



Academy of European Law

DIPLOMA EXAMINATIONS

(Past papers)

2011 HUMAN RIGHTS LAW EXAM

1 (compulsory) Please answer ONE of the following two questions:

1. The "dual nature" of human rights as both positive law and moral rights is widely recognized, in particular in UN and regional human rights treaties. What are the practical legal consequences of this recognition for the interpretation of international economic law?

OR

2. A "Westphalian conception" of International Economic Law (IEL) as a part of public international law among sovereign states is increasingly challenged by both lawyers and governments, who put forward a conceptualization of IEL as "global administrative law" or propose new concepts such as "multilevel constitutionalism" and new perspectives from an international private law standpoint. How do you explain these recent conceptual moves?

Answer TWO of the following three questions.

2 Moravia is a federated state made up of two provinces. Jutland is the larger province and occupies the central and northern part of the country. It hosts Moravia's capital city and federal government. Its population predominantly practises Confucianism. Viborg is the southern province and the majority of its populace adhere to a distinct form of Buddhism and speak an ancient Viborgian language.

Jutlanders make up 75% of the population of Moravia, Viborgians represent only 18%, with the remainder being peoples from neighbouring countries. Since the country's foundation in 1945, Jutlanders have held a parliamentary majority and have occupied key leadership positions in the judiciary, executive, armed forces, and financial and educational institutions. Since 1990, a bloody civil war has raged in Moravia between Jutland and Viborg. Viborgians were fighting for independence from Moravia because of the suppression of the Viborgian language, the widespread persecution of Buddhist leaders and the ongoing, systematic depletion of natural resources in Viborg by the Jutlander-dominated federal government.

Following the intervention of the United Nations' Security Council, Viborg and Moravia have agreed to negotiate a peace agreement which would permit Viborg to secede from Moravia. However, all parties to the negotiations wish to ensure that the new state fosters human rights and democratic principles and that there is lasting peace in the region. Therefore, they are seeking to devise legal protection for minority communities, particularly the Jutlander community, within the proposed new state of Viborg.

You have been asked to advise the UN peace envoy on possible legal protections for the minority communities within Viborgian territory. Use legal and theoretical justifications to support your recommendations.

3 According to both the ICTY and the ICJ, destruction of cultural heritage may (only) be considered as evidence of the *mens rea* of genocide. Some scholars consider this position quite narrow and not in line with an evolutionary interpretation of relevant international law. What is your position on the issue? How would you build the interaction between culture and genocide, and on the basis of which arguments?

4 Vine Deloria, Jr., revered leader of the indigenous peoples' movement in the 20th century, once stated that indigenous sovereignty "consist[s] more of a continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty."

1. To what degree has positive international law recognized the claims of indigenous peoples? Reference pertinent treaty rules and their interpretations by competent treaty bodies as well as other sources.
2. What is the legal status of the 2007 United Nations Declaration on the Rights of Indigenous Peoples and the entitlements it formulates? Where, if at all, does it serve as an intergovernmental standard for assessing state behaviour?
3. In what way, if at all, does the rationale of preserving and encouraging the flourishing of indigenous peoples' cultures and traditions influence the content and the limitations of indigenous peoples' rights, in particular, those to self-determination and to their traditional lands?

2011 EUROPEAN UNION LAW EXAM

1 (compulsory)

Article 4 paragraph 2 TEU reads: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. [...]."

How does this statement relate to limits of European constitutional law? Please comment, taking into consideration case law of the ECJ and of national courts.

Answer TWO of the following three questions.

2 'As in public law where individuals have directly effective rights against the state and its agencies, so too should individuals have directly effective fundamental rights in a private law context in order to protect those rights fully.' Discuss.

3 Read the recital 45 of the Consumer Credit Directive and discuss the potential impact of fundamental rights in the area of consumer credit in the light of the case law of the European Court of Justice and that of the national courts of the Member States. Please also provide arguments for or against the resort to (particular) fundamental rights in this area.

(45) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the rules on protection of personal data, the right to property, nondiscrimination, protection of family and professional life, and consumer protection pursuant to the Charter of Fundamental Rights of the European Union.

4 Answer parts 1) and 2) of this question

1) The constitutionalization discourse in the area of intellectual property law differs from the discussion in general private law. Give two reasons for this.

2) Explain how Article 3 Sec. 2 of the EU Charter of Fundamental Rights might impact the European stem cells debate and tissue banking (with regard to contested IP questions).

3.2. In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures laid down by law,
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - the prohibition on making the human body and its parts as such a source of financial gain,
 - the prohibition of the reproductive cloning of human beings.
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2010 HUMAN RIGHTS LAW EXAM

1 (compulsory)

Taking account of treaties and general international law, illustrate the principal areas of concern arising in relation to the protection of the human rights of migrants.

