International Law and Human Rights

Harvard Law School
Spring 2015

Thursday and Fridays, 9:50 a.m. to 11:50 a.m.
WCC 1019

Professor Samuel Moyn

Office and Office Hours: Areeda 130, Friday 12:30-2 p.m. or by appointment

This course surveys a selection of topics in contemporary human rights law, with attention to broader principles and problems in international law, as well as to cognate fields like international criminal and international humanitarian law. A consistent focus is how the United States relates to the international human rights system -- and how, conversely, that system impinges on diverse areas of American law and policy. The course also takes up the ways in which both the international system and the rights jurisprudence of other countries might differ from approaches in American law, as for example in socioeconomic rights adjudication or the regulation of religious practice. Note: This is one of the 1L required international or comparative courses and is only available to 1L and LLM students.

Many readings from this course come from Louis Henkin et al., Human Rights, 2nd ed. (Foundation Press), which you can buy in the bookstore; other readings will be provided as weekly packets on the course website and at the copy room.

You are required to attend the class each time, having prepared the assignments listed. There is a take-home examination at the end, on the day of your choice during exam period.

Schedule of Meetings and Readings

January 29

1. Case Study: The Extraterritorial Right to Privacy
   
   *Readings*: Supplemental Readings (Supp.): Universal Declaration of Human Rights (UDHR), Art. 12; European Convention on Human Rights and Fundamental Freedoms (ECHR), Arts. 1 and 8; International Covenant on Civil and Political Rights, Arts. 2(1) and 17; Weber and Saravia v. Germany, European Court of Human Rights (ECtHR), App. No. 54394/00 (2006), excerpts; Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Fourth Annual Report, UN Doc. A/69/397 (September 23, 2014), excerpts

2. Introducing the Course
   
   *Readings*: UDHR (entire—online in any version)

January 30
1. Origins of Human Rights Law
   *Readings:* Henkin, 55-77, 88-93, 99-109, 214-23; Supp., Selected Human Rights Agreements

2. Sources of International Law: Treaties, Customary Law, and General Principles
   *Readings:* Henkin, 190-97

February 5

1. The UN Charter and Charter Institutions
   *Readings:* UN Charter, Preamble, Arts. 1, 2, 13, 55, 62, 68, 76; Henkin, 415-43; Supp., Update-Human Rights Council

2. The United States and Universal Periodic Review (Role Playing)

February 6

1. The UN Security Council and Human Rights
   *Readings:* Henkin, 521-33

2. Human Rights and Rationales for War: From Humanitarian Intervention to the Responsibility to Protect
   *Readings:* Henkin, 533-67; Supp., Update-The Fate of R2P in Libya, Syria, and Beyond

February 12

1. Treaties from Negotiation to Ratification (and Withdrawal)
   *Readings:* Henkin, 198-207, 956-67 plus Notes/Questions 2, 4, 7, 8 following, 971-76 plus Notes/Questions 2 and 3 following, 978-79; Supp., Treaty Reservations and U.S. Ratification; Henkin, 210-11

2. Treaty Bodies (Guest: Gerald L. Neuman, Harvard Law School, and former member, Human Rights Committee)
   *Readings:* Henkin, 444-52, including 452, Notes/Queries 1, 2, 4, and 7, 455 (introductory paragraph on the petition system), 460-66, and 470, Notes/Queries 1-2; Supp., Update—Treaty Bodies and Reform

February 13

1. The Right to Life
2. Derogating from Human Rights Treaties

February 19

1. Treaties in the United States
   Readings: Henkin, 929-56; Supp., Update-Treaties

2. Customary Law in the United States
   Readings: Henkin, 985-97; Supp., Update-Customary Law

February 20

1. Extraterritoriality around the World…
   Readings: Henkin, 13-19, 21-22, 309 (starting at Note 4)-311; Supp., Update-Extraterritoriality and Europe

2. … and in America?

