

Wisconsin International Law Journal Annual Symposium

“Regional Human Rights Systems in Crisis”

Friday, March 31, 2017

Room 2260, UW Law School

Approved for 6.5 hours of CLE Credit for WI Attorneys

Program

Overview

Regional human rights systems have been heralded as one of the greatest innovations of the project of global governance. However, there are a host of urgent issues — of growing importance to social justice and human well-being — that pose fundamental challenges to the more developed regional systems, even as they make it harder for newer regional systems to develop. It is unclear, for example, how well these systems grapple with questions of economic inequality, climate change, migration crises and organized non-state violence. They are challenged as well by Brexit, the turn toward nationalistic ideologies, and other criticisms of globalization. In this Symposium, we explore how and whether regional human rights systems can constructively engage in these challenging times. We include not just the developed systems of Europe, Africa, and the Americas, but also the new and less judicialized systems of Asia and the Middle East. Taken together, the symposium allows us to ask anew the question of what are human rights, and where do human rights inscribed at the regional level take us in the contemporary era.

8:30am **Breakfast and Registration**

9:00am **Welcome**
Emmeline Lee and Claire Dennis
WILJ Symposium editors, UW Law School

9:05am **Welcome Remarks**
Alexandra Huneus
Associate Professor of Law, and Director, Global Legal Studies Center and Human Rights Program, UW-Madison

- 9:10am** **Welcome Remarks and Introduction of Keynote Speaker**
Dean Margaret Raymond
UW Law School
- 9:15-10:15am** **Keynote Address**
 “The Inter-American System in Crisis: Danger and Opportunity for Human Rights Oversight in the Western Hemisphere”
James L. Cavallaro
Professor of Law, Stanford Law School
Commissioner & Chair, Inter-American Commission on Human Rights
- 10:15am-12:15pm** **Panel 1: Surveying the Landscape: Current Challenges**
Chair/commentator: Scott Straus
Professor of Political Science & International Studies, UW-Madison
- Speakers:**
 “Double or Nothing? The Inter-American Court of Human Rights in an Increasingly Adverse Context”
Rene Uruena
Associate Professor, Universidad de Los Andes Law School, Bogota, Colombia
- “A Necessary Check Point or Immovable Roadblock? Accessing the African Court on Human and Peoples’ Rights”
Oliver Windridge
Human Rights Attorney, UK
- “The Good, the Bad and the Ugly: Crisis Management Strategies of the European Court of Human Rights”
Başak Çalı
Professor of International Law, Hertie School of Governance, Koç University, Istanbul, Turkey
- 12:15-1:30pm** **Lunch (served in Lubar Commons, 7200 Law)**
Sponsored by WI Experience and Multicultural Students Center
- “Counter-Terrorism in Saudi Arabia: Trapped in an Endless Vicious Circle”**
 Recorded message by Ali Adubisi
Director, European Saudi Organization for Human Rights, Berlin
- 1:30-3:30pm** **Panel 2: Emerging Trends and Novel institutions**
Chair/commentator: Rachel Ellet
Associate Professor of Political Science, Beloit College, Wisconsin

Speakers:

“Human Rights Treaty Review 2.0: The Taiwan Experience”

Yu-Jie Chen

Taiwan Attorney and Visiting Scholar, Weatherhead East Asian Institute, Columbia University

“An International Bill of Rights for the States of the Arabian Peninsula? Revisiting the GCC States’ Commitment to the Universal Human Rights Project”

Adamantia (Mando) Rachovitsa

Assistant Professor of Public International Law, University of Groningen, The Netherlands

“The Inter-American Human Rights System: Of Crises and Opportunities for Anti-Gender Violence Activists in Mexico and Canada”

Paulina García-Del Moral

Postdoctoral Fellow, Department of Sociology & Center for Research on Gender and Women, UW-Madison

“Criminalization of Trafficking in Hazardous Waste in Africa”

Matiangai Sirleaf

Assistant Professor of Law, University Pittsburgh Law School

3:30 -3:45pm

Break

3:45- 5:30pm

Panel 3: Looking to the Future

Chair/commentator: Ciara O’Connell

Visiting Scholar, Marquette University

“The Brexit Ambiguity as a Human Rights Problem”

Jure Vidmar

Chair of Public International Law, Maastricht University, the Netherlands

“Deglobalization and Human Rights Protection”

Alexandra Huneus

Associate Professor of Law and Director, Global Legal Studies Center and Human Rights Program, UW-Madison

“Regional Human Rights Systems in Crisis: The Future of the African System”

Basil Ugochukwu

Postdoctoral Fellow, Centre for International Governance Innovation, Canada

6:00pm

Dinner for speakers, chairs, WILJ members and other invited guests
University Club, 803 State Street, Madison

Biographies of Speakers and Commentators

Ali Adubisi

Ali Adubisi is the Director of the Berlin-based European Saudi Organization for Human Rights (ESOHR). He is an author and previously a prisoner of conscience in Saudi Arabia. With the arrival of the Arab Spring to the Saudi Kingdom in 2011, Mr. Adubisi was arbitrarily arrested twice between 2011-2013, and he continued to be targeted and threatened. As a result, Mr. Adubisi left Saudi Arabia with his family, and he claimed political asylum in Germany in May, 2013. The oppression that he personally experienced, as well as the deteriorating human rights condition in Saudi Arabia, inspired Mr. Adubisi to establish ESOHR, along with several other activists, in 2013. Mr. Adubisi participated in a number of conferences on the human rights situation in Saudi Arabia. He has also participated in UN Human Rights Commission sessions, as well as at conferences held at the European Parliament in Brussels, Amsterdam and Berlin. Mr. Adubisi has also written many reports and articles concerning human rights in Saudi Arabia.

