

**University of Baltimore School of Law
Spring 2018**

Course: Law and Human Rights, 776-511
Instructor: Professor Nienke Grossman
Office Hours: Tuesday, 3 to 4 pm, or by appointment
Office Location: Angelos Law Center, Room 512
Email: ngrossman@ubalt.edu
Days/Time: Tuesday/Thursday, 1:30 – 2:45 pm
Location: Angelos Law Center 402

Welcome to Law and Human Rights. The information in this document is vital to your success in this course. Please read it carefully.

CATALOGUE COURSE DESCRIPTION:

This survey course examines law, theory, and practice with a special focus on international human rights. Topics will include the history of human rights and the codification of human rights law after World War II; the role of customary international law in protecting human rights; the basic international and regional human rights instruments; connections and tensions among civil, political, social and economic rights; the status of human rights law in the United States and the relationship between the United States and the global human rights regime; and theories of cultural relativism and other academic critiques of the human rights movement.

LEARNING OUTCOMES:

This course aims to introduce you to the history, sources and institutional structures of the human rights field. You should leave the course with an understanding of the range of tools available to human rights lawyers, as well as their strengths and limitations. You will learn about primary theoretical debates and critiques of the human rights field as well. The course draws upon your close reading, legal analysis and critical thinking skills.

COURSE MATERIALS:

Required:

1. PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS: THE SUCCESSOR TO INTERNATIONAL HUMAN RIGHTS IN CONTEXT (2013).
2. TWEN: Human Rights Instruments. This is the book's on-line Document Supplement, and it contains human rights treaties and other documents we will use in class. **You must print it out and bring it to class every day.**
3. You will be asked to access sources on-line throughout the course.

Optional: Although international law is not a prerequisite, this is an international law course. I recommend you consider purchasing one of these books for more background in international law:

- THOMAS BUERGENTHAL AND SEAN D. MURPHY, PUBLIC INTERNATIONAL LAW (2006)
- SEAN MURPHY, PRINCIPLES OF INTERNATIONAL LAW (2d ed., 2012).
- DAVID BEDERMAN & CHIMENE KEITNER, INTERNATIONAL LAW FRAMEWORKS (2016).

GRADES (EXAM AND PARTICIPATION):

Course grades will be determined on the basis of a three-hour final examination and class participation. The exam will test your knowledge of the subjects covered in this course, as well as your critical thinking, legal analysis and legal argument skills. Participation will be graded by the quality of your contributions to class discussion. High quality participation shows that you have done the work assigned and reflected on the issues therein. Low quality participation shows that you have either not done the assignment or spent insufficient time reflecting on it before coming to class. As stated in the GW Law School Bulletin, your participation may help or hurt your grade by up to one step (e.g., B+ to A-, or B- to C+).

COURSE EXPECTATIONS:

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

Like any ethical, competent and courteous lawyer, I expect you to be on time and prepared for every class. You may not leave the room during class time unless you are experiencing an unanticipated emergency or you have let me know in advance. As explained below, please note that if you sign the attendance sheet and are unprepared, this may negatively impact your grade.

ATTENDANCE:

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2
2	2 absences	5 absences
3	2 absences	5 absences
4	--	5 absences

Please note that you are responsible for signing the attendance sheet to verify that you are present and prepared for class. You may attend class even if you are unprepared, but you may not sign the attendance sheet and will be counted as absent for the purposes of this policy. Do not sign in if you are not prepared. If you signed the attendance sheet and are unprepared when called upon, your final grade is likely to be negatively impacted by up to one step (e.g., from a B to a B-).

Course Website:

This course has a TWEN site that includes the syllabus, announcements, forums, assignments and other class materials. All students are required to register for the site.

Computers:

Laptops are permitted for the purpose of note-taking. On occasion, you may be required to close your laptop (e.g., if we are having a guest speaker or a simulation or debate). Consequently, you may want to bring some paper with you to class just in case.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and

impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

List of Course Topics and Assignments:

The list of topics and assignments are *subject to change* to maximize student learning, and we may not cover every topic. All changes will be emailed to you and posted on the TWEN site.

