

LAW4155 Notes

Resources:

- On Moodle:
 - Class schedule
 - Readings and materials:
 - Compulsory readings are organised per topic – most from Bantekas & Oette (2020) *International Human Rights Law and Practice*, 3rd edition – available online in Monash Library
 - Prescribed readings include international instruments/documents as indicated
 - Ppts for seminars
 - International instruments and documents, including Charter and Treaty body materials (compulsory and optional), are accessible via the OHCHR

Key difference between ICESCR and ICCPR:

The ICESCR (International Covenant on Economic, Social and Cultural Rights) and ICCPR (International Covenant on Civil and Political Rights) are core UN human rights treaties, forming part of the International Bill of Rights, with ICESCR focusing on rights like work, health, and education (progressive realization) and ICCPR on liberties such as life, freedom from torture, and expression (immediate obligations), both monitored by treaty bodies and defining state duties for human well-being.

ICESCR: Economic, Social & Cultural Rights (Rights to provision) h

- **Right to Work:** Fair wages, safe conditions, equal pay, rest, leisure.
- **Social Security:** Including insurance.
- **Family & Child Protection:** Support for families and children.
- **Adequate Standard of Living:** Food, clothing, housing, and continuous improvement.
- **Health:** Highest attainable standard.
- **Education:** Free primary education, accessible secondary/higher education.
- **Cultural Life:** Participation and benefits.

ICCPR: Civil & Political Rights (Rights to liberty)

- **Right to Life:** Protection from arbitrary deprivation.
- **Freedom from Torture/Slavery:** Absolute prohibitions.
- **Liberty & Security:** Protection from arbitrary arrest/detention.
- **Fair Trial:** Due process, equality before law.
- **Freedom of Movement:** Within and from a country.
- **Freedom of Thought, Conscience & Religion.**
- **Freedom of Expression, Assembly & Association.**
- **Political Participation:** Right to vote and be elected.

Key Difference in Implementation

- **ICESCR:** States commit to **progressive realization**, meaning they take steps over time with available resources.
- **ICCPR:** States have immediate obligations to respect and ensure these fundamental rights.

(1) Theories, philosophical foundations and the historical development of international human rights

Readings:

- **Maya Hertig Randall, 'The History of International Human Rights Law' in Robert Kolb and Gloria Gaggioli (eds), *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar, 2013)**
- International human rights are best understood as having a **dual character**: they are both legal and moral. As legal rights, they are protections recognised and enforced through law, and in the case of international human rights, through the international legal system. As moral rights, they are understood as basic entitlements that belong to every person simply because they are human. This moral dimension is grounded in the ideas of human dignity, equality, autonomy, and shared humanity. The Universal Declaration of Human Rights (UDHR) reflects this dual nature by presenting human rights as legally aspirational norms rooted in moral conviction.
- Human rights are commonly grouped into three “generations.” The first generation consists of civil and political rights, such as the right to life, liberty, equality before the law, and political participation. These rights historically emerged from 17th and 18th century liberal thought and are often described as negative rights because they protect individuals from state interference. The second generation includes economic, social, and cultural rights, such as the rights to work, education, and social security. These rights developed in the 19th century alongside socialism and industrialisation and typically require positive action by the state. The third generation, sometimes called solidarity or collective rights, includes rights such as self-determination, development, peace, and a healthy environment. These emerged mainly in the context of decolonisation and global inequality and are the least firmly established in binding international law. Importantly, this classification reflects historical development rather than a hierarchy of importance.
- International human rights law represents a major departure from traditional Westphalian international law. Classical international law viewed states as sovereign equals and treated individuals as objects rather than subjects of the legal order. Human rights challenge this by recognising individuals as direct beneficiaries of international law and by limiting state sovereignty. States can no longer claim that how they treat their own populations is purely an internal matter, nor can they rely on reciprocity between states as the sole foundation of international obligations.
- The moral foundations of human rights are equally significant. Human rights presuppose a minimum level of empathy and identification with others, based on the idea that all humans share certain fundamental characteristics, particularly reason and conscience. This idea allows people to be seen not only as members of particular groups—such as nations, religions, or cultures—but as members of a single human family. Central to this vision is the concept of human dignity, understood as the inherent and equal worth of every person. Unlike honour or status, dignity is not dependent on behaviour, social rank, or recognition by others; it cannot be earned or lost.
- At the same time, the concept of human dignity remains open and contested. It is often easier to identify violations of dignity—such as genocide, torture, or slavery—than to define precisely what dignity requires in all circumstances. For this reason, human rights are deliberately left open to interpretation and justification from different philosophical, cultural, and religious traditions. As Randall emphasises, human rights are an “incomplete idea” that continues to evolve in response to historical experiences of suffering and injustice.
- The development of human rights at the national level did not begin with the Enlightenment, although Enlightenment thought was crucial to their modern form. Earlier ethical and religious traditions across many cultures contained values that later supported human rights, such as concern for life, charity, tolerance, and justice. Ancient legal codes and religious teachings were framed mainly as duties rather than rights, but they provided the moral groundwork on which later rights-based claims could grow. Classical Greek and Roman philosophy contributed ideas of natural law, reason, and universality, while Christian thought introduced both egalitarian notions of shared human worth and hierarchical ideas that justified exclusion. Over time, humanist thinkers, the Reformation, and late medieval scholastics increasingly emphasised freedom, equality, and the intrinsic value of all humans.
- The modern human rights idea emerged during the political and religious conflicts of the 17th and 18th centuries, particularly in England, France, and North America. Thinkers such as John Locke argued that individuals possess natural rights to life, liberty, and property that exist prior to the state. Government was seen as legitimate only insofar as it protected these rights, and citizens retained a right to resist tyranny. This marked a shift from duty-based natural law to rights-based political theory and placed limits on state power. Later philosophers such as Rousseau and Kant developed ideas of autonomy and dignity, grounding human rights in human rationality and moral self-legislation.
- These philosophical ideas were translated into political reality through revolutionary declarations. The American and French Revolutions proclaimed natural and inalienable rights and eventually incorporated them into constitutional law. However, the 19th century brought significant critique and contestation. Conservatives

rejected abstract natural rights, positivists denied the existence of rights outside law, and Marxists criticised human rights as serving bourgeois interests. At the same time, the scope of human rights expanded through struggles against slavery, for women's rights, and for universal suffrage. Industrialisation also exposed the limits of purely negative liberty, leading to the development of social and economic rights aimed at addressing poverty and inequality.

- Despite these developments, human rights remained largely a domestic matter until the 20th century. Several international legal developments nevertheless prepared the ground for international human rights law. These included efforts to abolish slavery, the practice of diplomatic protection, the development of international humanitarian law, and minority and labour protection systems under the League of Nations. These regimes gradually shifted international law toward concern for human well-being and imposed limits on absolute state sovereignty.
- A decisive turning point came after World War II. The atrocities committed during the war, particularly the Holocaust, exposed the dangers of unchecked state power and undermined faith in legal positivism. The Nuremberg and Tokyo Trials established individual criminal responsibility under international law and rejected the defence that crimes were lawful under domestic law. This weakened the sovereignty shield and reinforced the idea that individuals possess rights by virtue of their humanity.
- In this context, international human rights were formally born. The United Nations Charter made the promotion of human rights one of the UN's core purposes, and in 1948 the General Assembly adopted the Universal Declaration of Human Rights. Although not legally binding, the UDHR articulated a comprehensive vision of civil, political, economic, social, and cultural rights and became a global moral reference point. During the Cold War, ideological divisions led to the adoption of two separate treaties: the ICCPR and the ICESCR. This division reflected competing views about the nature and priority of different rights.
- Since the end of the Cold War, efforts have been made to overcome these divisions. The 1993 Vienna Declaration affirmed that all human rights are universal, indivisible, interdependent, and interrelated. It also acknowledged cultural diversity while maintaining the universality of rights. Institutional reforms, such as the creation of the UN High Commissioner for Human Rights and the Human Rights Council, aimed to strengthen global human rights protection, though challenges of politicisation remain.
- In conclusion, human rights are historically shaped, morally grounded, and legally evolving. They emerged from long struggles against injustice and continue to adapt to new threats such as terrorism, globalisation, environmental degradation, and inequality. While the idea of human dignity has proven powerful and enduring, its realisation requires constant vigilance, as history repeatedly shows how easily certain groups are excluded from the promise of human rights.

