

Descriptif d'enseignement / *Course descriptions*

Cycle master 1
Semestre 1

Human Rights & Strategic Litigation

Intitulé du cours Human Rights & Strategic Litigation

Type de cours : Séminaire d'unité fondamentale

Langue du cours/Language of instruction : English

Jeanne SULZER

Nom de l'enseignant : Jeanne Sulzer

Titre ou profession Avocate

Contact : jeanne.sulzer@sciencespo-lille.eu

Résumé du cours – Objectifs - *Course description – Targets*

This 18-hour class will focus on the study of a selected number of human rights issues through the lens of strategic lawyering and litigation. Students will become acquainted with the fundamentals of human rights and will become aware of specific human rights issues.

The focus of this class is to understand how victims of human rights violations and NGOs that support them (including through documentation) are key actors in the promotion of human rights. By publicly exposing injustices through court cases - in complementarity with other tools such as campaigning or advocacy - strategic litigation seeks to bring systemic change for all victims of the same crimes.

According to Amnesty International, « in human rights, litigation is considered as “strategic” when it is consciously designed to advance the clarification, respect, protection and fulfilment of rights. The idea is to change laws, policies and practice, and to secure remedies or relief following violations. Strategic litigation is also often about raising public awareness of an injustice ».

During this class we will study four key areas:

1. The fight against impunity and the rights of victims of **international crimes** (war crimes, crimes against humanity and genocide)
2. The growing recognition of corporate **criminal accountability**
3. Innovative tools and **Climate justice**
4. **Terrorism and counter terrorism** : derogating from Human rights & state of emergencies

The class will combine classroom, case study and student's oral presentation.

1. **PARTICIPATION 25 %**
2. **GROUP WORK 50 %**
3. **INDIVIDUAL WORK 25 %**

1. Strategic Litigation Project. : **GROUP WORK**

The students will form small groups to elaborate a **Strategic Litigation Project**.

Each group will develop a strategic litigation case on an emerging human rights issue. You can pick from one the topics below, you may also propose another topic (no repetitions)

- Prosecuting foreign fighters for international crimes committed in Syria
- Repatriation of children from camps in North-East Syria
- Corporate accountability and the Uighurs
- Racial profiling by the police in France
- ECHR case Derogation - State of Emergency
- Victims of the Algerian war still await justice : what options?

Proposed format :

- *2/5 slides for the class presentation*
- *Narrative max 8/10 word pages*
- *May contain diagrams, pictures etc.*
- *You can use social media, communication tools, campaigning and advocacy tool to complement the strategic litigation case and objectives*

Proposed Structure

- *Applicant / defendant*
- *Jurisdiction*

Summary (1 page)

- **Case overview:** *imagine that you are describing the case to a non-legal public audience, to say why the violation must be corrected.*
- **Impact:** *What do you want to change? Who has the power to enact the change?*
- **Factual summary:** *Include a brief summary of the facts with the dates and key figures.*
- **Procedure summary:** *Include a brief summary of all the legal procedures that have already taken place.*

Jurisdiction(2/3 pages max)

- o *Choice of jurisdiction, reason*
- o *Why other avenues where not available or not preferred*

Motivation (3 pages max)

- **Relevant legal standards:** *Establish the legal standards that apply to the proposed case, both under national and international law.*
- **Admissibility:** *Briefly addressing the issue of exhaustion of all other options, for example statute of limitations. Mention all other procedural matters.*
- **Arguments:** *Give a summary of the main arguments.*

- **Counter-arguments:** Enumerate the main points that the other party is likely to lift, and how you will respond to them.

Build the case file

- **Proof:** Describe the evidence available in support of the case and the steps that may be necessary to obtain this evidence, including freedom of information requests.
- **Reparations (if applicable):** Summarize the requests

2. Press release : INDIVIDUAL WORK

Each of you individually will write a one pager press release in relation to the strategic litigation case from an NGO perspective. It may be a “third party NGO” commenting your case or a press release emanating from your group to announce the case or developments in the case

Plan – Séances - Course outline

Session 1 Thursday 18 November 2021 8h30 – 11h30

Strategic litigation and International Justice: victims’ rights and individual accountability, the International Criminal Court (Part I)

Listen

- PODCAST Asymmetrical haircuts , episode 46, ICC State of mind [HERE](#)

Readings

- Understanding the International Criminal Court [HERE](#)
- The International Criminal Court Today [HERE](#)
- Report on Preliminary Examination Activities 2020, 14 December 2020 [HERE](#)
- FIDH Report, ‘The victims’ mandate of the International Criminal Court: disappointments, concerns and options for the way forward Observations and recommendations for the Independent Expert Review, p. 10-17 [HERE](#)
- ICC Afghanistan Case docket [HERE](#)

Session 2 Thursday 25 November 2021 8h30 – 11h30

Strategic litigation and International Justice: Universal jurisdiction (Part II)

