

Lehrveranstaltungs-konzept

1. Titel der Lehrveranstaltung inkl. Name des/der LV-Leiter*in,
WiSe und/oder SoSe geplant:

INTERNATIONAL HUMAN RIGHTS LAW

Univ.-Prof. Dr. Christina Binder, E.MA & Univ.-Prof. Dr. Ursula Kriebaum

2. Ziele, Inhalte und Methode der Lehrveranstaltung:

This class provides students with an overview of the origin, development and current relevance of the international human rights regime. Its major focus is on the Council of Europe and the system of the United Nations. Likewise, topics currently of major importance for the international human rights regime are discussed, including measures against impunity for serious human rights violations, the consequences of terrorism and the fight against terrorism for human rights and the rights of women. The individual session (1,5 full hours) are structured around questions and case studies.

3. Gliederung der Einheiten:
(bitte hier zeitlich gliedern, also Inhalt pro Lehreinheit)

Syllabus

I. INTRODUCTION - WHAT ARE HUMAN RIGHTS?

1 OUTLINE

1. What are human rights?
2. History of international human rights protection
3. Universalism and regionalism
4. General overview of the human rights protection system

2 READINGS

M. Nowak, *Introduction to the International Human Rights Regime*, 2003, Chapter 1, 2.1.- 2.7., 3.1.1., 3.1.2.

M. Nowak, 'Human Rights from a Legal Perspective', in: M. Nowak (ed.) *Vienna Human Rights Manual*, 2012, 21-24.

3 DISCUSSION

- What are human rights?
- How and why did human rights enter the international political process?
- What is the status of the individual in international human rights law?
- Are governments legally bound to observe human rights?
- Are human rights standards universal?
- What validity is there to the argument that human rights are a western imposition?
- Do international human rights instruments apply to non-citizens?
- What is the difference between human rights law and public international law in general terms?
- Explain the difference between a state's obligations to respect, ensure and protect human rights
- Relationship: domestic law – international human rights law?

II. STANDARDS AND MECHANISMS OF HUMAN RIGHTS PROTECTION AT UNIVERSAL LEVEL

1 OUTLINE

1. Overview
2. The United Nations system for human rights protection
 - a. Standards
 - b. Mechanisms

2 READINGS

- O. De Schutter, *International Human Rights Law*, 2010, 855-895, 947-955.
- M. Nowak, *Introduction to the International Human Rights Regime*, 2003, Chapters 2.8., 3.2.1., 3.2.2., 3.2.4, 3.2.5, 3.2.7. 3.3., 4.1-4.3.

3 DISCUSSION

- What instruments exist at universal level for the protection international human rights?
- Which UN organs and machinery are in place to promote and protect human rights?
- Has the establishment of the Human Rights Council improved human rights protection compared to the former Human Rights Commission? Why or why not?
- What treaty-based procedures exist to safeguard human rights?
- What are the disadvantages of state reporting compared to the individual complaints procedure?
- Is the inter-state complaints procedure frequently used? – Why or why not?

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS WITH SPECIAL FOCUS ON THE RIGHT TO HOUSING

1 OUTLINE

1. Introduction to the international protection of ESC rights
2. The Covenant on Economic, Social and Cultural Rights (CESCR)
3. State obligations and problems linked to the effective protection of ESC rights
4. Justiciability of ESC rights?
5. The Optional Protocol to the CESCR & individual communications
6. The right to housing

2 READINGS

- Text of the Covenant on Economic, Social and Cultural Rights & the Optional Protocol to the CESCR.
- M. Nowak, Introduction to the International Human Rights Regime, 2003, Chapter 4.3.
- C. Binder, *The Committee on Economic, Social and Cultural Rights – The Power of Subjective Rights*, *Journal of Human Rights Practice* 2022, pp 75-83.
- CESCR, General Comment 3/1990.
- Fact Sheet No. 21, The Human Right to Adequate Housing
 - <http://www.ohchr.org/english/about/publications/docs/fs21.htm>
- ECHR, *Öneryildiz v Turkey*, No. 48939/99, 18.6.2002, (Hudoc version) pp. 34-41.
 - <http://www.hudoc.echr.coe.int/hudoc>

