

## INTERNATIONAL HUMAN RIGHTS LAW

## First part of the course

**Questions for the mid-term examination**

(50 of 100 points for the course)

1. The United Nations has the mission to promote and encourage the respect for human rights. For this purpose, the General Assembly has established a special institution.
  - a) Please present and discuss this institution and explain, why it is controversial among human rights experts. (8 of 50 points)
  - b) Please present and discuss the three important human rights instruments of this institution. Are they effective? (16 of 50 points)
2. In the course we have studied global and geo-regional human rights law and the relevant international treaties. Where do we find the most elaborate and effective way of enforcement? Why is it more effective than the mechanisms under the other treaties? (15 of 50 points)
3. In a human society, the freedoms of the human being cannot be guaranteed without limits. However, any restrictions of freedoms are limited in turn by an important legal principle. Please present this principle. What are its requirements? (11 of 50 points)

**Note:** Please send your answer until the end of the day in an e-mail with a short message directly to the lecturer ([tschmit1@gwdg.de](mailto:tschmit1@gwdg.de)). Please structure your answer well and answer only the questions asked! After the exam, all students are welcome to contact me to discuss the strong and weak points of their paper.

See for detailed information [slide 3](#), p. 2 f. (for question 1), [slide 4](#), p. 1 and [diagram 2](#), p. 1 (for question 2) and [slide 2](#), p. 2 (for question 3), which can be downloaded at the special course website, [http://www.thomas-schmitz-yogyakarta.id/Courses/International\\_Human\\_Rights\\_Law.htm](http://www.thomas-schmitz-yogyakarta.id/Courses/International_Human_Rights_Law.htm). See also for further information the [links](#) provided at this website.

## Question 1

- a) The UN Human Rights Council (UNHRC) / 8 points
  - political UN GA subsidiary body *without legal powers* (→ GA Resolution 60/251) / 2 p.
  - 47 members (states), elected for 3 years by GA with geo-regional proportional representation; 3 annual sessions / 3 p.
  - president, vice-presidents, working groups, Advisory Committee and forums (+ 1 extra p.)
  - corrupted and politicised by human rights hostile members abusing their position for sabotage (Saudi Arabia, Cuba, China etc.) / 3 p.
- b) The instruments of the Human Rights Council / 16 points
  - aa) Universal Periodic Review (UPR) / 10 p.
    - political "peer review" of all UN member states in 4.5 years cycle
    - assessment standards: UN Charter, UDHR, ratified intern. treaties, voluntary commitments
    - serves also to document achievements, exchange experiences, identify needs of technical assistance
    - assessment by *UPR Working Group* (all 47), assisted by *Troika* as rapporteurs (drawn by lot)
    - assessment based on 3 reports and interactive oral discussion
    - state report, OHCHR reports on info from UN institutions & treaty bodies / other states, national h.r. institutions & NGOs
    - *outcome report* (including recommend. from other states) adopted at plenary Council session; • follow up
  - bb) Special Procedures on special topics/states by independent special rapporteurs/wg, may include country visits / 3 p.
  - cc) Complaint Procedure to identify gross h.r. violations / 3 p.
    - confidential; examination by wg of Advisory Committee and WG on Situations, recommendations by Council

## Question 2: The most elaborate and effective enforcement mechanism

- in *European Convention on Human Rights* (art. 19 ff.) / 15 points
- more effective because *legally binding* decisions on h.r. questions by an *international human rights court* (→ judicial power) / 3 p.
- execution supervised by Council of Europe / 3 p.
- ECtHR can even take temporary measures and order just satisfaction (compensation) / 3 p.
- more effective because *individual complaints directly to the court* / 3 p.
- furthermore, interstate complaints and legal opinions (also on request of national high courts) / 3 extra p.

## Question 3: The principle of proportionality

- mentioned, • legitimate aim, • suitability, • necessity, / 4x2 p.
- proportionality in strict sense / thorough balancing / 3 p.