**International Human Rights Law and the Rights of Indigenous Peoples**

**Instructor: Rachael Lorna Johnstone [ralo@uni.gl]**

BA: 5 ECTS

MA: 10 ECTS

**Course Description:**

This course introduces students to the international law on human rights and the rights of indigenous peoples. Students learn about the processes for protection of human rights and indigenous rights as well as the substantive norms that States have agreed. The following topics are covered: the evolution of human rights in the Post WWII era; the core international human rights treaties; the UN human rights treaty monitoring systems; regional systems for human rights protection with emphasis on the European Convention on Human Rights; the non-discrimination principle in international human rights law; the justifications for the collective rights of indigenous peoples; the core substantive rights of indigenous peoples; state responsibility for human rights violations; and remedies for alleged violations.

**Learning Outcomes:**

On completion of the course the student:

* can describe the institutional human rights framework of the United Nations within the context of general international law;
* can describe the United Nations mechanisms for monitoring and protecting the rights of indigenous peoples;
* can explain the main principles of the major international human rights treaties of the United Nations, the European Convention on Human Rights and Fundamental Freedoms, the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples;
* Can explain and critique the definition(s) of indigenous peoples in international law;
* Can explain and critique the historic, philosophical and legal bases for indigenous rights;
* Can identify and apply norms of international human rights law and the rights of indigenous peoples;
* can explain the principle of non-discrimination and how it is applied to protect and promote human rights;
* can interpret state responsibility for human rights and the rights of indigenous peoples according to the tertiary framework of obligations to respect, to protect and to fulfil human rights.
* can independently find and interpret primary and secondary sources on human rights law and the rights of indigenous peoples;
* can able to apply critical and philosophical methods in analyzing human rights law and the rights of indigenous peoples.

**Assessment:**

Exam (5 ECTS) MA students only

Take-home paper (5 ECTS) BA and MA students

**Essential Reading:**

Students should purchase Rhona K. M. Smith, [*Textbook on International Human Rights*](https://global.oup.com/ukhe/product/textbook-on-international-human-rights-9780198746218?cc=gb&lang=en&), 7th ed., 2016. Students may also use older editions but please check with colleagues to ensure you have the correct page numbers. (The chapter numbers are the same as the later edition.)

Students should study carefully the documents listed for each class *prior to each session*, in particular, the [core UN human rights treaties](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx), the [Indigenous and Tribal Peoples Convention](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169), 1989 (No. 169) of the International Labour Organisation and the [UN Declaration on the Rights of Indigenous Peoples](http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx), 2007.

Students should also be familiar with the home page of the [office of the high commissioner for human rights](http://ohchr.org/EN/Pages/Home.aspx). All the treaties, treaty body reports, communications, general comments and supporting material are on this site.

The European Court of Human Rights also possesses a [case database.](http://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=#n14597620384884950241259_pointer)

You are expected to know how to use these databases and should definitely, by the end of the course, know how to locate the main human rights documents from the UN and the ECHR.

Further materials will be distributed to the students as per the detailed syllabus below.

*You are strongly recommended to undertake your own research and find your own materials in preparation for the exam.*

**Course Dates and Topics:**

**Each class is 4 hours and runs from 0815-1200**

8th October: Introduction, Origins and Basic Principles of Human Rights Law

9th October: Theories of and justifications for indigenous rights

11th October: The Core UN Human Rights Treaties

12th October: The Core UN Human Rights Treaties (cont.)

15th October: The European Convention on Human Rights

5th November: Indigenous rights in context

6th November: The principle of non-discrimination (with Mandana Zarrehparvar)

8th November: State responsibility and remedies in human rights law

9th November: Treaty Monitoring and Enforcement

**CLASS TOPICS AND READINGS, ETC.**

**8th October: Introduction, Origins and Basic Principles of Human Rights Law**

* Pre – WWII
* UN Charter
* UDHR
* U.N. Charter bodies:
Human Rights Council
General Assembly
Security Council
* Customary International Law

**Essential Reading:**

1. Smith, Chapter 2
2. Browse: [www.ohchr.org](http://www.ohchr.org)

**Further Reading:**

1. Smith, Ch. 1, 3 & 5.

**9th October: Theories of and justifications for indigenous rights**

* Identifying indigenous peoples and minorities
* Colonization and the limits of decolonization
* Introduction to indigenous rights in the UN system (including ILO)