Choose any two of the next three questions. Do not answer all three questions.

2 To what extent does the principle of non-refoulement under refugee law differ from the principle of non-refoulement under human rights law?

3 A friend from Guatemala is visiting you in Mexico City with her only child, aged 7. She relates her disastrous home life, how she has been beaten repeatedly by her husband who is an important figure in the national legislature. She has complained to the police, but they indicate that they do not have the resources to become involved with family disputes. When she indicated she might expose his activities to a cousin who is a reporter, he indicated that no one would publish the story because of his influence and threatened to lock her in the house if she continued to complain.

You have been planning to travel together to New York to see a former teacher -- you are a dual citizen of the United States and Mexico and your Guatemalan friend has a tourist visa to come to the United States. You discuss with your friend the possibility of arranging to stay in the United States rather than going back home to Guatemala and offer to help out financially. You call the former teacher in New York to make final plans and mention your suggestion. The New Yorker consults an immigration lawyer, who recommends that you all meet in Toronto instead of New York and insists that you take a nonstop flight from Mexico City to Toronto.

Why did the immigration lawyer make this suggestion?

4 Joint activities for the fight against piracy are being carried out off the coast of Somalia by state ships of a number of countries, all of which are parties to the 1951 Refugees Convention. Some individuals suspected of piracy are arrested on the high seas by a ship of the Italian navy (or the navy of another European Union Member State). The individuals ask to be granted asylum, arguing that if they were delivered to Somalia or any other state in the region, their lives would be threatened as a result of political persecution.

What should the arresting state do?

2010 EUROPEAN UNION LAW EXAM

1 (compulsory)

In 2011 the WTO Agreement on Subsidies and Countervailing Measures (SCM) is revised and enlarged with a chapter on the subsidization of the Members' fishing fleets and their activities. This amendment of the SCM Agreement is concluded by the EU in accordance with the relevant provisions of the Lisbon Treaty, but no implementing legislation is adopted at EU level. The chapter on the subsidization of fishing fleets contains a provision to the effect that the subsidization of fishing vessels above a certain tonnage and horse power shall be prohibited. From the preamble and the explanatory memorandum written to support the Commission proposal to conclude the agreement it is clear that this prohibition rests on the notion that such heavy ships (in tonnage and horse power of the engine) will mainly be used to deploy driftnets or very heavy trawls and thus cause damage to the environment. In addition, it is generally known that subsidization will lead to fishermen continuing to exploit unsustainable stocks.

In 2012 the Scottish government (under UK devolution fishing is the competence of that government) decides that it will give special subsidies to the construction of new fishing vessels, some of which go over the norms set in the amendment to the SCM Agreement. However, the Scottish government argues that on the other hand the nets used by these boats and prescribed by the Scottish government are better, since they permit all marine mammals, such as dolphins, to escape from the nets quite easily. Thus the Scottish measures fall within the scope of the EU Treaty rule giving Member states the right to take environmental measures which go farther than EU law.

In 2013 one of the Scottish vessels that goes over the limits set in the SCM Agreement, navigating under UK flag without at that moment engaging in fishing, is arrested in the EEZ of Ireland by a Dutch coast guard

vessel that is part of the fisheries policing unit employed by the EU DG Fisheries, and is brought to the Dutch naval port of Den Helder, where its catch of frozen fish is confiscated and its captain is sentenced with a heavy fine pursuant to the general Dutch law on economic delicts, which is habitually used for enforcing Union law. The lawyer for the ship's owner requests the Tribunal of Haarlem, where the case went to trial, to pose a number of questions to the Court in Luxembourg and so it happens.

At the same time, the Commission starts an infringement case in Luxembourg against the UK in connection with the subsidies granted by the Scottish government.

Norway is also furious about the Scottish subsidies and starts a Panel case in the WTO against the EU and Great Britain for breach of the new SCM rules on the subsidization of the fishing industry.

Questions:

- 1) If you were the lawyer for the owners of the vessel, what questions for the European Court of Justice would you suggest to the Tribunal of Haarlem?
- 2) If you were appointed as Commission agent in the infringement case against the UK, how would you present the case and how might the UK in the name of Scotland respond? (present an outline)
- 3) If you were the agent for Norway in the case before the WTO panel, what would be the essence of your case and how might the EU respond?
- 4) How could these cases mutually influence each other?

Choose any two of the next five questions. Do not answer all questions.

