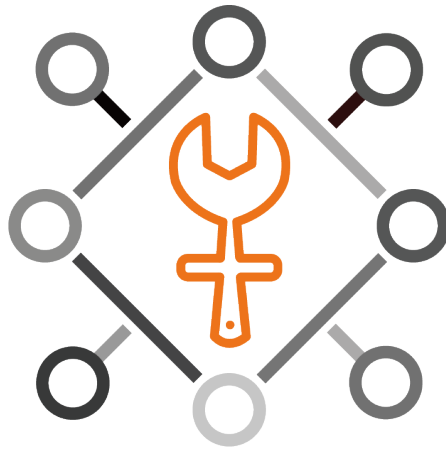# What are human rights and how did they emerge?

11 September 2018
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RightsTech Women

Geneva

Outline

Setting the scene for today's discussion

Part 1 – Big ideas (structure)
Part 2 – 'Nuts and bolts'
Part 3 – The key takeaway

Part 3 – Let's get to the point: The key takeaway

Goal: For each participant to have some tools for reflection:

"Why do I have human rights?" ⭐

"And what rights do I have, exactly?"

"Are they static or dynamic?"

Part 1 – Big ideas

1.1.   Law

1.2.   International law and its sources

1.3.   International human rights law

1.4.   Human rights origin stories

1.5.   The analogy of geology

1.1. Law

Interactive exercise:

We arrive on Planet Earth. We encounter and decipher the following law. [...]

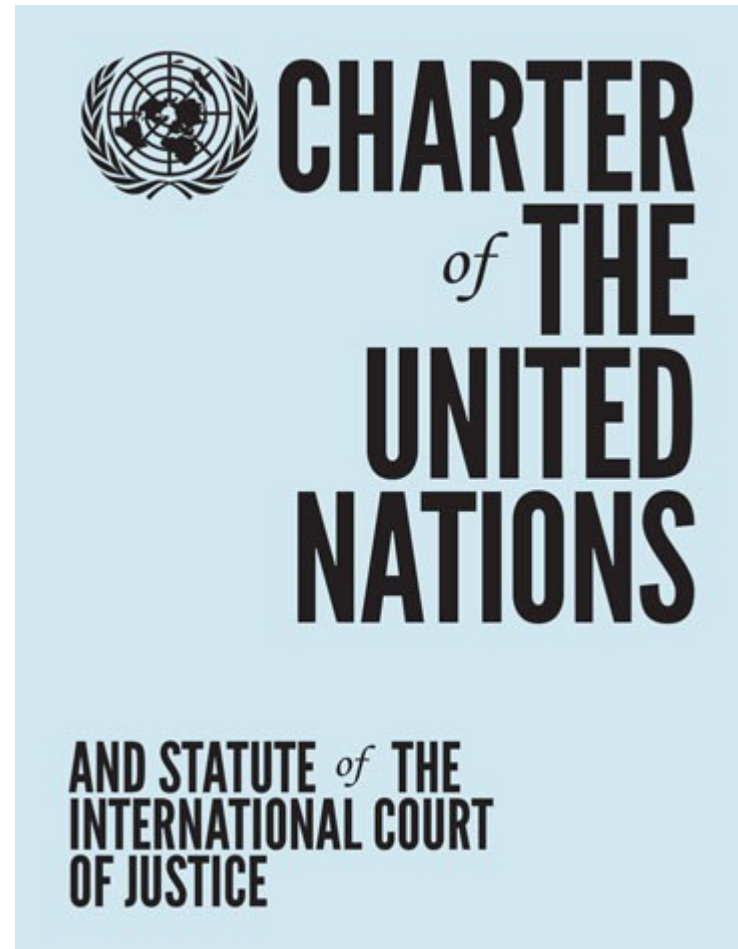Our questions: ?

- What do we want to know?

1.2. International law and its sources

- 'classic' approach
- 'sources'
- Law about international law
- Standards development
- Kinds of international law
- Status of international law in national laws
- The story of peoples and individuals as treated by international law

1945: The UN Charter

- It's a treaty.

