

IHRE – INTR2006 State Sovereignty and the International Human Rights Regime

Lecturer:

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Timetable:

Duration of the course: 28 July – 20 October 2011

Lectures: Thursdays, 14:15-17:00 B14 (Biology building)

Course outline

State sovereignty implies a state's ability to govern its own internal affairs without outside interference, while protecting its claim to equality in the society of states. Enshrined in Art 2 of the UN Charter, sovereignty provides the basis and remains at the heart of all state interaction in the modern world. The presumption is that no authority may exist above the state without its specific consent. Consequently, the nature of international law is very different to domestic legal structures, with states being the main subjects as well as the main agents; they formulate, enact and enforce the law that applies to them.

Considering how this impacts international human rights, sovereignty does not always become an issue. If human rights abuses occur within a particular state that is governed by laws that protect human rights, the victims are given recourse through domestic institutions. The problem arises when domestic structures fail to uphold human rights either because they are unable or unwilling to act. It is in these cases that IR scholars recognise an inherent tension between state sovereignty and the protection of human rights.

At this point the following questions should be raised, which are twofold. On the one hand, the existence of state sovereignty does not seem to have stemmed the tide of international human rights legislation, most notably the Universal Declaration of Human Rights and the two Covenants on Civil and Political, and Economic, Social and Cultural rights. It seems that many states have shown a surprising willingness to commit to these treaties, which begs the question as to why, given the impact this might have on their sovereignty. Is there an inherent

sense of wanting to learn from the past, recognising a need to cooperate or is the implication on a state that reneges on its commitments inconsequential as insufficient mechanisms are in place to enforce compliance?

On the other hand, what to do with states that refuse to accede to any of these treaties in the first place. Can an argument be made that certain human rights fall within the domain of international customary law, thereby applicable to all? Are there instances when the international community has an obligation to intervene and if yes, how? Alternatively, is the recent creation of the International Criminal Court able to circumvent the issue of sovereignty by targeting the individual abusers, this despite severe criticisms for overreaching its boundaries?

Some IR scholars support the premise that in the past 60 years a gradual reduction of state sovereignty has been occurring, often believed to be linked to the rise of human rights awareness and the need to protect people from abuse by the state. The debate centres on the question as to whether other actors such as individuals or groups of people, not just states as seen traditionally, are receiving recognition as subjects in international law and are therefore awarded protection. In an attempt to analyse this question it would be interesting to ask whether the nature of international law has shifted from dealing with order to dealing with justice, which ultimately means that having solely dealt with the relationship between states and their will in the past, it is now attempting to introduce a system of global governance.

This course will consider the issues of the relationship between human rights and state sovereignty, particularly in the light of the African context. It begins with the basic discussion of the concepts of sovereignty and international law before looking at how human rights relate to either. A theoretical framework will be provided in terms of Regime Theory. Furthermore, specific cases of national and international action on human rights issues will be examined. Also considered are the role played by various actors in human rights – states, intergovernmental organisations (IGOs), non-governmental organisations (NGOs) and multinational corporations (MNCs). Finally, students have an opportunity to apply these principles in a country case-study presentation.

Course outcomes:

By the end of this course students should be able to address the following questions:

- How are states created?
- What is meant by the concept of “state sovereignty” and how does it impact international law?
- How does the nature of international law differ to that of domestic law?
- How is the international human rights regime structured?

- When should the international community act in light of human rights abuses and how?
- What role do the different IR actors (states, IGOs, NGOs, individuals, MNC) play in the application of human rights?
- Is the absence of international enforcement mechanisms to the detriment of human rights or are there other means of ensuring compliance?
- Are we seeing the end of state sovereignty? Would this be a positive or negative development?
- How are these principles applied in specific countries?

By the end of this course students should walk away with a basic understanding of international law, its content and nature, and the place human rights law holds within it. Furthermore, students are expected to have detailed knowledge of the topics covered, especially the dates, names and contents of relevant treaties, the creation and powers of relevant courts etc. In addition, since this is an interdisciplinary course, students must show that they are able to draw on both the discipline of International Relations and International Law, integrating information into a coherent argument.