Chapter 1, Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (3rd edition, Cambridge University Press, 2020). The Questions in B & O at page 29 and 36 are great provocations to get you thinking about the development of this unusual normative order.

- **Introduction: What Do We Mean by Human Rights?**
 - The term *human rights* is often used as if its meaning is obvious and uncontested. In everyday discourse, human rights are commonly treated as inherently good and morally unquestionable, sometimes even described as a modern "religion." However, closer examination shows that the term is used in different ways by lawyers, philosophers, politicians, activists, and the general public, often with very different meanings and purposes. Because of this, it is misleading to assume that human rights are self-explanatory. To understand what human rights actually are, it is necessary to trace their historical development and examine how they are used in different contexts.
 - Human rights should not be equated solely with rights recognised in international treaties. While international human rights law provides a legal framework that is often sufficient for addressing specific violations, limiting human rights to positive law reflects a purely positivist approach. This raises a fundamental question: can claims to new human rights, such as same-sex marriage, be justified even when they are not yet recognised in law? Answering this question requires engagement with the moral, political, and philosophical foundations of human rights, not just their legal expression.
 - Human rights therefore serve a dual function. They are value-based claims grounded in principles such as dignity, equality, liberty, and solidarity, and they are also legal rights that generate entitlements and obligations. Although philosophical theories of human rights and international human rights law are closely connected, they do not always align neatly. Some morally compelling claims may never become legally recognised rights, while some legal rights may be defined too narrowly or too broadly when compared to underlying moral theories. Because of this, human rights are inherently contested, particularly regarding their universality, their cultural legitimacy, and their political use or misuse. Rather than weakening human

rights, engaging critically with these debates is essential for defending them convincingly when their legitimacy is challenged.

- **The Development of Human Rights and International Human Rights Law**

- The Universal Declaration of Human Rights (UDHR) is the foundational document of international human rights law. It affirms that human beings possess inherent rights simply by virtue of their humanity, grounded in dignity, equality, liberty, and solidarity. While the modern concept of human rights is relatively recent, it draws on much older traditions concerned with justice, ethics, and the exercise of power. Human rights address relationships between individuals and those who hold power over them, the treatment of minorities and groups, participation in political life, access to justice, and the material conditions necessary for a dignified life.
 - International human rights law emerged relatively late within the broader system of international law. Classical international law, which developed in the seventeenth and eighteenth centuries, treated states as the sole subjects of international law and regarded sovereignty as absolute. How states treated individuals within their borders was considered an internal matter. This explains why international human rights law, when it emerged after World War II, drew heavily on ethical traditions, political philosophy, and national constitutional experiences rather than existing international legal doctrine.
 - Long before modern human rights law, many ancient cultures and religious traditions developed ethical frameworks concerned with justice, restraint, and the protection of life. Hindu, Buddhist, Jewish, Christian, Islamic, African, and other traditions emphasised moral duties, social harmony, and limits on power. These systems focused less on individual rights and more on obligations and virtuous conduct, but they nevertheless contributed important ideas that later informed human rights, such as non-violence, equality before God, religious tolerance, and fairness in governance.
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- **The American and French Declarations of Rights**

- The American Declaration of Independence (1776) and Bill of Rights (1791), as well as the French Declaration of the Rights of Man and of the Citizen (1789), marked a decisive shift toward rights-based political thinking. Drawing on natural law and liberal philosophy, these declarations articulated rights to liberty, life, security, property, and resistance to oppression. They strongly influenced the UDHR and modern human rights discourse.
 - However, these declarations also exposed enduring problems. They primarily protected civil and political rights, reflected bourgeois and male perspectives, and excluded large groups such as women, enslaved persons, and Indigenous peoples. The contradiction between proclaiming universal rights while practising slavery, colonialism, and gender exclusion highlights the limitations of early rights discourse. From the outset, human rights language faced strong criticism. Conservatives like Edmund Burke rejected abstract natural rights in favour of historically rooted communal traditions, while Jeremy Bentham dismissed natural rights as meaningless unless legally recognised. Marxist critiques argued that human rights served capitalist interests and masked structural inequality.
 - Despite these criticisms, the language of rights proved powerful. It inspired social movements, provided a vocabulary for resistance, and gradually expanded to include demands for equality, political participation, and social justice.
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- **Nineteenth-Century Struggles and Early International Developments**

- During the nineteenth century, human rights ideas were increasingly mobilised by social movements. Feminists demanded women's rights, abolitionists fought against slavery, and nationalist movements invoked self-determination to challenge colonial rule. These struggles expanded the moral scope of human rights, even though legal recognition often lagged behind.
 - At the international level, however, human rights remained largely absent. Some progress occurred through international humanitarian law, which sought to limit suffering in armed conflict, and diplomatic protection, which allowed states to intervene when their nationals were mistreated abroad. Yet these mechanisms did not recognise individuals as rights-holders under international law and were often used to protect imperial economic interests rather than human dignity.
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- **World War I, the League of Nations, and Human Rights**

- World War I shattered the existing international order and intensified demands for political rights, social justice, minority protection, and self-determination. The League of Nations, established after the war, did not explicitly recognise human rights but introduced systems for minority protection and labour standards.

Although these mechanisms were limited and unevenly enforced, they marked an important shift toward international oversight of how states treated certain populations.

- The mandate system, which governed former colonies of defeated powers, claimed to promote development and welfare but largely perpetuated colonial domination. While framed in humanitarian language, it delayed genuine self-determination and embedded power hierarchies that continue to shape international human rights debates today.

- **World War II, the Holocaust, and the Birth of the International Human Rights System**

- The unprecedented atrocities of World War II, particularly the Holocaust, fundamentally transformed international law. The systematic, bureaucratic destruction of entire populations exposed the dangers of absolute sovereignty and legal positivism divorced from moral constraints. In response, the international community undertook a comprehensive reordering of the global legal system.
- The United Nations was established in 1945 with the promotion of human rights as a core purpose. The UN Charter explicitly affirmed faith in human dignity, equality, and fundamental rights, linking human rights protection to international peace and stability. Parallel developments included the Nuremberg and Tokyo trials, which established individual criminal responsibility under international law, the Genocide Convention, the expansion of international humanitarian law, and the recognition of refugee rights.

- **The Universal Declaration of Human Rights**

- Adopted in 1948, the UDHR became the cornerstone of international human rights law. Although not legally binding, it articulated a comprehensive set of civil, political, economic, social, and cultural rights in accessible language, intended both as a moral statement and an educational tool. It affirmed that all human beings are born free and equal in dignity and rights and set a “common standard of achievement” for all peoples and nations.
- The UDHR was the product of extensive negotiation and compromise. While influenced by liberal traditions, it cannot be reduced to a purely Western document. Contributions from diverse states, the inclusion of social and economic rights, recognition of duties, and attention to gender equality reflect a broader and more complex process. Although criticised for ethnocentrism and lack of enforcement, the UDHR has had enormous normative impact. Many of its provisions are now recognised as customary international law, and it continues to serve as the foundational reference point for human rights advocacy worldwide.

