



SHORT-TERM COURSE ON SIMPLICITIES OF BUSINESS AND HUMAN RIGHTS: A LEGAL INTRODUCTION

Course Outline

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|----------------------|----------------------------------|--|---------------------|--|---------------|
| Course number | | | | | |
| Course title | Business and Human Rights | | | | |
| Credit points | | | | | |
| Total hours | 50 | | | | |
| Contact hours | 36 | | | | |
| Independent studies | 20 | | | | |
| Course level | Masters | | | | |
| Prerequisites | None | | | | |
| Category | Mandatory | | Restricted elective | | Free elective |

COURSE RESPONSIBLE

| <i>Name</i> | <i>Academic position</i> |
|----------------------|--------------------------|
| Prakash Sharma | Assistant Professor |
| Shuvro Prosun Sarker | Assistant Professor |
| Uday Shankar | Associate Professor |
| Arindam Basu | Assistant Professor |

COURSE TEACHERS

| <i>Name</i> | <i>Academic degree</i> | <i>Academic position</i> |
|----------------------|------------------------|--------------------------|
| Prakash Sharma | PhD | Assistant Professor |
| Shuvro Prosun Sarker | PhD | Assistant Professor |

| | | |
|--------------------|-----|---------------------|
| Uday Shankar | PhD | Associate Professor |
| Arindam Basu | PhD | Assistant Professor |
| Narendran Thiruthy | PhD | Assistant Professor |

COURSE ABSTRACT

The course examines international standards, implementation processes and monitoring activities in the interface of business and human rights. The centrality of the debate will be premised on a simple question - should firms have human rights obligations? However, it is possible to see the same question differently – should human rights-based norms mandate firms’ compliance? Either way there is a possibility of germination, giving birth a host of policy and legal issues. This includes but not limited to, company due diligence, developing and accessing grievance mechanisms, relations between businesses and communities, supply chain and distribution challenges and human rights-based behavioural pattern for firms. Because the field expands to growing body of international standards too, special attention will be paid to the work of the former UN Special Representative on business and human rights, the UN Working Group on the issue of human rights, multinational corporations (MNC) and the UN Inter-Governmental Working Group on the potential UN Treaty Business and Human Rights. In addition, we will delve into the legal nature of state and corporate responsibility and accountability for business-related human rights abuses, issues related to legal personality of MNCs under international law, judicial and quasi-judicial responses to liability of MNCs for human rights violations, and the human rights of companies.

GRADING CRITERIA

| <i>Criteria</i> | <i>Weighting</i> |
|-----------------|------------------|
| Exam | 20% |
| Research Paper | 80% |

COURSE REQUIREMENTS

Participation

To fully benefit from this course, students are expected to participate actively in all sessions, part of which will be discussion-led. Students are expected to review the materials assigned by the lecturers before the relevant class.

Whereas, input for the lecture sessions is mainly delivered by the course teachers, students are expected to actively participate in the seminar discussions. Seminar sessions will rely heavily on in-class discussion and peer-to-peer learning. It is especially important to read the assigned materials before attending seminars.

Examination

The course will have only one examination component: the final objective exam (20% of the grade) and the research paper (80% of the grade). The final exam will be in-class task, consisting of theoretical questions or a synoptic case analysis. The students must pass the final exam in order to complete the course.

COURSE PLAN – MAIN SUBJECTS

| <i>No.</i> | <i>Main subjects</i> | <i>Planned hours</i> |
|------------|--|----------------------|
| 1 | Globalisation and human rights obligations of non-state actors | 2 |
| 2 | Human rights standards and business | 6 |
| 3 | Business, development, and human rights and the role of International Financial Institutions | 4 |
| 4 | Competition and human rights | 4 |
| 5 | Corporate social responsibility and the role of courts and international institutions | 6 |
| 6 | Human rights of companies | 2 |

COURSE PLAN – SESSIONS

| <i>Session</i> | <i>Session subjects and readings</i> | <i>Lecture/ Seminar</i> |
|----------------|---|-------------------------|
| 1 | <p>Course introduction; human rights and business compliance assessment tools</p> <p>Readings:</p> <ul style="list-style-type: none"> Andrew Clapham, 'Non-State Actors' (OUP 2018) | Lecture |
| 2 | <p>UN Guiding Principles on Business and Human Rights</p> <p>Readings:</p> <ul style="list-style-type: none"> Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, report of the special representative John Ruggie, A/HRC/17/31, 21 March 2011 http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf | Lecture |
| 3 | <p>Obligations of States in the context business activities, including extra-territorial obligations</p> <p>Readings:</p> <ul style="list-style-type: none"> CESCR General Comment 24 (UN doc. E/C.12/GC/24) OEIGWG, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, third revised draft August 2021 Jernej Letnar Čeranič, Christian Bukor, The Potential United Nations Business and Human Rights Treaty Turning of the Tides of Justice?, New Zealand Yearbook of International Law, 2022. David Birchall, Between Apology and Utopia: The Indeterminacy of the Zero Draft Treaty on Business and Human Rights' <i>Suffolk Transnational Law Review</i> (2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3417521 | Lecture |
| 4 | Cases and discussion of international standards related to business and human rights | Lecture |

