The University of Alabama

School of Law

Introduction to International Human Rights Law

Vaughan Carter

(Visiting Faculty)
Introduction to International Human Rights Law

Course Outline

Course Description

This short course in international human rights law is designed to provide students with an introduction to what is a dynamic subject, which in spite of its relative youth has come a long way in a short period of time, particularly since the inception of the United Nations. While the history of human rights and of domestic rules for their protection clearly predate the United Nations; it is the period, in the wake of the Second World War and in which countries were prepared to come together and form international organisations like the United Nations, that has provided the impetus for a plethora of international and regional treaties designed to protect various human rights. Students will be introduced to these landmark treaties and will, at the same time, be asked to consider the factors that have informed their composition, both in terms of the rights enshrined and the enforcement mechanisms developed therein.

In the course of reviewing the major international human rights treaties, students will be exposed to the different categories of rights that have been recognised in international human rights law. Implicit in this categorisation and at the heart of many contemporary human rights issues is the fundamental question of whether human rights are rightly considered to be universal. In this context; given that there are different categories of rights; students will examine how these different categories of rights relate to one-another in international law.

Having commenced with a review of the core international human rights instruments created under the auspices of the United Nations, this course will then proceed to analyse different approaches to the subject of human rights that have been taken at a regional level. In so doing, students will revisit issues surrounding the construction of rights, the extent to which these can be protected by international law and the significance of the categorisation of human rights in a regional context.

For reasons that will become evident as the course progresses, the European Convention for the Protection of Human Rights and Fundamental Freedoms represents a fruitful area for enquiry and students will therefore utilise this treaty, not just as a reference point for evaluating other regional mechanisms, but as a basis for more in-depth investigation of particular rights and their interpretation.

The course will conclude, and in a sense come full circle, with an assessment of how international human rights law can impact domestic arrangements for the protection of human rights.
Course Structure and Logistics

This Introduction to International Human Rights Law course is designed to complement the Public International Law course, which makes limited reference to aspects of international human rights law. Notwithstanding that there is some connection between the two courses; Public International Law is not therefore a pre-requisite for enrolment in this Introduction to International Human Rights Law course.

For the most part, this course will be delivered over two separate intensive weeks of contact time. The first teaching week is the week of 23 January 2012 through to 27 January 2012. Following a period in which on-going support will be available on-line, the second teaching week will commence on 5 March 2012 and conclude prior to Spring Break on the morning of 9 March 2012.

The Introduction to International Human Rights Law course will comprise eight areas for enquiry and investigation, four of which will be pursued in each of the two teaching weeks.

In the week of 23 January 2012 – 27 January 2012, the four areas for enquiry and investigation will be:

1. The Evolution of Human Rights and the Emergence of International Human Rights Law
2. The International Bill of Rights: From the Universal Declaration to Two Separate International Covenants

The activities in the first week should provide students with a sound appreciation of the framework for international human rights law, as defined by the major international human rights treaties.

In the week of 5 March 2012 – 9 March 2012, the second series of four areas for enquiry and investigation will encompass:

5. Third Generation Rights
6. Absolute Rights
7. Limited Rights, Qualified Rights and Principles of Interpretation
8. The Domestic Application of International Human Rights Norms

Having established the framework for international human rights law in the first teaching week, the areas for enquiry and investigation in the second week will provide greater opportunity for students to analyse selected examples of the case law generated by international human rights tribunals and to evaluate how various rights have been interpreted and applied. In so doing, many of the themes
pursued in the first series of four areas of enquiry and investigation will be developed, extended and exemplified in the second series.

By way of example, the study of third generation rights in the fifth area for enquiry and investigation will explore a further stage in the evolution of human rights, which is begun and pursued in the first teaching week. Moreover, this analysis of third generation rights; examples of which are to be found in the African Charter on Human and Peoples’ Rights; will also facilitate both an interesting comparison with the first and second generation rights embodied in the United Nations Covenants and a useful counterpoint to the European model enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In a similar vein, the focus on the European Convention for the Protection of Human Rights and Fundamental Freedoms in the fourth area of enquiry and investigation will serve as a basis for then distinguishing between absolute, limited and qualified rights in the second teaching week; while the consideration of human rights norms and their domestic application in the final area of enquiry and investigation will provide an opportunity to revisit many of the fundamental questions regarding the development of international human rights law identified at the start of the course. As such, it is important to note that the course, much like the human rights themselves, is very much inter-connected and inter-dependent and should be approached accordingly.

