

Seminar on International Human Rights

Spring 1998

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Course Outline

Session I (Jan. 14)

Introduction: The Contemporary Concern with Human Rights

Outline

1. Rights and Human Rights
2. The International human rights movement
 1. Pre-World War II antecedents
 2. World War II, Nuremberg
 3. The United Nations Charter and its aftermath
3. National and international perspectives on human rights

Discussion

- o Rights and alternative visions of the Good society, historically and now.
- o The significance of "human" "rights."
- o How and why did human rights enter the international political process in past centuries? Since the Second World War?
- o Are human rights standards universal? The validity of cultural relativism in a human rights court.

Readings

- o *The Age of Rights*, Louis Henkin. Columbia University Press (Reader, Item 1)

Session II (Jan. 28)

International Human Rights Standards: Rights and Limitations

Outline

1. International standards
2. History
 1. U.N. Charter
 2. Nuremberg
 3. Universal Declaration and covenants
 4. European, American and African arrangements
 5. Adherence of various states
3. Content

1. Civil, political, economic, social, cultural
2. Limitations, derogation
3. Interpretation of particular rights and by whom
4. New notions of rights: development, peace, environment

Discussion

- Why are standards desirable?
- Are standards sufficiently concrete to be useful? What uses might they serve?
- Which philosophical traditions are the standards based upon?
- Were any rights omitted? Are some included that should not have been? Should new rights be developed?
- Are differences between universal and regional standards significant?

Readings

- United Nations Charter, Preamble, Articles 2, 55, 56.
- Universal Declaration of Human Rights (Document book)
- Covenant on Civil and Political Rights (Document book)
- Covenant on Economic, Social and Cultural Rights (Document book)
- European Convention of Human Rights (Document book)
- African Charter on People's and Human Rights (Document book)
- American Convention on Human Rights (Document book)

Recommended

- *Szabo, Imre. "Historical Foundations of Human Rights and Subsequent Developments." in the *International Dimensions of Human Rights* (Volume I), ed. Karel Vasak. Westport, CT: Greenwood Press, 1982.
- International Convention on the Elimination of All Forms of Racial Discrimination (Document book)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Document book)
- *Whitaker, Ben. "Minority Rights and Self-Determination," in *Human Rights and American Foreign Policy*, Donald P. Kommers and Gilbert D. Loescher, eds. Notre Dame University Press, 1979.

* On reserve in Law School Library

Session III (Feb. 4)

Implementing International Standards: The United Nations

Outline

1. The United Nations
 1. the Human Rights purposes of the U.N.
 2. Non-intervention and Article 2(7)
2. The General Assembly and Human Rights
 1. The Assembly
 2. ECOSOC
 3. The Human Rights Commission
 4. The Subcommission and its working group
 5. High Commissioner on Human Rights
 6. Human rights monitoring as an element of UN peace operations
3. Implementation machinery international agreements -- the treaty bodies
4. The Genocide Convention
5. The Covenant on Civil and Political Rights
 1. The Human Rights Committee
 2. The Optional Protocol
6. The Covenant on Economic and Social Rights

1. The Committee on Economic, Social and Cultural Rights
7. The Conventions on Racial Discrimination Against Women, and on the Rights of the Child

Discussion

- Is depoliticization of human rights possible?
- UN politics and state interests
- Are there alternatives to the UN?
- In advocacy terms, which of these mechanisms works best?

Readings

- The implementation sections of the Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, and the Convention on Racial Discrimination (Document book)
- UN ECOSOC Res. 1985/17, creating Committee on Economic, Social and Cultural Rights. (Reader, Item 6)
- Institutional chart of the United Nations System. (Reader, Item 3)

Recommended

- Aspen Institute, *Honoring Human Rights & Keeping the Peace*, Introduction and recommendations, 1995
- Reflections on the Vienna Conference on Human Rights, Michael Posner. American Society of International Law Proceedings (Reader, item 8)

Session IV (Feb. 11)

Implementing International Standards: International Political Machinery

Outline

1. Regional Rights Enforcement
 1. Focus on Europe and Africa
 2. Council of Europe
 3. The Organization for Security and Cooperation in Europe (OSCE)
 4. The African Commission on Human Rights
 5. Other regional arrangements

Discussion

- General Political enforcement and special treaty machinery
- Universal and regional conventional machinery - effect on domestic protection
- Is international protection effective?

Readings

- The European Convention on Human Rights. (Document book)
- The American Convention on Human Rights "Pact of San Jose, Costa Rica," (Document book).
- The African Charter on Human and Peoples' Rights, (Document book).
- European Convention: Selected Cases (Reader, Item 9)
- Valesquez Rodriguez Case, Inter-American Court of Human Rights, 1988 (Reader, item 10)
- The Protection of Human Rights in Africa, *Interights Bulletin*, Vol. 8, No. 3, 1994 (Reader, item 11)

Session V (Feb. 18)

National Implementation of International Standards

Outline

1. International obligation and national enforcement
2. International human rights in United States law
 1. Customary human rights law
3. International human rights instruments
 1. Proposed reservations
4. Human rights as a guide for U.S. courts
 1. Constitutional or statutory interpretation
 2. In prison, mental hospital cases
5. U.S. courts and human rights abroad

Discussion

- Extensions of the *Filartiga* principle to other violations:
- Racial discrimination
- Prolonged detention
- Torture
- Is *Filartiga* a good idea?