Mr. Adubisi holds meetings with representatives of different states, independent organizations, and various bodies of the UN, in order to work to devise strategies to help improve the human rights situation in Saudi Arabia. Mr. Adubisi is also in touch with research institutions and international media outlets, offering analyses as to the human rights situation in Saudi Arabia. He has also contributed and offered expert advice to filmmakers of documentary films exposing the human rights situation in Saudi Arabia. In 2016, as a result of his activism in the field of human rights, the official Saudi Press Agency announced its intent to prosecute Mr. Adubisi, and to pronounce a verdict against him in absentia by September 21, 2016, under the Penal Law for Crimes of Terrorism and Financing. Mr. Adubisi is still unable to obtain any information as to the nature of charges pressed against him or the verdict rendered in his case.

Başak Çalı

Başak Çalı is Professor of International Law at the Hertie School of Governance and Director of the Center for Global Public Law at Koç University, Istanbul. She received her PhD in International Law from the University of Essex in 2003 and was Senior Lecturer in Human Rights and International Law at University College London until 2013. She is the Secretary General of the European Society of International Law, the chair of the board of the European Implementation Network, a senior research fellow at the Pluricourts Centre at the University of Oslo and a fellow of the Human Rights Centre of the University of Essex. Professor Çalı is a Council of Europe expert on the European Convention on Human Rights (ECHR) and has trained judges, prosecutors and lawyers on the ECHR for over 15 years. She is the author of *The Authority of International Law: Obedience, Respect and Rebuttal* (Oxford University Press, 2015).

James Cavallaro

James Cavallaro is Professor of Law at Stanford University and a commissioner and chair of the Inter-American Commission of Human Rights. He is the founding director of Stanford Law School's International Human Rights and Conflict Resolution Clinic and has dedicated his career to human rights—in both his scholarly research and his legal practice. His extensive expertise is derived from active involvement in the defense of rights, in the development of international

human rights law and the human rights movement, particularly in the Americas and in international human rights litigation. A prolific scholar and sought-after voice on international human rights issues, he is frequently called upon to offer his expertise by the media and civil society. Professor Cavallaro received his BA from Harvard University and his JD from Berkeley Law School. He also holds a doctorate in human rights and development from *Universidad Pablo de Olavide*, Seville, Spain. In 1994, he opened a joint office for Human Rights Watch and the Center for Justice and International Law in Rio de Janeiro serving as director, overseeing research, reporting and litigation before the Inter-American system's human rights bodies. In 1999, he founded the Global Justice Center, a leading Brazilian human rights NGO. He has held positions at Harvard Law School as a clinical professor of law and executive director of the Harvard Law School's Human Rights Program. He joined Stanford Law School's faculty in 2011. In June 2013, Professor Cavallaro was elected to the Inter-American Commission on Human Rights.

Professor Cavallaro has authored or co-authored dozens of books, reports and articles on human rights issues, including most recently: *No Nos Toman en Cuenta: Pueblos Indígenas y Consulta Previa en Las Pisciculturas de la Araucanía* (2013); *Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan* (2012); and "Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court," *American Journal of International Law* (2008).

Yu-Jie Chen

Yu-Jie Chen is a Taiwan lawyer who for the current academic year is a visiting scholar at Columbia University's Weatherhead East Asian Institute. She received her J.S.D. and LL.M. degrees from New York University School of Law. She also holds an LL.M. and LL.B. from National Chengchi University in Taiwan. Dr Chen had extensive experience as a research scholar for the U.S.-Asia Law Institute of NYU School of Law, where she focused on criminal justice and human rights developments in Taiwan and China. Prior to that, she served as a researcher and advocate for a non-governmental organization, Human Rights in China. She has also practiced in the Taipei-based international law firm Lee and Li. Dr Chen's research has focused on international and domestic law in relation to human rights in Mainland China and Taiwan. Her J.S.D. project, "Socialization in Isolation: Taiwan's Practice of Human Rights Treaties as a Non-UN Member State," was a socio-legal study of a peculiar phenomenon arising from Taiwan's acceptance of international human rights norms despite being excluded from the U.N. human rights regime. She traced the important individual actors who introduced international human rights norms to Taiwan and examined the interactions of various actors – including the bureaucracy, civil society and the judiciary – with the new legal order. Dr Chen has published both journalistic op-eds and scholarly essays. Her academic publications include "One Problem, Two Paths: A Taiwanese Perspective on the Exclusionary Rule in China," *N.Y.U. Journal of International Law & Politics*, Volume 43, No. 3, (2011), "Lawyers' Activism and the Expansion of the Right to Counsel in Taiwan," *Comparative Perspectives on Criminal Justice in China* (Mike McConville and Eva Pils eds., 2013), and "Human Rights in China-Taiwan Relations: How Taiwan Can Engage China," *Hong Kong Law Journal*, Volume 45, Part 2 (2015). Her current research considers human rights issues in cross-strait cooperation between China and Taiwan.

