of the Inter-American Court of Human Rights and the Commission.

protect a woman's right to adequate housing (such as lack of secure tenure) can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless.

- *Denial of socio-economic rights upholds inequalities in society.*
- *Can't achieve one without the other (C&P and ESC).*
- *Stepping-stone from one to another.*
- *E.g. if you are homeless, you don't have an address so you can't vote - can't exercise c&p rights without SE ones.*

Some arguments against recognising socio-economic rights as human rights (and counters):

- *ESC rights involve broad assertions to housing, education, healthcare, work, etc, which in turn involve a broad redistribution of a society's resources. Resolving these questions in courts instead of the democratic process can be problematic.*
 - *However C&P rights also require significant resources; e.g. the right to a fair trial requires adequate court conditions / facilities.*
 - *ESC rights can actually increase economic growth - offering decent food and education to children pays for itself since they will be more productive and contribute greater to the economy.*
- *It can be argued that ESC rights are infeasible because they are concerned with outcomes, e.g. a certain level of healthcare, whereas C&P rights are only concerned with processes, e.g. the no harm principle.*
 - *However, this argument isn't necessarily correct: the development of ESC rights is governed by the doctrine of progressive realisation, where different states are subject to different expectations in their realisation of these rights depending on their wealth / resources.*
 - *ESC rights are sensitive to resource constraints.*
 - *ESC rights are concerned with progress apart from the universal minimum core, which every state must comply with immediately.*
 - *Furthermore, the maximum realisation of some C&P rights is also infeasible: for example with the right to life, it is infeasible to protect absolutely everyone's lives.*

2. Some argue that people who do not contribute to the economy by working and paying taxes should not be entitled to public goods, e.g. health care, water, housing. What do you think about this?

- *An individual's material contributions to the economy should not govern their right to life and other essentials for their survival.*
- *Those that cannot / do not contribute to the economy by working and paying taxes are often some of the most vulnerable in a society, as they may have their reasons for not being able to work, like if they were disabled for example.*
 - *Or homeless.*
- *States are under an obligation to respect, protect and fulfil socio-economic rights (CESCR GC3), so no country should deprive an individual's access to public goods like health care, water or housing.*