

HUMAN RIGHTS SEMINAR

University of Maryland School of Law

Fall 2005

Dr. Chandra Lekha Sriram

Human Rights Seminar

The course will begin with basic questions such as ‘what are human rights?’ before turning to the conceptual difficulties surrounding the universality of rights and the political nature of rights. It will then examine how are human rights protected and humanitarian law enforced in practice’. Students should develop a clear understanding of the key documents in international human rights and international humanitarian law; a clear understanding of the key disputes surrounding the validity, content, and legitimacy of human rights; and a clear understanding of how human rights and international humanitarian law have been protected and enforced [or have not been] in practice.

Essays

Students are required to submit one 6000-word substantive essay, which will constitute 90% of the final grade. Topics will be provided in class; if students wish to deviate from those topics they may do so after consultation by third week. *All students, whether they are writing to a set paper question or one of their own device, must submit an essay plan (1-2 pages) by Monday of week 5.* Students will give presentations of these papers of about 10 minutes each in the last two weeks of class, and receive comments from colleagues. Students are also required to draft one short (500 words) memo for presentation in seminar, and act as discussants in class once. Students are to email the memos to all students in the seminar in advance of the relevant session.

Seminar participation

Class participation will constitute 10% of the final grade; students will be assessed based upon the presentations but also upon their participation throughout the course. As this is a seminar I will not be lecturing: it is the responsibility of all students to participate actively.

Essays should do the following:

- Make reference to an issue, theoretical or substantive, that has been covered in the course, and pose a clear question or hypothesis. Students may create their own questions, but must do so in consultation with Dr. Sriram, or choose from a list of specified questions. Tips for essay writing and specific questions are contained at the back of the syllabus.
- make use of the course readings, though not exclusively
- constitute a significant original research effort by the student
- make a clear argument and support it with specific references

Essays are assessed and marks awarded according to the following criteria:

- relevance to question
- sound ordering and structuring of material
- quality and clarity of written presentation
- effective use of evidence
- demonstration of sound understanding of the topic
- adequacy of research
- adequacy of analysis
- identification of major themes and arguments
- critical evaluation and judgment
- range of sources used
- insight and originality

Readings and sources

Core text:

Steiner and Alston, *International Human Rights in Context* (OUP, 2000)

In addition to required readings, background and recommended readings are listed in this syllabus. Background readings should be read at least in part by students less familiar with the underpinnings of a given week's discussion; recommended readings are included for students who wish to delve further on a given week's topic, or to help develop a paper topic.

Readings not contained in the core text will be available in the library, electronically or in hard copy, or via the course website.

A great number of resources are available online, particularly through the website of the American Society of International Law, www.asil.org. Students are strongly advised to read the news on a regular basis, such as the New York Times online www.nytimes.com, or on the BBC online: www.bbc.co.uk as well as to examine the websites of relevant international institutions closely, such as that of the United Nations: www.un.org; the Organization of American States: www.oas.org; the African Union: <http://www.africa-union.org>; the *ad hoc* criminal tribunals for the former Yugoslavia and for Rwanda: <http://www.un.org/icty/> and <http://www.ictj.org/>; and the permanent International Criminal Court: <http://www.un.org/law/icc/>; to name a few. Relevant international NGOs will also have information of interest, such as Human Rights Watch: www.hrw.org, Amnesty International: www.amnesty.org, and the Coalition for An International Criminal Court: www.iccnw.org. Links to these and other websites, as well as additional documents of note, are available on the course website.

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TOPICS

Week 1: What are 'human rights' and how did they evolve?

Required readings

Steiner and Alston, *International Human Rights in Context*. Chapters 3 and 4

- Key human rights conventions and declarations

[Universal Declaration of Human Rights](#).

[International Covenant on Civil and Political Rights](#)

[International Covenant on Economic, Social, and Cultural Rights](#)

[Torture Convention](#)

[Genocide Convention](#)

[Convention for the Elimination of Discrimination against Women](#)

[Convention on the Rights of the Child](#)

[Convention for the Elimination of all forms of Racial Discrimination](#)

- Key international humanitarian law documents:

Geneva Conventions (1949) on the laws of war, all four ([I](#), [II](#), [III](#), [IV](#))

Additional Protocols to the Geneva Conventions (1977), both. ([I](#), [II](#))

Status of ratifications of key human rights instruments:

<http://www.unhchr.ch/pdf/report.pdf>

Recommended readings:

Tim Dunne and Nicholas Wheeler, eds., *Human Rights in Global Politics*, chapter 1.

