

International Protection of Human Rights

Despite the close of the cold war and what appears to be a growing universal acceptance of democratic and human values, people still face "gross violations" of human rights. States, regardless of their theoretical foundations (socialistic, capitalistic, communistic, monarchical, theocratic, etc.), violate the normative international order in regard to the protection of human rights. At this moment in history violations continue to be seen in a variety of states, of a variety of kinds, in a variety of regions. Unfortunately human rights violations remain a serious concern for the world community. Regrettably the realities often do not conform to the rhetoric. Events confirm that despite progress towards the universality of a rights theory, nationalism, religion and other agendas have ignited state policies and actions that are destructive of minorities, peoples and individuals.

Yet, it must also be concluded, the human rights concept has a broader acceptance than in any other time in history. While we have witnessed the appearance of creative and collective steps to address some albeit not all, human rights violations (e.g. Timor, Kosovo{1999}, Afghanistan {2001...}, etc.); there are many critical situations that remain unaddressed. Concomitantly we have seen a trend towards unilateralism+ (e.g., Iraq) and the appearance of systematic and gross violations of human rights that are allowed to worsen beyond reason (e.g. Darfur, Republic of the Congo, etc.). We are also facing human rights violations in failed states, where no legitimate sovereign authority can be held accountable. The human rights issues of the twenty-first century may manifest itself differently than the twentieth century, but none the less human rights violations continue to plague peoples globally. While the rape of Nanking has been replaced with the tragedy of Darfur necessitating an alteration of the global organizational response, the need to protect humans and their rights from state and their neighbors remain an imperative.

At the end of World War II (1945), in the wake of the Holocaust, the world community committed itself to a reaffirmation of humanistic goals that had, to a limited extent, previously been made part of international law. Built on lessons of the past, for example the League of Nations' experience, states began to seriously develop international mechanisms to protect individuals from their own abuse and the abuse of others. While the record of success has been less than glorious, in fact at times disappointing, some significant steps have been made to provide a modicum of the protection of human rights. As inadequate as this system is, it has impacted the way states deal with individuals.

At the end of the last century, as a result of the events in the Former Republic of Yugoslavia, the horrific conflicts in Rwanda/Burundi and East Timor, the focus of human rights protection shifted to a global response unprecedented until that time in history. Collective military action, it was argued and demonstrated, is a legitimate response to protect peoples from gross and systematic violations of human rights. The aftermath of these events has also seen the enlargement of the use of international tribunals, (ICTY, ICTR, ICC, etc., albeit without universal acceptance) to hold individual perpetrators and not just governments accountable for human rights abuse. The beginning of this new millenium and the reaction to international terrorism (e.g. 9/11, London Tube bombings, etc.), sometimes state supported and at times not, has brought to the fore new human rights issues as to how to hold accountable those who intrude on our safety and our rights in the name of political, religious and/or other agendas. The Iraqi invasion, which is seen by many as a bilateral (USA and UK +) response to gross violations of human rights and threats to order, has put in question whether "universal" and/or "regional" organizational approval is a legal requisite to intervention in order to protect human rights.

HRA 464 /664X will explore the process of how 'human rights' has become increasingly internationalized. We will seek to understand how sovereignty has been in some instances limited in order to protect the individual from abuse. We will analyze the failures, as well as the successes of how international efforts, at both the universal and regional intergovernmental levels and NGO activity can monitor and control the abuse of sovereign power and at times even provide a remedy to human rights victims. Further, we will consider whether these efforts deter future violations of human rights by states or whether they are mere ineffective political promises that are meaningless. We will look at the trends, globally, regionally and the practice of individual states in order to determine whether or not the future is bright or dim for the international protection of human rights.

Readings

Buergethal, Shelton, Stewart, International Human Rights in a Nutshell, Third Edition, West Group-Thomson, 2002.

Orlin, Rosas, Scheinin, The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach, Institute for Human Rights, Åbo Akademi University, Turku Finland, 2000.

Hanski, Scheinin Leading Cases of the Human Rights Committee, Institute for Human Rights, Åbo Akademi, Turku, Finland, 2003.

Human Rights Quarterly- available in the library or online (selected articles).