Rachel Ellett

Rachel Ellett is Associate Professor of Political Science at Beloit College, WI. Rachel received her PhD in Political Science from Northeastern University in 2008. Her research interests lie at the intersection of law and politics in eastern and southern Africa. Her book *Pathways to Judicial Power in Transitional States*, was published by Routledge in 2013. She has published in, among others, *Comparative Politics*, *Journal of Law and Courts* and *Law and Social Inquiry*.

Her work begins from the assumption that an effective legal system and judiciary is critical to securing good governance and democracy. Yet the role of the judiciary and the mechanisms by which judicial independence and power are established remain poorly understood in sub-Saharan Africa. Professor Ellett's work explores courts as political institutions - institutions fully embedded in the logic of elite calculations, while also recognizing that judges shape their own legitimacy and empowerment. She consults with the U.S. based organization *Freedom House* and has written extensive reports on judicial independence in Lesotho, Malawi and Zambia. She teaches courses in international and comparative politics, and African Studies. Courses offered include politics of international development, contemporary African politics, comparative law and courts, building democracy and women and politics in Africa.

Paulina García-Del Moral

Originally from Mexico, Paulina García-Del Moral received her Ph.D. in Sociology from the University of Toronto in 2015. She is currently a Postdoctoral Fellow in the Department of Sociology and the Center for Gender and Women's Studies at the University of Wisconsin-Madison. Her research focuses on the killing of women and how feminist activists mobilize international human rights law to hold states accountable for this violence. In particular, her work has focused on *feminicidio* in Mexico and the killings of indigenous women and girls in Canada.

Alexandra Huneus

Alexandra Huneus Associate Professor of Law, Director of the Global Legal Studies Center and the Human Rights Program at University of Wisconsin-Madison. She is a leading authority on human rights law in Latin America. She has written extensively about international human rights courts, with an emphasis on their relation to national courts, as well as to other international courts. Her work stands at the intersection of law, political science and sociology, and has been published in the *American Journal of International Law*, *Law and Social Inquiry*, *Yale Journal of International Law*, *Cornell International Law Journal* and by the Cambridge University Press. In 2013, she was awarded the American Association for Law Schools Scholarly Papers Prize, as well as the American Society for Comparative Law Award for Younger Scholars (for two different articles). Currently, she holds an NSF grant to explore the impact of the Inter-American Court of Human Rights on domestic prosecutions of state atrocity. She received her PhD, JD and BA from University of California, Berkeley, and was a postdoctoral fellow at Stanford's Center on Development, Democracy and the Rule of Law.

Professor Huneus is on the Board of Editors of the *American Journal of International Law*, and is a founding board member of the *Brazilian Journal of Empirical/Socio-Legal Studies*. She holds a permanent visiting professorship at the Universidad Diego Portales Law School in Santiago, Chile. She serves as Chair of the Steering Committee of UW-Madison's Human Rights Program, which she co-founded, Chair of the American Society for International Law Midwest Interest Group, and is on the Board of the Inter-American Human Rights Network. Previously, she has

served on the Board of Trustees of the Law and Society Association and the American Society for Comparative Law, and as section chair for the Midwest Political Science Association (Law and Courts).

Ciara O'Connell

Ciara O'Connell recently completed her PhD in law at the University of Sussex and is currently a Visiting Scholar at Marquette University. Her dissertation examined reparations and gendered harm in women's reproductive rights cases before the Inter-American System of Human Rights. Dr O'Connell's research has been published in academic journals and edited collections including *Health and Human Rights*, *The Inter-American and European Human Rights Journal*, and *The Inter-American Court of Human Rights: Theory and Practice, Present and Future* (Intersentia, 2015). Future research plans include a cross-regional examination of gender and sexual and reproductive rights as they are interpreted and applied by the African, Inter-American and European regional human rights systems.

Adamantia Rachovista

Adamantia (Mando) Rachovitsa is an Assistant Professor of Public International Law at the University of Groningen, the Netherlands. Having read for her PhD at the School of Law, University of Nottingham (UK), she took up an Assistant Professorship in Public International Law at the College of Law, Qatar University where she taught international law and human rights from 2013 to 2016. She researches and writes on mitigating the difficulties arising from fragmentation of international law, human rights and, in recent years, her research interests include the relationship of international law to cyberspace.