Jack Donnelly, *Universal Human Rights in Theory and Practice* chp. 1

Christof Heyns and Frans Viljoen, "[The Impact of the United Nations Human Rights Treaties on the Domestic Level](#)," 23 *Human Rights Quarterly* 483 (2001).

Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004).

Yusuf Aksar, *Implementing International Humanitarian Law: From the Ad Hoc Tribunals to a Permanent International Criminal Court* (Routledge, 2004)

Dunne and Wheeler, *Human Rights in Global Politics*, generally.

David Forsythe, *Human Rights in international relations*, generally.

Week 2: Whose human rights? Relativism and Asian Values debates

Required readings

Steiner and Alston, Chapters 5 and 6.

Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, Chapter 4.

Jack Donnelly, *Universal Human Rights in Theory and Practice* chapters 6 and 7.

Fareed Zakaria, "[Culture is destiny: a conversation with Lee Kuan Yew](#)," *Foreign Affairs* vol. 73 no. 2 (March-April 1994) at 109.

Bangkok declaration on human rights (1993)
http://www.regency.org/human_rights/bangkok_declaration.pdf

Government of the People's Republic of China, White paper on human rights, at
<http://www.chinesehumanrightsreader.org/governments/91wp/91hr-wp.html>

Martha Nussbaum, "[In Defense of Universal Values](#)," *Idaho Law Review* 36 (2000), 379-448.

Elizabeth M. Zechenter, "In the name of culture: cultural relativism and the abuse of the individual," *Journal of Anthropological Research* vol. 53 (1997).

Recommended:

Fred Dallmayr, *Achieving Our World*, chapter 3.

Joanne R. Bauer and Daniel A. Bell, *The East Asian Challenge for Human Rights*.

Mashood A. Baderin, *International Human Rights and Islamic Law*.

Susan Moller Okin "Is Multiculturalism Bad for Women?" at
<http://www.bostonreview.net/BR22.5/okin.html>

David Westbrook, "[Islamic International Law and Public International Law](#)" *Virginia Journal of International Law* vol. 33 (1993), pp. 819-897.

Sonia Harris-Short, "[International Human Rights Law: Imperialist, Inept, and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child](#)," 25 *Human Rights Quarterly* 130 (2003).

George Kateb, "[Notes on pluralism](#)" *Social Research* vol. 61, no. 3 (1994).

Week 3: Global structures: the UN human rights system

Steiner and Alston, chapters 8 and 9.

Visit the websites of the [Office of the High Commissioner for Human Rights](#), [the UN Human Rights Committee](#), and the Committees monitoring other key agreements, such as the [ICESCR](#), [CEDAW](#), [CERD](#), and [CRC](#). [Links to all committees are under Treaty Bodies on <http://www.ohchr.org/english/bodies/index.htm>]

Recommended supplemental readings:

Michael J. Dennis, "[Human Rights in 2002](#)," 97 *American Journal of International Law* 364 (2003).

Dennis, "[The Fifty-seventh session of the UN Commission on Human Rights](#)," 96 *American Journal of International Law* 181 (2002).

Week 4: Regional systems of protection: the ECHR

Required readings

Steiner and Alston, Chapter 10, parts A and B.

Look at the [European Convention on Human Rights](#).

J.G. Merrills, *The development of international law by the European Court of Human Rights* chapters 3, 5, 6 and 7

Oren Gross and Fionnuala Ní Aoláin, "[From Discretion to Scrutiny: Revisiting the Application of the Margin of Appreciation Doctrine in the Context of Article 15 of the European Convention on Human Rights](#)," *23 Human Rights Quarterly* 625 (2001).

Geoff Gilbert, "[The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights](#)," *24 Human Rights Quarterly* 736 (2002).

Pamela A. Jordan, "[Does Membership Have its Privileges? Entrance into the Council of Europe and compliance with Human Rights Norms](#)," *25 Human Rights Quarterly* 660 (2003).

Recommended:

Paul Mahoney, "Marvellous Richness of Diversity or Invidious Cultural Relativism?" *Human Rights Law Journal* vol. 19, no. 1 (1998), pp.1-6.

Alastair Mowbray, *The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights* (Oxford: Hart Publishing, 2004).