2 In the case *European Parliament v. Council* the European Court of Justice in Luxembourg has interpreted certain provisions of Directive 2003/86 on the right to family reunification. Explain the main facts and findings of the case, and identify the most important (and innovative) interpretations put forward by the Court from the perspective of the integration of third country nationals. In the light of this ruling and the general principles of EU law, how much discretion do EU Member States have in the transposition of these provisions into their national legal systems?

3 The Lisbon Treaty introduces for immigration and asylum law '[a] *new supranational setting that is characterised by stronger democratic accountability, judicial control, efficient evaluation mechanisms for the full application of the rule of law and an ambitious, fundamental human rights strategy*' (Guild & Carrera). Critically discuss the extent to which this is the case.

4 The EU is increasingly asserting itself as an international actor in the field of migration policy. However its external relations in this field are complicated by the uneasy coexistence of EU and Member State competence, the territorial fragmentation of EU policy as a result of variable geometry, as well as the sometimes complex interactions between migration policy and other external policies. Critically discuss this assessment.

5 "2. *While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.*"

Proposal of amendment to Art. 1 of the Frontex Regulation, COM(2010) 61 final, 24 February 2010

Discuss and comment on this proposal of amendment to Art. 1 of the Frontex regulation, focusing on the meaning and content of the terms "relevant (...) International law" and "obligations related to access to international protection".

6 Does the European Union have exclusive external competences in the field of visa and migration policy? Please explain the grounds for such exclusive competence and to what matters it extends.

2009 HUMAN RIGHTS LAW EXAM

1 (compulsory)

What are the relationships between the International Court of Justice and the United Nations human rights treaty bodies?

Choose any two of the next three questions. Do not answer all three questions.

2 In *Kadi* the European Court of Justice (ECJ) took a very assertive position in affording protection to human rights violated by sanction measures decided at UN level. Explain the actual implications of the Court's judgment for individuals and entities targeted by UN sanctions implemented in the EU. Discuss then what you consider will/could be the "spill-over" effects of the Court's judgment for the protection of human rights in other fora (e.g. national courts, the European Court of Human Rights and the UN).

3 In the debate over the legality of humanitarian intervention, arguments have been made for and against multilateral intervention to restore democracy, stop mass killings (for the most part on religious grounds) and internal displacement of large segments of the population. Assume that the Security Council has determined that a situation of gross and systematic violations of human rights in a given State constitutes a threat to the peace, but has refrained from authorizing the use of force to restore international peace and security. Assume that armed intervention takes place and that in the aftermath of the successful intervention the government restored is friendly to the intervening States. A draft resolution condemning the intervention is tabled in the Security Council but is defeated.

Explain the arguments for and against the multilateral intervention, giving the legal basis for any position you argue based on legal instruments and the practice of states.

4 In the preamble of Resolution 1822 (2008) of 30 June 2008, the latest of its "1267" resolutions, the UN Security Council reaffirmed, *inter alia*, "the need to combat by all means, *in accordance with the Charter of the United Nations and international law, including applicable international human rights, refugee, and humanitarian law*, threats to international peace and security caused by terrorist acts" (emphasis added).

Please comment on this statement of the Security Council, considering, in particular, the following questions: What could the phrase "in accordance with the Charter of the UN and international law" possibly mean? Why did the Council speak of "applicable" human rights, refugee and humanitarian law? Does the statement of the Council reflect an already existing international legal obligation of the United Nations, or is it rather an expression of a political commitment?

2009 EUROPEAN UNION LAW EXAM

1 (compulsory)

Describe the evolution of the law and practice of EU Treaty revision since 2000.

Choose any two of the next three questions. Do not answer all three questions.

2 Under what conditions is the system of decentralized enforcement of European law effective in achieving Member State compliance?

3 The Commission has recently stated that "*a coordinated and cooperative approach – in partnership between the Commission and Member States – is vital to ensure the proper functioning of the single market*".

What are, in your opinion, the advantages and disadvantages of such an approach in comparison with traditional means of enforcement, such as recourse to courts and administrative control followed by sanctions? And how can governance mechanisms work together with means of enforcement based upon coercion?

4 'The legal framework governing the imposition of criminal sanctions for the enforcement of Community law is both excessively complex and unacceptably incoherent.' Discuss.

2008 HUMAN RIGHTS LAW EXAM

1 (compulsory)

Article 6.1 of the European Convention on Human Rights, as interpreted in *Golder v. United Kingdom*, implies a right of access to courts. States Parties are entitled to regulate and restrict that right; they enjoy a "margin of appreciation". How would you define that margin generally and, particularly, in the fields of immunity of States, diplomatic immunity and immunity of international organizations?

Choose any two of the next three questions. Do not answer all three questions.

2 When determining whether international Humanitarian Law or International Human Rights Law prevails regarding the killing or detention of an enemy in an armed conflict, to what extent does it matter whether the armed conflict is of an international character or not of an international character?