Matiangai Sirleaf

Matiangai Sirleaf is an Assistant Professor of Law at the University Pittsburgh Law School. Her scholarly work questions how institutions can more systematically address the challenges of providing redress for survivors of mass violence in resource-constrained contexts. Her work draws on insights from the fields of international law and human rights, as well as criminal law. Her most recent publication is "Regionalism, Regime Complexes and International Criminal Justice in Africa," 54 *Colum. J. Transnat'l L.* 699 (2016). She is a graduate of Yale Law School. Prior to law school, she earned an M.A. in International Affairs, from the University of Ghana-Legon while on a Fulbright Fellowship. Professor Sirleaf's practice experience includes serving as counsel in the International Human Rights Practice Group at Cohen Milstein, where she assisted with numerous cutting-edge international human rights cases, representing victims of human trafficking and forced labor, torture, enforced disappearance, extrajudicial killing, and arbitrary detention. Prior to this, she worked in South Africa where she clerked at the Constitutional Court for South Africa for former Chief Justice Sandile Ngcobo, taught a course on civic engagement with human rights for the International Human Rights Exchange Programme at the University of Witwatersrand, and worked at the International Center for Transitional Justice in Cape Town, South Africa on a Bernstein Fellowship - a fellowship for selected Yale Law School graduates to engage in full-time human rights advocacy.

Scott Straus

Scott Straus is Professor of Political Science and International Studies at UW-Madison, where he also serves as Associate Chair/Director of Graduate Studies of Political Science. Professor Straus specializes in the study of genocide, political violence, human rights, and African politics. His most recent books are *Making and Unmaking Nations: War, Leadership, and Genocide in Modern Africa* (Cornell University Press, 2015), which won three awards, and *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016). He has also published several books on Rwanda, including *The Order of Genocide: Race, Power, and War in Rwanda* (Cornell University Press, 2006); *Remaking Rwanda: State Building and Human Rights after Mass Violence* (University of Wisconsin Press, 2011); and *Intimate Enemy* (Zone Books, 2006). Professor Straus also co-authored (with David Leonard) *Africa's Stalled Development* (Lynne Rienner, 2003), translated *The Great Lakes of Africa* (Zone Books, 2003) and co-edited (with Steve Stern) *The Human Rights Paradox* (University of Wisconsin Press, 2014). He has also published in the *American Journal of Political Science*, *Perspectives on Politics*, *Foreign Affairs*, *World Politics*, *Politics & Society*, *Journal of Genocide Research*, *African Affairs*, *Terrorism and Political Violence*, *Genocide Studies and Prevention*, *Human Rights Quarterly*, *Journal of Peace Research*, and the *Canadian Journal of African Studies*.

Professor Straus has received fellowships from the Andrew Mellon Foundation, the Harry Frank Guggenheim Foundation, the National Science Foundation, the Social Science Research Council, and the United States Institute of Peace. In 2009, he was awarded the campus-wide William H. Kiekhofler Distinguished Teaching Award and in 2015 a Distinguished Honors Faculty award. In 2011, he was named a Winnick Fellow at the U.S. Holocaust Memorial Museum and in December 2016 was appointed to the United States Holocaust Memorial Council by President Obama. He co-edits the book series Critical Human Rights with Professor Steve Stern. Before starting in academia, Professor Straus was a freelance journalist based in Nairobi, Kenya.

Basil Ugochukwu

Basil Ugochukwu is a postdoctoral fellow in the International Law Research Program at the Centre for International Governance Innovation, Canada (CIGI). At CIGI, he researches how legal reasoning in environmental cases supports or displaces the efforts to link environmental practices to corporate social responsibility. Prior to joining CIGI, Basil was a director of the Legal Defence Centre in Nigeria and a staff attorney at the Constitutional Rights Project in Nigeria. He has also taught various courses in legal process and international human rights law at York University. His research has been published in *African Human Rights Law Journal*, *Law and Development Review* and *Transnational Legal Theory*, among others. Basil holds an LL.B. (Common Law) from Abia State University, an LL.M. from Central European University in Hungary, a teaching certificate from York University and a Ph.D. from Osgoode Hall Law School, where he was lead editor of Osgoode Hall Review of Law and Policy.

Rene Uruena

Rene Uruena is Associate Professor, Director of Research at the *Universidad de Los Andes* Law School (Bogota, Colombia), and is currently the president of the Colombian Academy of International Law. He earned his doctorate at the University of Helsinki (*eximia cum laude*), and holds a postgraduate degree in economics from the *Universidad de Los Andes*. He has been a fellow at New York University, a visiting professor at the University of Utah, and is a docent at the Institute for Global Law and Policy, Harvard Law School. Twice an expert witness before the Inter-American Court of Human Rights, Professor Uruena has published extensively on international law and global governance.

