



The Role of Courts in International Human Rights

PubPol 475.003

**Gerald R. Ford School of Public Policy
Course Syllabus**

Fridays, 11:30 a.m. – 2:20 p.m. (ET)

Fall Term 2021

Hybrid

Weill Hall Rm. 1230

Office Hours: Fridays, 3:30 - 5:30 p.m. in person and virtually, by appointment

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Conducting Class During a Pandemic

Given the public safety risks stemming from the coronavirus pandemic, I plan to conduct this course as if all of it will have to be virtual. I intend to teach in person in Ann Arbor most Fridays. I expect to teach virtually on a handful of Fridays. I will aspire to give you at least one week's notice as to whether I will teach in person or virtually. With your help, feedback, and collective action, I am confident we can create a safe learning space—literally and figuratively.

We may need to pivot our course trajectory occasionally given public health considerations and the paramount need to keep all of us safe as we learn. I will do my best to make those pivots with as much thoughtfulness and notice as possible, while doing so in a manner that avoids adding to your load, inside and outside the virtual classroom.

This means I will make myself available as much as I can to meet with you when I am in Ann Arbor on Fridays when I am teaching in person or virtually from my home in Northern Virginia otherwise. And if I am on campus, I will happily endeavor to make time to meet during office hours. (See *Office Hours* below.) Although I have a full-time day job with an office “in” Washington, D.C., I will make time for you. You need only reach out to me.

Communication and flexibility will be the keys to our success in what promises to be a dynamic, engaging—if not unique—semester.

Course Objectives

This course will explore the legal enforcement of human rights that are fundamental and are the birthright of all human beings. We will review the international political and legal framework established over the past seventy years to protect human rights. We will home in on how effectively those universally accepted legal norms are enforced. Conventional legal wisdom holds that where there is a right, there is a remedy. We will explore whether this is, indeed, true in the international human rights context.

Specifically, the central inquiry of this course is: what needs to be done to give legal effect to the moral norms that embody human rights and fundamental freedoms?

Of those institutions of government charged with the responsibility of enforcing these moral norms, we will explore the particular role of the courts—international and some domestic. In the area of human rights and liberties, the United States has traditionally been a beacon of hope. And so, we will be particularly attentive to the special role of the Supreme Court of the United States in giving meaning to the words of the Constitution and laws that guarantee basic rights.

Course Materials

1. Hurst Hannum, Dinah L. Shelton, S. James Anaya, and Rosa Celorio, *International Human Rights: Problems of Law, Policy, and Practice* (6th ed. 2018) (“HASC”). Please make certain that you purchase the sixth edition of this problem-oriented casebook. This casebook, unfortunately, is not inexpensive.
2. Jeffrey L. Dunoff, Monica Hakimi, Steven R. Ratner & David Wippman, *International Law: Norms, Actors, Process* (5th ed. 2020) (“DHRW”). I will add the relevant sections to Canvas so that you need not buy this casebook. The casebook also reprints many primary sources related to the assigned readings. When relevant, I will provide you with those primary sources. Other sources are available [here](#).
3. Supplementary readings as well as occasional handouts. I will add all supplementary materials to Canvas.
4. I will post PowerPoint presentations on Canvas at least one hour before each class. The presentations will briefly outline the anticipated take-away points from that day’s class.

You are responsible for the reading assignments from all sources. Please check the course website regularly for updates on reading assignments.

Course Participation and Format

Attendance

Your attendance in class is one of the most important elements in your success in this course. You will receive an attendance grade. You will be permitted one unexcused absence. Each additional unexcused absence will cost you 2.5 percentage points.

If you need to be excused from class, please contact me prior to class.

If you “arrive” to class after 11:40 a.m. (ET), I will mark you as late. If you arrive late, it is your responsibility to contact me after class to be sure that I noted your presence. Two “lates” will count as one unexcused absence.

Class Participation

Active participation in class discussions is required and highly valued in this course. Attendance is important because I anticipate much learning will take place in the context of our lectures, discussions, and in-class exercises. I will call on you in class. So, show up and be prepared.

I will, of course, make accommodations for students who have difficulty participating at 11 a.m. (ET) weekly because of time-zone challenges or otherwise. If we need discuss an accommodation for your circumstance, please reach out to me as early as possible.

I will record all classes and post to Canvas by the next day after class.

To facilitate in-class engagement, each week (beginning with the September 10 class onward) every student will submit a question related to the readings by 6 p.m. (ET) the day before class. Questions submitted after 6 p.m. will not count. I will further elaborate on my expectations during our first class.