3 Explain some of the difficulties of how and when human rights and humanitarian law apply post-agreement in countries emerging from violent conflict. Illustrate your answer with examples.

4 The Israeli High Court of Justice (HCJ) has employed a "dynamic interpretation" of various provisions of the 4th Geneva Convention and the 1st Additional Protocol.

You are requested to answer the following (please answer both parts (a) and (b):

(a) identify in the case-law of the HCJ with which you are familiar two instances in which a "dynamic" interpretation has been used, and explain its effect on the interpretation of the relevant provisions;

(b) The Israeli HCJ is in agreement with the ICJ that the relevant normative framework that governs the occupation consists of IHL as *lex specialis* and of international human rights law in cases of lacunae. Why would an Israeli court readily accept the fairly controversial position that Israel is bound by both IHL and human rights law in relation to the OPT?

2008 EUROPEAN UNION LAW EXAM

Question 1 (compulsory) Answer A or B

A. "Law has an important role to play in economic governance." Discuss, including examples from specific policy fields in your answer.

OR

B. What are the advantages and disadvantages of new governance techniques found in European economic governance?

Choose any two of the next three questions. Do not answer all three questions.

2 The specificities of national public health systems determine the extent to which EU law affects health services within Member States. Nevertheless, both legal uncertainty, and the problems associated with law-making through litigation, mean that Member States need to respond to the threat of the application of EU competition and free movement law to public health services. This means that general EU law is driving reform processes in national public health systems, so that experimentation with the market to provide such services may be a dangerous policy option for Member States. Yet at the same time we need more efficiency in European public health service provision.

To what extent do you agree with this assertion? Illustrate your answer with examples from the Court's case law.

Could the problem be resolved by developing sector-specific EU legislation that applies only to public health services?

3 Does European Community law establish a satisfactory balance between establishing a European procurement system that, on the one hand, is efficient and provides value for money, and on the other hand, permits Member States to advance appropriate human rights values through their systems of government contracting?

4 Is the principle of affordability in universal services enforceable, and if yes, by whom and against whom?

2007 HUMAN RIGHTS LAW EXAM

1 (compulsory)

What are the arguments that would support the **direct** access of individuals, without intermediaries, to the international human rights tribunals to obtain redress for breaches of their human rights?

Choose any two of the next three questions. Do not answer all three questions.

2 “Recognizing the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings” (General Assembly Resolution 60/25, 15 March 2006 Human Rights Council, Preamble)

Comment on the ‘achievements’ of the Commission and on its ‘shortcomings’. Has the Human Rights Council to date laid the basis for preserving and building on the Commission’s achievements and addressing its shortcomings?

3 Special measures are often suggested or prescribed in international human rights instruments for the purpose of eliminating discrimination against persons belonging to minorities.

a) Please mention three examples of such measures, one each for political, economic and cultural rights, drawing on either provisions in international instruments or national practices.

b) In your opinion, since the special measures may result in positive discrimination, to what degree do you find them acceptable or justifiable? Please explain your reasoning.

4 Assess to what extent the UN reform process, including the creation of the Human Rights Council, can be expected to have affected the work of the treaty bodies and special procedures.

2007 EUROPEAN UNION LAW EXAM

Question 1 (compulsory) Some commentators believe that the European constitutional project failed because its content and/or its timing was wrong, whereas others believe that it failed for the more basic reason that a written constitution is inappropriate for a non-state body. Discuss these different views, and indicate which you find most persuasive.

Choose any two of the next three questions. Do not answer all three questions.

Question 2 “The flexibility allowed to Member States in the implementation of the Water Framework Directive is more apparent than real.” Discuss.

Question 3 Critically analyse the EU’s approach to the regulation of chemicals under REACH. Does the regulation strike a good balance between harmonization and Member State autonomy?

Question 4 What contribution/s can the UN Framework Convention on Climate Change make to the discussions and agreement on further action to tackle climate change “post-2012”?