Jure Vidmar

Jure Vidmar is Chair of Public International Law at Maastricht University, the Netherlands. Prior to that, he held several teaching and research positions at Oxford University, where he was a Research Fellow at St John's College, Research Fellow of the Institute of European and Comparative Law, and a member of the Oxford Law Faculty. He was also a Visiting Fellow at Harvard Law School and a postdoctoral fellow at the Faculty of Law, University of Amsterdam. Professor Vidmar has taught in several areas of law, including public international law, EU law, human rights, public law, jurisprudence, and criminal law. His book “Democratic Statehood in International law: The Emergence of New States in Post-Cold War Practice” (Oxford, Hart, 2013) was a joint Runner-up for the Society of Legal Scholars Birks Prize for Outstanding Legal Scholarship in 2014. He also co-edited (with Erika de Wet) “Hierarchy in International Law: The Place of Human Rights” (Oxford, OUP, 2012). Professor Vidmar serves on the editorial board of the *Netherlands International Law Review*, and is the Editor-in-Chief of the *Hague Yearbook of International Law*.

Oliver Windridge

Oliver Windridge is a British lawyer specializing in international criminal law and international human rights law. He is founder of The ACtHPR Monitor, a website and blog dedicated to the African Court on Human and Peoples' Rights. In 2014 Mr. Windridge was one of five non-African lawyers appointed to the African Court's inaugural List of Counsel (*pro bono*). He has advised, lectured and written extensively on the African Court and is currently writing the Elgar Companion to the African Court on Human and Peoples' Rights, the first academic book dedicated solely to the African Court. Mr Windridge has also served as a legal officer in the Appeals Chamber at the International Criminal Tribunal for the former Yugoslavia (2014-2016) and the Appeals Chamber and Trial Chamber at the International Criminal Tribunal for Rwanda (2009-2014). He currently acts as a Consultant to the Bingham Centre for the Rule of Law, part of the British Institute for International and Comparative Law, on its sentencing in international criminal law project and as an adviser to the American Bar Association's Human Rights Center.

Abstracts

“Counter-Terrorism in Saudi Arabia: Trapped in an Endless Vicious Circle”

Ali Adubisi

Director, European Saudi Organization for Human Rights, Berlin

Abstract: International law has imposed the obligation to uphold human rights on states like the Kingdom of Saudi Arabia. However, Saudi Arabia has always sought to find pretexts to limit its commitment to uphold human rights. Saudi Arabia has adopted a number of measures in the context of what it refers to as “counter-terrorism”, but in reality, these measures have had a devastating impact on the human rights movement in the Kingdom, since Saudi Arabia now employs counter-terrorism measures to suffocate any voices calling for the respect of basic human rights. Unfortunately, it currently appears that Saudi Arabia intends to continue to use these counter-terrorism measures as an obstacle to basic human rights, and the Saudi government has already committed many human rights violations under the guise of counter-terrorism.

To better understand this paradox, such violations must be explored in detail and contrasted with international laws governing counter-terrorism. This process will help shed light on the application of counter-terrorism in Saudi Arabia so as to arrive at appropriate future-oriented recommendations for the various parties involved, including the citizens, organizations, media outlets, international community, and the Kingdom’s ally states, in order to urge the Kingdom to revise its current strategy that has proven destructive to the movement of human rights.

The ultimate goal behind this process is to end the misrepresentation of Saudi Arabia’s counter-terrorism measures. Such misrepresentation has been fueled by the Kingdom’s national media outlets, as well as public relations firms and international allies that benefit financially from arms deals with Saudi Arabia. This clarification and proper characterization of Saudi counter-terrorism measures will be an important step to improving human rights in Saudi Arabia.

“The Good, the Bad and the Ugly: Crisis Management Strategies of the European Court of Human Rights”

Başak Çalı

Professor of International Law, Hertie School of Governance, Koç University, Istanbul, Turkey

Abstract: The European Court of Human Rights has faced two protracted crises in the past two decades. Stalled and reversed democratic transitions in Europe have clogged the Court's docket with serious and repetitive human rights cases. The Court has also faced sustained criticisms of its legitimacy by apex court judges and parliamentarians from some of its founding members. These argue that the Court does not duly respect its subsidiary role in the interpretation of the Convention alongside national parliaments and national courts of well-established democracies. In the light of these two distinct types of crises that pull the Court in opposite directions, this paper analyzes the ways in which the European Court of Human Rights has addressed and sought to manage these through its case law. The paper argues that in order to manage the increased diversity of human rights practices in Europe (comprised of 'good' states wanting more

deference from the European Court of Human Rights and 'ugly' states that flout the Convention in serious ways), the European Court of Human Rights has developed what I call an emerging 'three-tiered' jurisprudence. Alongside its standard case law for the 'bad', the Court now has two other modes of engaging with human rights interpretation. One set of case law recognizes that the Court will defer to the judgment of national parliaments or courts if it finds that the domestic institutions acted in good faith in protecting human rights. Another part, in particular under Article 18, now declares that some states have not only violated the Convention, but that they did so in bad faith. The paper critically analyses whether this diversification of case law based on the good and bad faith of domestic institutions is a desirable development for supranational human rights law interpretation. It holds that, while this development is consistent with the role of the Court as a promoter of domestic respect for human rights through democratic governance, it is vulnerable to the criticisms of the Court becoming politicized and risking to deliver individual justice.