Students will be examined on the presumption that they have attended all lectures.

Course requirements:

- Students are expected to prepare for class by reading assigned texts and contributing to class discussions.
- **Essays:**
 - Two 2500 word essays will have to be submitted. All essays are to be submitted before 14:15 to the lecturer on the due date.

Essay 1:

Define 'state sovereignty' and elaborate on how it impacts the nature of international law.

Due date: 18 August 2011

Essay 2:

Are humanitarian interventions an effective tool in responding to human rights abuses? What are the legal mechanisms for such action and why are there so few cases where this option has been pursued?

Due date: 22 September 2011

- A good essay should include a clear argument that is backed up by well integrated evidence. The argument should be presented in a thesis statement in the introduction to the essay.
 - In answering the questions, students should reference the prescribed readings as well as additional sources (at least 3) that students need to find on their own. Be sure to cite sources even if you are not quoting them directly.
 - Essays will be graded on the demonstrated understanding of the concepts covered in the course, thorough reading of texts, originality, and the ability to present and defend an argument using available sources.
- **Presentations:**
 - Students will be required to do an individual presentation on a human rights treaty and towards the end of the course contribute to a group presentation on an African case study.

Individual presentation:

Each student will be allocated one of the treaties below and asked to present a 5 minute summary thereof.

Date: 1 September 2011

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948)
2. Geneva Conventions (1949)
 - a. Geneva Convention relative to the Treatment of Prisoners of War
 - b. Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part)
 - c. First Additional Protocols to the Geneva Convention (1949)
 - d. Second Additional Protocols to the Geneva Convention (1949)
3. Convention relating to the Status of Refugees (1951)
4. International Convention on the Elimination of All Forms of Racial Discrimination (1965)
5. Convention on the Elimination of All Forms of Discrimination against Women (1979)
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
7. Convention on the Rights of the Child (1989)
8. Optional Protocols:
 - a. Optional Protocol to the International Covenant on Civil and Political Rights (1966)
 - b. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)
 - c. Optional Protocol of the Covenant on Economic, Social and Cultural Rights (2008)

9. The Vienna Declaration and Action Programme (1993)

Most of the above can be accessed through <http://www2.ohchr.org/english/law/>

Regional Conventions:

10. American Declaration of the Rights and Duties of Man (1948)
<http://www.cidh.org/basicos/english/Basic.TOC.htm>
American Convention on Human Rights (1969)
<http://www.oas.org/juridico/English/treaties/b-32.html>
11. European Convention on the protection of Human Rights and fundamental freedoms (1950)
<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>
12. African Charter on Human and People's Rights (1981)
http://www.achpr.org/english/_info/charter_en.html
Protocol on: http://www.achpr.org/english/_info/court_en.html

For the presentation consider the following questions:

- What does the treaty set out to achieve?
- When was the treaty signed and by whom?
- When did it enter into force?
- Which states have ratified it? Which are the odd ones in/out?
- What type of government was in place at the time when the treaty was signed and ratified? (e.g. Established democracy, new/recent democracy, authoritarian etc).
- Are there any unusual reservations?
- In short, what are the main obligations on state parties?
- What monitoring/enforcement mechanisms are put into place by the treaty?
- Is there anything unique or unusual about this treaty?
- In your view, does the treaty challenge state sovereignty and why (or why not)?

Group presentation:

Groups of 4 students will collaborate in conducting research and presenting on the topic:

Date: 13 and 20 October 2011

How should the international community respond to human rights abuses in your particular case study? Is an international intervention justified for humanitarian reasons? If so, what type of intervention?