Listen

- PODCAST Branch 251 The Koblanz trial [HERE](#)

Readings

- Trial, FIDH, ECCHR, REDRESS Universal Jurisdiction Annual Review, 2021 [HERE](#)

- Open Society Justice Initiative, OPTIONS FOR JUSTICE, A Handbook for Designing Accountability Mechanisms for Grave Crimes [HERE](#)
- FIDH, ECCHR and REDRESS “Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes”, September 2020 [HERE](#)
- Reed Brody, Bringing a Dictator to Justice: The Case of Hissène Habré, *Journal of International Criminal Justice*, Volume 13, Issue 2, 1 May 2015, Pages 209–217 [HERE](#)
- Opinio Juris, Crimes against the Rohingya: ICC Jurisdiction, Universal Jurisdiction in Argentina, and the Principle of Complementarity [HERE](#)
- New York Times, Criminal Inquiries Loom Over al-Assad’s Use of Chemical Arms in Syria [HERE](#)
- Doughty street / Crimes against humanity committed against Yazidis [HERE](#)

Session 3 Thursday 2 December 2021 8h30 – 11h30

Strategic litigation and corporate accountability

Readings

- 7th Session of the UN Intergovt. Working Group on a proposed treaty on business and human rights [HERE](#)
- Surveillance and torture in Egypt and Libya: Amesys and Nexa Technologies executives indicted [HERE](#)
- FIDH – Corporate Accountability for human rights abuses [HERE](#)
- Opinio Juris, Holding Transnational Corporations Accountable for International Crimes in Syria: Update on the Developments in the Lafarge Case (Part I & II) [HERE](#)
- Holding transnational corporations accountable for international crimes in Syria : update on the Lafarge case [HERE](#)

Session 4 Thursday 9 December 2021 8h30 – 11h30

Strategic litigation and Climate change

Readings

- Stop Ecocide, Independent Expert Panel for the Legal Definition of Ecocide [HERE](#)
- Mégret, Frédéric, The Case for a General International Crime Against the Environment, 2010 [HERE](#)
- ICC Office of the prosecutor policy paper on case selection and prioritization, para 7, April 2016 [HERE](#)
- All Rise ICC communication [HERE](#)
- Maud Sarlieve, International criminal justice fails to meet the challenge of environmental crimes, JusticeInfo, July 2019 [HERE](#)
- ECCHR Special newsletter on Climate Justice [HERE](#)

Listen

- Podcast France Inter (in French) quel credit accorder au crime d’écocide [HERE](#)

Session 5 a) Tuesday 14 December 2021 8h30 – 11h30

Derogating from Human rights: reservations & state of emergencies – The case of terrorism and counter terrorism

Readings

- Page of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism page [HERE](#)
- Guide on Article 15 of the European Convention on Human Rights : Derogation in time of emergency [HERE](#)
- Emilie M. Hafner-Burton, Laurence R. Helfer and Christopher J. Fariss, Emergency and Escape: Explaining Derogations from Human Rights Treaties [HERE](#)
- Alka Pradhan v. Gitmo [HERE](#) in 2017
- Supreme Court's 2006 decision in Hamdan [HERE](#)
- France or Germany : state torturers, don't go to the wrong place [HERE](#)
- OSJI, European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria [HERE](#)

Watch

- The Trial: inside Guantánamo with 9/11 suspect Ammar al-Baluchi [HERE](#)

Session 5 b) Tuesday 14 December 2021 12h00 – 15h30

Group presentations - Strategic Litigation Project

Annex – Building a Human Rights Strategic Litigation

Common law countries have a tradition of resorting to the courts to achieve social change, however, this phenomenon is less known in other legal systems. Nonetheless, strategic litigation can also be very effective in civil law traditions. Other considerations are to be taken into account if the action is brought before criminal courts in countries where the rule of law does not apply and where the courts are not independent. Within national courts, different courts may be seized depending on if it is a criminal case, administrative or civil proceedings. Some situations require a slightly different approach, depending on the victim or the legal system in which you operate and the sensitivity of the problem under consideration. Factors to be considered include:

- *Take action to lose.* If you are unsuccessful, the procedure may expose the unfairness of a particular problem and the lack of redress, which is a catalyst for change. Is it a strategy or a posteriori description of an action that failed?
- *Anticipate backlash.* In some situations, gradual action may lead to a conservative reaction that can be very well founded and thus harm strongly a movement. How can the action be managed in a way that mitigates this problem?
- *Transnational litigation.* A very effective method is to draw up two jurisdictions against each other, in the hope that they will confront each other or for the purpose of elevating the violation of human rights to the diplomatic level. This method is nevertheless complex and costly.

- *Collaborative action.* When a coalition of several NGOs looks at the same question and coordinates their work so that the overall result is greater than the sum of everyone's efforts.