February 26

1. The Law of Armed Conflict: General Themes
   Readings: Philip Alston and Ryan Goodman, International Human Rights, 404-10; Geneva Conventions (1949), Common Arts. 1-4; Second Protocol Additional to the Geneva Conventions (1977), excerpt

2. The Intersection of IHL and IHRL
   Readings: International Court of Justice, Construction of a Wall Advisory Opinion, ¶¶ 102-113 (2004); Supreme Court of Israel, Targeted Killings Case, ¶¶ 16-18 (2006); Isayeva v. Russia, ECHR, App. No. 57950/00 (2005), excerpts

February 27

1. Intersection, cont’d: America after 9/11
Readings: United States government leaked memo from John Yoo to William Haynes on Applicability of Geneva Conventions to Taliban and Al-Qaeda, 1-2, 6-14, 22-25; U.S. Supreme Court, Hamdan v. Rumsfeld (2006), excerpts


March 5

1. The African System

2. The Inter-American System (and Indigenous Rights)
   Readings: Henkin, 568-72 (down to bottom), 588-89, 601 (from Note/Question 8)-620; Supp., The Inter-American System

March 6

1. Europe: Origins, Protocol 11, and the Consequences
   Readings: Henkin, 622-26, 656-62; Supp., Update—The European System

2. Case Study: The Human Rights Act and the Specter of British Withdrawal (Guest: Adam Wagner, One Crown Office Row, Founding Editor of http://ukhumanrightsblog.com)

March 12

1. The Kadi Case
   Readings: Supp., Chart on Relation between European Convention System and National Legal Orders; Görgülü, BVerfGE 111, 307, Bundesverfassungsgericht (German Constitutional Court) (2004); Kadi and Al Barakaat v. Council of the European Union, European Court of Justice, Opinion of Advocate General Miguel Maduro (January 2008)

2. European Human Rights, Constitutionalism, and Pluralism
   Readings: Cont’d

March 13
1. The Compliance Debate (Guest: Beth A. Simmons, Harvard Department of Government)

2. National Human Rights Institutions and “Mainstreaming”

SPRING BREAK

March 26

1. “Militant Democracy” and Individual Rights in Europe
   Readings: Henkin, 1356-72

2. Religious Freedom and “Living Together”

March 27

1. CEDAW and Gender Equality

2. Violence against Women and Non-State Actors
   Readings: Henkin, 839-44, 850-51, 855-74 (after due diligence cases, read Notes/Queries 1-3, 6-7, 11-13 only); Supp., Update—Violence against Women

April 2

1. Violence against Women and Human Rights Advocacy (Guest: Karen Naimer, Physicians for Human Rights)
   Readings: None

2. Social Rights: Threshold Issues
   Readings: Henkin, 1373-75, 1392-96, 1399-1402, 1542-45, 1381-84; Supp., Update—Social Rights

April 3
1. The ESCR Committee and the South African Cases
   
   **Readings**: Henkin, 1406-12, 1420-22 (through Note/Query 7), 1423-26, 1428-48 (through Note/Query 12), 1451 (Note/Query 16); Supp., Update—ESCR Committee and Social Rights Adjudication

2. Revisiting Compliance in the Context of Social Rights
   

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**April 9**

1. The Right to Development
   

2. Corporations in International Human Rights Law
   
   **Readings**: Henkin, 888-93, 900-920, Supp., Update—Corporations, including Guiding Principles on Business and Human Rights (but you can skip commentaries and focus on the general spirit and headings of the text); Société Colas Est v. France, App. No. 37971/97, ECtHR (2002)

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**April 10 – NO CLASS**

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**April 16**

1. The Alien Tort Statute, Rise and Fall
   
   **Readings**: Henkin, 1081-87, plus 1088 Note/Query 4, 1113-15, plus 1137-38 Note/Query 2 and 1145 Note/Query 18; Supp., Update—ATS

2. Post-*Kiobel* Strategies (Guest: Susan Farbstein, Harvard Law School Human Rights Clinic)
   
   **Readings**: Proposed Amended Complaint, In Re South African Apartheid Litigation, United States District Court, New York, Southern District, selections

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**April 17**

1. The New Principles (Guest: John Gerard Ruggie, Harvard Kennedy School, and former UN Special Representative for Business and Human Rights)
   

2. International Criminal Law: Introduction
   
   **Readings**: Henkin, 698-730

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**April 23**

1. The International Criminal Court
Readings: Henkin, 730-33; Supp., Updates-ICC (including Israel/Palestine and the ICC)

2. America and the ICC
   Readings: Henkin, 733-37; Supp., Updates-ICC and United States, including David Bosco, Rough Justice, brief excerpt, and Bosco, “Is the ICC Investigating the United States?”

April 24

1. Human Rights as a Movement: Past and Future
   Readings: Henkin, 790-804; David Kennedy, “The International Human Rights Regime: Still Part of the Problem?, excerpt

2. Exam Review