**Course Outcomes**

Expressed in terms of outcomes, upon completion of the course, students should be able to:

1. Demonstrate a basic knowledge of the major international and regional treaties that form the framework for international human rights law;
2. Articulate an awareness of the different categories of human rights recognised in international human rights law, as well as a more detailed understanding of selected rights within each category; and
3. Evaluate and critique the development and present standing of international human rights law.
Introduction to International Human Rights Law

Course Materials

Introduction

While there are many excellent texts devoted to international human rights and even to various aspects of this subject, given that this is only an introduction to the subject, there appeared to be little merit in mandating the purchase of any set texts. Instead, I have sought to assemble a variety of resources, most of which are available on-line. These should therefore provide an accessible, focussed and no less comprehensive set of materials for this course, which, if you so wish, may be supplemented by reference to general texts from the library holdings.

Materials for Week 1 and the First Four Areas for Enquiry and Investigation

1. The Evolution of Human Rights and the Emergence of International Human Rights Law

   The materials for the first area for enquiry and investigation are for the most part drawn from a series of papers, which were presented in July 2000, at a conference jointly sponsored by the University of London’s Institute of Advanced Legal Studies and Northwestern University School of Law. These papers were subsequently published in the Northwestern University’s Journal of International Human Rights:

   - McDowell, G.L. and S.B. Presser “Foreward: Human Rights, the Rule of Law and National Sovereignty”
     2 NW. U. J. INT’L HUM. RTS. 1 at http://www.law.northwestern.edu/journals/jihr/v2/1
   - Tierney, B “The Origins of Natural Rights – Origins and Persistence”
     2 NW. U. J. INT’L HUM. RTS. 2 at http://www.law.northwestern.edu/journals/jihr/v2/2
     2 NW. U. J. INT’L HUM. RTS. 3 at http://www.law.northwestern.edu/journals/jihr/v2/3
   - Zuckert, M “Natural Rights and Modern Constitutionalism”
     2 NW. U. J. INT’L HUM. RTS. 4 at http://www.law.northwestern.edu/journals/jihr/v2/4
   - Glendon, M.A. “The Rule of Law in the Universal Declaration of Human Rights”
McDowell and Presser, in their foreword, provide a useful introduction to the substantive papers, along with a narrative, which will help you to link themes in the various papers and appreciate their chronological development.

The roots of international human rights are explored by Tierney – in the context of natural rights theory – and by Baker – in relation to the English common law. Zuckhert then traces the journey of these concepts across the Atlantic and into the era of modern constitutionalism. Please dip into these papers with a view to obtaining a feel for the history and evolution of the subject. This will be relevant as we proceed to consider concepts, such as the universality of human rights, later in the course. With the Zuckhert paper, you should also find yourself on familiar ground with the US Constitution – use this to find your feet and to ready yourself to evaluate the US approach to many of the same rights when they are elevated onto the international stage.

While this historical context is important, the main thrust of this area for enquiry and investigation is this international emergence of human rights. There is evidence of this phenomenon prior to the Universal Declaration of Human Rights, but it is this instrument that has largely paved the way for the development of what can now be considered as a discrete area of law. Glendon’s paper should therefore be contemplated in some detail, particularly in terms of the relationship between international human rights and similar national provisions; the capacity, or otherwise, for such rights to be enforced through international law; and whether human rights are truly universal. These issues are also evident in Cassel’s paper, which merits similar attention. Cassel, however, brings a more contemporary edge to these discussions. In so doing, Cassel explains how international human rights law has grown since the Universal Declaration, noting the significance of this growth, while, at the same time, identifying some of the challenges that lie ahead for the international human rights movement.