- 3 pillars of the UN: Human rights, peace and security

- Outlawed most kinds of int'l use of force.

26 June 1945 (first signatures), 24 Oct. 1945 (entry into force)
Read it here: https://bit.ly/2wO6RDW
Video: Celebrating the UN Charter (UN Multimedia) https://bit.ly/2wLwwMK

Sources of international law

Article 38, Statute of the International Court of Justice:

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

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

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

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

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

Sneaky fact

There are many different words for 'international conventions', also known as:

- treaties
- charters
- international covenants
- pacts
- protocols
- additional protocols, etc.

THEY ARE ALL TREATIES.

Standards development

- Treaties and other standards; 'hard law' and 'soft law'; international org.s as lawmakers

- 'Nuts and bolts' of standards development

- Who writes treaties? Which customs 'count'?

- Remember our questions (about 'law')?
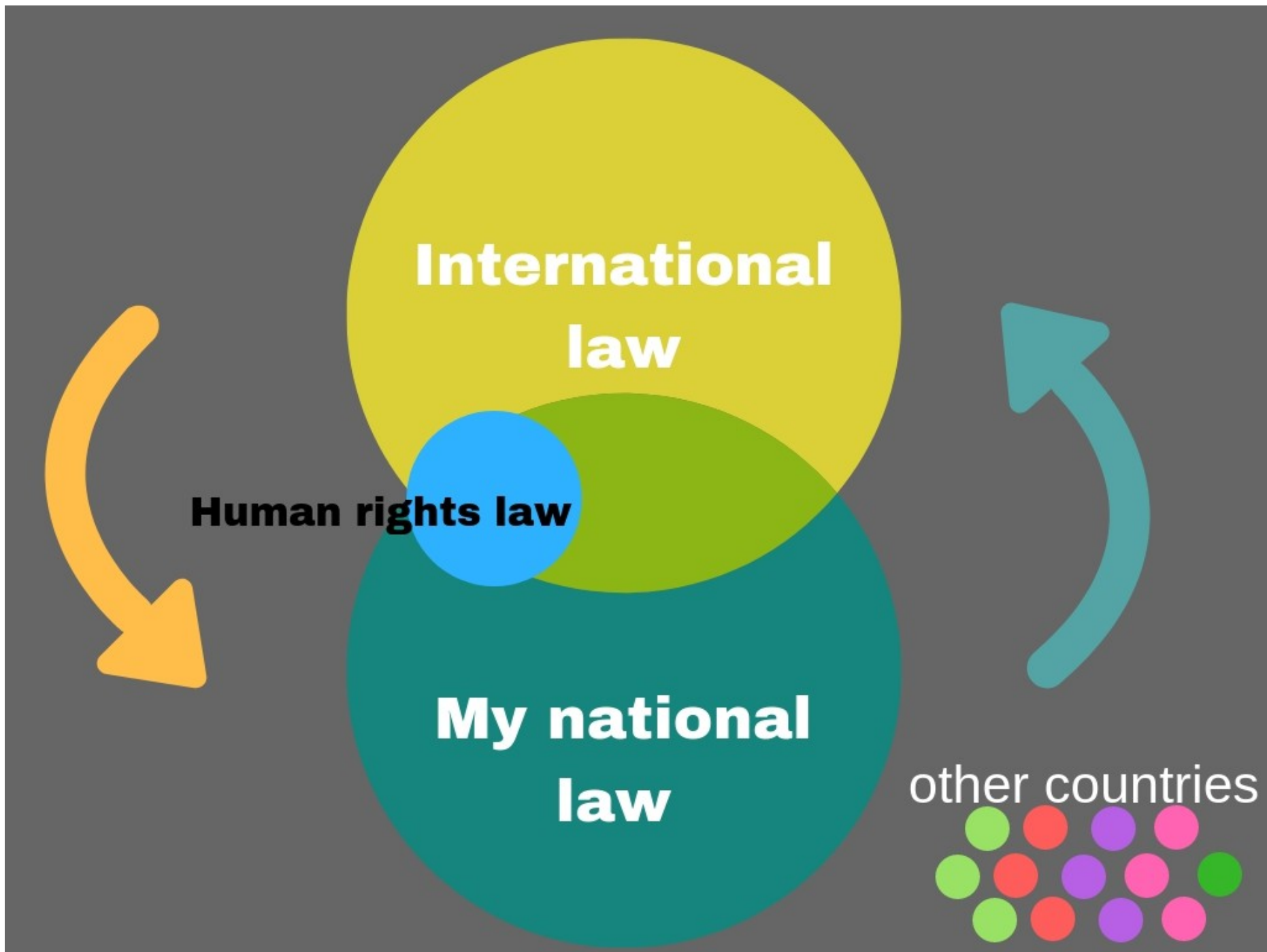
? **'legitimacy'**

