

Human Rights In The Era of COVID-19 Winter 2021-22

In recent history, there are very few things that have shaken the world in ways the COVID-19 pandemic has done. In moments of crisis, we see human rights being compromised, and the pandemic has been no different. Often it is the most vulnerable members of our society who face the grunt of these crises indiscriminately. To add, several international systems we put in place for such times begin to show signs of stress. We don't know when a post-covid world will finally start, neither do we know how this world would look like. However, the COVID-19 pandemic gives us a great opportunity to study human rights in moments of crisis, so we are better prepared for next time. Not only this, with the uncertainty surrounding the post-covid world, we cannot let our existing human rights structures erode. Because once eroded, they will be hard to bring back to their original form.

Consequently, this research seminar aims to study how and why human rights during the COVID-19 pandemic are impacted and the manners in which they have been impacted. This seminar will also hope to discuss how any further violation of human violations during the COVID-19 pandemic can be reduced. At the end of the seminar, using the lens of the COVID-19 pandemic, students would get a practical insight into international human rights law, how it applies to real-world events, what different stakeholders can do to mitigate human rights violations, and how can we strengthen our existing human rights mechanisms.

The class will be offered in lieu of a "Seminarschein" or as a "Fremdsprachenangebote." Those taking in the seminar in lieu of a "Seminarschein" will, in addition to a seminar paper (60% of grade), be expected to take part in class discussions and make a presentation of their seminar paper (40% of grade). On the other hand, those taking the class as a "Fremdsprachenangebote" are generally expected to participate in class discussions and specifically prepare for certain sub-topics (which will be clarified during our introductory class). Please send your registrations to amal.sethi@uni-hamburg.de. The registrations will be offered on a first cum first basis and will be capped at 20.

The substantive part of the seminar will take place over two block seminar days (tentatively on 6th November and 4th December – i.e., the first Saturday of November and December respectively). Additionally, we will have an introductory class on 23rd October and a class for presentations (tentatively post the lecture period).

For every topic, I have recommended a few blogs, online readings, and reports. Further, to guide students' readings and structure the discussions, I have provided some questions that we will spend our class dissecting and thinking critically about. *The number of assigned readings might seem daunting, but please be assured that most of them are short blog posts covering the topics crisply and concisely (and are 1-2 pages in length).* A different approach taken in this seminar is that to reflect the latest discussions on this topic which have not yet reached the pages of journals, we would be relying primarily on popular sources for our readings. Discussions that will be the prime mode of learning can surely benefit from as updated material as possible instead of antiquated literature from which we would have to infer far too much. This would help us directly take a plunge into the topic 'Human Rights in The Era of COVID 19'.

While this is an introductory level seminar and does not require any advanced knowledge of the topic, it would be beneficial for students without prior international law experience to read this short introductory [explainer to international law](#).

These classes will be conducted in person or virtually (or a combination of both), which will be announced closer to the date of the respective classes. At this stage, I do hope for us to be able to meet in person at least a few times this semester. For any questions, doubts, additional reading suggestions, trouble accessing the readings, etc. at any stage of the seminar or prior to registration, please feel free to email me at amal.sethi@uni-hamburg.de

The following are the readings and questions for discussion for each class.

INTRODUCTORY CLASS (1 HOUR)

In the first class of this seminar, we will not take up any substantive content. Rather we will use this class to get to know each other and understand what lies in the seminar ahead. I will clarify doubts regarding the presentations to be made, the subtopics for those taking the seminar as a “Fremdsprachengebote” to prepare on, and for those writing seminar papers - the requirements for the seminar papers, what type of papers I would expect, and how you could go about writing the seminar paper. I will also provide a short overview of the topics we will discuss in the seminar and how we would go about covering them. The syllabus is flexible, and I would be more than glad to add certain topics (or focus more on certain topics) if students express so during the introductory class). To facilitate our introductory class better, students are strongly urged to skim through the two readings mentioned below before our introductory class. This could even help them think about the topics they would be keen on writing about and start their discussions about the term papers with me early on in the semester.