LIST OF COURSE TOPICS

The list of course topics is *subject to change* to maximize student learning, and we may not cover every topic.

- I. Introduction
 - a. Sources of Human Rights Law
 - i. Customary International Law
 - ii. Treaties
 - iii. Pre-UN Charter: Natural Law, State Responsibility, General Principles
 - iv. Nuremburg and Birth of the Modern Regime, Universal Declaration
- II. Normative Foundations of International Human Rights
 - a. Civil and Political Rights
 - i. ICCPR
 - 1. Derogation Clauses
 - 2. Institutions: Treaty Bodies
 - 3. Hate Speech
 - ii. The Challenge of Reservations
 - b. CEDAW
 - i. Public/Private Divide
 - ii. Cultural Relativism
 - c. Norm regression – Torture
 - d. Economic Social and Cultural Rights
 - i. Background, Critiques, Justifications
 - ii. Problem of Resources, Comparative Perspectives
- III. Implementation and Enforcement (and Institutions)
 - a. UN
 - i. Charter Bodies
 - ii. Security Council (and R2P)
 - b. Regional Systems
 - i. European System
 - ii. Inter-American System
 - iii. African System
- IV. Stock-taking

LAW AND HUMAN RIGHTS – LIST OF ASSIGNMENTS

The casebook is “CB.” TWEN is the course website. *Please note that this list of assignments is subject to change to further student learning.* All changes will be posted on the course website and emailed to you. The human rights instruments (e.g., treaties, declarations, etc.) are “HRI,” and they are located on TWEN.

I. Introduction – Background and Sources of Human Rights Law

Class 1 (Tuesday, January 16): Introduction to Human Rights

- Department of Justice, Civil Rights Division, Investigation of the Baltimore City Police Department, Executive Summary and Background on Baltimore, pp. 3-15 (August 10, 2016), at <https://assets.documentcloud.org/documents/3009376/BPD-Findings-Report-FINAL.pdf> .
- “Black Lives Matter is not a Civil Rights Movement,” at <http://time.com/4144655/international-human-rights-day-black-lives-matter/>.
- CB, 490-92
- TWEN: HRI - Universal Declaration of Human Rights. **Please make sure to bring a hard copy of the HRI to class.** You may want to tab each instrument as you go along.
- CB, 504-508
- Based on the readings, what arguments could you make about violations of the rights in the Universal Declaration of Human Rights? Where do these rights come from? What are some advantages and disadvantages of using human rights discourse?
- TWEN: Fill out Student Information Sheet and bring to class

Class 2 (Thursday, January 18): Sources of HR Law I – Customary International Law

- CB, 59 (starting at last paragraph on the page) - 69, 72-78
- This reading begins to introduce you to the sources of international law, including human rights law. The focus for today’s class is on Customary International Law. According to the Restatement (Third) of Foreign Relations Law, customary international law “results from a general and consistent practice of states [state practice] followed by them from a sense of legal obligation [opinio juris].”
- Put yourself in the shoes of the Paquete Habana’s owners. How would you argue there is a customary international law rule prohibiting the seizure of coastal fishing vessels during war? How would you argue the opposite?
- TWEN – CALI – Customary International Law. Do this CALI lesson to help you get the basics on Customary International Law.

Class 3 (Tuesday, January 23): Sources II: Soft Law, Treaties I

- CB, 81-82
- CB, 113-118
- HRI: Vienna Convention on the Law of Treaties. This “treaty on treaties” provides the background rules on treaty formation, interpretation, and termination. Skim the entire treaty excerpt.
- CB, 1092-1095 – This is an example of a treaty reservation by the United States. Read it to see what a reservation looks like.
- <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>. Pick a human rights treaty (not ICCPR or ICESCR). Some of the documents listed are not treaties, so make sure the one you pick is a treaty.
 - What is your treaty about? What is its purpose? How you would describe the treaty’s structure? What mechanisms or bodies does it establish for enforcement? Does it have provisions for reservation or termination? Click on the link at the bottom of the page to determine how many states have ratified the treaty. Is the US a signatory or a party to the treaty?
- Be prepared to discuss your answers to these questions in class.