“Human Rights Treaty Review 2.0: The Taiwan Experience”

Yu-Jie Chen

Taiwan attorney and visiting scholar, Weatherhead East Asian Institute, Columbia University

Abstract: Since the People’s Republic of China has occupied China’s seat in the U.N., the Republic of China’s government on Taiwan has been excluded from the international human rights regime for more than four decades. Despite isolation, Taiwan ratified in 2009 the two major human rights covenants – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although Taiwan’s attempt to deposit the instruments of ratification with the U.N. was rejected, it nevertheless has committed itself to following the covenants by granting them the status of domestic legislation and setting up a human rights report and monitoring system to compensate for its inability to take part in the U.N. treaty review regime. Taiwan has designed an evaluation process that is largely modeled on the U.N. treaty review but modified to account for suggestions from civil society and to allow for greater local participation. Ten independent international experts were invited to Taipei to conduct the first treaty review in February 2013 and the second in January 2017. My paper focuses on this alternative model that Taiwan is shaping – what I call “human rights treaty review 2.0.” It examines the discussions and decision-making surrounding this innovative device, its unique features, how it has mobilized the government and civil society, how controversial issues in Taiwan – particularly the death penalty and same-sex marriage – have been addressed on this platform and the meaning of the review practice to local participants. In conclusion, the paper discusses the implications of the Taiwan experience for improving the design of the human rights treaty regime.

“The Inter-American Human Rights System: Of Crisis and Opportunities for Anti-Gender Violence Activists in Mexico and Canada”

Paulina García-Del Moral

Postdoctoral Fellow, Department of Sociology &

Center for Research on Gender and Women, UW-Madison

Abstract: In recent years, the Native Women’s Association of Canada (NWAC) and the Canadian Feminist Alliance for International Action (FAFIA) have increasingly mobilized international human rights law to hold Canada accountable for failing to respond to the killing of indigenous women and girls. Interestingly, NWAC and FAFIA have turned to the Inter-American Commission on Human Rights (IACHR), borrowing the transnational advocacy and

legal strategies that Mexican feminist activists used in the context of the mass abductions and killings of women in the northern Mexican state of Chihuahua. Emblematic of this activism is the case of *González and Others “Cotton Field” v. Mexico*, decided by the Inter-American Court of Human Rights in 2009. This case concerns the abduction and subsequent sexual murder of three young women, whose mutilated bodies were found along those of five other victims in a cotton field in Ciudad Juárez, Chihuahua, in early November 2001. The Inter-American Court of Human Rights (IACtHR) found that the Mexican state had failed to act with due diligence to prevent, effectively investigate, and punish these crimes. This judgment has resulted in significant legal change in Mexico. Yet unlike Mexican activists, NWAC and FAFIA do not have recourse to the IACtHR, since Canada is not a signatory to the American Convention on Human Rights (ACHR). Against this background, this paper examines the different opportunities that the Inter-American Human Rights system offers to these anti-gender violence activists in the context of its crisis. In particular, the paper examines how judicialized and less judicialized activist strategies may impact how States respond to the killing of women.

“Deglobalization and Human Rights Protection”

Alexandra Huneus

Associate Professor of Law and Director, Global Legal Studies Center and Human Rights Program, UW-Madison

Abstract: The regional human rights system of the Americas has flourished since the end of the Cold War. The spread of democracy in the region, coupled with a greater emphasis on rights, litigation, and constitutional law, has allowed the Inter-American System of Human Rights (IAS), created by the Organization of American States, to permeate domestic legal systems and play a role even, at times, in face of an executive branch loath to comply with its orders. Yet current changes in the geopolitical landscape are disrupting this human rights system in arguably new ways. Perhaps, as suggested by Stephen Hopgood, we are moving not towards a post-Westphalian order with porous borders and weak sovereignty, but towards a neo-Westphalian order of inward looking policies with weaker American leadership. In such a scenario, what becomes of human rights protection at the regional level? To pose this question is not to suggest that the IAS is under existential threat. The point, rather, is to consider that human rights systems are shaped and constrained not only by law and domestic politics, but also by the geopolitical context which originally allowed them to emerge.

“An International Bill of Rights for the States of the Arabian Peninsula? Revisiting the GCC States’ Commitment to the Universal Human Rights Project”

Adamantia Rachovista

*Assistant Professor of Public International Law, University of Groningen,
The Netherlands*

Abstract: This paper discusses the commitment of the States of the Arabian Peninsula, otherwise known as the Gulf Cooperation Council (GCC) States - Saudi Arabia, Qatar, United Arab Emirates, Kuwait, Bahrain and Oman - towards the international human rights law project. These States (alongside China) have been described as the ‘only two poles of stubborn and tenacious resistance’ to ratifying the two UN Covenants. This paper argues that it is time to revisit the practice of the GCC States and that there are, in fact, strong indications for one to be cautiously optimistic.