- **Cold War, Decolonisation, and the Expansion of Human Rights Law**

- The Cold War profoundly shaped international human rights law. Ideological divisions between capitalist and socialist states delayed agreement on a unified treaty system, resulting in the adoption of two separate covenants in 1966: the ICCPR and the ICESCR. This division reflected competing views about the nature of rights and the role of the state.
- Decolonisation further transformed human rights discourse. Newly independent states emphasised sovereignty, development, and collective rights, leading to new treaties addressing racial discrimination, apartheid, and the right to development. Although colonial legacies continue to shape global inequalities, decolonisation added important dimensions to the understanding of human rights, particularly regarding collective identity and historical injustice.

- **Growth, Challenges, and Contemporary Critiques**

- Since the 1970s, international human rights law has expanded rapidly through new treaties, regional systems, monitoring bodies, and jurisprudence. This growth reflects increased awareness of discrimination against specific groups, including women, children, migrants, persons with disabilities, and Indigenous peoples. At the same time, the convergence of human rights law with international humanitarian law and international criminal law has strengthened accountability mechanisms, particularly in contexts of armed conflict and transitional justice.
- Despite these achievements, serious challenges remain. Globalisation, economic inequality, environmental harm, mass displacement, and the involvement of non-state actors complicate traditional state-centred human rights frameworks. Enforcement remains weak, and the system relies heavily on political will. The selective use of human rights language by powerful states, particularly in the context of counter-terrorism and military intervention, has raised concerns about human rights imperialism and exceptionalism.
- Human rights today remain a powerful but contested project. Their legitimacy depends not only on legal codification but also on critical engagement with their foundations, limitations, and political uses. Understanding this complexity is essential for defending human rights in an increasingly fragmented and unequal world.

- **Growth, Challenges, and Controversies in International Human Rights Law**

- International human rights law has expanded significantly since its formal emergence after World War II. What began as a largely aspirational project centred on the Universal Declaration of Human Rights has developed into a dense network of treaties, monitoring bodies, courts, and soft-law mechanisms at both global and regional levels. New treaties have been adopted to address discrimination against specific groups such as women, children, racial minorities, persons with disabilities, migrants, and Indigenous peoples. This expansion reflects growing recognition that formal equality alone is insufficient and that different groups experience vulnerability and oppression in distinct ways. The growth of international human rights law has therefore been both quantitative, in terms of the number of instruments and institutions, and qualitative, in terms of the depth and specificity of protection.
- Alongside treaty development, human rights law has increasingly interacted with other areas of international law, particularly international humanitarian law and international criminal law. This convergence has strengthened accountability for mass atrocities, especially through mechanisms such as international criminal tribunals and hybrid courts. Human rights norms now play a central role in transitional justice processes, truth commissions, and reparations programs following conflict or authoritarian rule. At the same time, non-judicial mechanisms such as treaty bodies, special rapporteurs, and the Universal Periodic Review have broadened the scope of scrutiny beyond traditional courts, even though their recommendations are not legally binding.
- Despite this impressive growth, international human rights law faces serious structural and practical challenges. One of the most persistent problems is enforcement. Unlike domestic legal systems, international human rights law lacks a central authority with coercive power. Compliance depends largely on political will, peer pressure, reputational concerns, and domestic incorporation. As a result, states often ratify treaties while continuing to violate their obligations in practice. Reporting procedures are frequently delayed, recommendations ignored, and sanctions rare. This gap between formal commitment and lived reality has fuelled scepticism about the effectiveness of the human rights system.
- Another major challenge concerns selectivity and politicisation. Powerful states have sometimes used human rights rhetoric selectively to criticise adversaries while overlooking abuses by allies or by themselves. This has been particularly visible in the context of counter-terrorism, military intervention, and migration control. Practices such as torture, indefinite detention, mass surveillance, and extraterritorial killings have been justified as exceptional responses to security threats, undermining the universality of human rights norms. Such double standards weaken the credibility of the international human rights project and make it easier for other states to dismiss criticism as politically motivated.
- Globalisation has also complicated the traditional state-centred model of human rights law. Economic power is increasingly exercised by multinational corporations, international financial institutions, and private actors that fall outside classic human rights accountability frameworks. While states remain the primary duty-bearers, their ability or willingness to regulate powerful non-state actors is often limited. This has raised difficult questions about corporate responsibility for human rights abuses, particularly in areas such as labour exploitation, environmental harm, and resource extraction. Although new soft-law instruments and due diligence frameworks have emerged, binding obligations on corporations remain limited.
- Cultural diversity and claims of cultural relativism represent another enduring controversy. Critics argue that international human rights law reflects Western liberal values and fails to respect non-Western traditions, religious norms, and social structures. This critique has been especially prominent in debates over gender equality, family law, sexuality, and religious freedom. Supporters of human rights respond that universality does not require uniformity and that human rights norms allow for contextual interpretation, provided that core principles of dignity and equality are respected. The tension between respecting cultural diversity and preventing abuse in the name of culture remains one of the most difficult issues in human rights law.
- These tensions are clearly illustrated in debates over practices such as female genital cutting or mutilation (FGM). From an international human rights perspective, FGM is widely recognised as a form of gender-based violence that violates rights to bodily integrity, health, non-discrimination, and freedom from cruel or degrading treatment. States therefore have positive obligations to prevent and eliminate the practice. However, the persistence of FGM highlights the limits of purely legal or punitive approaches. Criminalisation alone has often proven ineffective and, in some cases, counterproductive, driving the practice underground rather than eliminating it.
- Experience has shown that successful efforts to combat harmful practices such as FGM require community-based, participatory strategies rather than top-down condemnation. Programmes that engage local leaders, women, and communities, raise awareness, and provide alternative social practices have achieved more sustainable results. These initiatives demonstrate that universal human rights standards can be pursued

without dismissing local contexts, but they also reveal that human rights change is slow, fragile, and dependent on trust and dialogue. The lesson is that invoking universal norms is not enough; meaningful change requires long-term engagement and sensitivity to social realities.

- Overall, the growth of international human rights law has been remarkable, but its future remains uncertain. Authoritarianism, armed conflict, economic inequality, climate change, and mass displacement pose serious threats to the protection of human dignity. At the same time, the continued mobilisation of human rights language by activists, courts, and civil society shows that the idea of human rights remains powerful. Whether international human rights law can respond effectively to contemporary challenges will depend on its ability to balance universality with pluralism, law with politics, and moral aspiration with practical implementation.

Human Dignity:

Human dignity is the inherent worth and respect owed to every person simply because they are human, forming the moral basis for human rights, ethical treatment, and justice, regardless of status, ability, or background, rooted in concepts of intrinsic value and shared humanity. It asserts that individuals are ends in themselves, not mere objects, and deserve conditions for full participation and development, as enshrined in documents like the Universal Declaration of Human Rights (UDHR).

Examples of human dignity include treating everyone with respect (even strangers, colleagues, or patients), ensuring basic needs like clean environments and personal safety, upholding rights (like autonomy, privacy, fair treatment), listening actively, recognizing individual worth beyond labels (like "patient" or "disabled"), and allowing self-determination, showcasing inherent value in all people. It's about recognizing inherent worth, not just status, and actions like compassionate care, ending torture, and promoting equal rights all uphold it

- In daily interactions

- Respectful communication: Using polite language ("please," "thank you"), active listening, avoiding interruptions, and offering genuine compliments.
- Valuing individuality: Seeing people as whole persons, not just roles (e.g., a patient, a disabled person).
- Maintaining composure: Staying calm and controlled in difficult situations.
- Honesty: Speaking truthfully, even when difficult, shows integrity.

- In care and institutions

- Clean, safe environments: Providing healthy living spaces in homes, hospitals, or prisons.
- Personal space: Knocking before entering a room and asking permission.
- Autonomy: Allowing individuals control over decisions affecting their lives.
- Inclusion: Ensuring everyone can participate in discussions and processes.