| <i>Session</i> | <i>Session subjects and readings</i> | <i>Lecture/ Seminar</i> |
|----------------|--|-------------------------|
| 5 | <p>Corporate responsibility to respect and protect human rights</p> <p>Readings:</p> <ul style="list-style-type: none"> ▪ Surya Deva and David Bilchitz (eds.), <i>Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?</i> (Cambridge: Cambridge University Press, 2013) ▪ David Birchall, 'Corporate Power over Human Rights: An Analytical Framework' <i>Business and Human Rights Journal</i> 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3566296 | Lecture |
| 6 | <p>Human rights in Global Supply Chains</p> <p>Readings:</p> <ul style="list-style-type: none"> • Jernej Letnar Černič, 'Moving Towards Protecting Human Rights in Global Business Supply Chains', <i>Boston University International Law Journal</i>, 2018, Vol. 35, No. 2, 101-116, https://www.bu.edu/ilj/files/2018/04/Cernic-Final-Version.pdf • OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, https://www.oecd.org/daf/inv/mne/mining.htm | Seminar |
| 7 | <p>The Concept of Due Dilligence in Business and Human Rights</p> <p>Readings:</p> <ul style="list-style-type: none"> • Nicolas Bueno, 'Mandatory Human Rights Due Diligence Legislation', <i>Teach BHR</i>, https://teachbhr.org/resources/teaching-bhr-handbook/mandatory-human-rights-due-diligence/ <p>Andrew Clapham, <i>Human Rights Obligations of Non-State Actors</i> (OUP, 2006), pp. 195-211, 218-252 and 263-271</p> | Lecture |
| 8 | <p>Access to remedy for business-related human rights abuses</p> <p>Readings:</p> <ul style="list-style-type: none"> • Juan José Álvarez Rubio and Katerina Yiannibas (eds.) <i>Human Rights in Business: Removal of Barriers to Access to Justice in the European Union</i>, Routledge, 2017, https://library.oapen.org/bitstream/id/6d5182f1-4c6a-4272-932d-fece77e810fb/624572.pdf. <p><i>Case-law concerning criminal liability of corporations:</i></p> <ul style="list-style-type: none"> • Special Tribunal for Lebanon, <i>STL-14-05/1/CJ/</i> • International Criminal Tribunal for Rwanda, <i>Prosecutor V. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-A</i>. For a summary of the case see Catharine A. MacKinnon, 'Prosecutor V. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-A', <i>American Journal of International Law</i> Vol. 103, No. 1 (January 2009), pp. 97-103 <p>US Military Tribunal in Nuremberg, <i>I.G. Farben Trial, Law Reports of Trials of War Criminals</i></p> | Lecture |
| 9 | <p>Corporate self-regulation, codes of conduct and internal corporate grievances mechanisms</p> <p>Readings:</p> <ul style="list-style-type: none"> • Claes Lundblad, 'Some Legal Dimensions of Corporate Codes of Conduct' in Ramon Mullerat (ed.), <i>Corporate social responsibility: The corporate governance of the 21st century</i> (Kluwer Law International, 2005), pp. 385-402 | Lecture |