Not least amongst these challenges is a concern that the development of human rights in international law could potentially be open to abuse. This extension of the universality debate, introduced above, is the final theme investigated in this area. Ignatief’s article provides a provocative basis for enquiry in this regard, as well as an opportunity for general reflection on the evolution of human rights and the emergence international human rights law:

- Ignatief, M, “Human Rights as Politics and Idolatry”
2. The International Bill of Rights: From the Universal Declaration to Two Separate International Covenants

The second area for enquiry and investigation focuses on the creation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together with the Universal Declaration are often referred to as the International Bill of Rights. Links to these Covenants can be found at:

- [http://www2.ohchr.org/english/law](http://www2.ohchr.org/english/law)

Consider the rights contained in each Covenant; the reasons for having two distinct Covenants; and the extent to which the rights contained in each Covenant are amenable to enforcement. A short introduction written at the time these Covenants came into force, which may assist in framing these considerations, can be accessed at:


Introductory comments on the International Covenant on Civil and Political Rights and references to key texts in this area are available at:


On the same site, you could opt to view the following two lectures, which address in more detail not just the rights encompassed by the International Covenant on Civil and Political Rights, but also the extent to which these rights can be enforced by the machinery created under the Covenant:


More detail on the International Covenant on Economic, Social and Cultural Rights and the nature of domestic obligations arising under this Covenant should be obtained from the following article, which is available in the library:
While one of the underlying reasons for the creation of two separate Covenants was an apparent distinction in terms of justiciability and enforcement, these are issues that continue to be raised in the context of the International Covenant on Economic, Social and Cultural Rights. Such challenges are dealt with extensively in the following Report from the International Commission of Jurists, from which you should selectively seek to draw out the salient points:


With the coming into force of the two Covenants, international human rights law undoubtedly took hold. This was not without its challenges or indeed without criticism. However, with the United States having been so heavily involved in the inception of the Universal Declaration, it is interesting to consider how the United States has reacted to the two Covenants. In this regard, see:

- Ash, K “US Reservations to the International Covenant on Civil and Political Rights”
  3 NW. U. J. INT’L HUM. RTS. 7 at http://www.law.northwestern.edu/journals/jihr/v3/7

- Alston, P “Putting Economic, Social and Cultural Rights Back on the Agenda of the United States”


This area for enquiry and investigation builds upon the study of the International Bill of Rights by considering the additional core international conventions, which have supplemented and enhanced the United Nations human rights treaty system. The seven core international human rights instruments, which focus on specific areas of concern, are:

   i. International Convention on the Elimination of All Forms of Racial Discrimination
   ii. Convention on the Elimination of All Forms of Discrimination against Women
iii. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
iv. Convention on the Rights of the Child
v. International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families
vi. International Convention for the Protection of All Persons from Enforced Disappearance
vii. Convention on the Rights of Persons with Disabilities

Links to these Conventions, along with any Optional Protocols thereto, can be found at:

- [http://www2.ohchr.org/english/law](http://www2.ohchr.org/english/law)

This introductory course does not permit an in-depth analysis of each of these Conventions by every student. Instead, students will be asked to select and present on a Convention of their choice. Each presentation should focus on the scope of the rights contained in the Convention; their contribution to the development of international human rights law; and the extent to which these rights are promoted and enforced under the respective Convention.

The following are some potential sources of material for this research exercise:


Fernandez, L. “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as Adopted In 2002 by the UN General Assembly 57/1999: Implications for South Africa”

3 J. INT’L L. &POL’Y 5:1 (2006), 5.1
http://www.law.upenn.edu/journals/jil/jilp/articles/3-1_Pilnik_Lisa.pdf

UNESCO Migration Studies
http://unesdoc.unesco.org/images/0015/001525/152537e.pdf

- McCrory, S. “The International Convention for the Protection of all Persons from Enforced Disappearance”
http://hrlr.oxfordjournals.org/content/7/3/545.extract (introduction only)


Please note these links are indicative – they are not by any means compulsory reading. At the same time, if you are presenting on one of these areas, additional credit will be given for your own independent research.