American Journal of International Law- available in the library or online (selected articles)

Two books related to human rights theory relevant to the research topic (likely to found in our library or in the Professor's library).

Documentary Source Books

Brownlie, Goodwin-Gill, Basic Documents on Human Rights, Oxford University Press, New York, 2002.

Optional: Methasani, Mushkolaj, Orlin, Fontani, Human Rights Glossary –Essential Human Rights Terms and Phrases in Albanian and English, UNESCO, Tirana, 2002 {Purchase from the Social Science Division- cost: \$15}
New York Times/Handouts

For students interested in European human rights: Send an email to newsline-request@list.rferl.org with the word subscribe as the subject of the message.

Course Requirements

Students will prepare one comprehensive research paper that will explore a problem of human rights violation(s) in an area of their academic concern or explore one problem that exists in a region or a variety of states.

Graduate Students will provide a literature review for their prospective research topic at midterm.

Graduate Students will prepare three reviews with analysis of journal articles relevant to their research topic by midterm. Some of the possible choices are presented in the syllabus, but the choice is not limited by the syllabus choice.

Graduate Students will prepare two short book reviews in preparation of their research project.

Tentative Class Schedule (*subject to change)

Students are expected to read assignments prior to class session and be prepared to discuss the pertinent material.

Assignment Key: B- Buergenthal, Shelton, Stewart **BG-** Brownlie/Gil Supplement
ORS-Orlin, Rosas, Scheinin **AJIL-**American Journal of International Law **HRQ-**Human Rights Quarterly **HO-**Handout **WP-**Web Page

Red items: HRA 664 Additional Graduate Assignments

| Week | Date | Topic | Assignment |
|-------------|-------------|--------------|-------------------|
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|----------------|-------------------------|----------------------------|--|
| Week 1. | Thursday Jan. 19 | <u>Introduction</u> | |
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1. Introduction of participants–Review of Syllabus
2. The meaning of human rights law-a lecture: **The State, Law and the Individual**
3. Need for a comparative approach. ORS:Chapter 1
4. Preliminary statement in research interest

Additional Readings: Students are to go to one country report of the US State Department and review for class discussion 2004(5) Country Report:

<http://www.state.gov/g/drl/hr/c1470.htm>

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| Week 2. | Thursday Jan. 26 | <u>Historical and Theoretical Background</u> | |
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1. The meaning of human rights- historical, philosophical and theological approaches- See for additional understandings– Ishay and Laurens and Morsink’s Books in Library or T. Orlin’s office library.
2. Historical Antecedents to human rights law **B: Chapter 1**
 - a) Reprisals b) Minimum Standard of Justice **UN Charter Chs.: VI,VII, VII**
 - c) Mandate System d) Minority treaties
 - e) Humanitarian Law f) Humanitarian Intervention Example: Darfur

All Students-Read: (Choose one of the first two) –all to read UN Doc.

HO- Michael Igantiff, Human Rights, Sovereignty and Intervention found in Human Rights, Human Wrongs, The Oxford Amnesty Lectures, 2001, (pp. 49-89), Oxford University Press.

HO- Nsongurua J. Udombana, When Neutrality is a Sin: The Darfur Crisis of Humanitarian Intervention in Sudan, HRQ Vol. 27, No. 4 (Nov.2005), pp.1149-1199. Ch. VI and VII –UN Charter

HO: Kofi Annan-UN doc A/59/565-pp.74-75, A /59/2005-Retrieve via <http://www.un.org>, Report of the International Commission on Intervention and State Sovereignty-pp.1-18...

Graduate Students Choose One:

HRQ Vol 26, No.4, (Nov. 2004) Universal Human Rights: The Contribution of Muslim States, S. Waltz, (pp.799-845).

AJIL, Vol .97, No.4, (2003) Sovereignty-Modern- A New Approach to an Outdated Concept.

HRQ, Vol. 23, No. 2, May 2001, New Global Realities, Monshipouri and Welch (p.370-401).

Recently received is: My Neighbor, My Enemy, Stover and Weinstein, Cambridge University Press, 2004- Note: contains many good chapters on human rights in the aftermath of mass atrocities- I ordered it for the library, but there is a copy available in my office (TSO).