Class 4 (Thursday, January 25): Sources of HR Law - Pre-UN Charter: Diplomatic Protection, State Responsibility, General Principles

- CB, 90-101
- What are the commissioners disagreeing about in the *Chattin* case? What role does international law play in this decision? What are some drawbacks to using diplomatic protection for protecting human rights?
- Responsibility of States for Internationally Wrongful Acts, at http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf. Please skim this and read the articles on attribution (articles 4-11).

Class 5 (Tuesday, January 30): Sources of HR Law – Nuremburg and Birth of the Modern Regime, Universal Declaration of Human Rights

- CB, 120-30, 135-45
- HRI: UN Charter, Preamble, articles 1, 2, 13(1), 55, 56, 62, 68
- HRI: Universal Declaration of Human Rights

II. Normative Foundations

a. Civil and Political Rights

Class 6 (Thursday, February 1): ICCPR, Derogation Clauses

- CB, 157-165
- CB, 397-401. This is an interpretation of the meaning of article 4 of the ICCPR by the Human Rights Committee, which is a body charged with interpreting the obligations in the ICCPR. How does this interpretation build on the text of ICCPR article 4? What sources and arguments does the Human Rights Committee use to justify its interpretation?
- HRI: ICCPR

Class 7 (Tuesday, February 6): ICCPR, Treaty Bodies I, What are treaty bodies?, One function: General Comments

- CB, 763-767, 791-94
- HRI: ICCPR
- Go on the website of the UN High Commissioner of Human Rights, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.
 - Explore the website of one of the UN Treaty Bodies. Find something interesting to share **for a maximum of three minutes** with the class about what you found. Options include:
 - information related to a general comment,
 - members of the committee,
 - selection procedures,
 - information about submitting individual petitions,
 - information about a specific individual petition,
 - something related to an annual report or other publication, etc.

Class 8 (Thursday, February 8): ICCPR, Treaty Bodies II, State Reporting and Individual Communications

- CB, 768-85 – As you read through the exchanges between the US and the Human Rights Committee, consider:
 - What is the role of HRC members? What challenges do they face? What is the role of non-governmental organizations (NGOs)? To what extent is state reporting a valuable tool in getting states to comply with human rights obligations?
- CB, 808-818
- HRI: ICCPR, First Optional Protocol

Class 9 (Tuesday, February 13): ICCPR, Finish up Treaty Bodies, Hate Speech

- CB, 832-43. How effective is the individual communication system at obtaining compliance with international human rights law? What are some of the challenges treaty bodies face in encouraging compliance with the treaties they monitor?
- HRI:
 - ICCPR, articles 19 and 20;
 - European Convention on Human Rights, arts. 10 and 17,
 - Convention on the Elimination of Racial Discrimination, art. 4
- How do these different treaties treat free speech and hate speech? What is the relationship between speech and other rights and values in the ICCPR or human rights law more generally?
- CB, 651-53, 658-66, 667 (Note at bottom of page)
- Skim Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, "Political Platforms Which Promote or Incite Racial Discrimination," <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/104/33/PDF/G0610433.pdf?OpenElement>. How does the author understand the relationship between democratic society and racist speech?