The class participation grade will consist of (1) the questions submitted and (2) an evaluation of the student's participation in class discussion. For each class between September 10 and November 12 (ten classes), students can earn two percentage points per class: one point for participation and another for submitting a timely question.

Course Format and Assignments

I will never lecture for three hours. This would be painful for all of us, to be sure. Instead, I will do my best to vary each class to engage your minds as much as possible. During class time, we will use various methodologies to learn, including small group breakout sessions, podcasts, video clips, and guest speakers. I also intend to upload various resources throughout the semester to assist your learning process.

I will call on students during class. I will challenge your arguments. I expect you to challenge my arguments. Most classes, you will work in small groups ("law firms") during class to prepare for the in-class discussion that will follow. This will help us learn from one another and, hopefully, lessen any anxiety associated with being called on in class; the law firm will work together to support each member of the firm. This space will be comfortable for learning, but it will likely be uncomfortable for bad, unsupported logic. And we will have fun.

We will establish the law firms at the start of the semester; they will be our default small groups throughout the semester. A few days before each class, I will post to Canvas questions for each law firm to consider when reading for that week.

The course is designed as a seminar involving lectures, class discussion, policy memorandums, case studies on relevant policy topics, and two student group oral arguments.

Quiz – Assigned Sept. 26; Due Oct. 4	10%
Group Oral Argument No. 1 – Week of Oct. 25 (evening slots)	10%
Exam – Assigned Nov. 21; Due Nov. 30	30%
Group Oral Argument No. 2 – Dec. 10	25%
Class Participation and Contribution to Discussion Threads	20%
Class Attendance	<u>5%</u>
	100%

Your total grade will be based on 100 points. For example, the exam, which is worth 30 percent, will translate to thirty points.

Quiz and Exam

You will have a quiz posted to Canvas on September 26. The quiz, which will consist of four short-answer questions chosen among five, will be due by 11:59 p.m. (ET) on Monday, October 4.

You will have an essay exam due by 11:59 p.m. (ET) on Tuesday, November 30. That exam, like the quiz, will be based on the lectures, class discussions, and all assigned materials, whether discussed in class or not. The exam will consist of issue-spotting essay and policy questions. The exam will be entirely open book and open notes; you are also free to consult the Internet and work with one another. We will prepare for the exam together on November 12, and I will post the exam to Canvas on Sunday, November 21, which gives you just over a week to complete and submit it via Canvas.

Two Group Oral Arguments

Students will work in small groups outside of class time on a common policy/legal question, which they will present to me (the appellate judge) and take questions during the arguments. I will grade students individually and as a group. I expect each group to draw upon the lessons learned up to that point in the semester.

The first oral arguments will take place during weeknight evenings the week of October 25; the second during the allotted class time on December 10. Each group will be assigned a timeslot of approximately 30 minutes. (The second argument will be longer than the first.) That will be your entire time commitment the day of your oral argument.

For the first oral argument, which will take place the week of October 25, I will assign the problem by 5 p.m. (ET) on Sunday, October 17. I will assign groups, randomly, and argument times during class on October 15. (The group will differ from the semester-long law firm.)

For the second oral argument, which will take place during our final class on December 10, I will assign the problem by 5 p.m. (ET) on Sunday, November 28. I will assign groups, randomly, and argument times during class on November 19. (The group will differ from the semester-long law firm and the group from the first oral argument.)

The first oral argument will take place virtually. The second will most likely take place in person.

Final Grade Policy

The quiz, exam, and oral arguments provide you an opportunity to display your grasp of the material and concepts covered in this course. Your final grade will be determined by your performance on these exercises. It is your responsibility to prepare for each. There will be no “extra-credit” assignments given to improve your grade. Once the final grade is posted, the grade is just that—final. I will not consider any requests for additional assignments to improve your final grade.

Office Hours

If you have any questions about the material or concepts covered in the class, or anything else on your mind, please make an appointment to speak with me during office hours, which will take place in person or virtually, depending on the student and instructor’s need/schedule, on Fridays from 3:30 - 5:30 p.m. (ET). To make an appointment, simply e-mail me, please.

I will, of course, work with you to make time to speak outside of office hours, should you ask me to do so.