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| Week 3. | Thursday Feb. 2 | | |
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| | | <u>UN Charter Based System to Protect the Individual</u> | |
| | | <u>The NGO and the Role of the Civil Society</u> | |

1. Review-The UN Charter (Arts. 1, 2, 55, 56, 62, 71, 86, 102,103) and the Universal Declaration

Documents- BG: pp.2-13, 18-24

WP: <http://www.3itu.int/udhr/>

B: Chapter 2, I., II, III {till p. 43}

2. The NGO and the role of Civil Society in Human Rights Protection

B: Chapter 8, I and II pp. 402-413

HO: Orlin- *The Local Non-Governmental Organization: The Human Rights Gatekeeper*

Additional Readings: Students are to go to Amnesty International's web page

<http://www.amnesty.org> and Human Rights Watch <http://hrw.org> and review for class discussion.

Graduate Students Choose One:

HRQ Vol.26, No.2 (May 2004) Human Rights Nongovernmental Organizations and the Problems of Transition, C. Bell, and J. Keenan, (pp.330-375)

HRQ Vol.26, No.1 (Feb. 2004) - Sierra Leone's Peace Process: The Role of the Human Rights Community, M. O'Flaherty (pp. 29-63)

Parker- Victims and Volunteers- New Yorker 26 Jan 04

Foreign Affairs, Vol.80, No.1, Jan. 2001, Are Human Rights Universal?, Franck, (p.191)

HRQ Vol. 25, No4, (November 2003), Origins and Universality in Human Rights Debates..., Michael Goodhart, (pp. 935-965)

Week 4. Thursday Feb. 9

UN System –Charter –Based Institutions

1. Charter-Based Institutions- Human Rights Commission-Sub-Commission, Rappateurs, High Commissioner for Human Rights

B: Chapter 2 V pp. 96-126

2. Human Rights Complaint System

WP: Read and review for Class: <http://www.bayefsky.com/complain/1>

3. Proposed Changes-Reform of the Commission and the Creations of a Council

HO: Kofi Annan-UN doc A/59/565-pp.74-75, A /59/2005, PP.37-46

4. Specialized Agencies **B: Chapter 2 VI pp.126-132**

Additional Readings: Students are to reference the United Nations Web page:

<http://www.un.org>

Week 4 Con't.

Graduate Students: Due date for journal review #1

Week 5. Thursday Feb. 16

UN Treaties, Treaty Bodies and State Reporting

1. Ratification and Implementation of Treaties

Documents: HO -WS. Vienna Convention pp. 122-146- **BG:** Not available although in Brownlie's Documents for International Law (p.270) or online .

2. Treaties- International Covenants- ICCPR, IESCR

B: Chapter 2 III-pp-43-45

For Background see Novak's book in Library-

Documents: BG: pp.172-199

WP: 1. Check States who have ratified the Covenants:

<http://www.un.org>, <http://www1.umn.edu/systemwide/indexsystem>

2. **Review:** <http://www.bayefsky.com/complain/1>

3. Reservations

HO- WS: Reservations pp. 281-287

Additional Readings: (Choose one)

HRQ Vol.27, No.4 (Nov.2005), The future in the Mirror: Incorporating Strategies for the Defense and Promotiom of Eco., Soc.,and Cultural Rights...., Alicia Ely Yamin, pp.1200-1245

98AJIL3 (July 2004), Justiciability of Economic, Social, and Cultural Rights: Should there be a International Complaints Mechanism...., Dennis and Stewart, (pp.462-515)

HRQ Vol.26 No.4 (Nov. 2004) Advancing Economic, Social and Cultural Rights: The Way Forward, Mary Robinson (pp.866-873).

96AJIL.3 (July2002), Human Rights Treaties, Invalid Reservations and State Consent, Ryan Goodman, (pp.531-561).

HRQ Vol. 25, No.4 (November 2003), UN Human Rights Treaty Bodies and Special Procedure of the Commission on Human Rights, Sir Nigel Rodley, (pp.882-909)

Week 6. Thursday February 23 Treaty Bodies Operation Continued

1. ICCPR- First Optional Protocol-

Human Rights Committee (HRC) B: Chapter 2 III –pp. 46-71

Documents- BG: pp.199-206

2. Examples: Human Rights Committee/Committee on Economics Social and Cultural Rights

Assignment: Students are to read one case of the HRC or a report of the ESCR Committee depending on research interests- Available in the Library or online- be prepared to discuss in class.

