

International Human Rights: Theory & Practice
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Spring 2008

This is a survey course that covers the international human rights pantheon and the international, regional, and domestic institutions that are charged with enforcing these rights. The course will engage some of the fundamental theoretical debates underlying the international human rights project. It will also survey the jurisprudence of the major human rights mechanisms and institutions with a focus on perennial questions of legitimacy, justiciability, compliance, and efficacy. In addition, the course will consider the challenges of institutional design and the impact of the jurisdictional redundancy in the global international human rights system.

Reading

The reading for this course is intensive at the outset of the semester to introduce and establish the basic framework for understanding international human rights. The reading will ease off slightly as the semester progresses in order to enable students to develop their paper proposals, outlines, and drafts. As you prepare for each week's reading, review the syllabus carefully, because the reading does not necessarily follow the book's chronology, and I occasionally suggest that you simply read certain passages for background. Although students are expected to be prepared to discuss all of the reading assigned, we will likely not cover that material extensively in class and will focus instead on the primary cases assigned.

Texts

Steiner et al., *International Human Rights in Context* (2008)

Various treaties and other human rights instruments are available online. Students are responsible for locating and reviewing these sources as assigned. I will occasionally post additional materials on Claranet.

Course Requirements

1. Paper

Students are responsible for writing a 30-page paper subject to several deadlines throughout the semester at which time students will submit a paper topic, outline, abstract, draft and final paper. Students are to choose one of the rights (or a bundle of rights) set forth in the Universal Declaration of Human Rights and discuss the way in which this right has been adjudicated before the various human rights institutions. In this paper, students can

- adopt a comparative approach between institutions or between international law and U.S. constitutional law or foreign law;
- present a framework for understanding the way in which the right has been given content through the adjudicative process;

- adopt an evolutionary approach to the norm in question in an effort to understand the way in which the norm has developed over time; or
- critique a particular treatment of, or approach to, the right in question in the international and/or domestic context.

Students must draw on, and properly cite, the jurisprudence of the various human rights institutions, including the Human Rights Council (formerly the Human Rights Commission—the United Nations’ human rights body); the Human Rights Committee (charged with monitoring compliance with and the implementation of the International Covenant on Civil and Political Rights); the Committee Against Torture (same with respect to the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment); the CEDAW Committee (same with respect to the Convention on the Elimination of All Forms of Discrimination Against Women); and the regional human rights institutions for Europe, the Americas and Africa. Students can identify relevant jurisprudence through the websites of the various human rights institutions (linked on Claranet) and academic scholarship available on Hein Online, Westlaw or Lexis.

If students complete the requirements of the paper submission, they will also satisfy the requirements of the Law School’s Supervised Analytical Writing (SAW) requirement. The final paper should be double-spaced, in Times New Roman 12-point font, with standard margins. Footnotes (not endnotes) should be single-spaced in 10-point font.

2. Class Participation

Class participation will also be graded, with the potential to raise or lower a student’s final grade by up to an entire letter grade given the quantity and quality of participation.

A final paper presentation is an essential part of class participation. In the second half of the semester, students are expected to circulate to the class a two-paragraph abstract of their paper and make a ten- to fifteen-minute presentation on the paper’s central argument(s).

Office Hours

M, W 9-10:30

T 4:30-5:30 (immediately after class)

Or by arrangement

Syllabus

Tentative: Subject to Change

I. Introduction to Human Rights Sources (Unit 1)

January 8th

Read for Background: text pp. 58-61, 69-85, 94-96, 106-114, 133-148
Text pp. 23-42: Consider and compare the role that international human rights played in these two decisions concerning the death penalty.

Universal Declaration of Human Rights (available online)

Guest Lecturer: Thomas McInerney, General Counsel, International Development Law Organization: “The Link Between The Rule of Law and The Promotion of Human Rights”

If you have a particular interest in Law & Development, you might review Text pp. 1433-1453 in advance of our guest lecture.

II. Civil & Political Rights (Units 2-4)

January 15th

A. International Covenant on Civil & Political Rights

Read for Background: text pp. 151-174, 185-191, 213-216
Posted on Claranet: *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, 1988, reprinted in 9 Hum. Rts. L. J. 212 (1988)
International Covenant on Civil & Political Rights (ICCPR) (available online)

January 22nd

B. Women’s Rights

Text pp. 175-185, 191-193, 196-198, 201 (starting at the note)-224, 1124-1130
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (available online)

Discussion question: Is Female Genital Cutting (also known as Female Genital Mutilation) a violation of CEDAW? Consider the following:

According to UNICEF, between 100 and 130 million women have been subjected to female genital cutting (FGC), while every year a further 2 million girls are at risk of some form of the practice. Twenty-eight out of 53 countries in Africa practice FGC in one form or another. In Kenya, for example, approximately 37

percent of females have been cut, although the practice is more prevalent within certain groups, such as the Maasai. FGC is unlawful in some countries of the world where it has traditionally been practiced, and in some of these countries, the practice carries criminal penalties. However, enforcement of these laws remains lax where governments have little interest in antagonizing the community elders who are guardians of the tradition or families intent on continuing a custom they consider important. As a result of human migration, women who have been cut exist in every country of the world.