Impact?

The way in which a case is brought before the courts depends on the objective of the litigation and the repairs you are requesting. Different options include:

Single-impact cases. Cases with an immediate impact, likely to modify the national or international discourse. These cases usually result from a reaction to a set of unexpected circumstances rather than a specific strategy.

Establishment of the truth. In some cases, victims are looking for the finding of a fact by a judge, thus asserting their position and establishing the truth. The mere finding of a violation is satisfactory.

Establish legal rights or prohibitions. The purpose of many disputes is to establish legal rights by declaring that an existing law is unjust or by requiring a government to act.

Procedural victories. Take legal action to establish a right which has more general implications, such as the right to a lawyer, conditions of release provisional bail or the burden of proof.

Administrative litigation. Recourse to administrative tribunals to challenge government actions on the grounds that they were not lawfully undertaken in procedural terms, rather than due to an inappropriate end result. It is less the decision than the procedure that is being challenged.

Litigation to attract attention. Senior officials may be unaware of a letter sent by an NGO or even a campaign, but once a request in Justice is formed, they are forced to respond, often at a higher level.

Impact of a declaratory nature

In some cases, the judgment itself has sufficient repercussions: for many of victims of human rights violations, hearing a judge declare that they have been harmed is of crucial importance.

Win on principle. The symbolic value of a statement that something is unfair: "Justice", "awareness of rights" or "validation" of the complaint filed by the community. A judgment sets a limit and states that something "is no longer permitted", so the status quo must be reformed. In some cases, the ECHR does not grant any financial compensation, because "the mere finding of a violation is satisfactory". The decision of an international court is enough.

Establishment of the truth. The finding of a fact in a judgment may have a significant impact in certain situations where the facts are disputed.

Legal impact

Not all litigation is intended to change the situation of individuals on the ground. Some cases will lead to a legal change which may have broader implications.

Create case law. Traditional strategic litigation aims to establish a historical jurisprudence to confirm an innovative interpretation of the law or extend its application. This will require extreme attention to legal arguments.

Prohibition. Cases in which the law can prohibit something will certainly have a stronger impact, it can lead to the annulment of a law.

Obligation to act. Judgments forcing the government to do something it does not wish to do are more difficult to apply, because they require a will, policy and a budget.

Bibliographie - Bibliography :

Human rights documentation

- Berkeley Protocol on Digital Open Source Investigations, [HERE](#)
- Weapons of War, Tools of Justice: Using Artificial Intelligence to Investigate International Crimes, Lindsay Freeman, Journal of International Criminal Justice, Volume 19, Issue 1, March 2021, Pages 35–53, [HERE](#)
- How to Prepare the International Criminal Court for Our Digital Future, Opinio Juris [HERE](#)
- Website <https://forensic-architecture.org/>

Blogs

- International Justice Monitor (Open society Justice Initiative Court Watch Project) www.ijmonitor.org
- Justice in conflict (from Mark Kersten) <https://justiceinconflict.org/about-this-blog/>
- Justice Hub <https://justicehub.org>
- International Justice Tribune www.justicetribune.com/blog
- Justice Info www.justiceinfo.net/fr/
- Jurist www.jurist.org
- Ilawyer <http://ilawyerblog.com>
- Trial
- ICL Media Review
www.iclmediareview.com

Podcast

- [Assymetrical haircut](#)

Selected International Tribunals

- ICC www.icc-cpi.int
- International Criminal Tribunal for Rwanda (ICTR)
- International Criminal Tribunal for the former Yugoslavia (ICTY) (jurisprudence of the ICTR and ICTY through ICTR/ICTY/MICT Case Law Database)
- Special Court for Sierra Leone
- Extraordinary Chambers in the Courts of Cambodia
- Special Tribunal for Lebanon
- Kosovo Specialist Chambers & Specialist Prosecutor's Office www.scp-ks.org/en

Universal jurisdiction

- Extraordinary African Chambers (Habré Casé) www.chambresafricaines.org
- Equatorial Guinea / The Campaign to Bring Yahya Jammeh and his Accomplices to Justice
www.facebook.com/Jammeh2Justice

Indicative list of International NGOs working on international Justice issues

- Redress <https://redress.org>
- FIDH www.fidh.org/fr/themes/justice-internationale/
- Guernica37 <http://guernica37.org>

- ECCHR www.echr.eu/en/our_work/international-crimes-and-accountability.html
- TRIAL <https://trialinternational.org>
- HRW www.hrw.org/topic/international-justice
- Amnesty International www.amnesty.org/en/what-we-do/international-justice/
- Coalition for the ICC www.coalitionfortheicc.org
- Civitas Maximas <https://www.civitas-maxima.org/fr>
- Collectif des parties civiles rwandaises (France) <http://www.collectifpartiescivilesrwanda.fr>