2006 HUMAN RIGHTS LAW EXAM

Question 1 (compulsory)

Immediately after the tragic World Cup match against Portugal, a heated discussion builds up in the Dutch dress room. The coach, Marco van Basten, claims that his team played lousy; the players rebut that his tactics failed altogether. Emotions reach a peak when the Dutch Prime Minister enters the dressing room in order to convey the disappointed reaction of the Dutch people. At that very moment an unsuspected cleaner, Luiz Vego - a Portuguese immigrant who settled in Germany decades ago -, knocks on the door as it is time to clean the dustbin. As soon as he sees Vego, Marco van Basten takes one of the crutches of an injured player and whacks him on his bottom. With the Prime Minister cheering, defender Boulahrouz follows the Example of the coach: he pulls poor Vego on his lap and hits him three times on the bottom with his football shoe. Vego manages to get away and decides to lodge a complaint against the Netherlands before the European Court of Human Rights. (a) Is it possible at all to hold the Netherlands accountable, since the events took place not in the Netherlands but in Germany? Assuming that you answer the first question in the affirmative, please answer the following: (b) As to the merits of the case, do you expect the Court to find that the treatment of Vego is in violation of the European Convention? (c) It turns out that incidents like these happen every time the Dutch team loses a major match (i.e. at least every two years, when a major tournament is held). It appears that other unsuccessful teams behave in similar ways. What instruments does the Court have at its disposal to address this practice? Meanwhile the Royal Dutch Football Association decides to lodge a formal complaint with the German authorities. They argue that the appearance of Vego in the Dutch dressing room was yet another provocation from the Portuguese, and they insist that measures are taken against him. In order to prevent a diplomatic row, the Germans decide to deport Vego back to Portugal immediately. (d) Could Vego successfully challenge his deportation in Strasbourg? Which elements would the Court take into account when reviewing the situation? (*note: question (b) will not count very heavily as the General Course did not address the Strasbourg case-law under Article 3 ECHR in great detail*)

Choose any two of the next three questions. Do not answer all three questions.

2 "The regulation of biotechnology is a major challenge. While regulators seek to promote the benefits of biotechnology, they must do so in a way that is compatible with respect for human rights and human dignity." Discuss.

3 As Minister for Public Health, your Prime Minister has instructed you to develop a National Biobank Initiative (NBI). The purpose of NBI, chiefly, is twofold: - increase understanding of the interplay between genetic and environmental factors; - attract investment by pharmaceutical companies which, in return for financial participation, are afforded privileged access to the biobank. Write a concise position paper, detailing the (human rights) issues to which NBI is likely to give rise, and your general approach to address these.

4 Mr T, a British citizen, is in an English prison serving a life sentence for murder. He and his wife, who is now aged 35, want to start a family, and Mr T has applied to the British government for permission to have access to facilities for in vitro fertilization. He is concerned that, by the time he is released from prison, his wife might be too old to conceive. He and his wife are worried that, without access to facilities for in vitro fertilization, they might never be able to have a family. They plan to use their own gametes for the in vitro fertilization, and they will not use a surrogate mother. The British Government's policy is to grant access to facilities for in vitro fertilization to prisoners only in exceptional circumstances. Should access to facilities for in vitro fertilization be granted in this case? Give reasons for your answer.

2006 EUROPEAN UNION LAW EXAM

1. Imagine that you are about to undertake the following initiatives in the State of Ameuropia. (First, assume that Ameuropia is a full Member State of the European Union. Then, assume that it is the 51st state of the United States). For TWO of the following three scenarios, identify the most salient legal concerns that you would have as you embark on the initiative and indicate how you might address them: (a) You are an Ameuropian legislator drafting proposed state legislation prohibiting the sale in Ameuropia of newspapers or magazines made from non-fully-recyclable paper. (b) As Prime Minister or Governor of Ameuropia, you want to issue an executive order forbidding the purchase of goods or services by any resident of Ameuropia that

have been produced or are rendered by a national of Massacrana (a third country), until the new government of Massacrana brings its former dictator to trial for genocide or surrenders him to a recognized international war crimes tribunal. (c) You are CEO of Ameuropa Film Enterprises Ltd., an independent film maker based in Ameuropa. The Ameuropian minister of the economy has agreed to build a film studio, free of charge, for the large film producer, Universal Films, which is based in one of Ameuropa's sister states. You want to do something about that.

2. *Answer (a) or (b)* (a) The European Neighbourhood Policy raises a number of significant challenges for the European Union legal system. Identify and analyse these challenges with a view to assessing the ENP's potential for contributing to the coherence, effectiveness and visibility of EU external policy. *OR* (b) In Case T-306/01 Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council and Commission, judgement of 21 September 2005 at para 156, the Court of First Instance refers to "the coexistence of Union and Community as integrated but separate legal orders, and the constitutional architecture of the pillars, as intended by the framers of the Treaties now in force". Discuss the implications of these coexistent legal orders for the external relations of the European Union.

3. *"The Community has a major role to play in international trade as it pursues the gradual integration of developing countries into the world trading system. An equally important role in this context is to ensure that the rules of that trading system ... should help achieve the goal of sustainable development and not frustrate the integration of developing countries. Such integration will also be assisted through the promotion of regional integration and/or co-operation between developing countries."* Joseph McMahon, The Development Co-operation Policy of the EC (Kluwer, 1998), 256-7 Discuss.