Readings:

- 1) ‘Human Rights Dimensions of COVID-19 Response’ (*Human Rights Watch*, 19 March 2020) <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>>
- 2) ‘COVID-19 and Human Rights We are all in this together’ (*United Nations*, April 2020) <https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf>

TOPIC 1 – THE NUTS AND BOLTS

For this topic, we will cover some of the preliminary issues that arise in ‘human rights in the era of Covid-19’. This would enable us to lay down the stepping stones before we deep dive into exploring specific issues. A few questions that we will take up in-depth and structure our discussions around are (1) How is international law (and international human rights in particular) implicated during the pandemic? (2) What if any obligations do states have to cooperate with each other during the current pandemic? (3) What can be state justifications to derogate from their international law obligations? (4) How can we best protect human rights in the pandemic? (5) How do we balance different human rights obligations during the pandemic? (6) What role do international actors (particularly international organizations) have in protecting us from the fallouts of the pandemic.

Readings:

- 1) Martins Paparinskis, ‘COVID-19 Symposium: COVID-19 and the Foundations of International Law’ (*Opinio Juris*, 31 March 2020) <<http://opiniojuris.org/2020/03/31/covid-19-symposium-covid-19-and-the-foundations-of-international-law/>>
- 2) Sam Zarifi, ‘COVID-19 Symposium: Human Rights in the Time of COVID-19—Front and Centre’ (*Opinio Juris*, 6 April 2020) <<http://opiniojuris.org/2020/04/06/covid-19-human-rights-in-the-time-of-covid-19-front-and-centre/>>
- 3) Jasper Doomen, ‘A Burden to Share’ <<https://voelkerrechtsblog.org/a-burden-to-share/>>
- 4) Rana Moustafa Essawy, ‘The Legal Duty to Cooperate amid COVID-19: A Missed Opportunity?’ (*EJIL: Talk!*, 22 April 2020) <<https://www.ejiltalk.org/the-legal-duty-to-cooperate-amid-covid-19-a-missed-opportunity/>>
- 5) Mariela Morales Antoniazzi, ‘How to Protect Human Rights in Times of Corona? Lessons from the Inter-American Human Rights System’ (*EJIL: Talk!*, 1 May 2020) <<https://www.ejiltalk.org/how-to-protect-human-rights-in-times-of-corona-lessons-from-the-inter-american-human-rights-system/>>
- 6) Federica Paddeu, ‘COVID-19 and Defences in the Law of State Responsibility: Part I’ (*EJIL: Talk!*, 17 March 2020) <<https://www.ejiltalk.org/covid-19-and-defences-in-the-law-of-state-responsibility-part-i/>>
- 7) Federica Paddeu, ‘COVID-19 and Defences in the Law of State Responsibility: Part II’ (*EJIL: Talk!*, 17 March 2020) <<https://www.ejiltalk.org/covid-19-and-defences-in-the-law-of-state-responsibility-part-ii/>>
- 8) Nora Salem, ‘Proportionality of State Emergency Health Measures amid COVID-19’ (*Opinio Juris*, 13 May 2020) <<http://opiniojuris.org/2020/05/13/proportionality-of-state-emergency-health-measures-amid-covid-19/>>
- 9) Marko Svicevic, ‘COVID-19 as a Threat to International Peace and Security: What Place for the UN Security Council?’ (*EJIL: Talk!*, 27 March 2020) <<https://www.ejiltalk.org/covid-19-as-a-threat-to-international-peace-and-security-what-place-for-the-un-security-council/>>
- 10) ‘What Does the World Health Organization Do?’ (Council on Foreign Relations, 29 January 2021) <<https://www.cfr.org/backgrounder/what-does-world-health-organization-do>>
- 11) Inu Manak, ‘How can the WTO Can Help in the Efforts Against COVID-19’ (Cato Institute, 27 March 2020) <<https://www.cato.org/blog/how-wto-can-help-efforts-against-covid-19>>

TOPIC 2 – COVID AND CIVIL AND POLITICAL RIGHTS (5 HOURS)

For this topic, we will cover COVID-19 and civil and political rights. While the topic is too broad to do justice to in a single day, we will hope to cover as many of the core debates happening in the civil and political space since the early 2020s. Questions we will try and discuss based on the readings (1) How has freedom of speech been put under threat during the pandemic, and is some restriction on speech an unavoidable reality? (2) Can restrictions be put on individuals returning to their own countries? (3) What about foreigners – can their movement be limited, and if yes, in what cases? (4) Can states make it mandatory for their citizens to take vaccines? (5) Can the pandemic be tackled without breaching the right to privacy to some extent? (6) How can contact-tracing apps be made compliant with International Law? (7) Why are LGBTQI people at higher risk during the pandemic, and what obligations do states have towards them? (8) How can states prevent the violation of prisoners’ rights during the pandemic (9) Is the pandemic a time when the

international refugee system could be put on pause? If not, what are the obligations owed to refugees during the pandemic?

