

International Human Rights Law

International Human Rights Law

Douglas Lee Donoho

PROFESSOR OF LAW
NOVA SOUTHEASTERN UNIVERSITY
SHEPARD BROAD COLLEGE OF LAW

WITH CONTRIBUTIONS BY JAMES WILETS
PROFESSOR, NOVA SOUTHEASTERN UNIVERSITY, SHEPARD BROAD COLLEGE OF LAW
CHAIR, INTER-AMERICAN CENTER FOR HUMAN RIGHTS



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Introduction and Preface

This electronic course book provides a student-oriented examination of the law of international human rights. Although human rights are hardly a recent invention, the advent of their international protection is one of the most profound developments of the modern era. For centuries, governments acted with impunity regarding the treatment of their own people. The horrors of World War II, however, germinated a new conception of international law that dramatically altered this legal landscape. How governments treat their own citizens and others is no longer strictly an internal domestic matter but rather the concern of all humankind. This concern now manifests itself not simply through moral approbation but also through legal constraints created through international law and, sometimes, incorporated into domestic legal systems. International law is now a central feature of the effort to progressively achieve human freedom and dignity for all.

Although great progress has been made, clearly all is not good. You will learn that millions still suffer the torment of torture, imprisonment for their ideas, religious persecution, overt discrimination, and even execution at the hands of their own government. Even recently, civil war, genocide, systematic rape, and ethnic cleansing have ruined the lives of millions and created more than 40 million refugees and displaced persons worldwide.¹

The United States itself, although a post-World War II leader in the promotion of human rights,² now faces serious and credible charges of egregious human rights

1. The United Nations currently estimates that there are more than 43 million refugees and displaced persons worldwide. The precise number of refugees and displaced persons is difficult to pin down. The CIA “Fact Book” provides a country specific listing.

2. The longer term human rights history of the United States unquestionably also reflects deep flaws, particularly regarding the rights of African-Americans, Native Americans, and women. See, for example, the Report of the Brown University Trustees on their own university’s connections with the slave trade. In the Report, the Trustees note that the United States experience with slavery was unique to world history. As noted by the report of the Brown University Steering Committee on Slavery and Justice (the “Brown Report”). The Brown Report states:

If American slavery has any claims to being historically “peculiar,” its peculiarity lay in its rigorous racialism, the systematic way in which racial ideas were used to demean and deny the humanity of people of even partial African descent. This historical legacy would



People stand on a street lined with damaged buildings in the besieged area of Homs January 27, 2014. Photo Yazan Homsy, Reuters.

abuses relating to the torture and inhumane treatment of prisoners of war and terrorism suspects. Homelessness, poverty, police brutality, deplorable prison conditions, and many forms of discrimination continue unabated in the United States despite our enormous resources. The advent of DNA evidence has exposed glaring flaws in the American criminal justice system with the exoneration of hundreds of convicted defendants, including those who previously faced execution on death row. Perhaps most startling, all of these injustices exist in a nation whose people profoundly believe in human rights.

The materials which follow explore how international law and institutions work to progressively prevent violations of human rights and improve how national governments treat their own citizens. You will soon find that studying human rights can be both distressing and uplifting. We will examine situations that are disturbing, ugly and depressing. The existing international system for protecting rights un-

make the process of incorporating the formerly enslaved as citizens far more problematic in the United States than in other New World slave societies.

...

Few if any societies in history carried this logic further than the United States, where people of African descent came to be regarded as a distinct “race” of persons, fashioned by nature for hard labor. Id. at 8, 84.

doubtedly has deep flaws. Nevertheless, you will also see that international law has helped achieve substantial progress in human rights and offers the promise of a better way moving forward. You should think critically as you learn about how the current system works. One need not believe in the system (you may or may not) in order to believe in and work for the attainment of its ultimate goal: The enjoyment of fundamental rights and freedoms for all people everywhere.

Format and Organization

The readings that follow often include web-based materials. When a link to a video clip is provided, use your discretion to skip through parts that you don't find useful, especially if the clip is long (over 10 minutes). When a website link is to textual materials, review the linked page as carefully as seems appropriate to the task at hand. Some links, as noted in their accompanying text, provide explanations or definitions central to our topic — you should study such material carefully. For added explanations and elaboration, you can follow any related links that the webpage itself provides if you think it will be helpful to you. Other links provided in the course materials provide general background, often describing factual situations or points of potential interest — these you should read, if at all, as carefully as your own interest dictates.

Every chapter provides either a set of questions to answer or a problem (or both). *The questions and problems are designed to provide basic guidance to students regarding what they ought to focus on and understand from the materials — the questions are meant to be answered and are not (I hope) esoteric abstractions posed merely for contemplation.*

Since this course book is designed primarily for law students, most chapters focus on legal concepts and institutions with an emphasis on the practice of law. I anticipate that many students will have had little or no exposure to international law which is, of course, the core legal foundation for the international human rights system. Consequently, early chapters examine international law basics relevant to the human rights system. While some particular human rights topics are addressed in distinct, separate chapters (such as the rights of women and sexual minorities), many current human rights issues or topic areas are instead presented as illustrations within the chapters, which focus on various legal aspects of the current international system. The chapter headings, with internal hyperlinks provided in the Table of Contents, should provide adequate guidance for finding such specific topic and factually based material.