3 DISCUSSION

- What is meant by ‘positive’ and ‘negative’ rights?
- What is the traditional difference between ‘civil and political’ rights and ‘social and economic’ rights in terms of enforcement?
- Is the ESCR Committee overreacting when it claims that we tolerate breaches of economic, social and cultural rights in ways that would provoke horror and outrage if they occurred with respect to civil and political rights?
- Is the concept of resource constraints unique to the CESCR? Does this notion also appear in the CCPR and CEDAW? Can you identify rights within those instruments whose full realization might be limited by resource constraints?
- What might be meant by ‘all appropriate means’ in Art 2 CESCR? – Consider examples.
- What are the challenges involved in monitoring of economic, social and cultural rights?
- Identify provisions in the CESCR that are capable of immediate implementation.
- Which international human rights instruments address to the right to adequate housing?

IV. THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS PROTECTION

1 OUTLINE

1. Overview
2. The Inter-American System of Human Rights Protection

2 READINGS

- C. Binder, ‘The Inter-American Human Rights System’, in: M. Nowak (ed.) *Vienna Human Rights Manual*, 241-246.
- C. Binder, *The Prohibition of Amnesties by the Inter-American Court of Human Rights*, *German Law Journal*, 2011, 1203-1230.
- E. Ferrer Mac-Gregor, *American Convention on Human Rights*, in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 102-110.
- F. Piovesan, J Cortez, *Inter-American Commission on Human Rights*, in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 77-.
- E. Ferrer Mac-Gregor, *Inter-American Court of Human Rights*, in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 97-104.

3 DISCUSSION

- What instruments exist at the regional level for the protection of international human rights?
- What particular challenges do the Inter-American Human Rights monitoring institutions face in the Americas?
- What are the specific features of the Inter-American Human Rights system?
- What is innovative about the human rights jurisprudence of the Inter-American Court?

V. THE EUROPEAN SYSTEM OF HUMAN RIGHTS PROTECTION

1 OUTLINE

1. Overview: European System of Human Rights Protection
2. Institutional Setting of the European Court of Human Rights (ECtHR)
3. Procedure before the ECtHR
4. Jurisprudence of the ECtHR - overview
5. The European Court of Human Rights: a victim of its own success?

2 READINGS

- Text of the European Convention on Human Rights as amended by Protocol No 16.
- M. Nowak, *Introduction to the International Human Rights Regime*, 2003, Chapter 5.
- C. Binder, 'The European System for the Protection of Human Rights: Balance and Perspectives', in: A. von Bogdandy, F. Piovesan, M. Morales Antoniazzi (eds.), *Estado de Derecho, Democracia y Derechos Humanos*, 2011, 371-393.
- C. Binder, *The European Court of Human Rights*, in: C. Binder et al, *Elgar Encyclopedia of Human Rights*, 2022, 120-130.
- R. Mackenzie, C. Romano, Y. Shany and P. Sands, 'The European Court of Human Rights', in *The Manual on International Courts and Tribunals*, 2nd ed., 2010, 334-359.

3 DISCUSSION

- What instruments exist for the protection of human rights in Europe?
- The European Social Charter has been referred to as the "little sister" of the European Convention on Human Rights. In your opinion, what are the reasons for this characterization?
- What are the requirements for a complaint to be deemed admissible by the European Court of Human Rights (ECtHR)?
- Who qualifies as an indirect victim under the ECtHR system?
- What are the key features of the European Convention on Human Rights, and how do they differ from other regional human rights systems?
- How does the European Court of Human Rights (ECtHR) function, and what makes its monitoring mechanism unique?
- How has the principle of subsidiarity shaped the relationship between the ECtHR and national courts?
- What challenges does the ECtHR face in ensuring compliance with its judgments?
- How does the ECHR address controversial issues such as freedom of expression, or freedom of religion?
- How has the ECHR evolved to address emerging issues such as climate change, digital privacy, or artificial intelligence?