- Broader societal examples

- Human rights: Abolishing torture, ensuring the right to food, education, and life.
- Equality: Rejecting discrimination based on gender, religion, or background.
- Self-determination: Supporting a person's ability to make their own choices.

- Actions that deny dignity (the opposite)

- Ignoring contributions or failing to give credit.
- Excluding people from important discussions.
- Dismissive body language (e.g., eye-rolling).
- Exploitation or abandonment.

International Human rights:

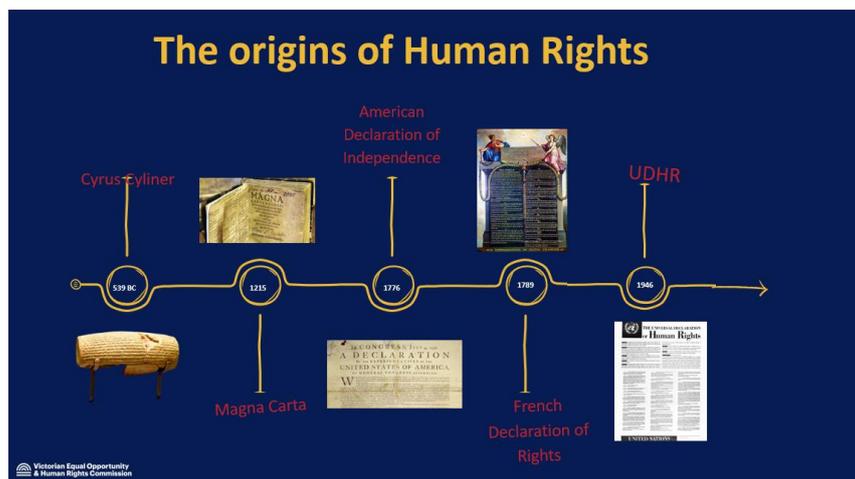
- What are human rights? (today)

- Variety of disciplines/perspectives about human nature, ethics, and justice (philosophy, religions, critical perspectives)
- History and development as a set of ideas and normative international system
- Why study the history and philosophy of human rights?

- What is international human rights law? (tomorrow)

- Specialised branch of (public) international law, building on existing system and concepts of international law
- Normative framework creating legally binding commitments for States as part of the international legal system

The Origins of Human rights:



History and development of human rights:

- 'International human rights law' = recent and contested development in international law
- 'Human rights' as an idea involving moral rights and duties, ethical rules applying to everyone, has a very long history across religious and philosophical thought.
- Early ideas of natural law: human law should emulate eternal/natural law, basis of a just/harmonious society – cf. divine rule of kings, religious authority
- Gradual evolution of written sources placing limits on sovereign power in domestic systems (Magna Charta, English Bill of Rights 1689)
- Enlightenment philosophy: belief in reason, knowledge and rationality; pursuit of knowledge and freedom; natural law applies to all because of capacity to reason
- Enlightenment: natural law → natural 'rights of man' (individual natural rights) – eg Hugo Grotius (human reason gives individuals rights against the State, imposing limits), John Locke (natural rights, esp. essential freedoms, right to property)
- Political struggles leading to elevation of 'rights of (some) men' (French Declaration of the Rights of Man and of the Citizen, American Declaration of Independence)
- Note rhetoric v reality: women, slaves, hierarchy of civilisations (eg Indigenous)
- Rise of Westphalian sovereignty as foundational principle of international order: equal sovereignty of (European) states and non-intervention in matters of a state's domestic jurisdiction
- Human rights, as they emerge after WW2, are claims based on particular values and principles, developed in response to specific violations of human dignity
- Human rights bring together morality and law to question power, draw attention to unnecessary suffering, powerlessness and inequality
- Human rights law as a normative order is distinguished from other legal orders by its **moral** demands: seeks to implement core moral values as universal rights – often implies other laws are inadequate or unjust, even if formally valid
- Human rights claim universality: assert standards that apply to everyone, and across time, location and culture, as a way of protecting core human values and interests, such as individual autonomy and dignity
- Critiques: individualistic, apolitical, culturally determined/'Western' (not universal)

Source/foundation of human rights:

- Equal worth and dignity of human beings – **dignity?**
 - theological concept: human beings as image of God →
 - philosophical concept: all humans have inherent and equal dignity – e.g. Kant: individuals as end, not means; treat others as ends in themselves (empathy, identification as fellow human beings of equal worth) →
 - foundation of human rights: every human has intrinsic worth, which must be recognised by others, and protected by the state (also against the state)
- The purpose of human rights is to preserve human dignity → human rights law affirms the universal rights and freedoms to which all human beings are entitled because of their inherent dignity

- Critiques?

Human rights as international law – history & development

- International human rights law = branch of international law that affirms the universal rights and freedoms to which all human beings are entitled because of their inherent dignity
- Human rights law is a recent development in international law
- Pre-1945 system largely about States' relations with each other (NB: rise of international/intergovernmental organisations)
 - Some rules on what States could do to **other** States' nationals (e.g. aliens, laws of war), and specific topics such as slavery, workers (ILO)
 - WW1 → League of Nations – e.g. minorities
 - But few rules on what States could do to their own nationals, within their jurisdiction

Human rights law – history and development

- WW2 (1945) as a watershed (never again moment): why?
 - Reshaping of the international legal order +
 - *“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...”* (UDHR, preamble, 1948)
 - Response to failures of legal positivism (and traditional international law)
- States' agreement on the need to:
 - try individuals for genocide, crimes against humanity & war crimes → international criminal law, AND
 - **create standards and mechanisms to protect individuals via a global regime** based universal values → **international human rights law**

Human rights in international law

- Development of international law since 1945:
 - Birth of international human rights law (and also of international criminal law): **individuals** recognised as relevant in international law – as beneficiaries, perpetrators, and limited subjects
 - Rules on what States can do to their **own nationals**, as accepted by States: human rights are claims by individuals that involve duties by States as part of States' international law obligations towards other States
 - Implied a departure from/development of the Westphalian model whereby international law is focused on regulating the relations between sovereign and equal states
 - Birth of international institutions and agencies
- Other notes:
 - “So having identified World War II as a watershed, the next question is: what changes in international law?”
 - Pause.
 - “This slide captures that shift.”
 - “After 1945, international law begins to change in a fundamental way.”
 - Slow down and structure.
 - “Traditionally, international law regulated relations between States.”
 - “Human rights law begins to regulate the relationship between the State and the individual.”
 - Emphasise the novelty:
 - “That is a significant departure from the pre-1945 model.”
 - “Individuals are no longer invisible.”
 - “They become recognised beneficiaries of international legal concern.”
 - Be precise:
 - “This does not mean that States lose sovereignty.”
 - “Sovereignty remains central to international law.”
 - “But it is no longer absolute.”
 - “It becomes subject to limits based on internationally agreed standards of treatment.”
 - Link explicitly to the readings:
 - “Bantekas and Oette describe this as a structural shift in international law.”

- “Individuals begin to matter not only through their State, but in their own right.”
- “Hertig Randall similarly emphasises that this shift is deliberate, contested, and historically specific.”
- Clarify the form of the response:
- “At this stage, the response is not primarily about enforcement or courts.”
- “It is about articulating shared norms.”
- “About saying: this is the minimum standard of treatment that all States should aspire to.”
- Bridge forward accurately:
- “The first major expression of this shift is the Universal Declaration of Human Rights.”
- “It is not legally binding.”
- “But it plays a foundational role in shaping what comes next.”

UN Charter (1945):

- **Combines traditional international security (ie absence of war) with emerging focus on (what we might now call) ‘human security’:**
- “We the peoples of the United Nations determined
 - to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
 - to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
 - to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained...”

The Universal Declaration of Human Rights
(UDHR)



History and development of international human rights:

- Read the Universal Declaration of Human Rights and do the following:
- What, if anything, is missing from the UDHR that you think is an important human rights issue today?
- What, if anything, was included in the UDHR that is now less relevant than in 1948?