This area for enquiry and investigation will then conclude with a general review of the overarching treaty system created by the United Nations. How successful has it been? Is it effective? Are changes required? In addition to your conclusions in respect of the two Covenants and your presentation on one of the subject-specific Conventions, you should consult the following Report:

The executive summary and principal recommendations alone provide a rich source of information and ideas. You may wish to use these as a stringboard into a particular aspect of what is a lengthy report. If you are inclined to further research any issue, Bayefsky’s site has an extensive collection of resources, including a range of UN Reports and contributions from various academics and NGOs, on the reform of the UN human rights treaty system:


In the previous areas of enquiry and investigation, you will have noted the tension between efforts to secure widespread support for various human rights in international law and, at the same time, difficulties associated with putting in place machinery for the effective enforcement of these rights. In part, this may well be a symptom of endeavouring to introduce and implement these principles at the broadest of international levels. Without wishing in any way to diminish these efforts and the desirability thereof, this fourth area for enquiry and investigation considers whether this tension can potentially be more readily reconciled at a regional level, with particular reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A relatively brief overview of the entire European system has been produced by the Human Rights Education Association:


Our primary regional focus, however, will be on the European Convention, which was developed almost contemporaneously with the Universal Declaration. The most notable difference between the European Convention and the Universal Declaration is that the former contains several mechanisms for enforcing the rights contained in the European Convention, which have been reinforced by the coming into force of Protocol 14. The European Convention, as amended, is available at:


In addition, the case law generated by the European Court of Human Rights is also available at:
A review of the rights enshrined in the European Convention may be instructive in understanding why the European approach differed from that at the United Nations and how the more stringent enforcement machinery in the European Convention came into being. However, this enforcement machinery and, in particular, the right of individual petition have presented their own challenges. See the recent commentary by Kjeldgaard-Pedersen:

- Kjeldgaard-Pedersen, A. “The Evolution of the Right of Individual to Seize the European Court of Human Rights”
  Journal of the History of International Law, Volume 12, No. 2, pp. 267-306

Kjeldgaard-Pedersen notes that:

“In at least two ways the year 2009 was a milestone for the European Court of Human Rights. On the bright side, the Court could celebrate its 50th anniversary and its continuous role as principal promoter of human rights in the 47 Member States of the Council of Europe. However, 2009 was also the year in which the number of pending cases before the Court passed the disturbing 100,000 benchmark. Paradoxically, the main reason for both the Court’s success and its current crisis is the right of petition of individuals.”

In the second exercise in this area of for enquiry and investigation, students will be asked to consider issues arising in this quote and evaluate the success, or otherwise, of the European Convention. Is it accurate for the European Convention to be “labelled a breakthrough in the field of human rights as well as in general international law?”

For a comprehensive evaluation of the European Convention on Human Rights, there are a series of eminent texts. For example, you could consult:


This area for enquiry and investigation, along with the first week of this course, will conclude by touching on other regional human rights mechanisms. In so doing, it is useful to compare and contrast these with both the European Convention and the United Nations treaty system. See:
  Human Rights Quarterly, Volume 6, No. 2 (May 1984), 141-159
  http://hmb.utoronto.ca/HMB303H/weekly_supp/week-02/Okere_Comparative_Analysis.pdf

Does an analysis of the African or Inter-American systems, for example, cause you to reconsider any of your conclusions in respect of the European Convention or, indeed, the development of international human rights law in general? In order to answer these questions, students will be divided into groups and allocated a regional system to research.

On the African system for protecting human rights, some interesting perspectives may also be obtained from the following:

• Boukongou, J.D. “The Appeal of the African System for Protecting Human Rights”
  2006 (6) AHRlj 268, at:

• Juma, D. “Access to the African Court on Human and Peoples' Rights: A Case of the Poacher turned Gamekeeper”
  Essex Human Rights Review, Volume 4, No. 2, 2007, at:
  http://projects.essex.ac.uk/ehrr/V4N2/juma.pdf

You may also wish to note that the Boukongou article is but one of a series of contributions to the same edition of the African Human Rights Law Journal, entitled “Focus: Twenty years after the entry into force of the African Charter on Human and Peoples' Rights”, which are contained in 2006 (6) AHRlj (pp. 255-492) and accessible at the same address as the Boukongou article (http://www.chr.up.ac.za/centre_publications/ahrlj/journals/ahrlj_vol06_no2_2006.pdf).