VI. SELECTED PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS – PRIVATE AND FAMILY LIFE, RELIGION, FREEDOM OF EXPRESSION

1 OUTLINE

1. Overview of the Jurisprudence of the European Court of Human Rights
2. Jurisprudence on Specific Rights (e.g., Freedom of Expression, Freedom of Religion)
3. Case Studies: *Leyla Şahin v. Turkey*, *Jersild v. Denmark*

2 READINGS

- D. Gomien, Short guide to the European Convention on Human Rights, Third Edition, 2005, 79 – 115, available at: <http://www.humanrights.coe.int/aware/GB/publi/materials/1062.pdf>.
- *Leyla Sahin v. Turkey*, (Hudoc version) pp.14-27
- *Jersild v. Denmark*, (Hudoc version) pp. 4-8 and 14-23.
- C. Rozakis, 'Freedom of expression and the protection of private life in the case-law of the European Court of Human Rights: A field of tension', in A. Constantinides and N. Zaikos (eds.), *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, 2009, 293-302.
- Fact Sheet: Hate speech (November 2023)
https://www.echr.coe.int/documents/d/echr/FS_Hate_speech_ENG
- Fact Sheet: Religious symbols and clothing (September 2024):
https://www.echr.coe.int/documents/d/echr/FS_Religious_Symbols_ENG

3 ROLE PLAY

- Refer to the role play instructions on moodle

4 DISCUSSION

- What principles guide the interpretation of the European Convention on Human Rights (ECHR) by the ECtHR?
- How does the doctrine of the margin of appreciation influence the Court's decisions?
- What role does proportionality play in balancing competing rights under the ECHR?
- How has the ECtHR evolved its approach to protecting private and family life, religion, and freedom of expression over time?
- How does the ECtHR approach cases involving religious symbols in public spaces?
- In what ways does the Court address conflicts between religious freedom and gender equality?
- To what extent can states restrict religious practices in the interest of public safety or secularism?
- How does the Court distinguish between beliefs that are protected under Article 9 and actions that may be regulated by the state?
- What criteria does the ECtHR use to determine whether a restriction on freedom of expression is "necessary in a democratic society"?
- How does the Court balance freedom of expression with other competing rights, such as the right to privacy or protection against hate speech?
- To what extent does the ECtHR protect journalists and whistleblowers under Article 10?
- How does the Court handle cases involving social media and online expression in the context of freedom of expression?

VII. IMPUNITY FOR MAJOR HUMAN RIGHTS VIOLATIONS? – INTERNATIONAL CRIMINAL LAW

1 OUTLINE

1. The fight against impunity
2. The International Criminal Tribunals for Ex-Yugoslavia (ICTY) and Rwanda (ICTR)
3. The establishment of an International Criminal Court (ICC)
4. Hybrid International Criminal Tribunals (Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia, Special Tribunal for Lebanon).

2 READINGS

- M. Nowak, Introduction into the International Human Rights Regime, 2003, Chapter 15.
- R. Mackenzie, C. Romano, Y. Shany and P. Sands, The Manual on International Courts and Tribunals, 2010, 157-247.

3 DISCUSSION

- Why do we need international criminal adjudication?
- How does the principle of universal jurisdiction contribute to the fight against impunity?
- What are the main challenges in holding individuals accountable for major human rights violations at the international level?
- What were the key achievements of the ICTY and ICTR in prosecuting war crimes and crimes against humanity?
- How did these tribunals contribute to the development of international criminal law?
- What limitations did the ICTY and ICTR face in achieving justice for victims?
- How have the experiences of the ICTY and ICTR influenced the creation of other international or hybrid tribunals?
- Why was the establishment of the ICC considered a major step forward in the fight against impunity?
- What are the ICC's primary functions, and how does it differ from ad hoc tribunals like the ICTY and ICTR?
- How does the principle of complementarity affect the ICC's ability to prosecute cases?
- In war situations, it is often argued that the criminal prosecution of high level leaders at international level would prevent peace. War leaders would be reluctant to consent to peace because of the risk of criminal prosecution afterwards: "justice vs. peace". Discuss this assumption.
- What are the main challenges faced by the ICC?
- What are the specific characteristics of hybrid international criminal tribunals? What are their (dis)advantages as compared to international criminal adjudication at the international level?