International Bill of Rights:

- Human rights in the UDHR were subsequently split into two separate instruments because of political disagreement
 -
- Two UN Covenants
 1. International Covenant on Civil and Political Rights (ICCPR, 1966) and
 2. International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)
- Create binding legal commitments for States (each has >170 parties)

International Bill of Rights

- Historical division of human rights into categories (generations)
 - Civil and political rights rooted in the political philosophy of Western Europe; found in many domestic constitutions,
 - Economic, social and cultural rights: socialist tradition, “goals and aspirations” esp. in the West – cf more recent constitutions/Global South

- Group rights: people's right to self-determination (esp. decolonisation)
- Now: all human rights as "indivisible, interdependent and interrelated" (Vienna Declaration, 1993) – what do these terms mean?
- Human rights obligations as involving elements of (negative) non-interference and (positive) action, and duties to respect, protect and fulfil

Development of international human rights law:

Elaboration on specific human rights issues or the rights of specific groups

- Conventions on
 - racial discrimination (ICERD)
 - discrimination ag. women (CEDAW)
 - torture (CAT)
 - rights of the child (CRC)
 - rights of migrant workers (ICRMC)
 - rights of persons with disabilities (CRPD)
 - enforced disappearance (CED)
- Protocols, e.g. on the abolition of the death penalty

Development of international human rights law

- Creation of regional human rights instruments
 - **European** Convention on Human Rights and Fundamental Freedoms (1950)
 - **Inter-American** Declaration and Convention (1948/1969)
 - **African** Charter on Human and Peoples' Rights (1981)
 - Arab Charter on Human Rights (2004)
 - ASEAN Human Rights Declaration (2012)
- The European, Inter-American and African systems provide for human rights courts and individual remedies

Development of international human rights law

- Evolution of international supervision, monitoring and enforcement mechanisms:
 - Proliferation of Treaty bodies and expansion of the scope of their work from reporting, esp. to examining individual complaints procedures (initially just ICCPR)
 - Creation of Special Rapporteurs and other experts with thematic and country mandates
 - Creation of the Human Rights Council (2006), replacing the Commission on Human Rights
 - Well-known deficiencies of the institutional system – cf. role of political will in creating stronger systems

Notes:

- UDHR is what inspired states to turn it into law. Law is the covenant now. thus ICESCR and ICCPR is really what is being applied now
- Human rights is all about the individual vs the state
- Human rights is NOT a western concept though ideas of democracy did originate from western philosophers etc

(2) Foundations of international human rights law as a branch of international law

Readings:

- **Adam McBeth, Justine Nolan and Simon Rice, 'Chapter 5: International Law', *The International Law of Human Rights* (2nd edition, Oxford University Press, 2017)**
 - International human rights law operates within the broader framework of public international law, which is traditionally state-centric and founded on the principles of sovereignty and consent. International law governs relations between states and is based on the sovereign equality of states, meaning that each state has exclusive authority over its internal affairs and is not subject to external control without consent. These principles are

reflected in Article 2 of the UN Charter, including non-interference, peaceful dispute resolution, and the prohibition on the use of force except in self-defence or with Security Council authorisation.

- A core feature of international law is voluntarism: states are only bound by rules to which they have consented, whether through treaties or customary international law. While treaties may appear to limit sovereignty, they are in fact an expression of it, as states voluntarily accept constraints in pursuit of mutual benefits such as predictability, economic cooperation, and security. Obligations under treaties are generally reciprocal and owed to other states that are parties to the same agreement.
- International law functions as a horizontal legal system, meaning that law-making, compliance, and enforcement occur between legally equal states. This contrasts with municipal (domestic) law, which is vertical, involving a sovereign authority imposing and enforcing rules on individuals. Despite criticisms that international law lacks enforcement and is merely political, it qualifies as a genuine legal system because it consists of agreed norms intended to regulate state behaviour, even if enforcement mechanisms differ from domestic systems.
- Enforcement in international law relies primarily on non-coercive mechanisms such as diplomacy, countermeasures, dispute settlement, and institutional processes. States may bring disputes before the International Court of Justice or arbitration bodies, but only where consent has been given. The UN Security Council represents the strongest enforcement mechanism, with powers to impose sanctions and authorise force under Chapter VII of the UN Charter. Outside the Security Council, enforcement largely depends on persuasion, monitoring, and political pressure.
- Human rights law sits uneasily within the traditional international law framework because it focuses on rights held by individuals and groups rather than states. Although human rights treaty obligations are formally owed between states, the beneficiaries are individuals within a state's jurisdiction. Traditional enforcement tools such as countermeasures are ill-suited to human rights violations, leading to the development of specialised monitoring and complaint mechanisms that allow individuals to bring claims against states.
- The sources of international law are set out in Article 38(1) of the ICJ Statute and include treaties, customary international law, general principles of law, and subsidiary sources such as judicial decisions and scholarly writings. The most significant sources of international human rights law are treaties and customary international law. Treaties become binding through ratification or accession and enter into force only when required conditions are met. Reservations allow states to limit treaty obligations, but they raise particular problems in human rights treaties because such treaties are intended to protect individuals rather than regulate reciprocal state obligations.
- Customary international law arises from consistent state practice combined with *opinio juris*, the belief that such practice is legally required. Some human rights norms, such as the prohibition of torture, exist both as treaty obligations and as customary international law, meaning they bind even states that have not ratified the relevant treaties. States may avoid being bound by emerging customary norms only if they persistently object.
- UN declarations and resolutions, including the Universal Declaration of Human Rights, are not formally binding but may contribute to the development of customary international law. Over time, widespread acceptance and reliance on the UDHR suggest that many states now treat its principles as legally authoritative, particularly through mechanisms such as the Universal Periodic Review.
- The relationship between international law and municipal law varies by state. Monist systems automatically incorporate international law into domestic law, while dualist systems, such as Australia, require legislative incorporation. Despite these differences, international human rights law expects all states to implement rights domestically, provide effective remedies, and ensure accountability. The international system primarily monitors compliance, leaving the main responsibility for enforcement and implementation to national legal systems.

- **Chapter 2: Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (3rd edition, Cambridge University Press, 2020)**

- International human rights law forms part of public international law but has developed distinctive characteristics that set it apart from traditional interstate legal regimes. While general international law is primarily concerned with reciprocal obligations between states, international human rights law focuses on the protection of individuals and groups against abuses of power. Its normative foundations are value-based and draw on principles such as human dignity, equality, freedom and solidarity. These values are reflected in legal concepts such as *jus cogens* norms and *erga omnes* obligations, which signal that certain human rights obligations are owed not only to specific states but to the international community as a whole. Human rights law is therefore not purely contractual in nature but expresses shared global interests that limit state consent and sovereignty.