2005 HUMAN RIGHTS LAW EXAM

1 The US Government has taken the position that the Geneva Conventions of 1949 do not apply to Al Qaeda or Taliban prisoners captured in Afghanistan. What are the arguments that could be made in favour of its position? What are the arguments against? Which arguments do you find more persuasive? Why? In analysing and evaluating the arguments on both sides, distinguish between the Taliban prisoners and the Al Qaeda prisoners, since some arguments may be more relevant to one than to the other.

2 Although access to justice has been interpreted as a necessary corollary of the right to a "fair hearing" or to an "effective remedy" in the implementing practice of human rights treaty bodies, it is still doubtful whether and to what extent access to justice constitutes an autonomous human right under customary international law. Discuss this problem in light of the diverse conceptions of justice in the international community, and in relation to the novel issue of access to justice to obtain redress for the violation of international human rights norms of jus cogens.

3 What is the relationship between access to justice and derogations from human rights standards in times of war and of public emergency? Do non-derogable human rights norms (such as the right to life, prohibition of torture etc.) entail a non-derogable right of access to justice to vindicate such rights in court? And for derogable human rights, to what extent is it permissible to suspend or exclude corresponding judicial remedies in times of war and of public emergency?

2005 EUROPEAN UNION LAW EXAM

1 Discuss the ways in which the Community courts, in recent years, have developed the proportionality principle and the precautionary principle.

2 Although the doctrines of supremacy and direct effect date back to the early 1960s, they continue to present a series of problems and questions. 1. Discuss briefly at least two such problems. 2. To what extent did the Constitutional Treaty address these problems? If it did not, should it have done so?

3 Discuss the extent to which the European Court of Justice takes account of the value of social solidarity in its internal market case-law.

2004 HUMAN RIGHTS LAW EXAM

1. Discuss the various ways in which "militant democracy" is used to protect democracy against its enemies, giving specific Examples of limitations placed on freedom of speech and freedom of association in Europe to this effect, and referring to the relevant jurisprudence of the European Court of Human Rights. What are the main arguments in favour of and against restrictions on democracy for the sake of democracy itself?

2. *"To apply human rights obligations to non-state actors is said to dilute and distort the concept of human rights and to dissipate the discredit. It has been suggested that we should not legitimize non-state actors by claiming they have human rights obligations. A system which focuses exclusively on the responsibility of governments is said to be a more effective way of ensuring human rights protections."* Discuss.

3. Does the system of the European Convention on Human Rights make the effective response of states to international terrorism impossible?

2004 EUROPEAN UNION LAW EXAM

1 Imagine that you are a legal adviser at the ministry of foreign affairs of an EU member state. You must write a concise briefing for your minister setting out the current practice of EC mixed agreements, and giving your advice for the country's future policy with regard to mixed agreements, taking into account possible constitutional changes at the EU level. More particularly, you are asked to state whether it is in your country's best interests to have as much mixity as possible, or rather as little mixity as possible.

2 Discuss the relationship between harmonisation of European private law and its regulatory function by addressing the following questions and by focusing in particular on the relationship between articles 28, 95 and 153 of the EC Treaty: Can we have harmonisation without regulation? Can we have regulation without harmonisation?

3: Answer EITHER (a) OR (b)

(a) Discuss the relationship between the concept of unfairness in the field of consumer law and competition law by focusing on the unfair contract terms Directive, on the jurisprudence of the ECJ and CFI concerning article 82, and on the proposed directive on unfair trade practices.

(b) Discuss the institutional conditions which are necessary to trigger regulatory competition through private international law, comparing in particular the cases of product liability and corporate law.

2003 HUMAN RIGHTS LAW EXAM

1. In light of the issues discussed by the various lecturers during the course, and of the materials made available, consider the arguments for and against the justiciability of economic and social rights, including labour rights.

2. What do you consider would be the appropriate role of the EU in relation to labour rights, both in the internal and external policies of the Union?

3. Identify the specific international human rights law questions that arise from the following press release.

HUNGER: Food Summit Ends With Divisions Among Rich, Poor By Angela Stephens, UN Wire, June 13, 2002

ROME - The World Food Summit: Five Years Later ended here this morning with nongovernmental organizations and civil society groups rejecting the summit declaration and a wide gap having emerged between developed and developing countries on what should be done to alleviate world hunger. ... The purpose of the event was to review progress since the 1996 World Food Summit, where 185 nations agreed to reduce the ranks of the world's hungry by half by 2015, from more than 800 million to 400 million.