Possible African case studies are:

1. Sudan

2. *Rwanda*
3. *Sierra Leone*
4. *Democratic Republic of Congo*
5. *Libya*
6. *Zimbabwe*
7. *Somalia*

With regard to your specific case study you should, amongst other issues, consider:

- What is the specific background/context of this situation?
- What types of human rights abuses have occurred or are occurring?
- What options did/does the international community have?
- What is the legal basis to justify this action?
- What problems were or might be encountered?
- Was/should transitional justice (be) implemented and if yes, what form?
 - Each group will be given a 45 minute period to present their findings in the final two weeks. The format of the presentation is left to the discretion of each group, but should include the participation of all its members. About 15-20 minutes should be left open for questions, discussion and debate. The venue has both an overhead and data projector, but laptops will have to be brought when using the latter.
- **Exam:**
 - A two hour exam will be scheduled in the November examination session.
- **Final mark configuration:**
 - The break-down of the final mark is as follows:

Essay 1:	20%
Essay 2:	20%
Individual presentation:	5%
Group presentation:	10%
Exam:	45%

Weekly lecture topics:

1. The State (28 July)
 - a. Evolution of the state system
 - b. Criteria for statehood
 - c. Contested states
2. Conceptualising 'state sovereignty' (4 August)
 - a. Definition according to the UN Charter
 - b. Alternative interpretations
 - c. Is state sovereignty fixed or changing?
3. The nature of international law (11 August)
 - a. Municipal law versus international law
 - b. Making and enforcing international law
 - c. IR actors as subjects of international law
4. Human rights in international law (18 August)
 - a. Important human rights treaties and obligations of state parties - UDHR, ICCPR, ICESCR etc
 - b. Human rights as part of international customary law
5. Regime Theory (25 August)
 - a. Definition
 - b. Typology of regimes
 - c. Liberalists versus Realist approaches to regimes
6. Individual presentations on Human Rights treaties (1 September)
7. Enforcing human rights (1): Humanitarian interventions (8 September)
 - a. The 'responsibility to protect (R2P)' norm
 - b. Past successes
 - c. Failures
8. Enforcing human rights (2): International courts and tribunals (22 September)
 - a. Prosecutable offences under international law
 - b. ICTY and ICTR
 - c. ICC
9. Transitional Justice: National mechanisms and Hybrid courts (29 September)
 - a. TRC in South Africa
 - b. Gacaca trials in Rwanda
 - c. Cambodia
 - d. The Special Court for Sierra Leone
10. Soft law enforcement (6 October)
 - a. The role of IGOs and non-state actors
 - b. Foreign policy tools
11. Group presentations (13 and 20 October)

Course materials:

The main textbook is:

- Forsythe, D.P.: *Human Rights in International Relations* (second edition), CUP, 2006

Each student will receive a copy of this book for the duration of the course (for a R200 or \$20 deposit). Additional readings will be provided in the reading pack.

Week 1: The State

- Dugard, J. "States" (Ch5) in *International Law: A South African Perspective*, Juta, 2005

For non-IR students:

- Jackson, R. and Sørensen, G.: *Introduction to International Relations* (2nd edition), Oxford University Press, 2003, Chapter 1 "Why study IR?"
- Mingst, K.A.; *Essentials of International Relations* (3rd edition), Norton, 2004, Chapter 5 "The State"

For IR students and those who like to be challenged:

- Jessop, B. "The State and State Building" (Ch 7) in Rhodes, R., Binder, S. and Rockman, B. (eds): *The Oxford Handbook of Political Institutions*, OUP, 2006 (Malte's book)
- Lake, D.A. "The State and International Relations" (Ch 2) in Reus-Smit, C. and Snidal, D. (eds): *The Oxford Handbook of International Relations*, OUP, 2008
- Linklater, A. "Globalization and the transformation of political community" (Ch 32) in Baylis, J. and Smith, S. (eds): *The Globalization of World Politics*, OUP, 2005

Week 2: Conceptualising 'state sovereignty'

- Jackson, R. and Sørensen, G. "Sovereignty" (extract from Ch 10) in *Introduction to International Relations*, OUP, 2003
- Zaum, D.: *The Sovereignty Paradox – the Norms and Politics of International Statebuilding*, OUP, 2007 (accessed through Oxford Scholarship Online)
- Forsythe, D.P. Chapter 1 "Introduction: Human rights in international relations" and Chapter 2 "Establishing human rights standards"

Week 3: The nature of international law

- Dugard, J. "The nature and history of international law" (Ch 1) and "Sources of international law" (Ch 3) in *International Law: A South African Perspective*, Juta, 2005