- The sources of international human rights law include treaties, customary international law, judicial decisions, and soft law instruments such as declarations, general comments and guidelines. Human rights treaties establish binding obligations for states parties, while treaty bodies, courts and monitoring mechanisms interpret these obligations and assess compliance. Although these mechanisms lack strong enforcement powers, they play a crucial role in clarifying the content of rights, identifying violations and shaping state practice. The effectiveness of the human rights system ultimately depends on domestic implementation, political will and the interaction between international institutions, national authorities and civil society.
- Questions of state responsibility are central to international human rights law. The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) are widely regarded as reflecting customary international law and are frequently relied upon by international courts and human rights bodies. These articles set out the general rules governing attribution of conduct to states and the legal consequences of internationally wrongful acts, including human rights violations. In the human rights context, findings of violations typically give rise to obligations of cessation and reparation, which may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- A significant debate concerns whether international human rights treaties constitute "self-contained regimes" that exclude recourse to general international law mechanisms such as countermeasures. Human rights treaties often establish specialised procedures, including reporting systems, individual complaints and inter-state complaints mechanisms, which are designed to address violations within the treaty framework. While it is generally reasonable for states to use these specialised procedures where available, international practice and legal analysis do not support treating human rights treaties as entirely closed systems. Where treaty mechanisms are manifestly ineffective or unavailable, states may have recourse to other international forums, including the International Court of Justice, or in limited circumstances to proportionate countermeasures. However, countermeasures and unilateral sanctions raise serious legal and political concerns, particularly where they are perceived as selective, politically motivated or aimed at establishing hegemonic influence.
- These tensions have contributed to the development of doctrines such as the Responsibility to Protect (R2P), which affirms that states have the primary responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that the international community, acting through the United Nations, may take collective action where a state manifestly fails to do so. R2P reflects an attempt to reconcile sovereignty with human rights protection while avoiding the dangers associated with unilateral humanitarian intervention.
- A persistent weakness of the international human rights system lies in the gap between treaty ratification and effective implementation. Many states formally commit to international standards while failing to translate those obligations into domestic law and practice. Legislative reform is therefore a crucial element of practical implementation. Best practice requires states to conduct compatibility studies to identify domestic laws that conflict with international standards, repeal or amend incompatible provisions, and adopt legislation that gives legal effect to protected rights. Such reforms should be supported by institutional changes, training of officials, access to courts and effective remedies, as well as broader policies and public education to ensure that rights are understood and exercised in practice.
- In reality, legislative reform is often obstructed by complex political, institutional and social factors. Governments may lack political will, face strong opposition from law-enforcement agencies, religious authorities, nationalist groups or public opinion, or consider the financial and political costs of reform too high. Institutional weaknesses, including limited technical capacity to draft legislation and fragmented law-making processes, further undermine reform efforts. Even where international bodies identify laws that require reform, their recommendations are frequently ignored or provoke backlash, particularly when international pressure is perceived as external interference.
- The struggle for law reform is illustrated by efforts to repeal Pakistan's Hudood laws, which criminalised extramarital sexual relations and effectively turned rape victims into criminal suspects. These laws derived legitimacy from religious discourse and political power rather than from justice or human rights principles. Women's rights activists adopted a long-term, multi-track strategy combining public awareness, grassroots mobilisation, litigation, advocacy and international engagement. By exposing the discriminatory impact of the laws through emblematic cases and sustained campaigning, they gradually eroded public support and achieved partial repeal through legislative compromise. This experience demonstrates that law reform is often slow, politically contested and symbolic, requiring persistence, strategic engagement and the ability to work both within and beyond legal institutions.
- National Human Rights Institutions (NHRIs) play an important role in bridging international standards and domestic implementation. NHRIs are mandated to monitor state compliance with international human rights obligations, analyse laws and policies, investigate violations, promote human rights education and provide information to international bodies. Where functioning effectively and independently, they can enhance

accountability, protect human rights defenders and serve as authoritative sources of information on the national human rights situation.

- The experience of the Uganda Human Rights Commission (UHRC) illustrates both the potential and limitations of NHRIs. The UHRC has achieved significant national and international credibility and has served as a model for other institutions in the region. Its commissioners and staff have contributed expertise and capacity-building across Africa, and the institution has played leadership roles in regional and Commonwealth NHRI networks. However, the UHRC faces serious challenges, including delays by the government in implementing tribunal awards and compensating victims, limited financial resources, declining donor funding and insufficient geographic reach. With only a small number of regional offices, access to human rights services remains difficult for rural and remote populations.
- To address these challenges, the UHRC has adopted practical strategies such as mobile complaints handling systems, establishment of sub-regional offices and sustained advocacy through annual reporting. Nevertheless, structural constraints continue to limit its effectiveness. More broadly, many NHRIs suffer from inadequate funding, limited investigative capacity, weak independence and appointment processes that fail to meet the UN Paris Principles. These weaknesses undermine public trust and reduce the ability of NHRIs to fulfil their mandates consistently across different national contexts.
- Strengthening NHRIs requires increased and secure funding, institutional independence, regional and international cooperation, and engagement with networks and coalitions to share expertise and resources. In conflict and transitional settings, NHRIs can play a vital role in facilitating dialogue, supporting access to remedies and contributing to accountability and reparation processes. However, they cannot substitute for genuine political commitment to human rights. Their effectiveness ultimately depends on broader structural conditions, including the rule of law, democratic governance and respect for human rights norms at both national and international levels.

Lowe's *International Law: A Very Short Introduction* OUP 2015)

- In *International Law: A Very Short Introduction*, Vaughan Lowe explains what international law is, how it operates, and what role it plays in global society, particularly in response to contemporary global problems. He situates international law within real-world issues such as war, terrorism, trade, climate change, poverty, migration, and humanitarian crises, showing how legal principles shape international cooperation and conflict. Lowe challenges common myths about international law, clarifying both its possibilities and its limitations, and emphasises that international law is neither a global government nor a guaranteed solution to injustice. Instead, it is a practical framework that reflects political realities, power imbalances, and state interests while still providing tools for coordination, restraint, and accountability. The book highlights the growing relevance of international law in modern global affairs and encourages a realistic understanding of what it can and cannot achieve.

****Monash Library has a terrific resources guide on [International law](#) and on [Human Rights Law](#).**

The UN Friendly Relations Declaration at 50 : an assessment of the fundamental principles of international law

Chapter 1

- Abi-Saab explains that the UN Charter was drafted with one foot in the old, state-centred world of “classical” international law and one foot in a future vision of deeper international community. He says Article 2 of the Charter reflects a Westphalian model of international law built on sovereign equality and non-interference: states are treated as formally equal “billiard balls,” with the core legal obligation being respect for each other’s sovereignty. From this logic flow the key corollaries the Charter makes explicit—especially the prohibition on the threat or use of force (Art 2(4)) and the duty to settle disputes peacefully (Art 2(3)). Article 2 also sets limits on UN competence over Member and non-Member states (Arts 2(7) and 2(6)), and imposes good-faith and assistance obligations toward the UN (Arts 2(2) and 2(5)). At the same time, he argues Article 2 cannot be read alone: it must be read with Article 1, which sets out a broader peace strategy that moves from urgent collective security responses to longer-term cooperation addressing the deeper causes of conflict (including economic/social issues and human rights). The Charter’s design therefore contains “latent potentialities” for a more integrated international community beyond mere coexistence.
- He then traces why and how the Friendly Relations Declaration (UNGA Res 2625 (1970)) emerged. The push began in 1960–62 amid Cold War politics and decolonisation, with socialist and newly independent states criticising the slow, selective, and “Western-tilted” agenda of codification and the International Law Commission—arguing that core issues like aggression, colonialism, self-determination, and broader state

responsibility were being sidelined. Over time, the project became an exercise in “authentic interpretation” of Charter principles, but updated in light of 25 years of UN practice and an expanded membership that made the UN less a club of “victorious powers” and more representative of world society. The Declaration therefore reformulated and clarified the Charter’s principles as general inter-state law, while also revealing that international law could no longer be confined to a purely inter-state frame.