Readings:

- 1) Oona Hathaway, Mark Stevens, and Preston Lim, 'COVID-19 and International Law Series: Human Rights Law – Civil and Political Rights' (*Just Security*, 24 November 2020) <<https://www.justsecurity.org/73520/covid-19-and-international-law-series-human-rights-law-civil-and-political-rights/>>
- 2) 'Covid-19 Triggers Wave of Free Speech Abuse' (Human Rights Watch, 11 February 2021) <<https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>>
- 3) Anna Nilsson, 'Is Mandatory Vaccination Against COVID-19 Justifiable Under the European Convention on Human Rights?' (*Global Campus of Human Rights*, 15 April 2021) <<https://gchumanrights.org/preparedness/article-on/is-mandatory-vaccination-against-covid-19-justifiable-under-the-european-convention-on-human-rights.html>>
- 4) Rutsel Martha, 'The Right to Enter His or Her Own Country' (*EJIL: Talk!*, 23 June 2020) <<https://www.ejiltalk.org/the-right-to-enter-his-or-her-own-country/>>
- 5) Weijun Yu and Jessica Keralis, 'Controlling COVID-19: The Folly of International Travel Restrictions' (*Health and Human Rights Journal*, 6 April 2020) <<https://www.hhrjournal.org/2020/04/controlling-covid-19-the-folly-of-international-travel-restrictions/>>
- 6) Caroline Foster, 'Justified Border Closures Do Not Violate the International Health Regulations 2005' (*EJIL: Talk!*, 11 June 2020) <<https://www.ejiltalk.org/justified-border-closures-do-not-violate-the-international-health-regulations-2005/>>
- 7) Ainura Bekkoenova and Zana Idrizi, 'In a Global Pandemic, Do We Still Have a Right to Privacy?' (UNDP, 12 May 2020) <<https://www.eurasia.undp.org/content/rbec/en/home/blog/2020/global-pandemic-right-to-privacy.html>>
- 8) Lorna McGregor, 'Contact-Tracing Apps and Human Rights' (*EJIL: Talk!*, 30 April 2020) <<https://www.ejiltalk.org/contact-tracing-apps-and-human-rights/>>
- 9) 'Joint Statement on Data Protection and Privacy in the COVID-19 Response' <<https://www.who.int/news/item/19-11-2020-joint-statement-on-data-protection-and-privacy-in-the-covid-19-response>>
- 10) 'COVID 19 and The Human Rights of LGBTI People' (OHCHR, 17 April 2020) <<https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>>
- 11) Toby Cadman, 'COVID-19 Symposium: The Impact of Coronavirus (COVID-19) on Prisoners' (*Opinio Juris*, 1 April 2020) <<http://opiniojuris.org/2020/04/01/covid-19-symposium-the-impact-of-coronavirus-covid-19-on-prisoners/>>
- 12) Oona Hathaway, Mark Stevens, and Preston Lim, 'COVID-19 and International Law: Refugee Law – The Principle of Non-Refoulement' (*Just Security*, 30 November 2020) <<https://www.justsecurity.org/73593/covid-19-and-international-law-refugee-law-the-principle-of-non-refoulement/>>

TOPIC 3 – COVID AND ECONOMIC, SOCIAL, CULTURAL RIGHTS (5 HOURS)

In moments of crisis, very frequently, economic, social, cultural rights (ECSr's) take a back seat. This has been no exception during the current pandemic. Yet, some of the most important questions that have arisen during the pandemic are those concerning ECSr's. For this topic, we will take up

questions such as (1) What is the minimum standard of living owed by a state to its population? (2) What obligations does a state have under the right to health? (3) can a state invoke a lack of funds not to fulfill its ECSr's obligations (4) What obligations do states have to ensure equitable distribution of vaccines across the world? (5) Do states have extraterritorial obligations w.r.t ECSr's during the pandemic (6) Do developed states have an obligation to share the benefits of science in the pandemic, and if yes, then to what extent? (7) How is the right to education impacted during the pandemic, and what can be done to ensure its maximum fulfillment?