**Essential Reading:**

1. [GA Resolution 1514](http://www.un.org/en/decolonization/declaration.shtml) (Independence of Colonial Peoples, 1960);
2. [GA Resolution 1541](http://www.worldlii.org/int/other/UNGARsn/1960/59.pdf) (Principles which should guide states on non-self-governing territories, art. 73, 1960);
3. [A Circumpolar Inuit Declaration on Sovereignty in the Arctic, 2009](http://www.inuitcircumpolar.com/sovereignty-in-the-arctic.html), Inuit Circumpolar Council
4. [The Concept of Indigenous Peoples](http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc): Background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues
5. Paul Patton, “Philosophical Justifications for Indigenous Rights” in *Handbook of Indigenous Peoples’ Rights,* Corinne Lennox and Damien Short, eds. (Routledge, 2017) (distributed by the instructor).
6. Isabelle Schulte-Tenckhoff, “Treaties, Peoplehood, and self-determination: understanding the language of indigenous rights” in *Indigenous Rights in the Age of the UN Declaration,* Elvira Pulitano, ed. (Cambridge UP, 2014) (distributed by the instructor).
7. Overview of Indigenous rights in the ILO available [here](http://www.ilo.org/indigenous/lang--en/index.htm):
8. Overview of indigenous peoples’ rights at the UN available [here](http://www.ohchr.org/EN/Issues/IPeoples/Pages/IndigenousPeoplesIndex.aspx):

**Further Reading:**

1. Dunbar-Ortiz, et al, [*Indigenous Peoples’ Rights in International Law: Emergence and Application: A book in honor of Asbjørn Eide at eighty*](http://www.iwgia.org/iwgia_files_publications_files/0709_INDIGENOUS_PEOPLES_RIGHTS_2.pdf)*,* 2015

**11th-12th October: The Core UN Human Rights Treaties**

* The international Bill of Rights
* Distinguishing “generations” of rights
* Criticisms of the “generations” approach
* Hierarchy of human rights norms
* Treaty interpretation
* ICCPR
* ICESCR
* CAT and customary law against torture
* Why special treaties for particular groups?
* The right to self-determination
* Reservations

**Essential Reading:**

1. Smith, Chapters 4; 11-15, 19-20, and 22
2. ICCPR
3. ICESCR
4. CERD
5. CEDAW
6. CAT
7. [CESCR General Comment No. 3 (1990)](http://hrlibrary.umn.edu/gencomm/epcomm3.htm)
8. [Human Rights Committee General Comment 12 (1984).](http://hrlibrary.umn.edu/gencomm/hrcom12.htm)

**Further Reading:**

1. Smith, Ch. 16-18, 21.
2. CMW
3. CRC
4. CRC-OP-AC
5. CRC-OP-SC
6. CRPD
7. [CESCR General Comment No. 20](http://hrlibrary.umn.edu/gencomm/escgencom20.html) (2009)
8. *East Timor (Portugal v Australia)* [1995] ICJ Rep 90.
9. Johnstone: *East Timor* case comment (distributed by the instructor)

**15th October: The European Convention on Human Rights**

* [The European Convention on Human Rights](http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=8&DF=05/10/2015&CL=ENG)
* Smith, Chapter 7

**5th November: Indigenous rights in context**

* ILO Convention 169
* UNDRIP 2007
* The American Declaration on the Rights of Indigenous Peoples 2016
* Monitoring and Implementation of Indigenous Rights
* ICCPR Article 27 and jurisprudence
* Jurisprudence from the Regional Human Rights Courts