Ford School Public Health Protection Policy

Ford School Inclusivity Statement: Members of the Ford School community represent a rich variety of backgrounds and perspectives. We are committed to providing an atmosphere for learning that respects diversity. While working together to build this community we ask all members to:

- share their unique experiences, values, and beliefs
- be open to the views of others
- honor the uniqueness of their colleagues
- appreciate the opportunity that we have to learn from each other in this community
- value one another's opinions and communicate in a respectful manner
- keep confidential discussions that the community has of a personal (or professional) nature
- use this opportunity together to discuss ways in which we can create an inclusive environment in Ford classes and across the UM community

Ford School Public Health Protection Policy. In order to participate in any in-person aspects of this course--including meeting with other students to study or work on a team project--you must follow all the public health safety measures and policies put in place by the State of Michigan, Washtenaw County, the University of Michigan, and the Ford School. Up to date information on U-M policies can be found [here](#). It is expected that you will protect and enhance the health of everyone in the Ford School community by staying home and following self-isolation guidelines if you are experiencing any symptoms of COVID-19, have been exposed to someone with COVID-19, or are awaiting a test result because of symptoms. If you do not have a verified COVID-19 vaccine report in the U-M vaccination report system, you are required to participate in [weekly testing](#) if you intend to come to campus for any reason.

Student Mental Health and Wellbeing. The University of Michigan is committed to advancing the mental health and wellbeing of its students. We acknowledge that a variety of issues, both those relating to the pandemic and other issues such as strained relationships, increased anxiety, alcohol/drug problems, and depression, can directly impact students' academic performance and overall wellbeing. If you or someone you know is feeling overwhelmed, depressed, and/or in need of support, services are available.

Kristen Carney, LMSW, is an embedded counselor within the Ford School. She is available to meet with Ford School students in-person or via remote access using Zoom. You may reach her at krisca@umich.edu. In addition, you may access other counselors and urgent services at [Counseling and Psychological Services \(CAPS\)](#) and/or [University Health Service \(UHS\)](#). Students may also use the Crisis Text Line (text '4UMICH' to 741741) to be connected to a trained crisis volunteer. You can find additional resources both on and off campus through the [University Health Service](#) and through [CAPS](#).

Accommodations for Students with Disabilities. If you believe you need an accommodation for a disability, please reach out to U-M [Services for Students with Disabilities \(SSD\)](#) office to help determine appropriate academic accommodations and how to communicate about your accommodations with your professors. Any information you provide will be treated as private and confidential.

Academic Integrity. The Ford School academic community, like all communities, functions best when its members treat one another with honesty, fairness, respect, and trust. We hold all members of our community to high standards of scholarship and integrity. To accomplish its mission of providing an optimal educational environment and developing leaders of society, the Ford School promotes the assumption of personal responsibility and integrity and prohibits all forms of academic dishonesty, plagiarism, and misconduct. Academic dishonesty may be understood as any action or attempted action that may result in creating an unfair academic advantage for oneself or an unfair academic advantage or disadvantage for any other member or members of the academic community. Plagiarism involves

representing the words, ideas, or work of others as one's own in writing or presentations and failing to give full and proper credit to the original source. Conduct, without regard to motive, that violates the academic integrity and ethical standards will result in serious consequences and disciplinary action. The Ford School's policy of academic integrity can be found in the MPP/MPA, BA, and PhD Program handbooks. Additional information regarding academic dishonesty, plagiarism and misconduct and their consequences is available at: <http://www.rackham.umich.edu/current-students/policies/academic-policies/section11#112>

Use of Technology. Students should follow instructions from their instructor as to acceptable use of technology in the classroom, including laptops, in each course. All course materials (including slides, assignments, handouts, pre-recorded lectures or recordings of class) are to be considered confidential material and are not to be shared in full or part with anyone outside of the course participants. Likewise, your own personal recording (audio or video) of your classes or office hour sessions is allowed only with the express written permission of your instructor. If you wish to post course materials or photographs/videos of classmates or your instructor to third-party sites (e.g. social media), you must first have informed consent. *Without explicit permission from the instructor and in some cases your classmates, the public distribution or posting of any photos, audio/video recordings or pre-recordings from class, discussion section or office hours, even if you have permission to record, is not allowed and could be considered academic misconduct.*

Please review additional information and policies regarding academic expectations and resources at the Ford School of Public Policy at: <https://intranet.fordschool.umich.edu/academic-expectations>

Course Outline and Assigned Readings

Class 1/September 3 Course Introduction, Expectations, and Introduction to Legal Context

Part I. Defining the Scope of International Human Rights Law

Class 2/September 10 Introduction to the Concept of Human Rights

Policy Topic: The Abolition of Slavery

- Hannah-Jones, Nikole. “[The Fight for a True Democracy](#).” 1619 Podcast. *The New York Times*, 23 August 2019.
- HASC, chapter 1, pp. 1-53.
- Allen, Danielle S. *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*. Liveright, 2014. Pp. 145-188.
- *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (Abridged)
- Zvobgo, Kelebogile, and Meredith Loken. “Why Race Matters in International Relations.” *Foreign Policy*, no. 237, Summer 2020, pp. 11-13.