Week 5: Regional systems of protection: the IACHR and the emerging African system

Required readings

Steiner and Alston, chapter 10, parts C and D.

Lindsay Moir, "[Decommissioned? International Humanitarian Law and the Inter-American Human Rights System](#)," *25 Human Rights Quarterly* 182 (2003).

IACHR, *Velazquez-Rodriguez* case: http://www1.umn.edu/humanrts/iachr/b_11_12d.htm

Revisit Moravcsik, "The Origins of Human Rights Regimes".

Association for the Prevention of Torture, Occasional Paper, *The African Court on Human and Peoples' Rights* at www.apt.ch/africa/African%20Court.pdf.

Recommended:

J. Scott Davidson, *The Inter-American Court of Human Rights* (Dartmouth, 1992).

Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge University Press, 2003).

Week 6: Specialized protections enabling or requiring punishment

Required Readings:

[Genocide Convention](#)

Torture Convention

Geneva conventions, with emphasis on Grave Breaches provisions (see Week 1 for links)

Diane Orentlicher, "[Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime](#)," 100 *Yale Law Journal* 2537 (1991).

Carlos S. Nino, "[The Duty to Punish Past Human Rights Violations Put into Context: The Case of Argentina](#)," 100 *Yale Law Journal* 2619-2641 (1991).

Recommended readings:

Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law*.

Antonio Cassese, *International Criminal Law* casebook.

Kenneth W. Abbott, "[International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts](#)," 93 *American Journal of International Law* 361 (April 1999).

Week 7: Domestic responses to human rights violations: Transitional Justice

Required readings:

Steiner and Alston, Chapter 14, part E.

Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (2001), chapters 1-4..

Chandra Lekha Sriram, *Confronting past human rights violations: Justice vs. peace in times of transition* (London: Frank Cass, 2004), introduction, chapters 1 and 2.

Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* chapters 1 and 2.

Naomi Roht-Arriaza, ed., *Impunity and human rights in international law and practice* (1995), chapters 1-4.

Ruti Teitel, *Transitional justice* chapters 1 and 7.

Ellen Lutz and Kathryn Sikkink, "[The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America](#)," 2 *Chicago Journal of International Law* 1 (2000).

See also resources from the International Center for Transitional Justice www.ictj.org..

Recommended:

Rama Mani, *Beyond Retribution* (Cambridge: Polity Press, 2002).

Mark Osiel, *Mass Atrocity, Collective Memory, and The Law*.

Neil Kritz, *Transitional justice* 3 volume sourcebook (Washington, DC: USIP Press, 1995).

Aryeh Neier, *War Crimes*.

Martha Minow *Between vengeance and forgiveness*.

Week 8: International practice I: The ad hoc criminal tribunals for the former Yugoslavia and Rwanda

Required:

Steiner and Alston, Chapter 14, part B

[ICTR Statute](#), [ICTY Statute](#), [Genocide Convention](#), [Torture Convention](#).

Richard Dicker and Elise Keppler, "Beyond the Hague: The Challenges of International Justice" (Human Rights Watch Report) at www.hrw.org

"[Development in the Law: International Criminal Law](#)," 114 *Harvard Law Review* 1943 (2001), parts I-IV.

ICTR, *Akayesu* case:

<http://www.ictor.org/ENGLISH/cases/Akayesu/judgement/akay001.htm>

ICTY, *Tadic* case <http://www.un.org/icty/tadic/trialc2/judgement/index.htm>

Mark A. Drumbl, "[Juridical and Jurisdictional Disconnects](#)," *Finnish Yearbook of International Law* vol. XII (2001).

Andrea Bianchi, "[Individual Accountability for Crimes Against Humanity: Reckoning With The Past, Thinking of the Future](#)," *SAIS Review* vol. 19, no. 2 (1999).

Jose E. Alvarez, "The *Tadic* Case," *European Journal of International Law* vol. 7, no. 2 (1996) <http://www.ejil.org/journal/Vol7/No2/art7.html>.

Recommended readings:

Payam Akhavan, "[Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?](#)" *American Journal of International Law* vol. 95, no. 1 (January 2001).

Samantha Power, *'A Problem From Hell': America in the Age of Genocide*.

Week 9: International Practice II: The ICC

Steiner and Alston, Chapter 14, part C

Leila Nadya Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* chapters 4, 6, and 7.

"[Development in the Law: International Criminal Law](#)," 114 *Harvard Law Review* 1943 (2001), parts I-IV.