- 'Legally binding'

- Ways in which law becomes legally binding

Enforcement and rule of law

- Enforcement

- Specific standards on enforcement (like on recognition of judgments)

- 'rule of law': Are courts or enforcement bodies independent? even if I get a judgment, will it be enforced? Legal environment.

1.3.   International human rights law

- <u>International</u> human rights laws and <u>national</u> human rights laws

- Note: The same <u>rights</u> pop up in different places (were negotiated to be put there).

- Standard-setting treaties: The UN human rights treaty body system

- Plus some other important sources:

  – <u>Regional</u> international human rights law

  – Human rights treaties/texts in <u>other UN entities</u>

International human rights law

- Universal Declaration on Human Rights (1948)
- International Bill of Rights
- UN human rights treaties (www.ohchr.org)
- UN human rights treaty bodies
- Charter-based bodies and mechanisms

1.4. Human rights: Origin stories

- The historical view
- Moral and religious origins
- Universality
- Taking credit (national pride)

Factors

- Geography
- What does it mean to recognize versus to confer a right?
- Bias in the system: against certain groups

1.5. The analogy of geology

Part 2 – Nuts and Bolts

- How did human rights emerge?
- How are human rights still emerging?
- How will human rights emerge?

- The nuts and bolts of standards development
- At international level
- Geneva, New York, Nairobi, Vienna, Bonn
- At national level

Still emerging

- 'Crises' in international law create discussions- "is current law sufficient?" Do we apply existing standards, or develop new ones?" Technology?

- Recommendation- sometimes we should reclassify the crisis and see it differently.

- Protection of the individual (post-1945)

- Example of death penalty

- Empowerment of groups – political will

- Regulation of private actors: new treaty on business and human rights

Part 3 – Back to the key takeaway

Goal: For each participant to have some tools for reflection:

"Why do I have human rights?" ⭐

"And what rights do I have, exactly?"

"Are they static or dynamic?"

Challenge: Decide why you have them. Make a personal connection to your own rights.
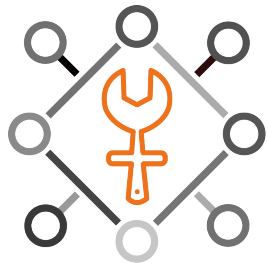
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Further resources

- Statute of the International Court of Justice: http://www.icj-cij.org/en/statute

- United Nations – UN Charter and Organizational Chart: https://www.un.org

- UN Office of the High Commissioner for Human Rights (OHCHR): https://www.ohchr.org

- OHCHR: What are human rights? (4 videos): https://bit.ly/2wQoaUc

- UN Library Geneva Research Guides: https://libraryresources.unog.ch/?b=s

- Dag Hammarskjöld Library: UN Documentation – Human Rights: https://research.un.org/c.php?g=98279&p=636537

- UN International Law Commission: http://legal.un.org/ilc/

- RefWorld (UNHCR): http://www.refworld.org/

- Brownlie, Ian. Principles of Public International Law, 6th ed. Oxford UP (2003), Ch. 25: The Protection of Individuals and Groups: Human Rights and Self-Determination (pp. 529-557).

Thank you for your attention

and thanks to the Internet Society Switzerland Chapter

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 RightsTech Women

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