



The Role of Courts in International Human Rights

PubPol 475.001

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

**Fridays, 9 - 11:50 a.m.
Fall Term 2019
1220 Weill Hall**

**Office Hours: Fridays, 1 - 3 p.m.; or by appointment in Weill Hall Room 4129
Telephone: 202.888.7607 (Office at Human Rights First in Washington, D.C.)
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**Hardy Vieux
September 2, 2019**

Course Objectives

This course will explore the legal enforcement of those 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 fifty years to protect human rights. We will hone 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 certain domestic ones. 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.
2. Jeffrey L. Dunoff, Steven R. Ratner & David Wippman, *International Law: Norms, Actors, Process* (4th ed. 2015) (“DRW”). I will add the relevant sections to Canvas so that you need not buy this casebook. The casebook reprints many primary sources related to the assigned readings. When relevant, I will provide you with those primary sources. Other sources are available here: <https://www.law.umich.edu/facultyhome/drwcasebook/Pages/Documents.aspx>
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 day's class.

You are responsible for the reading assignments from all sources. Please check the course web site 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 unexcused absence will cost you 2.5 percentage points.

If you arrive in class after roll has been taken, I will mark you as late. If you arrived late, it is your responsibility to see 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. You will be called on in class. So, show up and be prepared.

To facilitate in-class engagement, each week (from the September 13th class onward) every student will submit a question related to the readings by 5 p.m. the day before class. Questions submitted after 5 p.m. will not count. I will further elaborate on my expectations at 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 13 and November 15, students can earn two percentage points per class: one point for participation and another for submitting a timely question.

Feel free to use your laptops in class. Surfing the web, e-mailing, or use of the laptops for reasons other than taking notes not only prevents you from fully absorbing the lecture material, but also is distracting to those students around you and therefore extremely inconsiderate.

Course Format and Assignments. The course is designed as a seminar involving lectures, class discussion, policy memorandums, case studies on relevant policy topics, and a student group presentation.

Quiz – Sept. 27	10%
Policy Memorandum – Oct. 25 (three-page maximum)	20%
Take-Home Exam – Assigned Nov.15; Due Nov. 20	25%
Group Oral Presentation on Case Study – Dec. 6	20%
▪ Presentations will be approximately ten minutes per group, which includes Q&A	
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 memorandum, which is worth 20 percent, will translate to twenty-five points.

Quiz and exam. You will have an in-class quiz on September 27 consisting primarily of short-answer questions. Moreover, you will have an essay take-home exam due by 11:59 p.m. on Wednesday, November 20. 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/or a policy questions. The exam will be entirely open book and open notes; you are also free to consult the Internet. We will prepare for the exam together on November 8 and I will assign the exam to you on November 15, which gives you five days to complete and submit it via Canvas.

Policy memorandum. Students are required to write one policy memorandum. I will assign the policy issue to be addressed in the memos one week prior to when the memorandum is due. The assigned issue will require students to call upon principles gleaned in the preceding classes.

We will discuss my expectations for the policy memorandums during the first class, with additional guidance posted to Canvas.

Group Oral Presentations. Students will work in small groups on a common policy question, which they will present before the class and take questions. I will grade students as a group and expect each group to draw upon the lessons learned during the semester.

Exam and Final Grade Policy

The exams provide you an opportunity to display your grasp of the material and concepts covered in this course. You must take the exams on the date and time on which they are given. Make-ups will be given only in exceptional cases of documented illness. It is your responsibility to prepare for each exam. There will be no “extra-credit” assignments given to improve your grade. Your final grade will be determined by your performance on the exams and your class participation. 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, please make sure to come to office hours. I will make time outside of office hours, should you ask.

Course Outline and Assigned Readings

Class 1/September 6 Course Introduction, Expectations, and Introduction to Legal Context

Part I. Defining the Scope of International Human Rights Law

Class 2/September 13 Introduction to the Concept of Human Rights

Policy Topics: The Abolition of Slavery

- HASC, chapter 1, pp. 1-53
- OHCHR, Frequently-Asked Questions on a Human Rights-Based Approach to Development Cooperation (2006), <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (Part I, pp. 1 - 6).
- OHCHR, *Human Rights Bodies: Complaint Procedures* at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

Class 3/September 20 Introduction to the Concept of Human Rights II: Guaranteeing Human Rights by Treaty

- HASC, chapter 2, pp. 53-125
- DRW, pp. 33-67
- Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization* 26 HUM. RTS. Q. 63 (2006)
- 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 27 Introduction to the Concept of Human Rights III: Guaranteeing Human Rights by Non-Binding Instruments and “Soft Law”

- In-Class Quiz
- HASC, chapter 3, pp. 128-134
- DRW, pp. 68-100

Class 5/October 4 Participants in the International Human Rights Legal Process I: What is a State?

- In-Class Role Play
- HASC, chapter 5, pp. 335-403
- DRW, pp. 105-117

Class 6/October 11 Participants in the International Human Rights Legal Process II: Non-State Actors and International Organizations

Policy Topics: Haiti Cholera Outbreak and the United Nations

Guest Speaker TBA

- HASC, chapter 3, pp. 128-134, and 154-198
- DRW, pp. 117-130
- Human Rights History Website, “Accountability” page <http://humanrightshistory.umich.edu/accountability/>
- Michael Goodhart, “Human Rights and Non-State Actors” in Andreopoulos, Arat and Juviler (eds), *Non-State Actors in the Human Rights Universe* (Kumarian 2006), pp. 23-41.