Readings

- Bush Administration package of Reservations, Declarations and Understandings to International Covenant on Civil and Political Rights 1991 (Reader, Item 13)
- Introduction: Civil and Political Rights in the United States, U.S. Report to the U.N. (Reader, Item 14)
- Human Rights Committee Summary Statement on U.S. Report (Reader, Item 15)
- *Hilao vs. Marcos*, (Reader, item 22)
- Human Rights Committee - General comment on Reservations (Reader, item 16)
- Observations by the U.S. on the General Comment (Reader, item 17)
- *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2d. Cir. 1980) (Reader, Item 18)

Recommended

- * Lawyers Committee for Human Rights, In *the National Interest*, chapter on Human Rights in the United States: Domestic Implementation of Treaty Obligations, 1996
- * Statement by Senator Jesse Helms opposing U.S. Ratification of the International Covenant on Civil and Political Rights, November 1991
- Restatement of the Law of Foreign Relations, Sections 701-703 (Reader, Item 15)
- Torture Victim Protection Act 1991 (Reader, item 20)
- *Hanock Tel-Oren v. Libyan Arab Republic*, 726 F. 2d 774 (D.C. Cir. 1984) (Reader, item 19)

Session VI (Feb. 25)

The Politics of Human Rights in a World of States: Building an International System of Accountability

Outline

1. The politics of the United Nations: The debate about humanitarian intervention
2. Accountability - The international tribunals for the former Yugoslavia and Rwanda
3. The creation of a Permanent International Criminal Court

Discussion

- The reality of and limitations on international concern with human rights
- The effect of contemporary international politics on human rights

- The effect of human rights on international politics
- International accountability: What are the possibilities?/What are the limits? - The debate about the creation of a permanent International Criminal Court

Readings

- "Humanitarian Intervention and American Foreign Policy: Law, Morality, and Politics" Jack Donnelly, University of Pennsylvania Press, 1989 (Reader, Item 25)
- "Should We Risk Lives to Save Lives?" Diane F. Orentlicher, *Boston Review*, December/January 1993/94 (Reader, Item 26)
- "Rape in War: Challenging the Tradition of Impunity" Dorothy Thomas and Regan Ralph, *SAIS Review*, 1994 (Reader, Item 32)
- "Realising Human Rights: Take Hold of it Boldly and Duly" Speech by Mary Robinson (Reader, item 34)
- "Establishing a Permanent Criminal Court: Moving Forward" Jelena Pejic, *Interights Bulletin*, 1996 (Reader, item 35)

Recommended

- * Walzer, Michael. *Just and Unjust Wars: A Moral Argument*. New York: Basic Books, 1977. Chapter 1.
- * Hoffman, Stanley. *Duties Beyond Borders*. Chapter 3.

Session VII (March 4)

Human Rights in North-South Relations

Outline

1. The World Conference on Human Rights
2. Human rights, democracy and development
3. Human rights in North-South relations
 1. Controversies as to definition and priorities
 2. Conditionality on aid, trade and lending policies
 3. The role of international financial institutions
 4. Human rights and governance

Discussion

- In North-South relations, are human rights text or pretext?
- Humanitarian intervention: The obligation of other states to promote economic-social rights; the right of other states to intervene to protect civil-political rights. What are the opportunities? What are the limits?
- Prospects for human rights in a diverse and divided world.

Readings

- "Governance and the Development Process," Pierre Landell-Mills and Ismail Serageldin in *Finance & Development*, September 1991 (Reader, Item 30)
- "International Law and the Right to Food," Philip Alston, *Human Rights in the World Community*, (1989) (Reader, Item 28).
- "The State and Human Rights in Africa in the 1990's: Perspectives and Prospects," Sakah S. Mahmud, 1993 (Reader, Item 29)
- The United Nations and the Creation of an International Law of Development, *Harvard International Law Journal*, Vol. 36, Number 2, spring 1995 (Reader Item 35)

Session VIII (March 11)

Refugees-International Standards and Procedures

Outline

1. International protection of refugees
 1. The Refugee Convention and Protocol
 2. The U.N. High Commissioner for Refugees
 3. Dealing with Large-scale Refugee Crises
 4. International Displacement
 5. Forced Repatriation

Discussion

- o Causes of refugee flow; any cures?
- o A viable international program
- o Should there be a right to asylum?
- o Asylum--an evolving standard--gender-related persecution

Readings

- o Convention Relating to the Status of Refugees (Reader, Item 21).
- o Protocol Relating to the Status of Refugees (Reader, Item 22).
- o Coping with a Complex Refugee Crisis in Africa, George Okoth-Obbo, *The Problem of Refugees in the Light of Contemporary International Law Issues*, 1996 (Reader, item 24)
- o Gender-related Persecution: Assessing the Asylum Claims of Women Vol 26, *Cornell International Law Journal* (1993) 625, (Reader, Item 26).