Readings:

- 1) 'Protecting Economic and Social Rights During and Post-Covid-19: Questions and Answers on Economic and Social Assistance' (Human Rights Watch 2020) <<https://www.hrw.org/news/2020/06/29/protecting-economic-and-social-rights-during-and-post-covid-19>>
- 2) Anna Kohte, 'Vulnerability in Times of Corona' (*Voelkerrechtsblog*, 28 May 2020) <<https://voelkerrechtsblog.org/vulnerability-in-times-of-corona/>>
- 3) Tim Fish Hodgson and Ian Seiderman, 'COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1)' (*Opinio Juris*, 1 April 2020) <<http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-1/>>
- 4) Tim Fish Hodgson and Ian Seiderman, 'COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 2)' (*Opinio Juris*, 1 April 2020) <<http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-2/>>
- 5) Miguel Calmon Dantas, 'A Glimmer of Hope for All?' (*Voelkerrechtsblog*, 26 March 2021) <<https://voelkerrechtsblog.org/a-glimmer-of-hope-for-all/>>
- 6) Claire-Marie Richter, 'Time to Counter "Vaccine Nationalism"?' (*Voelkerrechtsblog*, 26 March 2021) <<https://voelkerrechtsblog.org/time-to-counter-vaccine-nationalism/>>
- 7) Margherita Melillo, 'COVID-19 Symposium: The Right to Enjoy the Benefits of Scientific Progress at the Time of the COVID-19 Pandemic' (*Opinio Juris*, 6 April 2020) <<http://opiniojuris.org/2020/04/06/covid-19-symposium-the-right-to-enjoy-the-benefits-of-scientific-progress-at-the-time-of-the-covid-19-pandemic/>>.
- 8) 'Years Don't Wait for Them: Increased Inequalities in Children's Right to Education Due to the Covid-19 Pandemic' (Human Rights Watch 2021) <<https://www.hrw.org/report/2021/05/17/years-dont-wait-them/increased-inequalities-childrens-right-education-due-covid>>

TOPIC 4 - BUILDING BACK BETTER (2 HOURS)

We will conclude this seminar by studying how the COVID-19 pandemic provides us with an opportunity (if at all) to build back better. The pandemic can be a watershed moment when it comes to the future of human rights. Questions to consider for this topic are (1) Can COVID-19 be a moment that can make states reconsider their commitment to human rights? (2) Are there reasons to not be overly optimistic in thinking so? (3) Going forward, what should states prioritize regarding human rights so as to not repeat the mistakes of the COVID-19 pandemic (4) What would be the biggest challenges in ensuring that the human rights regimes take a step forward rather than backward in a post-covid world?

Readings:

- 1) Jamesina King, 'COVID-19 and Africa Symposium: Building Back Better–Can COVID-19 Renew African States' Commitment to African Charter ESCR Obligations?' (*Opinio Juris*, 7 December 2020) <<http://opiniojuris.org/2020/12/07/covid-19-and-africa-symposium-building-back-better-can-covid-19-renew-african-states-commitment-to-african-charter-escr-obligations/>>
- 2) Alexander Gilder, 'Using Human Security to Harness Human Rights in the Post-COVID World' (*Voelkerrechtsblog*, 24 March 2021) <<https://voelkerrechtsblog.org/using-human-security-to-harness-human-rights-in-the-post-covid-world/>>
- 3) Diane Desierto, 'The Myth and Mayhem of “Build Back Better”': Human Rights Decision-Making and Human Dignity Imperatives in COVID-19' (*EJIL: Talk!*, 25 May 2020) <<https://www.ejiltalk.org/the-myth-and-mayhem-of-build-back-better-human-rights-decision-making-as-the-human-dignity-imperative-in-covid-19/>>
- 4) HLCP Inequalities Task Team, 'Covid-19, Inequalities and Building Back Better'(United Nations 2021) <<https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/10/HLCP-policy-brief-on-COVID-19-inequalities-and-building-back-better-1.pdf>>