| <i>Session</i> | <i>Session subjects and readings</i> | <i>Lecture/ Seminar</i> |
|----------------|--|-------------------------|
| | <ul style="list-style-type: none"> Denise Wallace, <i>Human Rights and Business</i> (Brill Nijhoff, 2015), pp. 285-298 | |
| 10 | <p>Voluntary and judicial enforcement of Business and Human Rights</p> <p>Readings:</p> <ul style="list-style-type: none"> Report 'International Business and Human Rights Arbitration', Claes Cronstedt, Jan Eijsbouts and Robert C. Thompson, February 2017 Vivian Kube, Ernst-Ulrich Petersmann, 'Human rights law in international investment arbitration', <i>Working Paper EUI LAW</i>, 2016/0, pp.1-37 Vasanthi Srinivasan & Parvathy Venkatachalama, Decade of the UNGPs in India: Progressive Policy Shifts, Contested Implementation, (2021) 6(2) <i>Business and Human Rights Journal</i> 279-292 ECOWAS Court, SERAP v Federal Republic of Nigeria, 14 December 2012, ECW/CCJ/JUD/18/12 Christine Kaufmann, 'Holding multinational corporations accountable for human rights violations: litigation outside the United States', pp. 253-265 in <i>Business and Human Rights: From Principles to Practice</i>, Dorothee Baumann-Pauly, Justine Nolan (eds.), Routledge, 2016 <i>Lungowe and others v. Vedanta Resources Plc and Konkola Copper Mines Plc</i> [2017] EWCA Civ 1528 | Seminar |
| 11 | <p>Business, human rights and development: responsibilities of International Financial Institutions (WB, IMF, WTO)</p> <p>Readings:</p> <ul style="list-style-type: none"> Surya Deva, Human Rights Realization in an Era of Globalization: The Indian Experience, (2006) 12 <i>Buffalo Human Rights Law Review</i> 93-138. Upendra Baxi, What May the Third World expect from International Law? (2006) 27(5) <i>Third World Quarterly</i> 713-725. Surya Deva, Socially Responsible Business in India: Has the Elephant Finally Woken up to the Tunes of International Trends?, (2012) 41(4) <i>Common Law World Review</i> 299-321. | Lecture |
| 12 | <p>Intellectual property law and human rights (TRIPS and beyond)</p> <p>Readings:</p> <ul style="list-style-type: none"> Article 15 of the International Covenant of Economic, Social and Cultural Rights Report by Anand Grover, UN Special Rapporteur on the right to health, A/HRC/11/12, 31 March 2009. Helper, L.R. (2003). 'Human Rights and Intellectual Property: Conflict or Coexistence?', <i>Minnesota Intel. Property Review</i> 47 | Lecture |
| 13 | <p>Competition and human rights</p> <p>Readings:</p> <ul style="list-style-type: none"> Arianna Andreangeli, 'Competition Law and Human Rights: Striking a Balance Between Business Freedom and Regulatory Intervention', in D. Daniel Sokol, and Ioannis Lianos (eds), <i>The Global Limits of Competition Law</i> (Redwood City, CA, 2012; online edn, Stanford Scholarship Online, 20 June 2013). Amy Klobuchar, 'Antitrust: Taking on Monopoly Power from the Gilded Age to the Digital Age', <i>Vintage Books</i> (18 January 2022). Albert Sanchez-Graells and Francisco Marcos, 'Human Rights' Protection for Corporate Antitrust Defendants: Are We Not Going Overboard? (February 2, 2014). University of Leicester School of Law Research Paper No. 14-04, Available at SSRN: https://ssrn.com/abstract=2389715 or http://dx.doi.org/10.2139/ssrn.2389715 | Lecture |

COURSE LEARNING OUTCOMES

This course has the following main learning outcomes:

Knowledge:

By the end of the course, students will be able to:

1. Understand and critically examine the global, regional and national institutions monitoring of business conduct in relation to human rights;
2. Critically examine the fragmented rules on corporate responsibility under different fields of soft law and hard law;

3. Critically examine the legal personality of multinational corporations and the responsibility of companies for human rights abuses and international crimes;
4. Critically assess the role of international financial institutions (notably World Bank, IMF and WTO) in relation to global human rights protection, both generally and in relation to the conduct of business enterprises.

Skills:

Upon successful completion of the course students will acquire:

5. legal research and presentation skills allowing them to engage in independent research and develop a complex argument;
6. skills necessary to apply the knowledge accrued to case studies;
7. analytical skills necessary to apply human rights law and human rights principles in relation to the practice of Non-State Actors, notably multinational corporations.

Competencies:

Upon successful completion of the course students:

8. will be able to use knowledge, analytical skills and and/or methodological abilities they have developed in the fields of international human rights law and corporate social responsibility in work or study situations and in professional and personal development.