...
The United States today issued a reservation to the summit declaration, referring to Paragraph 10 of the declaration, which asks the FAO Council to establish an intergovernmental working group that will have two years to issue a set of voluntary guidelines to member states to achieve "the progressive realization of the right to adequate food."

"The United States believes," according to a U.S. government statement, "that the issue of adequate food can only be viewed in the context of the right to a standard of living adequate for health and well-being as set forth in the Universal Declaration of Human Rights, which includes the opportunity to secure food, clothing, housing, medical care and necessary social services."

"Further, the United States believes that the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively that does not give rise to any international obligation or any domestic legal entitlement and it does not diminish the responsibilities of national governments towards their citizens. Additionally, the United States understands the right of access to food to mean the opportunity to secure food and not a guaranteed entitlement. Concerning operative Paragraph 10, we are committed to concrete action to meet the objectives of the World Food Summit and are concerned that sterile debate over voluntary guidelines would distract attention from the real work of reducing poverty and hunger."

U.S. Agency for International Development Administrator Andrew Natsios said earlier this week that the rift is in part due to a cultural difference between countries on the meaning of the word "right." In many countries, Natsios said, a right is a general statement of principle. "There's not a bill of rights you sue over," he said. "We see the word 'rights' as having much more legal implications."

2003 EUROPEAN UNION LAW EXAM

1. "The European Court of Justice has been responsible for undermining the foundations of the national systems of welfare and service provision through its judgments on the internal market, even while none of the building blocks exist for developing a European welfare system". Discuss this statement, making reference to the case law on freedom of movement and on competition law.

2. "Through a combination of the influence of the Charter of Fundamental Rights and other sources of human rights law, and the emergence of mechanisms such as the open method of coordination of social policies, a form of European solidarity is developing which may form the basis for a new social citizenship in the EU." Critically analyse this proposition, supporting your answer by reference to case law and policy developments.

3. "The provisions of the draft constitutional treaty on competences are largely successful in codifying the existing system, enhancing the visibility and comprehensibility of the distribution of power in the EU, and introducing a limited number of necessary reforms. They should satisfy those who have criticised the constantly 'creeping competence' of the EU". Critically analyse this proposition.

2002 HUMAN RIGHTS LAW EXAM

1. From the perspective of international human rights law, what do you consider to be the principal strengths and weaknesses of the Sub-Commission Draft 'Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises'?

2. "The right to education is vital to participation in the community and in civil society as well as for the exercise of political rights. It is clearly a first generation human right, as is recognized by its inclusion in the

constitutions of many states within the USA and of many other countries." Discuss this assessment in the context of an overall evaluation of the concept of the three generations of human rights.

3. "Traditional international law and existing institutional arrangements are simply inadequate to deal effectively with the need to ensure the human rights accountability of transnational corporations and the international financial institutions. The time has come to move beyond that tired and ineffectual framework and to devise new approaches which are flexible, innovative and reflect the different realities of the twenty-first century." Discuss this comment in light of two or three specific institutions, instruments or other contexts which were dealt with during the two-week course.

2002 EUROPEAN UNION LAW EXAM

1. Explain what you understand by (i) supranationalism and (ii) the theory of the European "economic constitution". How, if at all, are these two notions related?

2. "Insofar as they relate to title IV of the EC treaty (Asylum, immigration, etc.), the Tampere Conclusions of 1999 already seem out-of-date." Discuss.

3. Do you believe that Eurojust and Europol provide solid foundations for a genuinely European system of law enforcement?

2001 HUMAN RIGHTS LAW EXAM

1. Why is the argument of cultural particularity consistently raised in the context of the guarantee of women's human rights? In your view what strategies might be the most effective to counteract this challenge to the universal application of human rights? Take a concrete Example, preferably a complex one, to develop your argument.

2. Discuss the following statement: "Article 5 of the CEDAW is both an unwarranted intrusion into the domestic affairs of states and a denial of fundamental human rights such as freedom of expression and opinion. As such it should be discounted and disregarded."

3. Discuss and critique several areas in which the emergence of the women's human rights movement has had a major impact (positive or negative) upon the overall body of international human rights.

2001 EUROPEAN UNION LAW EXAM

1. Under what circumstances will a State acceding to the EU be required to re-negotiate or to withdraw from its pre-existing treaty commitments?

2. Can a set of principles of good governance be distilled from EU law at present? If so, what are they, and do they apply to all EU policy areas?

3. The European Council of Cologne (June 1999) decided to start an intergovernmental conference "in order to ensure that the European Union's institutions can continue to work efficiently after enlargement". Was this objective achieved by the Treaty of Nice? Give arguments for your view.