Recommended:

Cassese, *International Criminal Law*, chapter 19.

Michael Byers, "[Letting the Exception Prove the Rule](#)," 17 *Ethics and International Affairs* 9 (2003)

Bruce Broomhall, *International justice and the international criminal court*.

Marc Weller, "[Undoing the global constitution: UN security Council Action on the International Criminal Court](#)," *International Affairs* vol. 78 (2002).

Madeline Morris, "[The Disturbing Democratic Defect of the International Criminal Court](#)," 5 *Buffalo Criminal Law Review* 591 (2001).

Week 10: Transnational practice I: Universal jurisdiction

Required:

Steiner and Alston, Chapter 14, parts A and D

Stephen Macedo, ed., *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes under International Law*, Introduction, chapters 1 and 9.

Chandra Lekha Sriram, *Globalizing justice for mass atrocities* chapters 1-3.

Recommended:

Luc Reydams, *Universal Jurisdiction: international and municipal legal perspectives* (Oxford University Press, 2003).

Brad R. Roth, "Anti-Sovereignism, Liberal Messianism, and Excesses in the Drive Against Impunity," *Finnish Yearbook of International Law* vol. XII (2001).

Week 11: Transnational practice II: civil accountability

Steiner and Alston, Chapter 12, part C

Alien Tort Claims Act, Title 28, Part IV Chp. 85, Sec. 1350
<http://www4.law.cornell.edu/uscode/28/1350.html>

Filartiga v Pena Irala: <http://homepage.ntlworld.com/jksonc/docs/filartiga-630F2d876.html>

Sosa v. Alvarez-Machain
<http://a257.g.akamaitech.net/7/257/2422/29june20041115/www.supremecourtus.gov/opinions/03pdf/03-339.pdf>

William J. Aceves, "[Doe v. Unocal](#) 963 F. Supp. 880," *American Journal of International Law* vol. 92, no. 2 (April 1998).

Doe v. Unocal <http://homepage.ntlworld.com/jksonc/docs/filartiga-630F2d876.html>

Wiwa v Royal Dutch Shell <http://www.derechos.org/nizkor/econ/shell28feb02.html>

Recommended readings:

"[Development in the Law: International Criminal Law](#)," 114 *Harvard Law Review* 1943, 2025 (2001), parts V, VI.

Anne-Marie Burley, "[The Alien Tort Claims Statute and Judiciary Act of 1789: A Badge of Honor](#)," 83 *American Journal of International Law* 461 (1989).

David Weissbrodt and Maria Kruger, "[Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights](#)," 97 *American Journal of International Law* 901 (October 2003).

Sriram, *Globalizing justice for mass atrocities*, Chapter 4.

Week 12: Student paper presentations

Week 13: Student paper presentations

ESSAY TOPICS

The following are set essay topics. You may select from one of these, or develop a topic of your own in consultation with Dr. Sriram. In either event, you must submit an essay plan to Dr. Sriram in Week 5, comprising either a clear outline, or an introduction that clearly indicates the major questions and objects of study. You must also include a brief bibliography with the plan.

1. Are human rights universal? Explain in detail using arguments for universalism and relativism, individual and group rights, and specific examples of documents or institutions that espouse the universalist view of rights.
2. What is the purpose of accountability for past human rights violations or violations of IHL? Does accountability achieve these purposes? Examples may include domestic transitional justice, international criminal accountability, civil accountability, etc.
3. Can regional human rights courts help to regulate state behavior? Consider the ECHR and its practice, but also consider the IACHR and possibilities of using such models in other regions
4. Can effective protection of human rights, and enforcement of IHL (or at least the grave breaches provisions) ever occur? Why or why not, and how? Through what mechanisms?

Tips for essay writing
Dr. Chandra Lekha Sriram

General structure

It may appear obvious or slightly repetitive, but a clear essay will tell people what you plan to say, then say it, then tell them what you have said. This approach should help you to shape your introduction, main text, and conclusion, respectively.

The introduction

An introduction ought to be clear about what it is that your essay will do. It should do the following:

- Indicate what question(s) you seek to answer
- Identify why these questions arise? Do they come from a specific literature or from real world events? You should provide a context that helps to make clear not only what your questions are, but why they matter
- Indicate what answers you will offer to the questions?
- Indicate how you will reach the answers. This should make clear your sources, methods, and evidence
- Offer an overview/roadmap which makes clear your plan for the remainder of the paper

The paper

The body of the paper will offer your argument and evidence. It is important therefore that you offer clear lines of argument, and well-sourced evidence. It is equally important that you write clearly, and edit carefully.