- Case Study on 2010 Haiti Cholera Outbreak and the U.N.
 - Following documents available under “US Lawsuit” at <http://www.ijdh.org/cholera/cholera-litigation/>
 - Principal Appellate Brief of Plaintiffs, May 27, 2015
 - District Court Judge’s Opinion on UN immunity, January 9, 2015
 - Following document available under “UN Claims Process” at <http://www.ijdh.org/cholera/cholera-litigation/>
 - UN’s response to BAI/IJDH challenge, July 2013

Part II: The Role of the Courts

Class 7/October 18 The Arsenal for Defending Human Rights Globally and Introduction to Strategic Litigation

- Human Rights Committee, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, General Comment No. 31 (2004)
- OHCHR, *Human Rights Bodies: Complaint Procedures* at <http://www.ohchr.org/EN/HRBodies/TBPEtitions/Pages/HRTBPEtitions.aspx> § OHCHR, International Legal Protections of Human Rights in Armed Conflict (2011) (section II)
- Naz K. Modirzadeh, Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds, 19 HARV. HUM RTS J. 191 (2006).
- Martin Abregu, *What Strengthening Human Rights Has to Do with Challenging Inequality*,” May 22, 2017, at <https://www.fordfoundation.org/ideas/equal-change-blog/posts/what-strengthening-human-rights-has-to-do-with-challenging-inequality/>
- Anne Skelton, *Strategic Litigation Impacts: Equal Access to Quality Education* (Sept. 2015): <https://www.justiceinitiative.org/publications/impacts-strategic-litigation-equal-access-quality-education>

Class 8/October 25 The Role of Domestic Court in Advancing International Human Rights Guarantees

Policy Topic: “The War on Terror” and Prohibition against Torture

- HASC, chapter 6, pp. 463-529
- DRW, pp. 273-277; 282-288 (top); 292 (middle) – 298; and 298-314
- Richard B. Lillich, *The Role of Domestic Courts in Promoting International Human Rights Norms*,” 24 N.Y.U. L. Sch. L. Rev. 153 (1978-79)

Class 9/November 1 International Human Rights Law in United States Courts – Comparatively Speaking

- HASC, chapter 3, pp. 128-134, and 154-198
- DRW, pp. 117-130

Class 10/November 8 International Human Rights Law in United States Courts II – Comparatively Speaking

Policy Topic: Protection: Human Rights and Forced Migration, and the Travel Ban/Asylum in the U.S.

- 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),

<http://www.unhcr.org/3b66c2aa10.html> and Guiding Principles on Internal Displacement (Introductory Note, Introduction-Scope and Purpose, Principles 1-30), (1998),

<http://www.unhcr.org/43ce1cff2.html>

- Susan Martin, Forced Migration, the Refugee Regime and the Responsibility to Protect, 2 GLOBAL RESPONSIBILITY TO PROTECT 38 (2010)
- UNHCR Viewpoint: ‘Refugee’ or ‘migrant’ – Which is right?, UNHCR, August 27, 2015, <http://www.unhcr.org/55df0e556.html> -- 5
- Why Al Jazeera will not say Mediterranean ‘migrants,’ August 20, 2015, AL JAZEERA, <http://www.aljazeera.com/blogs/editors-blog/2015/08/al-jazeera-mediterranean-migrants150820082226309.html>
- Migration crisis: Migration to Europe explained in graphics,” December 22, 2015, BBC NEWS, <http://www.bbc.com/news/world-europe-34131911>, read “A note on terminology”

Class 11/November 15 Bringing Human Rights Home: Human Rights Advocacy and the United States

- Akbar, Amna A., Law’s Exposure: The Movement and the Legal Academy (November 13, 2015). 65 J. Legal Educ. 352 (November 2015); Ohio State Public Law Working Paper No. 320, <http://ssrn.com/abstract=2690369>
- Amnesty International: Ferguson police committed human rights abuses during Michael Brown protests, October 24, 2014, WASH. POST, <http://www.washingtonpost.com/news/morningmix/wp/2014/10/24/ferguson-police-committed-numerous-human-rights-abuses-amnestyinternational-says/>
- Opal Tometi and Gerald Lenoir, Black Lives Matter Is Not a Civil Rights Movement, December 10, 2015, TIME, <http://time.com/4144655/international-human-rights-day-black-lives-matter/>
- Joint Press Statement by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and to right to non-discrimination in this context, and Special Rapporteur on the human right to safe drinking water and sanitation Visit to City of Detroit (United States of America) 18-20 October 2014, 20 October 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>
- Dear White LGBT People, Prove Black Lives Matter, September 25, 2015, <http://www.advocate.com/6in10men/2015/9/25/dear-white-lgbt-people-prove-black-lives-matter>

Class 12/November 22 Domestic Politics and Human Rights

Guest Speaker TBA and Screen Film “Finding Oscar” about Forced Disappearances in Guatemala

November 29 Thanksgiving Break – No Class

Class 13/December 6 Final Class / Oral Presentations

Ford School of Public Policy 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

Accommodations for Students with Disabilities: If you believe you need an accommodation for a disability, please let your instructor know at your earliest convenience. Some aspects of courses may be modified to facilitate your participation and progress. As soon as you make your instructor aware of your needs, they can work with the Services for Students with Disabilities (SSD) office to help determine appropriate academic accommodations. Any information you provide will be treated as private and confidential.

Student Mental Health and Well-Being Resources: The University of Michigan is committed to advancing the mental health and wellbeing of its students. We acknowledge that a variety of issues, such as strained relationships, increased anxiety, alcohol/drug problems, and depression, directly impacts students' academic performance. If you or someone you know is feeling overwhelmed, depressed, and/or in need of support, services are available. For help, contact [Counseling and Psychological Services](#) (CAPS) and/or [University Health Service](#) (UHS). For a listing of other mental health resources available on and off campus, visit: <http://umich.edu/~mhealth/>

Please review additional information and policies regarding academic expectations and resources at the Ford School of Public Policy at this link:

<http://fordschool.umich.edu/academics/expectations>