- Armstrong, D., Farrell, T. and Lambert, H. “The nature of international law” (Ch1) and “The evolution of international law” (Ch2) in *International Law and International Relations*, CUP, 2007
- Charter of the United Nations, signed in San Francisco, 26 June 1945, www.un.org/aboutun/charter/index.html

Optional reading:

- Diehl, P.F., Ku, C. and Zamora, D. “The dynamics of international law: the interaction of normative and operating systems (2003)” in Simmons, B.A. and Steinberg, R.H. (eds): *International Law and International Relations*, CUP, 2006

Week 4: Human rights in international law

- Forsythe, D.P. Chapter 3 “Global application of human rights norms”
- Armstrong, D., Farrell, T. and Lambert, H. “Human rights” (Ch5) in *International Law and International Relations*, CUP, 2007
- Universal Declaration of Human Rights, UNGA Res 217A(III), 10 December 1948, www.ohchr.org/EN/UDHR/Pages/Introduction.aspx
- International Covenant of Civil and Political Rights, signed 1966, <http://www2.ohchr.org/english/law/ccpr.htm>
- International Covenant of Economic, Social and Cultural Rights, signed 1966, <http://www2.ohchr.org/english/law/cescr.htm>

Week 5: International Regimes

- Little, R. “International regimes” (Ch16) in Baylis, J. and Smith, S. (eds): *The Globalization of World Politics*, OUP, 2005

Optional reading:

- Moravcsik, A. “The origins of human rights regimes: Democratic delegation in Postwar Europe (2000)” in Simmons, B.A. and Steinberg, R.H. (eds): *International Law and International Relations*, CUP, 2006, p 622-636

Week 7: Humanitarian interventions

- Wheeler, N.J. and Bellamy, A.J. “Humanitarian intervention in world politics” OUP, 2005
- Friedman, G. “Immaculate Intervention: The Wars of Humanitarianism” in *Geopolitical Weekly*, 5 Apr 2011
- Thayer, B.A. and Ibryamova, N.V. “Humanitarian intervention v. respect for state boundaries” in *Debates in International Relations*, Longman, 2010

Optional reading:

- Cronin, B. “The tension between sovereignty and intervention” in *Human Rights Review*, Jul 2007

Week 8: International Courts

- Armstrong, D., Farrell, T. and Lambert, H. "International crimes" (Ch 6) in *International Law and International Relations*, CUP, 2007, p 178-191
- Forsythe, D.P. Chapter 4 "Transitional justice: criminal courts and alternatives" p 89-110
- Rudolph, C. "Constructing an atrocities regime: The politics of War Crimes Tribunals (2001)" in Simmons, B.A. and Steinberg, R.H. (eds): *International Law and International Relations*, CUP, 2006
- Brueton, Russel "Justice vs Politics - Prosecuting High-Ranking State Officials for crimes against International Humanitarian Law in the Post-Nuremberg Legal Order: a Critical Assessment", Honours Long Essay, Department Of International Relations, Wits, August 2009
- Rome Statute, signed 1998,
<http://www2.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/>

Optional reading:

- Cakmak, C. "The International Criminal Court in World Politics" in *International Journal on World Peace*, Vol. 23, Iss. 1, Mar 2006

Week 9: Transitional Justice: National mechanisms and Hybrid courts

- Forsythe, D.P. Chapter 4 "Transitional justice: criminal courts and alternatives" p 110-119
- Longman, T. "Justice at the Grassroots? Gacaca Trials in Rwanda" in *Transitional Justice in the 21st Century and Beyond: Beyond Truth vs. Justice*, CUP, forthcoming
- Graybill, L. "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission", *Human Rights Review*, Jul-Sep 2001
- Call, C.T. "Is Transitional Justice Really Just?", *Brown Journal of World Affairs*, Vol. 9, Iss. 1, 2004

Week 10: Soft law enforcement

- White, B. "Diplomacy" (Ch 17) in Baylis, J. and Smith, S. (eds): *The Globalization of World Politics*, OUP, 2005
- Forsythe, D.P. Chapter 6 "Human rights and foreign policy in comparative perspective", Chapter 7 "Non-governmental organisations and human rights" and Chapter 8 "Transnational corporations and human rights"