Congratulations!

You have come to the end of your work on the first section of the course.

The key points that you should keep in mind before moving onwards to the final questionnaire for the section are summarized below:

- **The origins of human rights in international law:** Although individual rights have a long history in distinct national traditions, human rights as we understand them today emerged after World War II in a gradual fashion, taking shape first as one of the goals of the United Nations, being further clarified by the adoption of the Universal Declaration of Human Rights, and taking on an increasingly precise – and a doubtlessly binding character – through the adoption of multiple treaties throughout the second half of the twentieth century.
- **The indivisibility of human rights:** Whereas the Universal Declaration embodied essentially all human rights within a single text, the treaties adopted since then have focused on specific categories of rights (civil and political, economic, social and cultural) or specific groups (women, children, migrant workers, persons with disabilities) or wrongful activities (genocide, torture, racism). Despite this variety of legal instruments and the different manners in which they are monitored and enforced, human rights share a number of common features and are considered universal, indivisible and interdependent.
- **The 'special nature' of human rights obligations in international law:** international law – formerly described as the *jus gentium* or the 'law of nations' – was traditionally thought of as a set of rules applicable in the relations between States. Most of 'classical' international law refers to the exchange of rights and obligations between States, based on their consent, and on reciprocity. The protection of individuals was not a central concern of this branch of law. Human rights treaties, however, are not based on the reciprocal exchange of rights between self-interested States, but are best thought of as commitments States have made on the international scene to respect, protect and fulfill rights of individuals. The implication is that human rights and the treaties that embody them are considered not to be simply reducible to the interests of the States having negotiated human rights: they are concluded in the interest of individuals under the jurisdiction of the State, and therefore they have an "objective" character beyond their "subjective" origin in inter-State negotiations.
- **Human rights as customary international law:** Customary international law emerges from the consistent practice of States that align their conduct with certain expectations out of a sense of legal obligation. State practice sometimes tends to show that human rights are often more honored in the breach than in the observance, yet, even when they do not act in accordance with the requirements of human rights, States do not challenge that human rights are binding: the strength of the rule is reaffirmed each time that States seek to justify their behavior by relying on a certain interpretation of what human rights require. Human rights are therefore increasingly seen as part of customary international law, binding on States apart from, and beyond, the specific treaties they have ratified.
- **Human rights as peremptory norms of international law (*jus cogens*):** International norms that have the status of *jus cogens* norms cannot be circumvented by States through the conclusion of treaties by which they may be tempted to

exempt themselves from having to comply with them. Human rights are often considered to have this nature. However, which consequences follow from this remains heavily contested, and human rights monitoring bodies or human rights courts are divided on the implications.

- **Reservation to human rights treaties:** Because human rights treaties have an "objective" character, and are concluded in the interest of individuals rather than in the interest of the States parties alone, reservations to human rights treaties are treated with suspicion. They are allowed, unless they are against the object and purpose of the treaty in question. But whether they are valid will often fall to be determined by an independent monitoring body, rather than through the classic "horizontal" mechanism of objections filed by the other States parties to the treaty: the reason for this is that States cannot be trusted to police each other's behavior, since (unlike commercial treaties, for example) human rights treaties are not in the mutual interest of States. Moreover, though this too remains contested, when a reservation is found to be invalid, the State remains bound by its main commitment: this is because human rights have an existence independent from the specific treaties that embody them.
- **The 'common law' of human rights (*jus commune*):** Developments in human rights law increasingly are the result of judicial interpretation and interpretation by expert bodies, and cross-references are frequent. Both international and domestic courts and expert bodies take part in this dialogue, which strengthens the hybrid nature of human rights, which are neither "pure" international law, since they do not concern exclusively inter-State relationships, not "just" constitutional law, since they increasingly have their source in, and are being shaped by, international law. This means that the intention guiding the preparation of treaties is increasingly irrelevant to judicial interpretation of human rights: instead, human rights can be seen as the product of this transnational judicial dialogue that crosses legal systems and cultures.