Recommended

- o * UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status," UNHCR, pages 3-25 (1988)
- o * Aleinikoff, T. Alexander, "State-Centered Refugee Law: From Resettlement to Containment," *Michigan Journal of International Law* 120, (Fall 1992)
- o * African Exodus: Excerpt, The Lawyers Committee for Human Rights, (1995)

Session IX (March 25)

Refugees - U.S. Law and Practice

Outline

1. U.S. refugee policy
 1. U.S. Refugee policy and immigration policy
2. Refugees in U.S. Courts
 1. Interdiction and detention

Discussion

- o A practicable U.S. policy
- o Refugee admissions
- o Asylum policy
- o Detention
- o Expedited removal of Asylum-Seekers
- o Other means of deterrence

Readings

- *Sale v. Haitian Centers Council, Inc.*, 113 S. Ct. 2549 (1993) (Reader, Item 27)

Recommended

- * Perliss, Deborah and Hartman, Joan, "Temporary Refugee: Emergence of a Customary Norm," *Va. J. Int'l L.*, 26:3 (1986): 551.
- * Vazquez, Carlos Manuel, "The 'Self-Executing' Character of the Refugee Protocol's Nonrefoulement Obligation," *7 Georgetown Immigration Law Journal* 39 (1993)

Session X (April 1)

Human Rights and Women's Rights

Outline

1. Women's Rights as Human Rights
2. The Distinction between the Public and the Private in International Human Rights Law
3. Cultural Relativism and Women's Rights
4. Economic and Social Rights - Their Links to Women's Rights
5. Women and International Law Making about Women; CEDAW
6. Violence Against Women, International Protections

Discussion

- Should women's rights be created as a separate category?
- Can women's rights be separate from cultural constraints?
- Should formal equality be the goal of women's lobbying for rights protection?
- The Beijing Conference - Outcome and Achievements
- The North/South divide in the International Womens Movement

Readings

- Convention to the Elimination of All Forms of Discrimination against Women.
- United Nations General Assembly Resolution 48/104 Declaration on the Elimination of Violence Against Women.
- * Charlotte Bunch, "Women's Rights as Human Rights: Toward a Revision of Human Rights," *12 Human Rights Quarterly* 486, 1982 (Reader, Item 30)
- * Charlsworth, Chinkin and Wright, "Feminist Approaches to International Law," *85 American Journal of International Law* 813, 1991 (Reader, Item 31)
- * "Women Law and Property in the Developing World: An Overview," *Human Rights Quarterly*, Johns Hopkins University 1981 (Reader, Item 34)

Recommended

- * Joan Fitzpatrick, "The Use of International Human Rights Norms to Combat Violence Against Women," from *Human Rights of Women* (Ed. Rebecca J. Cook)
- * Theodore Meron, "Rape as a Crime Under International Humanitarian Law," *87 American Journal of International Law* 424 (1993)
- * I. Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries," *23 Columbia Human Rights Journal* 189 (1991-92)

Session XI (April 8)

Human Rights and U.S. Foreign Policy

Outline

1. Two Human Rights Policies: Congress and the Presidency
2. Linking Human Rights and Aid - the Fraser Amendment
3. Trade and Human Rights

Discussion

- o "Consistency" in U.S. human rights policy
- o Bilateral vs. Multilateral Approaches
- o Post-cold war policies - Addressing trade and human rights
- o Bureaucratic Implementation of Human Rights

Readings

- o "Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal," *Daedalus*, Stanley Hoffman, 1983 (Reader, Item 36).

Recommended

- o * Lawyers Committee for Human Rights, *In the National Interest*, Chapters on Trade Investment Policy and Human Rights and International Legal Regime to Protect Workers Rights, 1996.

Session XII (April 15)

The Role of Non-governmental Organizations

Outline

1. The special role for NGO's in international human rights
2. National and international NGO's
3. Varieties of NGO's
4. NGO's in national and international fora
5. NGO's, Congress and the Department of State
6. NGO's and the courts
7. NGO's and the press

Discussion

- o Improving the effectiveness of NGO's/Focus on freedom of association
- o Relations between NGO's and Governments
- o Competition and Cooperation between NGO's
 - o International and local

Readings

- o "Bearing Witness: The Art and Science of Human Rights Fact-Finding," Diane Orentlicher, *Harvard Human Rights Journal*, Vol. 3, 1990. (Reader, Item 37)
- o List of Human Rights Organizations (Reader, Item 39)
- o "The Status of Human Rights NGOs," Michael H. Posner and Candy Whittome, *Columbia Human Rights Law Review*, Spring, 1994 (Reader, Item 36).
- o "Islam and Human Rights: Tradition and Politics," Ann Elizabeth Mayer (Reader, Item 38).

Recommended

- * "U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy", Philip Alston, *American Journal of International Law*, April 1990
- * Shestack, Jerome J., "Sisyphus Endures: The International Human Rights NGO," *New York Law School Rev.* 24:1 (1978) 89-123.

Session XIII (April 23)

The Role of Non-governmental Organizations