2000 HUMAN RIGHTS LAW EXAM

1. To what extent have existing legal formulations of the equality principle been capable of addressing racism and accommodating diversity? How would you suggest that these formulae should be improved in order to achieve the objectives more effectively and appropriately?
 2. What are the principal shortcomings that you would identify in relation to two or more of the existing regional and international institutional mechanisms for dealing with problems of racial discrimination?
 3. What do you see as the appropriate role for the European Union to play in relation to racism and racial discrimination? Does Article 13 reflect the best approach?
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2000 EUROPEAN UNION LAW EXAM

1. Outline and assess the adequacy of the various mechanisms for ensuring accountable government in the European Union.
 2. What are the challenges to democracy which the EU faces? How best, in your view, could a democratic European polity be sustained?
 3. Explain briefly the current system of administrative law in the European Union. Does it require a greater degree of harmonisation?
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1999 HUMAN RIGHTS LAW EXAM

1. *"International human rights law guarantees that impose positive obligations upon states present serious, if not insuperable, difficulties of interpretation and application."* Discuss.
 2. To what extent, if at all, should international human rights treaties be interpreted and applied so as to take into account cultural differences between states? Does the existence of such differences suggest that human rights are guaranteed best at the regional, rather than the universal, level?
 3. Assess the strengths and weaknesses of the present arrangements for the enforcement of the two UN Covenants through the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. How could these arrangements be improved?
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1999 EUROPEAN UNION LAW EXAM

Part I Answer two of the following three questions:

1. Discuss the phenomenon of Comitology and its impact, if any, on the Institutional Balance of the European Community.
2. Track the landmark decisions of the European Court of Justice in relation to individual Locus Standi ex Article 173EC. Explain and evaluate this Jurisprudence.
3. Reflect in your mind on the legal aspects of the free movement of factors of production in the Single Market (Goods, Labour, Services-Establishment, Capital). Answer the following question: Is there a unified Jurisprudence of free movement?

Part II All candidates must answer the following question:

Discuss the legal aspects concerning the status of the ECHR in relation to the European Union legal order.

1998 HUMAN RIGHTS LAW EXAM

1. Taking account of the different theories used to explain the increased importance of ethnicity, analyse critically international norms for the recognition and protection of ethnic groups which have been adopted since 1948.
 2. In recent years two approaches to the constitutional accommodation of ethnicity at the national level have been advocated. One is consociationalism. The other is liberal majoritarianism with special protection of minorities. Outline the principles underlying each approach and discuss their strengths and weaknesses. Illustrate your answer by reference to specific national experiences.
 3. How does the concept of peoples' rights relate to that of human rights?
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1998 EUROPEAN UNION LAW EXAM

1. The jurisprudence of the ECJ provides for the adoption of interim measures by national courts in cases of suspected violations of EC law by national law as well as in cases of suspected illegality of secondary Community legislation. a. Explain the reasoning of the Court and comment on the differences of the two constellations. b. Discuss the significance of this jurisprudence for the overall concept of supremacy of EC law.
 2. The Amsterdam Treaty allows for closer cooperation of Member States of the EU and the EC - for the first time in history on a general basis within the organizational system of the Union. a. Discuss the most salient questions of the setting up and the functioning of closer cooperation in a specific field. b. Compare the general features with those of specialized cases (EMU; Schengen; area of freedom; security and justice) c. Discuss the pros and cons of closer cooperation and show how they are reflected in the provisions of the Treaty.
 - 3a. To what extent, if any, is the law of the World Trade Organization (WTO law) part of European Community (EC) law? b. To what extent, if any, should WTO law be part of EC law? Give reasons for your answers, including a discussion of any relevant legal instruments, any relevant judicial decisions and any relevant factors of legal or economic policy.
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1997 HUMAN RIGHTS LAW EXAM

1. Compare the protection of refugees under the Geneva Convention and under the ECHR.
 2. Discuss the application of Article 6 in pre-trial proceedings.
 3. With the entry into force of Protocol No. 11, the European Commission of Human Rights will disappear. What problems does this create for the new Court and how can they be solved?
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1997 EUROPEAN UNION LAW EXAM

- 1a) Explain whether it is correct to say that and, if so, why and how the doctrine of direct effect has been transformed into a general requirement of efficient judicial protection.
b) Does the notion of "direct effect" have a different meaning after Francovich? (60 minutes)
2. Is it a principle inherent to the Community legal order that individuals must be able to receive compensation from other individuals for breaches of Community law, and if so, to what extent? Whatever your answer, describe the arguments you would advance to persuade the Court for either position. (60 minutes)

3. How can the principle of uniform application of Community law in the Member States be conciliated with the principle of procedural autonomy? Refer to case-law of the ECJ for the remedies of compensation, interim relief, restitution. (60 minutes)