Class 3/September 17 Introduction to the Concept of Human Rights II: Guaranteeing Human Rights by Treaty

Policy Topic: Climate Change

- HASC, chapter 2, pp. 53-109.
- DHRW, pp. 31-62.
- Scopelianos, Sarah. “Can the Antarctic Treaty protect one of the world's last great wildernesses from climate change?” *ABC Radio National*, 18 Aug. 2021.
- Roth, Kenneth. “Defending Economic Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization.” *Human Rights Quarterly*, vol. 26, no. 1, 2004, pp. 63-73.
- Review the following core human rights treaties: ICCPR, ICESCR, CERD, CEDAW, CRC, CAT, ICRMW, CPED, CRPD at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

Class 4/September 24 Introduction to the Concept of Human Rights III: Guaranteeing Human Rights by Non-Binding Instruments and “Soft Law”

Policy Topic: Executing Minors, *Roper v. Simmons*, 543 U.S. 551 (2005)

- HASC, chapter 3, pp. 128-46.
- DHRW, pp. 63-72.
- [Roper v. Simmons](#), 543 U.S. 551 (2005) (Excerpts).

Class 5/October 1 Participants in the International Human Rights Legal Process (States and Business Enterprises) and their Obligations – Part I of II

Policy Topic: Human Rights and Technology

- HASC, chapter 5, pp. 335-59; 372-79; and 404-12.
- Human Rights Committee, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, General Comment No. 31 (2004).
- Raman, Sushma. “[Technologies of Humility](#).” *Justice Matters*. Harvard Kennedy School – Carr Center for Human Rights Policy, 29 June 2021. Web. (Listen from start to 18:30; and 24:19 to end.)

Class 6/October 8 Participants in the International Human Rights Legal Process (International Organizations and Nongovernmental Organizations) and their Obligations – Part II of II

Policy Topic: Haiti Cholera Outbreak and the United Nations’ Peacekeeping Challenges

- HASC, chapter 5, pp. 424-34; 443-44.
- DHRW, chapter 3, pp. 87-118; 156-68; chapter 4, 169-78.
- Douyon, Emmanuela, and Alyssa Sepinwall. “Earthquakes and storms are natural, but Haiti’s disasters are man-made, too,” *Washington Post*, 20 August 2021.
- Modirzadeh, Naz K. “Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds.” *Harvard Human Rights Journal*, vol. 19, 2006, pp. 191-234.

Part II: The Role of the Courts

Class 7/October 15 Advancing Economic, Social, and Cultural Rights

Guest Speaker: Guest Speaker: Malika Saada Saar, Global Head of Human Rights at [YouTube](#)

- Abregú, Martín. “[What Strengthening Human Rights Has to Do with Challenging Inequality](#).” *Just Matters*, 22 May 2017.
- HASC, chapter 6, pp. 530-47.
- “[US: President Should Set a Human Rights Foreign Policy](#).” *Human Rights Watch*, 10 Nov. 2020.

Class 8/October 22 The Role of Domestic Courts in Advancing International Human Rights Guarantees – Part I of III (Domesticating International Law)

- HASC, chapter 6, pp. 463-508.
- DHRW, chapter 5, pp. 207-34.
- Lillich, Richard B. “Role of Domestic Courts in Promoting International Human Rights Norms.” *New York University Law Review*, vol. 24, no. 1, 1978, pp. 153-178.

Week of October 25 Oral Argument No. 1 (evening time slots on October 26 and 27)

Class 9/October 29 The Role of Domestic Courts in Advancing International Human Rights Guarantees – Part II of III (Domesticating International Law Continued and Seeking Redress for Corporate Complicity in Human Rights Violations)

Policy Topic: Applying the Alien Tort Statute (also known as the Alien Tort Claims Act)

- DHRW, chapter 5, pp. 234-66.