As regards the American regional approach, an overview of the Inter-American system, produced by the Human Rights Education Association, can be found at:

• http://www.hrea.org/index.php?doc_id=413

A short, but nevertheless interesting, book review, which illustrates differences and points for comparison between the European Convention and the Inter-American system, is also available at:
• Cerna, C.M. “The Battle of Human Rights – Gross Systematic Violations and the Inter-American System

For a more comprehensive analysis of the work of the Inter-American Court of Human Rights, you could consult:

http://bilder.buecher.de/zusatz/21/21144/21144514_vorw_1.pdf (contents only)
http://www.questia.com/PM.qst?a=o&d=107344872 (temporary access)

**Materials for Week 2 and the Second Four Areas for Enquiry and Investigation**

The materials for week 2 and the second four areas for enquiry and investigation will be distributed at a later date. Please refer to the Course Outline for detail of the subjects to be covered.
Introduction

This assessment of this course is divided into the following three components:

1. Class participation
2. Written paper (draft)
3. Written paper (final)

Class Participation

Class participation is a requirement on this course. Each of the eight areas for investigation and enquiry will need your engagement. At times, this will take the form of general class discussion; while at other times, students will be expected to present on a designated topic. It is imperative therefore that you come prepared. A range of materials have been identified to assist in this regard. Please note that, in the absence of a set textbook, I have purposely sought to provide you with more, rather than less, references. This will also assist if you wish to extend your study of a particular topic in your written paper. In some cases, topics may be divided across the class and, as such, each individual student may not be expected to access every reading; while in others, particularly where the resources identified are lengthy, I have provided indications as to how best to approach these. If you are unsure as to what is expected in terms of preparation and class participation, it is your responsibility to raise this with me. I do appreciate that time between our classes, at least in the course of each of the two teaching weeks, will be limited and I will work with you to ensure that expectations are clear and manageable. In this way, we will maximize class participation and the grades obtained for this aspect of the assessment mechanism. That said; students are also encouraged to undertake their own independent research and contribute alternative supported viewpoints to the class discussions.

Students will be graded for class participation based on:

i. Their participation throughout the course; and
ii. Their ability to present on a particular topic in the second week of the course and to lead discussion on this topic.
As regards the general participation, there will be an opportunity to receive feedback on performance at the end of the first teaching week, which is designed to provide an opportunity, where necessary, for students to improve their performance in the second week.

In terms of the presentation in the second teaching week, topics and times will be agreed during the first teaching week, thereby providing you with the intervening period to prepare. I will be contactable during this period to guide and answer any preparatory questions that you might have. For the presentation, you will be expected to make an introductory statement on the assigned topic (which should also be provided in writing – no more than 1 page, single-spaced – for the rest of the class); lead the class discussion; and, taking the views of others into account, articulate conclusions. This is an activity that will benefit from your independent research and you will also be asked to evidence this by identifying any additional resources that you have utilized and attaching these to your written statement.

25% of the final grade for this course will be awarded for class participation.

**Written Paper (Draft)**

The draft written paper is designed to provide some structure to the writing process and to give you an opportunity to receive feedback on the progress of your written paper. When you receive the course outline and course materials, please start to consider the topic for your written paper. The first teaching week will then provide ample opportunity to consider whether your topic is appropriate. At the end of the first teaching week, it is anticipated that there will be some time for class discussion on proposed topics. You should be prepared to come to this session with an outline of your topic. At the very latest, your topic should be agreed in the week following the first teaching week. The first draft of the written paper will then be due before class on the first day of the second teaching week.

10% of the final grade for this course will be awarded for the draft written paper.

**Written Paper (Final)**

Building upon the first draft, there will be an opportunity to discuss your written paper in the second teaching week. Please make an appointment for an individual consultation. Final written papers will then be due by 5.00pm on 2\textsuperscript{nd} April 2012. The usual University of Alabama rules regarding length and all other matters will apply to this final written paper.

65% of the final grade for this course will be awarded for the final written paper.