**Essential Reading:**

1. [ILO Convention No. 169](http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm) 1989
2. [UN Declaration on the Rights of Indigenous Peoples](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) 2007
3. [American Declaration on the Rights of Indigenous Peoples](http://www.iitc.org/program-areas/treaties-standard-setting/the-oas-american-declaration-on-the-rights-of-indigenous-peoples/) 2016
4. [Committee on the Elimination of Racial Discrimination, General Recommendation XXIII](http://hrlibrary.umn.edu/gencomm/genrexxiii.htm)
5. [Committee on Economic, Social and Cultural Rights, General Comment No. 21.](http://hrlibrary.umn.edu/gencomm/escgencom21.html)
6. [Petition to the Inter American Commission on Human Rights](http://www.inuitcircumpolar.com/inuit-petition-inter-american-commission-on-human-rights-to-oppose-climate-change-caused-by-the-united-states-of-america.html) seeking relief from violations resulting from global warming caused by acts and omissions of the United States, submitted by Sheila Watt-Cloutier, with the support of the Inuit Circumpolar Conference, on behalf of all Inuit of the Arctic regions of the United States and Canada, Petition No. P-1413-05, 7 December 2005.
7. *Länsman, Jouni et al v Finland*, Human Rights Committee, Communication No. 1023/2001 (17 March 2005) CCPR/C/83/D/1023/2001.
8. *Mahuika et al v New Zealand*, Human Rights Committee Communication No. 547/1993 (15 November 2000) CCPR/C/70/D/547/1933.
9. *Poma Poma v Peru*, Human Rights Committee, Communication No. 1457/2006 (27 March 2009) CCPR/C/95/D/1457/2006.
10. *Saramaka People v Suriname*, Case of the (Preliminary Objections, Merits, Reparation and Costs) Petition 12338, Inter-American Court of Human Rights Series C No 172 (28 November 2007).
11. Rachael Lorna Johnstone, Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility, Ch 5 (distributed by instructor).
12. *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,* Communication 276/2003 (25 November 2009) AHRLR 75.

**6th November: The principle of non-discrimination**

* Non-discrimination or equality?
* The UN non-discrimination treaties
* Discrimination based on “other status”
* Avoiding discrimination in practice
* Objective and reasonable justifications
* Discrimination and protection of Indigenous Peoples and Minorities
* Linguistic minorities

**Essential Reading:**

1. Smith, Chapter 12
2. Icelandic Human Rights Centre, [*The Right to Equality and Non-Discrimination*](http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination)
3. *Sandra Lovelace v. Canada,* Human Rights Committee, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

**8th November: State responsibility and remedies in human rights law**

* State responsibility and state actors in general international law
* The tertiary scheme of state responsibility in human rights law Positive and negative obligations
* State responsibility for private violations
* Obligations of Conduct & Result
* Justiciability of “positive” rights

**Essential Reading:**

1. Rachael Lorna Johnstone: “State Responsibility: A Concerto for Court, Council and Committee,” 37(1) *Denver Journal of International Law and Policy* 63-117 [2008]. (Read Part IV) (distributed by instructor)
2. [HRC General Comment No. 31](https://www1.umn.edu/humanrts/gencomm/hrcom31.html) (2004)

**Further Reading:**

1. Rachael Lorna Johnstone, “Feminist Influences on the United Nations Human Rights Treaty Bodies,”28(1) *Human Rights Quarterly*, 148-185 [2006] (distributed by the instructor)
2. Rachael Lorna Johnstone, “When Private and Public Meet: Three CEDAW Committee Views on Intra-Familial Violence” in *Gender Issues and International Legal Standards: Contemporary Perspectives,* Proceedings of Selected Topics in Public International Law Course 2009, University of Catania,Adriana Di Stefano, ed., 47-68 [2010] (distributed by the instructor)
3. [*Questions Relating to the Obligation to Prosecute or Extradite*](http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=bs&case=144&k=5e&p3=0) *(Belgium v Senegal) (Merits)* July 20, 2012.
4. [Case of the "Street Children " *(Villagran-Morales et al.) v. Guatemala*](http://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf), Inter-American Court of Human Rights, Judgment of November 19, 1999 (moodle)

**9th November: Treaty Monitoring and Enforcement**

* H.R. Committees
* Functions
* Processes
* Problems
* Reform

**Essential Reading:**

1. Smith, Chapters 10 and 23.
2. ICCPR OP1
3. OP-ICESCR
4. [UNGA Status of the human rights treaty body system, Report of the Secretary-General, 2016](https://www.ohchr.org/Documents/HRBodies/TB/TBS/A-71-118_en.pdf)
5. Rachael Lorna Johnstone: “Streamlining the Constructive Dialogue: Efficiency from States’ Perspectives” in New Challenges for the UN Human Rights Machinery, M Cherif Bassiouni & Willam A Schabas, eds., Intersentia, 59-93 [2011] (distributed by the instructor)