Class 10/November 5 The Role of Domestic Courts in Advancing International Human Rights Guarantees – Part III of III (The Reach of Domestic Law in the International Arena: Jurisdiction and Sovereign Immunity)

- HASC, chapter 6, pp. 530-47 (Justiciability of Economic, Social, and Cultural Rights).
- DHRW, chapter 6, pp. 267-76; 287-95 (Jurisdiction).

Class 11/November 12 Holding Human Rights Abusers Accountable and Introduction to Impact Litigation (Accountability I of II)

Guest Speaker: TBA

Policy Topic: Using Migration and Refugee Advocacy to Hold the U.S. Government Accountable

- Sikkink, Kathryn. “The Justice Cascade: How Human Rights Prosecutions are Changing World Politics.” New York: W.W. Norton & Co, 2011. pp. 162-188.
- Review Human Rights History Website, “[Accountability](#)” page.
- Extracts from [1951 Convention Relating to the Status of Refugees \(Introductory Note, Articles 1-6, 26-28, 31-33\) and 1967 Protocol Relating to the Status of Refugees \(Article 1\)](#), and [Guiding Principles on Internal Displacement](#) (Introductory Note, Introduction-Scope and Purpose, Principles 1-30), (1998).
- Miroff, Nick. “Along Mexico border, covid spike and more migrant families stall plans to end Title 42 expulsions.” *Washington Post*, 28 July 2021.
- Therkelsen, Jessica. “[A Global Perspective on the Modern Perils of Seeking Asylum](#).” *Human Rights*, vol. 45, no. 2, Apr. 2020, pp. 8-11.
- [UNHCR Viewpoint: ‘Refugee’ or ‘migrant’ – Which is right?](#) UNHCR, 11 July 2016.
- Hearing on the Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment before the U.S. House of Representatives Committee on Oversight and Reform (July 12, 2019) ([statement of Elora Mukherjee](#), Jerome L. Greene Clinical Professor of Law Director, Immigrants’ Rights Clinic, Columbia Law School).

Class 12/November 19 **UN Human Rights Mechanisms and Coercing Compliance with those Mechanisms (Accountability II of II)**

Guest Speaker: *The Honorable [George Moose](#), American diplomat who served as assistant secretary of state for African Affairs, ambassador to the UN agencies in Geneva, and as ambassador to the Republics of Benin and Senegal. He is known for, among other things, serving as assistant secretary of state for African Affairs in the Clinton Administration during the genocide in Rwanda.*

Policy Topic: The Rwandan Genocide and the UN's Response

- HASC, chapter 4, pp. 309-33 (International Crimes and Human Rights).
- Verma, Pranshu and Simons, Marlise. [“Reversing Trump, Biden Repeals Sanctions on Human Rights Prosecutor.”](#) *The New York Times*, 2 Apr. 2021.
- HASC, chapter 12, pp. 1050-73; 1088-97; 1109-17 (Coercing Compliance with Human Rights Norms: Darfur, Sanctions, Armed Intervention, Consequences of Nonintervention (Rwanda)).
- [“Taliban’s Treatment of Women a ‘Red Line’: UN Rights Chief,”](#) *Al Jazeera*, 24 Aug. 2021.

November 26 **Thanksgiving Break – No Class**

Class 13/December 3 **The United States’ Human Rights Record at Home**

Policy Topic: *The Chinese Exclusion Case*, 130 U.S. 581 (1889);
Korematsu v. United States, 323 U.S. 214 (1944) (Internment of Japanese Americans); and The Black Lives Matter Movement

- HASC, chapter 13, pp. 1211-17.
- [Korematsu v. United States](#) (seven-page excerpt).
- Shilliam, Robbie. [“When Did Race Become Solely a Domestic Issue.”](#) *Foreign Policy*, 23 June 2020.
- Danticat, Edwidge. [“So Brutal a Death.”](#) *The New Yorker*, 22 June 2020, pp. 18-19.
- Lepore, Jill. [“The Riot Report.”](#) *The New Yorker*, 22 June 2020, pp. 24-29.
- Tometi, Opal and Gerald Lenoir. [“Black Lives Matter Is Not a Civil Rights Movement.”](#) *Time*, 10 Dec. 2015.
- Jones, Cleve and Liz Highleyman. [“Dear White LGBT People, Prove Black Lives Matter.”](#) *The Advocate*. Pride Publishing Inc. 25 Sept. 2015.

Class 14/December 10 **Oral Argument No. 2**