International Human Rights as a Part of International Law

• Introduction
  – Human rights as law
  – Human rights as international law

• Individuals as subjects of rights
  – Individuals as objects and subjects of rights
  – Individual rights and human rights
  – Respect, protect and fulfill
  – Individual and collective rights
  – The shift in international law from co-existence to co-operation

ICJ art. 38
• Human rights treaties
  – Interpretation
  – Reservations

USA/ICCPR:
"That the United States considers itself bound by article 7 to the extent that `cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

Saudi-Arabia/CEDAW:
» "In case of contradiction between any term of the Convention and the norms of islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.“

– State succession and human rights treaties

The Vienna Convention

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• Customary international law
  – The importance of customary international law
  – State practice and opinio juris
  – Soft law and hard law
  – Jus cogens

  Vienna Convention on the Law of Treaties art. 53:
  “A treaty is void if, at the time of its conclusion, it conflicts with a
  peremptory norm of general international law. For the purposes of
  the present Convention, a peremptory norm of general international
  law is a norm accepted and recognized by the international
  community of States as a whole as a norm from which no
  derogation is permitted and which can be modified only by a
  subsequent norm of general international law having the same
  character.”
Erga omnes rights

Barcelona Traction case (ICJ 1970):

“In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes ... Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination.”
• Dispute settlement and enforcement of human rights
  – Measures under treaty law
  – State responsibility and countermeasures
  – Decisions and actions by IGOs, including the United Nations
    » UN Charter Chapter VII
    » Human Rights Council
    » Charter-based measures
  – Treaty bodies
    » State reports
    » Cases between states
    » Individual complaints
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    » Cases between states
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  – The International Court of Justice (ICJ)
• The interplay between human rights and other parts of international law
  – Fragmentation of international law? Self-contained regimes?
  – The Tampa case (law of the sea, refugee law, human rights law)
  – The Pinochet case (head of state immunity/human rights)
  – Human rights and international humanitarian law
  – Humanitarian intervention (prohibition against the use of force and human rights)
  – Self-determination and territorial integrity
  – International environmental law and trade law
  – ‘Second’ and ‘third’ generations of rights
Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

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1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
   (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
   (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

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3. There shall be taken into account, together with the context:
   (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
   (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
   (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.
Article 32 Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

a) leaves the meaning ambiguous or obscure; or
b) leads to a result which is manifestly absurd or unreasonable.

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