The Middle East has a poor human rights record not to mention that it is the one of the least judicialized regions regarding human rights protection. More specifically, the GCC States have been particularly reluctant to assume human rights obligations at the international level; this hesitance is striking even for Middle Eastern standards. The analysis revolves around the 2015 GCC States' Declaration on Human Rights, which has received little, if any, attention in international law scholarship. The paper reads the GCC Declaration in light of the Universal Declaration of Human Rights and the UN Covenants, on the one hand, and the Revised Arab Charter on Human Rights, on the other hand, in order to underscore the specific features of the practice of the GCC States. Islamic countries do not constitute a monolithic bloc and it is significant in this regard to discuss regional particularities including historical, cultural and religious backgrounds. The analysis also draws upon recent developments, including these States' engagement in the Universal Periodic Review process before the Human Rights Council and the ratification of the ICCPR and the ICESCR by Bahrain and Kuwait. GCC States strongly support specific "red lines" in their practice bringing to the fore mostly cultural (and religious) particularities. At the same time, however, they constructively engage with international human rights both on the discourse and on the law and practice levels. The paper concludes by stressing that the assessment of the human rights protection system in the Middle East needs to, first, account for regional and intra-regional specificities and, second, pursue a tailored approach to the region with regard to how we define progress and crisis.

“Criminalization of Trafficking in Hazardous Waste in Africa”

Matiangai Sirleaf

Assistant Professor of Law, University Pittsburgh Law School

Abstract: The African Union adopted an instrument to create the first ever regional criminal tribunal in May of 2014. The Malabo Protocol criminalizes trafficking in hazardous waste, and presents an opportunity for African states to alter the status quo in environmental protection. This paper examines how the troubling history of toxic colonialism in Africa helped to inform the attempt to criminalize the trafficking of hazardous waste in the Malabo Protocol. It explores how the inadequate international legal framework for regulating hazardous waste, led to the criminalization of trafficking in hazardous waste in the Malabo Protocol. It also analyzes how the regional prosecution of trafficking in hazardous waste contributes towards some of the newer theories of punishment, as well as some of the more traditional goals of punishment. It discusses the potential challenges that might arise in the attempt to regionally prosecute trafficking in hazardous waste and suggests ways these issues can be resolved through creative interpretation of the Protocol. Lastly, the paper concludes that the regional criminal court's prosecution of trafficking in hazardous waste presents another option for African states whose domestic judiciaries and related institutions may not be able to prosecute trafficking in hazardous waste, and the international system, which has failed to prosecute trafficking in hazardous waste or corporations involved in toxic dumping.

“Regional Human Rights Systems in Crisis: The Future of the African System”

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Abstract: Is the world approaching the end of the age of human rights? Some scholars think so; and recent world incidents seem to suggest that they might be right after all. Feelings of political and economic exclusion have forced long-suppressed resentful attitudes to the surface in many parts of the world. There is, therefore, a sense that human rights are receding while fear-stoked

phobias are gaining ground. What could these mean for the various existing and emerging regional human rights protection systems? In my presentation, I will attempt to answer this question from an African perspective. In doing so, I will trace the past, present and future of the African human rights system and how contemporary challenges might impact its effectiveness. Some of the questions I intend to address are: what is the current state of the African human rights protection system? What new challenges does the system face given developments in other regions of the world especially in the face of globalist resentment and “othering” of African peoples around the world? Besides, how could the African system tackle such existing challenges as terrorism and newer one like climate migration? I will argue that the challenges facing the human rights idea now also provide opportunities for regional systems to integrate in their protective and promotional activities the contextual issues driving doubt and resentment that human rights norms provide answers to feelings of exclusion rather than being a part of the problem.

“Double or Nothing? The Inter-American Court of Human Rights in an Increasingly Adverse Context”

Rene Uruena

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Abstract: Following the end of dictatorships in Latin America, the Inter-American Court of Human Rights (IACtHR) has implemented an ever-more ambitious agenda. From effectively striking down domestic amnesty laws, to adopting orders for structural transformations of domestic governance and engaging in detailed supervision of the implementation of its decisions, the Court has fundamentally changed human rights protection in the region.

There is, however, some evidence of a backlash to this trajectory. Three states have withdrawn from the Court’s jurisdiction, and the Commission’s work almost came to a complete halt in 2016, as states proved unwilling to fund it. Moreover, some domestic courts have grown resistant to follow the Court’s guidelines. On top of that, the most influential nation in the region (and the main financial backer of the Commission) elected Donald Trump as President, on an “America First” platform that seems hostile to both human rights and international governance.

What is the appropriate strategy for the Court in this context? One possible answer is to double down on the efforts, and insist on a deepening of the Court’s current trajectory. This paper, though, suggests some caution. For the last decade, the Court has followed an overall mindset that emphasizes advancement along three axis: (a) direct effect in domestic decision-making of Inter-American laws and orders; (b) expanded enforcement of socio-economic rights; and (c) increased protection of minorities. This paper argues that the way the Court has advanced each of these dimensions features a distinctive blind spot that makes the Inter-American Human Rights System an easy target for populism and nationalism. Each of these dimensions needs to be advanced, but their advancement does not necessarily mean defending the IACtHR’s current trajectory. Doubling down on the current strategy may, in fact, prevent us from protecting the System’s achievements from attack by a disturbing new kind of political opponent.