Class 10 (Thursday, February 15): ICCPR, The Challenge of Reservations

- CB, 1092-1109
- HRI: International Covenant on Civil and Political Rights, Vienna Convention on the Law of Treaties, arts. 19-21
- HRI: First Optional Protocol to the ICCPR

Class 11 (Tuesday, February 20): CEDAW I: Introduction to CEDAW and Women's Human Rights

- CB, 166-70, 179-91
- HRI: CEDAW

Class 12 (Thursday, February 22): Women's Human Rights: The Public/Private Divide

- HRI: CEDAW, American Convention on Human Rights (as needed for Velasquez Rodriguez)
- CB, 191-205

Class 13 (Tuesday, February 27): Women's Human Rights: The Challenge of Cultural Relativism – The Hijab

- CB, 627-45
- HRI: ECHR (as needed for cases in reading)
- “American Chess Player Boycotts Championship in Iran over Hijab Rule,” at https://www.nytimes.com/2016/10/08/sports/american-chess-player-boycotts-championship-that-would-require-her-to-wear-a-hijab.html?_r=0
- “Your Boycott Won't Help Iranian Women,” at <https://www.nytimes.com/2016/10/08/opinion/your-boycott-wont-help-iranian-women.html>
- *Optional:* CB, 538-55. If you want to read more on cultural relativism, this is super interesting!

Class 14 (Thursday March 1): Norm Regression: Torture

- CB, 238-40; 265-76
- Senate Select Committee on Intelligence Report, available at https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf. Read Findings and Conclusions only.
- HRI: Convention Against Torture
- “How US Torture Left Legacy of Damaged Minds,” at <https://www.nytimes.com/2016/10/09/world/cia-torture-guantanamo-bay.html>

b. Economic Social and Cultural Rights

Class 15 (Tuesday, March 6): ICESCR

- CB, 277-87, 292-95, 315-26
- HRI: ICESCR

Class 16 (Thursday, March 8): ICESCR – Comparative Perspectives

- Philip Alston, Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights (Dec. 15, 2017), at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533&LangID=E>
- CB, 353-58, 363-69
- HRI: ICESCR

III. Implementation and Enforcement (and Institutions)

Class 17 (Tuesday, March 13): UN – Charter Bodies

- CB, 691-701, 704-5 (up to North Korea), 708-712, 719-28
- HRI: UN Charter, relevant articles

Class 18 (Thursday, March 15): UN – Charter Bodies

- CB, 731-45
- HRI: UN Charter, relevant articles

MARCH 18-25: SPRING BREAK

Class 19 (Tuesday, March 27): UN – Charter Bodies – Security Council and R2P

- CB, 745-61
- HRI: UN Charter, Chapter VII
- 21 October 2016 Speech on Syria, <http://www.ohchr.org/EN/NewsEvents/Pages/HRCTacklesAleppoCrisis.aspx>

Class 20 (Thursday, March 29): Speaker - Inter-American HR speaker

Class 21 (Tuesday, April 3): Regional Arrangements- European System

- CB, 889-92, 894-96, 897-903, 906-12
- HRI: European Convention

Class 22 (Thursday, April 5): Regional Arrangements – European System, Illustrative Cases, Margin of Appreciation

- CB: 912-22; 946-55
- HRI: European Convention

Class 23 (Tuesday, April 10): Inter-American System I

- CB, 978-997
- HRI: American Declaration on the Rights and Duties of Man (1948), American Convention on Human Rights

Class 24 (Thursday, April 12): Inter-American System II

- CB, 997-1018

Class 25 (Tuesday, April 17): Inter-American System III; The African System I

- CB, 1018- 24
- CB, 517-525, 1025-1031
- HRI: African Charter on Human and Peoples' Rights

Class 26 (Thursday, April 19): No Class

Class 27 (Tuesday, April 24): African System II

- CB, 1032-1044
- HRI: African Charter
- Go on the African Court on Human and Peoples' Rights and find something interesting to share with the class.

Class 28 (Thursday, April 26): Wrap Up: Taking Stock of Human Rights Treaties...

- CB, 1251-1261
- Eric Posner, The Case Against Human Rights,
<https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>
- How should we measure the effectiveness and utility of human rights treaties? Are you convinced by Posner's arguments about the effectiveness and utility of human rights and the call for a different approach? Why or why not?

University Make up Days: May 1-2

University Reading Period: May 3-6

Final Exam: Friday, May 11 at 1 pm (tentative)