



www.hrjust.net



## Event Report

**Title: Facts and Norms in Human Rights Assessment: Can human rights compliance be measured?**

- **Date:** 28 May 2025
- **Type of Event:** Webinar
- **Organizers:** Organized by the Institute of International Relations in Prague
- **Number of participants:** 31
- **Number of speakers:** 1 – Prof. Martin Scheinin
- **Programme and link to the Intersect Observatory:** <https://hrjust-intersect-observatory.eu/events/facts-and-norms-in-human-rights-assessment-can-human-rights-compliance-be-measured/> + **Institute of International Relations in Prague website:** <https://www.iir.cz/facts-and-norms-in-human-rights-assessment-can-human-rights-compliance-be-measured>

### Detailed Report from the Workshop:

Prof. Martin Scheinin’s webinar addressed the question of whether and how human rights compliance can be measured. Drawing from five phases of his career, he argued for the development of structured, empirical, and theoretically grounded methods to evaluate how states justify and implement human rights obligations. He highlighted the growing misuse of “legitimate aims” such as national security in limiting rights, stressing that such justifications must be embedded in what he called the “grammar of human rights law”—a structured framework based on principles, evidence, and empirical scrutiny.





Prof. Scheinin emphasized the need for a general theory of human rights compliance that considers both negative obligations, such as refraining from torture, and positive obligations, such as ensuring access to healthcare and education. While negative obligations are relatively well developed, he noted that positive ones still lack rigorous analytical tools. He also pointed to the under-theorization of the prohibition of discrimination and called for better tools to distinguish between lawful and unlawful differentiation.

Rejecting simplistic rights balancing, Prof. Scheinin proposed a methodology that identifies the non-negotiable core of each right while providing structured means to reconcile competing interests in non-core areas. He advocated for a new epistemology that values empirical research and measurement as sources of legal knowledge.

Prof. Scheinin illustrated his argument with examples from several projects. As a member of the UN Human Rights Committee, he came to see the limitations of relying solely on legal intuition. In his work with the UN Office of the High Commissioner for Human Rights, he helped create a system of human rights indicators—structural, process, and outcome—which allows for flexible yet evidence-based evaluation of compliance. Although complex, these indicators support rather than replace legal interpretation by raising relevant questions and guiding inquiry.

He further developed interdisciplinary methodologies in the Surveil project, which assessed surveillance technologies using panels of technologists, philosophers, and lawyers. This approach combined utility, ethics, and legality into a comprehensive evaluation, revealing that mass surveillance typically failed to meet human rights standards due to its indiscriminate nature.

During the COVID-19 pandemic, Prof. Scheinin led a team at the European University Institute to assess the compatibility of state responses with human rights. This project introduced a four-basket model—covering civil and political rights, economic and social rights, equality and non-discrimination, and the rule of law—offering a more balanced framework than public discourse, which often focused narrowly on restrictions of movement or expression.

Scheinin's current work on the ELOQUENCE project continues this trajectory by applying analytical and empirical methods to evaluate AI-driven communication technologies in terms of their compliance with fundamental rights. Across all these phases, he consistently emphasized the value of combining legal expertise with robust data and clear methodologies to improve both accountability and understanding of human rights in practice.

## Summary of Major Takeaways:

**Measurement and Theory:** Prof. Scheinin stressed that human rights compliance must be measured through structured, evidence-based methods instead of intuition. He argued for a general theory of compliance that treats both negative duties—such as the prohibition of torture—and positive duties—such as ensuring healthcare and education—with equal analytical rigor, highlighting the need for better tools to address under-theorized areas like discrimination.

**Methodology and Indicators:** Rejecting simple rights-balancing, Prof. Scheinin advocated identifying





the non-negotiable core of each right while using structured methods to reconcile competing interests in peripheral areas. Building on his UN experience, he helped design structural, process, and outcome indicators that guide evidence-based evaluation without replacing legal interpretation.

**Practical Applications:** Through interdisciplinary projects such as Surveil, Prof. Scheinin combined legal, ethical, and technical expertise to evaluate surveillance technologies, demonstrating that mass surveillance generally fails human rights standards. During the COVID-19 pandemic, he introduced a four-basket framework—covering civil and political rights, economic and social rights, equality and non-discrimination, and the rule of law—to assess state responses comprehensively.

**Technology and Future Work:** Prof. Scheinin's current ELOQUENCE project applies these analytical and empirical methods to AI-driven communication technologies, reinforcing his broader message that robust data and clear methodology are essential to holding states accountable and understanding how they justify their human rights obligations

## Grant Agreement Questions

### 1) How do States defend and legitimise its actions through human rights? Compare the general and the particular.

Prof. Scheinin's analysis shows that states often defend contested measures by appealing to the language and structure of human rights themselves. Generally, they rely on broad "legitimate aims," most prominently national security or public health, to justify restrictions. These justifications are presented as if they were faithful to the "grammar of human rights law," invoking proportionality, necessity, and balancing to suggest legal compliance. In particular situations—such as pandemic lockdowns or mass surveillance—states argue that temporary or targeted rights limitations protect the very rights they appear to constrain, for example by safeguarding life or public order. Scheinin warns, however, that without empirical scrutiny these claims can mask overreach; measuring compliance through indicators and identifying the non-negotiable core of each right exposes when the rhetoric of human rights is used as a shield for unlawful differentiation or excessive limitation.

### 2) What role does geopolitics play in strategy, resources and reach.

Geopolitical considerations shape both the methods and the credibility of human rights compliance. States with greater strategic power or technological capacity can frame surveillance or security measures as globally necessary, extending their influence beyond borders and complicating oversight. International projects like Surveil reveal how security concerns tied to geopolitical rivalry drive investment in intrusive technologies while limiting the resources available for independent monitoring. Conversely, geopolitical competition can create incentives for some states to present themselves as human-rights leaders, funding data-driven compliance tools to bolster soft power. Scheinin's insistence on interdisciplinary, empirical approaches is partly a response to this dynamic, providing objective benchmarks that resist politicisation.





### **3) What role has EU in comparison between internal to EU and external to EU?**

Within the EU, human rights assessment benefits from relatively strong institutions and shared legal standards, which enabled projects like Scheinin's four-basket COVID-19 framework to evaluate member-state measures across civil, social, equality, and rule-of-law dimensions. Externally, the EU seeks to project these standards as part of its foreign policy identity, using human rights conditionality in trade or development agreements. Yet the gap between internal rigor and external ambition remains: while internal mechanisms allow for more consistent measurement and accountability, external action is filtered through geopolitical priorities and relationships with non-member states. Scheinin's call for a general, empirically grounded theory of compliance highlights the need to bridge this internal–external divide so that EU human rights advocacy abroad is as evidence-based and enforceable as it aspires to be at home.

