

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)
Readings: Supp., Update-Universal Periodic Review; skim Report of the Working Group on the United States, UN Doc. A/HRC/16/11

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
Readings: Supp., Human Rights Committee, Pedro Pablo Camargo v. Colombia, Communication No. 45/1979, U.N. Doc. CCPR/C/OP/1 (1985); Human Rights Committee, General Comment 6; Human Rights Committee, Ms. Yekaterina Pavlovna Lantsova v. The Russian Federation, Communication No. 763/1997,

U.N. Doc. CCPR/C/74/D/763/1997 (2002); Supreme Court of India, *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 Supreme Court 18 (1985)

2. Derogating from Human Rights Treaties

Readings: Supp., *Ireland v. United Kingdom* (1978) (excerpt); UK House of Lords, *A and others v Secretary of State for the Home Department*, Session 2004-05 [2004] UKHL 56 (excerpt)

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?

Readings: Henkin, 299-304, 19-21, 23-24; Charlie Savage, "U.S., Rebuffing U.N., Maintains Stance that Treaty Does Not Apply Abroad," *New York Times*, March 13, 2014; Human Rights Committee, Concluding Observations on the United States of America (2014); Statement by NSC Spokesperson Bernadette Meehan on the U.S. Presentation to the Committee Against Torture; Harold Koh, "America's Unequivocal Yes to the Torture Ban," *Just Security*, November 18, 2014; skim Advocates for U.S. Torture Prosecutions, Shadow Report to the UN Committee against Torture, September 2014

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*, ECtHR, 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

2. Human Rights in American NIAC (Guest: Naz K. Modirzadeh, Harvard Law School)

Readings: Naz Modirzadeh, "Folk International Law and the Syrian Airstrikes," *Lanfare*, October 2, 2014; Marty Lederman, "Of So-Called 'Folk' International Law," *Just Security*, October 2, 2014; Naz Modirzadeh, "A Reply to Marty Lederman," *Lanfare*, October 3, 2014; Major Charles Kels, "Folk International Law and the Law of Armed Conflict," *Lanfare*, October 29, 2014; optional: Marty Lederman, "Folk Tales," *Just Security*, October 20, 2014

March 5

1. The African System

Readings: Henkin, 675-83, 695-98; Supp., Update—The African System; Makau Mutua, "Human Rights in Africa: The Limited Promise of Liberalism"

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>)

Readings: Conservative Party, "Protecting Human Rights in the United Kingdom," October 3, 2014; Packet—Adam Wagner

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)
Readings: Supp., Beth A. Simmons, *Mobilizing for Human Rights* (2011), chap. 4 (required) and chap. 9 (optional); Eric A. Posner, *The Twilight of Human Rights Law* (2014), introduction and chap. 4; Beth A. Simmons, “What’s Right about Human Rights,” *Democracy* (2015) (optional)
2. National Human Rights Institutions and “Mainstreaming”
Readings: Supp., Olivier de Schutter, *International Human Rights* (2010), 780-790; Martti Koskeniemi, “Human Rights Mainstreaming as a Strategy of Institutional Power” (2010); Heritage Foundation Backgrounder on NHRI for the United States

SPRING BREAK

March 26

1. “Militant Democracy” and Individual Rights in Europe
Readings: Henkin, 1356-72
2. Religious Freedom and “Living Together”
Readings: Henkin, 1299-1301, Supp., *Lautsi and Others v. Italy*, Grand Chamber Decision, ECtHR, App. No. 30814/06 (2011), ¶¶ 10-14, 29-32, 47, 68-77, plus Judge Giovanni Bonello’s concurrence; *S.A.S. v. France*, Grand Chamber, ECtHR, App. No. 43835/11 (2014), ¶¶ 10-14, 28, 27, 69, 74, 76-78, 80-82, 85, 123-131, 137-159

March 27

1. CEDAW and Gender Equality
Readings: Henkin, 247-60, 815-19, 825-39; Supp., Update—CEDAW and 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
Readings: David Landau, “The Reality of Social Rights Enforcement,” *Harvard International Law Journal* (2012), 190-201, 230-41, 243-47

April 9

1. The Right to Development
Readings: Declaration on the Establishment of a New International Economic Order, UN Gen. Ass. Res. 3201 (1974); Henkin, 373-80; Posner, *Twilight of Human Rights Law*, chap. 7
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)

April 10 – NO CLASS

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 Farbstain, 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

April 17

1. The New Principles (Guest: John Gerard Ruggie, Harvard Kennedy School, and former UN Special Representative for Business and Human Rights)
Readings: review principles; Supp., John Gerard Ruggie, “Global Governance and the ‘New Governance Theory’: Lessons from Business and Human Rights”
2. International Criminal Law: Introduction
Readings: Henkin, 698-730

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