- Abi-Saab’s key claim is that the Declaration’s real significance lies less in any single principle than in its overall architecture and balance. Sovereign equality remains the structural norm, but the Declaration gives much fuller content to the prohibition on force and non-intervention, spelling out legal consequences like illegality of occupation/annexation and duties of non-recognition. More importantly, the Declaration elevates two Charter “purposes” into fully fledged principles that relativise sovereignty: (1) self-determination, which shifts the centre of gravity away from the state by recognising “peoples” as rights-holders and by implying a community interest that can override a state’s sovereignty; and (2) a duty to cooperate, which is a positive obligation of action rather than abstention and therefore clashes with purely formal equality by requiring attention to real disparities among states. These principles signal a movement from Friedmann’s “law of coexistence” (keeping antagonistic states apart) toward a “law of cooperation” (bringing states actively together around collective interests).
- Finally, Abi-Saab frames the Declaration as a landmark showing an international legal order in transition between two competing logics: an older Westphalian logic still dominant but increasingly strained, and a newer cooperative/community-oriented logic pushing into areas once treated as purely domestic. He notes that after the Cold War the “penetration” of state sovereignty accelerated through globalisation and growing international regulation, but also warns that since the 2000s the older logic has resurged through annexations, interventions, and other challenges to the Charter system. Still, he argues the cooperative logic persists and is strengthened by growing normative development around human rights and environmental protection, meaning the struggle between these two logics continues as international law tries to respond to global threats like pandemics, climate change, and transnational violence

- **General principles and the coherence of international law - Andenæs, Mads Tønnesson, 1957- editor**

- *General Principles and the Coherence of International Law* provides a collection of intellectually stimulating contributions from leading international lawyers to the discourse on the role of general principles in international law. Offering a comprehensive analysis of the doctrines, practices, and debates on general principles of law, the volume assesses their role in safeguarding the coherence of the international legal system. This important book addresses the relationship between principles of law and the other sources of international law, explores the interplay between principles of law and domestic and regional legal systems and the role of principles of law with regard to three specific regimes of international law: investment law, human rights law and environmental law.

- **The prevention of gross human rights violations under International Human Rights Law - Have, Nienke van der**

- The Responsibility to Protect (RtoP) developed in response to the international community’s failure to prevent mass atrocities such as the genocide in Rwanda and the massacre at Srebrenica. These crises prompted UN Secretary-General Kofi Annan to question how state sovereignty could be reconciled with the need to prevent large-scale human rights violations. In response, the International Commission on Intervention and State Sovereignty (ICISS) was established in 2000 and published its report *The Responsibility to Protect* in 2001. The core idea of the report was that sovereignty should be understood not merely as control, but as responsibility: a state has the primary responsibility to protect its population from mass atrocities, and international intervention is only justified when the state is unable or unwilling to do so.
- RtoP gained broader acceptance by reframing humanitarian intervention in less confrontational terms and by emphasising prevention rather than military force. This shift made the concept more politically acceptable to states, even though intervention remained controversial. In 2005, RtoP was endorsed in non-binding form in the World Summit Outcome Document (WSOD), which remains its most authoritative expression. The WSOD limits RtoP to four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing, and confirms that any use of force must be authorised by the UN Security Council.
- Following the WSOD, efforts focused on clarifying and operationalising RtoP rather than transforming it into binding law. A key development was the UN Secretary-General’s 2009 report, which introduced the influential three-pillar framework: first, each state’s responsibility to protect its own population; second, the international community’s responsibility to assist states in fulfilling that responsibility; and third, the

international community's responsibility to take timely and decisive action when a state is manifestly failing to protect its population. Institutional support for implementation was strengthened through the creation of the Office on Genocide Prevention and the Responsibility to Protect, which later developed a Framework of Analysis to identify risk factors and support prevention strategies.

- Although RtoP is unlikely to crystallise into a rule of customary international law, it has had significant normative and practical influence. Scholars argue that its value lies less in creating new legal obligations and more in shaping policy agendas, structuring prevention efforts, and reinforcing the centrality of human rights in responses to potential mass atrocities. As such, RtoP functions as a guiding framework that complements existing international human rights and humanitarian law rather than replacing them.

- **Chapter 3, Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (3rd edition, Cambridge University Press, 2020)**

- At the **international level**, the text explains that *non-state actors*—especially **NGOs, social movements, and transnational networks**—have become much larger and more influential in human rights work. But even though “civil society” is often praised, it’s a **contested idea**: people use it differently and disagree about what role it should play.
- “Civil society” is described in two layers. **National civil society** is framed as an *intermediary space* between the **state (public sphere)** and **private life** (households and voluntary organisations). By contrast, **global civil society** is broader: it includes ideas, values, institutions, organisations, networks and individuals operating **beyond national borders**, located between **family, state and market**. This makes the point that civil society is not just “NGOs”—it’s a whole ecosystem.
- Even so, the reading stresses that **NGOs are a major organised part of civil society**, and the World Bank definition is used to show how wide that category can be. “Civil society organisations” (CSOs) includes not only NGOs, but also community groups, unions, indigenous groups, charities, faith-based organisations, professional associations and foundations. So, NGOs matter, but they’re only one piece of the bigger picture.
- A key tension is how civil society relates to politics. Many civil society actors try to keep **distance from political parties**, relying on their *moral credibility* to shift public opinion rather than directly entering political processes. That creates a useful demarcation, but the text warns it can also be misleading: treating civil society as totally “outside politics” creates a **false dichotomy**, because in reality civil society often interacts with political and economic power.
- The chapter also challenges the “civil society = good” assumption. Civil society is **multifaceted**, and groups can hold **opposing positions**, including positions that may be harmful from a human rights perspective. The abortion example (women’s rights groups vs religious institutions) shows civil society as a space of contestation. The value of civil society, then, is not that it is automatically “human-rights friendly,” but that it **creates political space** where rights claims and competing versions of rights can be argued, advocated, and ideally exercised.
- On **social movements**, the text explains that human rights advocacy can come from *self-interest* (workers, indigenous peoples, LGBTI communities) or from ethical belief (human rights NGOs, faith groups). Social movements are characterised by **collective action**, shared purpose and solidarity, and ongoing interaction with elites and authorities. Historically, movements like abolitionism, suffrage, anti-colonial struggles, anti-apartheid and anti-racism campaigns show how movements can become powerful engines for rights change, often across borders.
- But the reading adds two cautions. First, social movements can fight injustice at local or global levels, yet **mobilisation itself is neutral**—the same methods can be used for causes that run against human rights (for example, anti-migrant campaigns). Second, movements don’t always use “human rights” language even when the issue is clearly rights-based, because they may think other framings resonate more (like **civil rights** in the US context, or **social justice** in European contexts). Choosing the “best” frame isn’t just strategic; it can reflect deeper attitudes toward the state and law.
- This leads into a more critical point: some movements are ambivalent or hostile toward institutions and may seek not reform but **transformation** of systems grounded in exclusion and violence. The text suggests that some forms of resistance have helped expose “blind spots” in traditional human rights practice—such as over-reliance on formal institutions—pushing the human rights paradigm toward greater recognition of **collective rights** and the need to respond to people outside the “mainstream.”
- On **NGOs**, the chapter notes their growing importance nationally, regionally and internationally, and links this to their formal recognition within the UN system (e.g., consultative status). It then gives criteria used

internationally (especially through ECOSOC) to clarify what counts as an NGO: they are not created by governments or intergovernmental agreements, and ideally have transparent governance, representative structures and accountability mechanisms. The text also flags “GONGOs” (government-organised NGOs) as a tactic states use to mimic civil society while controlling it.