See generally Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Anika Rahman & Nahid Toubia eds., 2000).

January 28th

C. Torture

Text pp. 224-262, 1201-1205

Convention Against Torture and Other Forms of Cruel, Inhuman & Degrading Treatment or Punishment (CAT) (available online)

19 U.S.C. §2340, 28 U.S.C. 1350 note (Torture Victim Protection Act (TVPA)) (available on line or on lexis/westlaw)

Discussion question:

Nonlethal torture is currently being used by the United States in an effort to secure information deemed necessary to prevent acts of terrorism. It is being done below the radar screen, without political accountability, and indeed with plausible deniability. All forms of torture are widespread among nations that have signed treaties prohibiting all torture. The current situation is unacceptable: it tolerates torture without accountability and encourages hypocritical posturing. I would like to see improvement in the current situation by reducing or eliminating torture, while increasing visibility and accountability. I am opposed to torture as a normative matter, but I know it is taking place today and believe that it would certainly be employed if we ever experienced an imminent threat of mass casualty biological, chemical, or nuclear terrorism. If I am correct, then it is important to ask the following question: if torture is being or will be practiced, is it worse to close our eyes to it and tolerate its use by low-level law enforcement officials without accountability, or instead to bring it to the surface by requiring that a warrant of some kind be required as a precondition to the infliction of any type of torture under any circumstances? That is the important policy question about which I have tried to begin a debate. It is about how a democracy should make difficult choice-of-evil decisions in situations for which there is no good resolution.

Alan M. Dershowitz, "Tortured Reasoning", in *Torture: A Collection* 257-77 (Sanford Levinson, ed., 2004)

*** PAPER TOPIC DUE**

III. Economic, Social & Cultural Rights (Units 5-6)

February 5th

A. Content

Read for Background: text pp. 263-278, 280-291, 294-297

International Covenant on Economic, Social & Cultural Rights (ICESCR) (available online)

Posted on Claranet: *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*, Afr. Commission, Communication No. 155/96 (October 27, 2001)

February 12th

B. Justiciability

Text pp. 313-347

February 19th No Class Administrative Monday

IV. Cultural Relativism (Unit 7)

February 26th

Read for Background: text pp. 517-540

Text pp. 590-592, 616-639

March 4th No Class Spring Break

V. United Nations Institutions (Units 8-9)

March 11th

A. Human Rights Commission/Council

Read for Background: Text pp. 735-742, 746, 754-762, 791-804

Text pp. 787-791, 811-823

Discussion Question: Consider the Chad fact pattern posted on Claranet.

*** DETAILED PAPER OUTLINE DUE**

March 18th

B. Human Rights Committee (International Covenant on Civil & Political Rights)

Read for background: text pp. 844-849, 891-895, 918-923
Text pp. 853-867, 873-886, 900-918
Review: ICCPR

VI. Regional Arrangements (Units 10-12)

March 25th

A. European Court of Human Rights

Read for Background: text pp. 925-7, 933-946, 1001-1005, 1007-1013
Text pp. 951-963, 964-5, 967-979
European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (available online)

April 1st

B. The Inter-American System

Read for Background: text pp. 1020-1029
Text pp. 1048-1062
American Declaration of the Rights and Duties of Man
American Convention on Human Rights (ACHR) (both available online)

Discussion Question: Consider the Colombian fact pattern posted on Claranet.

April 8th

C. The African System

Read for background: text pp. 1062-70, 1081-83, 1106-08
Text pp. 1074-1081
African Charter on Human and People's Rights (available online)

*** PAPER DRAFT DUE**

VII. Domestic Implementation (Units 13-14)

April 15th

A. The United States

Read for Background: text pp. 1086-88, 1096-99, 1156-57,
Text pp. 1119-1122, 1133-1147, 1177-1203, 1208-1211, 1212-1221

April 22nd Last Day of Class

B. Abroad

Read for Background: text pp. 1161-1163
Text pp. 1167-1177, 1224-1240, 1319-1330, 1338-1341

*** FINAL PAPER DUE AT THE END OF THE FINALS PERIOD**

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