VIII. THE AFRICAN SYSTEM OF HUMAN RIGHTS PROTECTION

1 OUTLINE

1. Overview
2. The African System of Human Rights Protection

2 READINGS

- J. Lober, 'The African System of Human Rights Protection', in: M. Nowak (ed.) *Vienna Human Rights Manual*, 247-257.
- A. Uwazuruike, African Charter on Human and Peoples' Rights, in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 58-67.
- F Viljoen, African Commission on Human and Peoples' Rights, in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 72-81.
- M Wiebusch, African Court on Human and Peoples' Rights, in in C. Binder et al (eds.) *Elgar Encyclopedia of Human Rights*, 2022, 81-87.
- O. De Schutter, *International Human Rights Law*, 2010, 1033-1040.

3 DISCUSSION

- What are the specific characteristics of the Banjul-Charter?
- What instruments for international human rights protection exist at regional level?
- What are the mechanisms to monitor states' compliance with their human rights obligations provided for in the three regional human rights systems?
- What are similarities among the regional human rights protection systems?
- What are differences between and among the regional human rights protection systems?

IX. WOMEN'S RIGHTS ARE HUMAN RIGHTS – ALWAYS? EVERYWHERE?

1 OUTLINE

1. What do you know about the factual situation of women? – Gender Quiz
2. The CEDAW system of supervision: state reporting
3. The Optional Protocol to the CEDAW: individual complaints and inquiry procedure, jurisprudence of the CEDAW Committee
4. Traditional practices affecting the health of women and girls
5. Violence against women, international protection

2 READINGS

- S. Marks and A. Clapham, 'Women', in *Human Rights Lexicon*, 2005, 411-428.
- K. Tomaševski, 'Women's Rights', in J. Symonides (ed.), *Human rights: Concept and Standards*, 2000, 231-258.
- H. Charlesworth, 'Inside/Outside: Women and the International Human Rights System', in A. Constantinides and N. Zaikos (eds.), *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, 2009, 381-398.

3 DISCUSSION

- Why, if they do, do women's rights require special protection?
- What are some of the UN structures established in connection with women's rights?
- Why is the reservation of the Republic of Maldives to the CEDAW problematic?
 - "The Government of the Republic of Maldives will comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic Sharia upon which the laws and traditions of the Maldives is founded.

Furthermore, the Republic of Maldives does not see itself bound by any provisions of the Convention which obliges to change its Constitution and laws in any manner.”

- What are the main challenges of an effective protection of women’s rights?
- What are some of the typical patterns of violence against women related to traditions?

X. PROTECTION DURING MIGRATION, FORCED DISPLACEMENT AND FLIGHT

1 OUTLINE

1. The problem
2. Migrants
3. Refugees
4. Definition
 - 4.1. Asylum
 - 4.2. Non-refoulement
 - 4.3. Status rights

2 READINGS

- W. Kälin, J. Künzli, The Law of International human Rights Protection, *Introduction into the International Human Rights Regime*, 2009, Chapter 17.
- A-N Reyhani, Refugees, in C. Binder et al (eds.) Elgar Encyclopedia of Human Rights, 2022, 121-128.
- M Gibney, Asylum, Right to, in C. Binder et al (eds.) Elgar Encyclopedia of Human Rights, 2022, 186-192.
- C. Bauloz, G. Ruiz, Refugee Status and Subsidiary Protection: Towards a Uniform Content of International Protection?, in: V. Chetail, P. De Bruycker and F. Maiani (eds.), *Reforming the Common European Asylum System: The New European Refugee Law*, 2016, 240-268.

3 DISCUSSION

- What makes a refugee a refugee?
- What’s the difference between political refugees and economic refugees?
- What’s the difference between a refugee, a migrant and an internally displaced person?
- What would be the problem if refugees were to be forced back to the country of origin?

4. Art der Leistungskontrolle und erlaubte Hilfsmittel:

To pass this course students have to take a **final written exam**, which will be held on **12 June 2025**.

Additionally, students have to complete **online tests** after each unit.

Active course participation is encouraged and can improve the final grade.

5. Mindestanforderungen und Beurteilungsmaßstab:

The grading system for the final written exam and the Short Paper will be as follows:

100,00 %	85,00 %	1
84,99 %	70,00 %	2
69,99 %	60,00 %	3
59,99 %	50,00 %	4
49,99 %	0,00 %	5

The weighting of the different contributions will be as follows:

- Final written exam 65%
- Online tests 25%
- Active course participation 10%

6. Literatur:

Siehe Syllabus