- The chapter also complicates common assumptions about NGOs. The idea that NGOs are “not-for-profit” is blurred because NGOs must fundraise and sometimes generate income to survive; this creates risks of **donor dependency**, shifting agendas, and legal restrictions on foreign funding. NGOs also should be distinguished from political parties: they may be political in impact, but their purpose is not to **win government office**. Registration can be another vulnerability—repressive states may refuse or revoke NGO registration, undermining freedom of association.
- For **human rights NGOs specifically**, the text explains that many originally mirrored the old split between civil/political rights and ESCR. Amnesty International is given as an example of an organisation that expanded its mandate to include ESCR, showing the tension between having a broader scope (meeting real needs) and maintaining effectiveness and identity. Mandates matter because they define what an NGO is “for,” and expanding them can create internal conflict and dilute core strengths.
- Finally, the reading evaluates NGOs through the recurring critiques of **legitimacy, accountability, and effectiveness**. Legitimacy concerns whether NGOs suffer a “democracy deficit” as self-appointed actors, though the text notes their rise is also linked to the decline of mass movements and party politics, and membership-based NGOs can have stronger representative legitimacy. Accountability is highlighted as a major issue because NGOs demand transparency from states but may not always practice it; credibility is their main asset, so codes of conduct and accountability initiatives become crucial both for genuine integrity and for resisting state backlash. Effectiveness is hard to measure because long-term advocacy work doesn’t always produce immediate “outputs,” so evaluation needs to be nuanced and often empirical.
- The section on **human rights defenders** broadens the lens beyond NGOs: defenders include *any individuals or groups* working to eliminate rights violations, as long as they accept human rights universality and act peacefully. The 1998 UN Declaration on Human Rights Defenders is presented as key because it affirms the right of everyone to promote and strive for rights protection nationally and internationally, and it identifies protections linked to expression, assembly, association, funding, advocacy, and access to remedies.
- The text emphasises that defenders face serious risks: harassment, threats, arbitrary arrest, unfair trials, ill-treatment, and killings—often in sensitive cases involving corruption, business interests, or evidence-gathering. It also notes that threats come from both states and non-state actors. International responses include special UN mandates (Special Representative/Special Rapporteur), plus regional initiatives (like EU/CoE supports), but the reading is realistic that protection is limited in practice—hence the growth of specialist protection networks and the need for rapid practical measures (like emergency visas).

International human rights law and international law:

- International human rights law is a specialised branch of (public) international law →
 - What kind of system of law is (public) international law?
 - Who makes rules, for whom, about what?

States, sovereignty and international law

- International law: normative system where rules emanate from the express will of sovereign States (Peace of Westphalia of 1648 →)
- What’s a ‘sovereign State’?

States and nature of international law

- Right of every sovereign State to conduct its affairs without outside interference is a core principle of the international system:
 - UN Charter, Art. 2.1: based on sovereign equality of States (formal equality)
 - UN Charter Art. 2.4: no threat or use of force against the territorial integrity or political independence of other States (non-aggression)
 - UN Charter, Art. 2.7: no intervention in matters which are essentially within the domestic jurisdiction of any state... [does not prejudice the application of enforcement measures under Chapter VII]
- NB: international law has no central authority (ie, above States) → horizontal system where rules made by States, for States, and enforced by States

International law: a horizontal legal system

- Binding rules (usually) require States' consent → largely permissive system, where consensus-seeking is central for making new rules
- Sources of law: see article 38 of the ICJ Statute – international conventions, international custom, general principles of law and, as subsidiary means for the determination of rules of law, judicial decisions and the teachings of the most highly qualified publicists
- Ensuring observance: no effective top-down enforcement – why follow?
 - States' self-interest (sense of obligation; desire for stability; political/economic costs)
 - Reciprocity as a powerful stabilising force – why? Mutual inter-dependency of States creates network of advantages and disadvantages

Accountability in a horizontal legal system:

- System is inherently political and affected by power differentials; centrality of vital State interests (security, territorial integrity) to breaches of international obligations
- State responsibility for wrongful acts – but what can the injured State do?
 - Continuum of actions: eg application of diplomatic pressure, both formal and informal; retorsions and reprisals (counter-measures)
 - Self-help (wronged State pursuing a remedy to make violating State comply with its obligations) + assistance from other interested States
- Role of international institutions in international law?
 - useful but largely supporting – e.g. International Court of Justice (dispute resolution), UN Security Council (some coercive powers – exception) and UN General Assembly (persuasion only)
- Other notes:
 - “Because international law is a horizontal system, accountability works very differently from domestic law.”
 - “It’s inherently political.”
 - “Power matters, and breaches often involve vital state interests like security or territorial integrity.”
 - Pause.
 - “When a state breaches international law, it is responsible for a wrongful act.”
 - “But the key question is: what can the injured state actually do?”
 - Explain simply.
 - “There’s no international sheriff.”
 - “Instead, there’s a continuum of responses.”
 - List briefly.
 - “That includes diplomatic pressure, both formal and informal.”
 - “It can also include retorsions and countermeasures.”
 - Plain language:
 - “In other words, states respond themselves.”
 - “This is often described as ‘self-help’.”
 - Add the collective element.
 - “Other states can also assist, especially if they have an interest in the issue.”
 - Then institutions.
 - “International institutions play a role, but it’s largely supportive.”
 - “The International Court of Justice can resolve disputes if states consent.”
 - “The UN Security Council is an exception, because it has some coercive powers.”
 - “The General Assembly mainly operates through persuasion.”
 - Close with the key takeaway.
 - “So accountability in international law is real, but it’s uneven, political, and dependent on state behaviour.”
 - “This structure is exactly why international human rights law is so challenging and significant.”

Questions – use readings or MPIL for short answer

- **What’s a convention/treaty, how do they come into being, and how do they become binding on States?**

- A convention or treaty is a written international agreement between States that is governed by international law. Treaties come into being through negotiation and adoption of a text, usually at an international conference or through the United Nations. States may then sign the treaty to indicate political support, but a treaty only becomes legally binding once a State has formally consented to be bound, typically through ratification or accession, and once the treaty has entered into force according to its own terms. Binding force therefore depends on state consent and the satisfaction of entry-into-force conditions set out in the treaty.
- **What are reservations? How and why are they made, and what is their effect?**
 - Reservations are unilateral statements made by a State when signing, ratifying, or acceding to a treaty, by which the State seeks to exclude or modify the legal effect of certain treaty provisions as they apply to that State. States make reservations to manage political, legal, or constitutional concerns and to allow participation in treaties they might otherwise be unwilling to accept in full. The effect of a reservation is to limit the State's obligations under the treaty, provided the reservation is permitted by the treaty and is not incompatible with its object and purpose. In human rights treaties, reservations are particularly controversial because they may undermine the protection of individual rights.
- **What is customary international law, and what elements are needed to establish a rule of international custom?**
 - Customary international law consists of unwritten rules that arise from the general and consistent practice of States followed out of a sense of legal obligation. To establish a rule of customary international law, two elements must be present: widespread and consistent state practice, and *opinio juris*, meaning the belief by States that the practice is required by law rather than followed out of convenience or habit. Once established, customary international law is binding on all States, including those that have not expressly consented, unless a State has persistently objected to the rule while it was forming.
- **What is meant by *jus cogens*? And what are obligations *erga omnes*?**
 - *Jus cogens* refers to peremptory norms of international law that are considered so fundamental that no derogation is permitted, even with state consent. Examples include the prohibitions on genocide, slavery, and torture. Any treaty or act that conflicts with a *jus cogens* norm is void. Obligations *erga omnes* are obligations owed by a State to the international community as a whole, rather than to specific States. Breaches of such obligations, such as serious human rights violations, give all States a legal interest in their protection and enforcement, regardless of whether they are directly affected.
- **What do the terms 'monism' and 'dualism' mean, and what consequences flow from them?**
 - Monism and dualism describe different approaches to the relationship between international law and domestic law. In monist systems, international law automatically forms part of domestic law and can be directly applied by domestic courts. In dualist systems, international law and domestic law are separate, meaning that international legal obligations have no direct effect domestically unless they are incorporated through legislation. The consequence is that in dualist states, such as Australia, a State may be bound internationally by a treaty but individuals cannot rely on it in domestic courts unless it has been implemented through national law.

Treaties

- International conventions [charters, treaties, covenants, protocols]
 - 'Contracts' between States – agreements based on State consent; typically involve reciprocal exchange of rights and duties
 - Can be bilateral (between two States) or multilateral (open to many/all States to become a party)
 - Law of Treaties governs treaty interpretation and application (*pacta sunt servanda*, States parties must perform treaty obligations in good faith)
- Multilateral conventions, e.g. on human rights, usually require a process of **ratification or accession** (in addition to signature) – why?