HRC Cases- students are to choose a case from Hanski and Scheinin or seek a report of the ESCR committee.

3. The UN as a human rights violator

Assignment: HO- *HRQ, Vol.25, No.2 (May 2003), The UN as a Human Rights Violator?..., Megret, Hoffman, (pp.314- 343)*

HO- Orlin, et al- Report on UN Prisons in Kosovo-2001

BG- Minimum Standards-pp.50-52, 52-59, 59-63, etc.

Graduate Students: Due date for Journal review #2

Week 7. Thursday March 2 Other Human Rights Treaties

1. Substantive Provisions

B: Chapter 2 IV pp.71-96

Documents- Genocide, Torture, CEDAW, CERD

BG: 108-122 229-241 241-272, 224-229 160-172

HO: 94AJIL4, (October 2000), *Rights of Child – New Protocols* (p.789)

2 Review of the Convention of the Rights of the Child and its Protocols.

3 Examples of Treaty Bodies Activities

Assignment: Students are to read one case or a report from a Treaty Body- Available in the Library or online- be prepared to discuss in class

Additional Readings (choose one):

98 AJIL 2 (April 2004), Prosecutor v. Nahimana, Barayagwiza, & Ngeze (C. MacKinnon) ICTR Judgment on crimes against Humanity – incitement to genocide through broadcast and press. (pp.325-330)

HRQ, Vol.25, No.3, Role of NGOs...Optional Protocol CR of Child

HRQ, Vol.25, No.3, August 2003, CR of Child: A Catalyst for Innovative Child Care Policies, Davis- Powell, (pp.689-720)

HRQ, Vol.23, No.1, Feb. 2001, Chinese Population Policy, Shalev, (p.119)

AJIL, Vol.94, No.4, October 2000, Rights of Child – New Protocols (p.789)

HRQ Vol. 25 No.1, Feb 2003, Harris-Short-Cultural Relativism and the UNCR Child...

HRQ, Vol.23. No.2 May 2001, Genocide in Cambodia, Schabas, (p.470).

New Material

AJIL, VOL. 99, No. 4 October 2005

Applying the Death Penalty to Crimes of Genocide Jens David Ohlin

This article critically examines early feminist debates over the treatment of rape in Bosnia and Herzegovina, and traces their resonances in the structure and jurisprudence of the ICTY. Observing that problematic assumptions about ethnic identity and women's sexual and political agency emerged in the debate and ultimately wove their way into the ICTY's legal treatment of rape, the article argues that the international criminalization of rape might be neither as pathbreaking nor as progressive as the doctrinal recognition might suggest.

Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina Karen Engle

When Rwanda reserved the right to execute genocidal criminals, many international lawyers objected, believing that the emerging norm of customary international law generally prohibiting the death penalty is categorical. Linking the death penalty's role in national reconciliation with the UN Charter's primary goal of restoring peace and security, this article argues that if this prohibition hardens into customary law, it should be sensitive to extreme circumstances such as genocide by not denying justice by local standards to its victims.

March 6th – Monday

Graduate Students: Due Date Book Review #1

Graduates and Undergraduate Students: One page paper statement-annotated with readings (footnoted)- First Outline for paper.

Week 8

Thursday March 9

European System of Human Rights

1. Substance

B: Chapter 3 I, II pp.133- 144

Documents : BG: pp.398 -423

2. Enforcement B: Chapter 3 III, pp. 144-180

Additional Readings: (choose one)

HRQ Vol.25, No.3 August 2003, Does Membership have its Privileges..., Pamela Jordon, (pp.660-689).

97AJIL3, (July 2003)-Goodwin v. UK...(pp. 659-664)

Podkozina v. Latvia (pp.664-669)

Made available will be Summary Sheets from the ECHR enabling you to pick a case relevant to your research

Spring Break – March 11-19

Professor will be in the Balkans and Moldova until the 11th April (March 23, 30 and April 6 sessions will be missed, made up by two Tuesdays and an extra exam date)

Week 9. Thursday April 13 ECHR Case Examples

Cases/Examples

Each Student is to choose one case from the European Court relevant to their research.