Argumentation

You must be careful to offer reasoned arguments that support your initial thesis and answer the questions that you pose.

- Use clear evidence to support any claims that you make. This may be empirical, offering facts, statistics, historical narrative, or it may be theoretical and deductive, offering an elaboration of theoretical claims and their implications
- Be clear about what claims your evidence supports, and how. Simple statements of fact do not automatically support a claim
- Avoid making arguments that are tautological—your evidence must prove that something is the case, rather than be definitional. An argument that demonstrates that democracies engage in citizen representation is not of particular interest
- Consider the counter-arguments. Be certain to raise real objections that might be raised by a skeptic, and not simply straw men that are easy to destroy. Straw men do not pose real tests for your thesis
- Document your claims with clear footnotes. Footnotes should certainly be offered to support specific factual claims (e.g. ‘no modern democracies have gone to war against other modern democracies’). They should also be offered to support key arguments or claims where they have been made by others. Failure to do so is a form of plagiarism. However, simply telling the reader that someone has said *x* is insufficient—that proves they said it and nothing more. You should also make clear what the reasoning is behind someone else’s claim, if you are using it to bolster your argument. Footnotes should be clear and complete—*Bluebook style* is preferable. Using footnotes rather than in-text citations keeps the text clean and readable.

Writing

It is very important that the structure of your argument be clear, and that your writing be clear and grammatically correct. A number of steps can be taken to ensure this:

- Make only one or two clear points in your paper, and organize the paper simply and clearly. Try to avoid adding numerous ancillary points, no matter how interesting, if they do not contribute to your core inquiry
- Create clear headings for sections, with clear signposting for each section and transition; try to avoid excess subsections and subheadings
- Each section should offer the:
 - Argument of the section
 - Supporting evidence
 - Counterarguments or limitations to the argument
- Writing from an outline will help you to follow the structure suggested here
- Begin each paragraph with a topic sentence
- Write clear, declarative sentences
- Avoid the passive voice. They make your argument less clear, as they often obscure who is actually doing the acting. They also make it sound as though you are unclear or indecisive yourself as to what has taken place and why.
- Avoid run-on sentences. Do not try to pack too much into any given sentence, as it is liable to confuse the reader or conflate several issues
- Don't clutter the text with information that is not directly relevant. It is not necessary to write 'Columbia professor Michael Doyle has argued that democracies do not fight each other for two reasons' when you can write 'It has been argued that democracies do not fight each other for two reasons' and footnote the relevant article by Doyle. Clearly, the exception will be where an author is your main object of inquiry—if you are describing Donnelly's conception of universal human rights.
- Don't use excessive direct quotations. Where possible, paraphrase the arguments of others, and footnote the relevant page(s). Use quotations where they are particularly apt only. If they run more than three lines, indent the quote, offset it from the text, and single space it.
- Be very cautious about spelling, grammar, and style. Poor grammar and poor spelling makes you look sloppy and casts doubt upon the general quality of your scholarship. MS Word and other programmes help with this, marking spelling and grammar queries—*pay attention to these*. Sloppy style and inconsistency also undermines your argument. Common errors include:
 - Confusing its and it's. The former is the possessive of it, while the latter is a contraction of it is.
 - Confusing homonyms. Their, there, and they're are different.
- Pay attention to sentence parallelism. Make sure that not only do subjects and verbs agree, but that each agreement is consistent in a list of things. For example, 'It is vital for a law to be effective that it is *passed*, that it is *published*, and that it is *enforced*.'
- Be consistent about use of language. This holds for terminology and style. If you are using a term of art that is specific to a literature, define it according to the rules of that literature, and follow it consistently. Similarly, if you choose to capitalize or otherwise use specific notation for a term, use it consistently. Some international lawyers may capitalize *States*, but most international relations scholars use the lowercase *states*. If you use one or the other, stick with it throughout.
- You can ensure that your paper is clear and readable by vetting it—have a friend read it through before turning it in.

The conclusion

The conclusion should follow all of the rules indicated above. If your introduction was thorough and your structure clear, a long conclusion will not be necessary. You should still, however, recapitulate your argument and the key support for it. You may then turn to the implications of your findings, be they policy implications or theoretical ones.