“The Brexit Ambiguity as a Human Rights Problem”

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Abstract: While Brexit has been primarily presented as a matter of EU law, it could also lead to an adverse human rights problem. Free movement of people is one of the fundamental rights under EU law. Once the UK is severed from this legal regime, UK citizens residing in other EU member states and non-UK EU citizens residing in the UK will *prima facie* lose their residency rights in their present host EU member states. The combined number of directly affected individuals is 4.5 million. Is Europe facing a forced resettlement of millions of current EU citizens residing abroad, as well as their non-EU-citizen family members who also benefit from certain EU citizenship rights?

This paper argues that the European Convention on Human Rights (ECHR) could afford partial protection to the affected individuals. In the 2012 case of *Kuric v. Slovenia*, the European Court of Human Rights decided that a change of the legal status of a territory does not deprive a lawfully-resident non-citizen of her/his established residency rights. Applied to the situation of Brexit, the Kuric doctrine would mean that a UK citizen residing in, e.g., Spain could keep his/her already established right to residence. But this would not continue to be EU citizenship. The ECHR would only freeze the already acquired residence rights on the critical date, but would not enable free movement anew. The same would apply vice versa, e.g., for a Spanish citizen residing in the UK.

The problem addressed in *Kuric v Slovenia* came out of its secession from Yugoslavia. But Brexit is not quite the same as secession. In purely technical international legal terms, by exiting the EU, the UK is only terminating its participation in an international treaty regime. Is the Kuric doctrine, then, applicable in the EU exit situations by analogy? If not, what is the legal status of people who lose EU citizenship (or some aspects of it) collectively? Even if the Kuric doctrine were applicable in principle, EU law knows of different levels of free movement rights for persons, whereas the level of rights depends on the nature of activity (e.g., worker, student, economically self-sufficient) in the host state, and on the length of residency. Would all these categories benefit from the Kuric doctrine or only some of them?

This paper seeks to draw a comprehensive legal framework under European human rights law for tackling the pressing human rights problems created by Brexit: a collective loss of EU citizenship rights for several categories of European residents. While human rights treaties do not guarantee economic free movement between countries in the way this is guaranteed by EU citizenship, it is arguable that the ECHR could protect at least some already-acquired EU citizenship rights. The paper demonstrates how a human rights crisis was created within a legal regime aimed at fostering an economic and political integration (EU), and how this crisis could be resolved within a separate legal regime which aims at protecting regional human rights standards (ECHR).

“A Necessary Check Point or Immovable Roadblock? Accessing the African Court on Human and Peoples’ Rights”

Oliver Windridge

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Abstract: This paper looks at the persistent difficulties faced by African citizens and NGOs attempting to bring cases before the African Court on Human and Peoples’ Rights (African Court). In short, the African Court is in many ways an ideal destination, with jurisdiction to

consider alleged violations of the African Charter and other international human rights instruments, carefully considered judgments, and a robust record of finding in favor of applicants. The difficulties relate instead to the jurisdictional journey required to get to the African Court - difficulties that threaten to stifle the African Court's potential.

Every African Union member state, bar South Sudan, has ratified the African Charter on Human and Peoples' Rights. This means, at least in theory, that every AU member state must ensure their domestic laws adhere to and promote the rights found in the African Charter. This paper starts by briefly examining the rights contained in the African Charter including both individual rights and peoples' rights. This paper will then consider the two juridical limbs of African Union human rights system; the African Commission on Human and Peoples' Rights, a quasi-judicial body created in 1986 and situated in Banjul, Gambia, and the African Court, a judicial body created in 2004 and located in Arusha, Tanzania. It notes that whilst access to the African Commission remains open to AU citizens who have exhausted domestic remedies, the African Court requires a triple layer of ratifications required in order to allow citizens and NGOs direct access to it - the African Charter, the African Court Protocol and the African Court Special Declaration. This paper will analyze all three layers, and discuss whether these requirements serve as a necessary checkpoint or an unnecessary roadblock as the title of the paper posits.

In particular, this paper will examine the African Court's Protocol and how its ratification gives jurisdiction to a number of bodies capable of bringing a case but also how it places limitations on who can bring a case before the Court. It will then briefly compare these limitations to other regional human rights institutions, before examining some of the challenges to the limitation. The paper will then consider the Special Declaration - the third layer required to allow citizens and NGOs direct access to the African Court. Looking first at its wording and the number of member states who have signed it, the paper will also examine the recent attempts by Rwanda to withdraw its Special Declaration and what effect this may have for the future of the African Court. The paper will then consider the emerging possibility of citizens and NGOs bypassing the Special Declaration altogether through referral via the African Commission, the possible advantages of this route and current difficulties obtaining clear information on the criteria applied. Finally, in conclusion the paper will take a global view of the limitations currently in place and suggest possible ways forward in order to ensure the African Court can fully meet its mandate as a truly continental human rights court.