<http://www.echr.coe.int/Eng/Judgments.htm>

Additional Readings (Possible Choices):

94AJIL.4 (October 2000), Beyeler v. Italy (p.736)

Cyprus v. Turkey (ECHR cite) 96AJIL2 (April 2002) pp.445-453

Badeck...(ECHR cite)96AJIL2 pp. 453-461

New Material - AJIL, VOL. 99, No. 4 October 2005

Khashiyev & Akayeva v. Russia; Isayeva, Yusupova & Basayeva v. Russia; Isayeva v.

Russia (David Kaye) ECHR decision on human rights violations during Chechen conflict

Monday April 17

Graduate Students: Due Date for Journal Review #3

Graduate Students: Due Date Book Review #2

Graduates and Undergraduates: Review of Revised outline

Week 10. Tuesday April 18 European Social Charter, Torture Convention, etc., European Union and OSCE

1. European Social Charter

B:Chapter 3 IV pp. 181-191

Documents: WS: pp. 268-281 BG: pp.423- 480 ,

2. Torture Convention, etc. B: Chapter 3 IV pp.191- 199

BG: 493- 504

3. European Union B: Chapter 3 IV pp. 199-205

WP: <http://www.curia.eu.int>

Documents: BG pp.547- 557

4. OSCE B: Chapter 3 VII pp. 205- 221

OSCE Documents (see www.osce.org -Helsinki Accords BG: pp.557 to 657

Additional Reading: Human Rights Quarterly, Vol.23, No.2. May 2001, Rights of Child and ECHR, Kilkelly (p.308).

Week 11. **Thursday April 20** **Inter-American System**

1. Substance **B: Chapter 4**

Documents WS: pp. 200- 245 BG: pp. 665- 722

2. Commission/ Court Systems

WP: <http://www.oas.org/>

Additional Readings:

Choose one: HRQ, Vol.25, No. 1, Feb.2003, Law and the Inter-American Human Rights System, Moir, (pp.182-213)

AJIL, Vol.95, No.1, Jan. 2001, Inter-American Court-PreTrial Detentions, etc. (p.171

AJIL, Vol.96, No.3, July 2002 (p.730-731)

Week 12. **Tuesday April 25** **Other Systems**

1. African System **B: Chapter 5 pp. 282-313**

Documents- WS: pp. 189-199 BG: pp.722-764

HO- HRQ Vol.26, No.4 (Nov. 2004) The African Union, NEPAD and Human Rights the Missing Agenda, B. Manby, (pp.983-1028)

WP: African Union-<http://www.africa-union.org/home/Welcome.htm>

2. Status in Asia of regional protection, Islam

3. US Ratifications and Status **B: Chapter 7**

Additional Reading:

HO- HRQ Vol. 27, No.4, (Nov. 2006),Who's Watching Big Brother?Globalization and the Protection of Cultural Rights in Present Day Africa, J. Oloka-Onyango, pp.1245-1274.

HRQ Vol.25, No.1, (February 2001), Groups and the African Charter on Human and Peoples Rights, Murray- Wheatley.

Week 13 **Thursday April 27** **Comparative Jurisprudence**

Students will be do one of these three topic -

1. Indigenous Rights

ORS. (Scheinin) Ch. 7

Additional Reading:

HRQ Vol.26, No.1 Indigenous Rights in the Russian Federation:... A. Xanthaki, (pp.74-106).

HRQ Vol.24, No. 1 Indigenous Peoples and Multi Citizenship-Holder and Corn tassal (pp. 126-152)

2. Death Penalty

ORS Chs. 2 (Novak), 3 (Schmidt)

Orlin- The Burdens of the Death Penalty

Orlin- Excerpts- The Prohibition of the Death Penalty

3. The Right to Die-

ECHR case (Pretty)

ORS. Ch. 4 (Orlin)

2006 Supreme court decision-Gonzalez V. Oregon

Week 14. **Thursday April 27** **Presentations**

1. *Name* *Title*

2.

3.

4.

Week 15.

Two Exam Dates TBA

There will be two dates when students will make presentations.

Date I-

Name

Title

1.

2.

3.

4.

Date II-

1.

2.

3.

4.