By completing the study course and successfully passing examination, the student will be able to:

| <i>Learning outcomes</i> | <i>Evaluation criteria</i> | | |
|---------------------------------|---|--|--|
| | <i>(40-69%)</i> | <i>(70-89%)</i> | <i>(90-100%)</i> |
| <i>Knowledge</i> | The student has acquired only basic knowledge of the course subject. The student lacks understanding of some of the core issues of the course subject. | Overall, the student's knowledge complies with the expectations. However, there are issues that the student does not fully understand. | The student has demonstrated in-depth knowledge and understanding of the issues related to the course subject. |
| <i>Skills</i> | The student has demonstrated only basic level of skills. | The student has demonstrated good skills. | The student has demonstrated excellent skills. |
| <i>Competences</i> | The student can apply the knowledge only at a basic level. The student struggles with assessment and evaluation of legal issues. The student can identify the relevant legal norms. However, the student cannot correctly apply them. | The student can apply the knowledge at a reasonably good level. However, the student does not have the necessary level to be able to fully apply the acquired knowledge independently. The student has some problems to correctly apply the legal norms. | The student is able to apply the knowledge independently and correctly. The student can assess and evaluate legal issues, identify the relevant legal norms, and correctly apply them. |

COURSE LITERATURE

Compulsory literature

| <i>No.</i> | <i>Author, year, title, publisher</i> |
|------------|---|
| 1 | Gary Gereffi & Joonkoo Lee, Economic and social upgrading in global value chains and industrial clusters: Why governance matters, (2016) 133 Journal of Business Ethics 25–38. |
| 2 | Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, report of the special representative John Ruggie, A/HRC/17/31, 21 March 2011 http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf |
| 3 | OEIGWG, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, third revised draft August 2021 https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf |
| 4 | George G. Brenkert, Business ethics and human rights: An overview, (2016) 1(2) Business and Human Rights Journal 277–306. |
| 5 | Report by Anand Grover, UN Special Rapporteur on the right to health, A/HRC/11/12, 31 March 2009 |
| 6 | Andrew Clapham, Human Rights Obligations of Non-State Actors (OUP, 2006), pp. 195-211, 218-252 and 263-271 |
| 7 | Jernej Letnar Čeranič, Moving Towards Protecting Human Rights in Global Business Supply Chains, Boston University International Law Journal, 2018, Vol. 35, No. 2, 101-116, https://www.bu.edu/ilj/files/2018/04/Cernic-Final-Version.pdf |
| 8 | Carsten Stahn, <i>Liberals vs. Romantics: Challenges of An Emerging Corporate International Criminal Law</i> , (2018) 50 Case Western Reserve Journal of International Law, 91–125 |
| 9 | Claes Lundblad, ‘Some Legal Dimensions of Corporate Codes of Conduct’ in Ramon Mullerat (ed.), <i>Corporate social responsibility: The corporate governance of the 21st century</i> (Kluwer Law International, 2005), pp. 385-402 |
| 10 | Assessment and Evaluation of Business and Human Rights Reporting by Corporate India: An IIM Bangalore and NHRC Joint Study, https://nhrc.nic.in/sites/default/files/Assessment%20and%20Evaluation%20of%20Business%20and%20Human%20Right.pdf |

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| 11 | ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy |
| 12 | OECD Guidelines for Multinational Enterprises, 2011, http://www.oecd.org/corporate/mne/48004323.pdf |
| 13 | ECtHR, Case of Barbulescu v. Romania, App no. 61496/08, 2017 |
| 14 | Rashmi Venkatesan, The UN Framework on Business and Human Rights: A Workers' Rights Critique, (2019) 157 Journal of Business Ethics 635–652. |
| 15 | Surya Deva, Human Rights Realization in an Era of Globalization: The Indian Experience, (2006) 12 Buffalo Human Rights Law Review 93-138. |

Additional literature and sources

| <i>No.</i> | <i>Author, year, title, publisher</i> |
|------------|--|
| 1 | CESCR General Comments 24 and 25 |
| 2 | International Criminal Tribunal for Rwanda, Prosecutor V. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-A. For a summary of the case see Catharine A. MacKinnon, 'Prosecutor V. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-A', American Journal of International Law Vol. 103, No. 1 (January 2009), pp. 97-103 |
| 3 | US Military Tribunal in Nuremberg, I.G. Farben Trial, Law Reports of Trials of War Criminals (available here: https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-10.pdf), pp. 1-69 |
| 4 | Denise Wallace, Human Rights and Business (Brill Nijhoff, 2015), pp. 285-298 |
| 5 | Steven Ratner, Corporations Suing in Defense of Human Rights? Lessons from Arkansas, EJIL Talk, 13 June 2017 |
| 6 | Antal Berkes, "Extraterritorial responsibility of the home States for MNCs violations of human rights" in <i>Research Handbook on Human Rights and Investment</i> , Y Radi (ed) (2018, E Elgar) |
| 7 | Survival International v WWF, Initial Assesment by National Contact Point Switzerland, 20.12.2016, pp.1-10 |
| 8 | ILO, Complaint GB.331/INS/13, case against Qatar over its treatment of migrant workers, 31 October 2017 |