

Can We Enforce Human Rights?

Understanding and Evaluating Human Rights Enforcement Mechanisms in Asia

Mark S. Cogan

Associate Professor of Peace and Conflict Studies

Office: 601 (Nakamiya Campus)

Office Hours: TBD

E-mail: mscogan@kansaigaidai.ac.jp

Class Date/Period: Tues. 5th, Thurs. 5th

Classroom(s): TBD

Course Description: A famous law professor once said that “Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.” But what happens when they don’t? What systems exist to compel states to uphold their international human rights obligations? This upper-level course will survey the global human rights landscape, from Eastern and Western philosophical and normative underpinnings, the codification of human rights norms in national courts, and a thorough examination of United Nations human rights enforcement mechanisms, including the Universal Periodic Review. This interdisciplinary course will introduce case studies from Japan and broader Asia as evidence of state compliance. Reading and lecture material will come from a variety of academic and legal disciplines as well as reports from major international organizations. This course is challenging. It is useful for those seeking internships with the United Nations, or looking toward graduate school in the area of international relations, law, or human rights.

Course Objectives:

This course aims to articulate a number of themes: sovereignty, universality, reciprocity and more. We will analyze several human rights assessment processes as well as an examination of systemic failures. We will consider whether nations can truly enforce human rights as well as an assemblance of justice for victims. Are human rights a set of promises or just mere fantasy? What are the prospects for individual and group rights protection? Are the ideals of an international bill of rights fading with time? This upper-division undergraduate course will review the human rights landscape with specific Asian case studies. By the end of the course, students should be able to:

- **Conceptualizing “universalism” and the history and philosophy of human rights:** What are universal human rights? Do all states conform to a universal normative standard? We will trace the origins of the human rights discourse in both the West and the East.
- **Understanding and Evaluating United Nations Treaty Bodies and the Universal Periodic Review (UPR):** Why do nation states enter into human rights treaties? What are the consequences, commitments or obligations of states who are parties to human rights instruments? How does the UPR help enforce normative behavior on the part of states?
- **Assessing specific areas of international human rights law with reference to relevant cases:** How do domestic judiciaries approach human rights? How is international law a part of domestic law? Are we on the road to “universal jurisdiction”?
- **Reviewing the Country Context** - Students will review specific case studies (Thailand, Cambodia and Japan) to distinguish national human rights challenges and political or socio-economic events that give rise to or exacerbate these challenges. Are they cultural? Are they political? Are human rights challenges the result of religious disputes? What is the capacity of the state to respond to human rights violations?

Classroom, Literature and Materials:

This course combines formal lectures by the instructor with assigned group work and student-led in-class activities. Before each class session, students are expected to have read the assigned reading before coming to class, where participation is both encouraged and expected. Reading newspapers, periodicals and other relevant material is encouraged. Student knowledge and analysis of the assigned material will be tested in class through substantive conversation and through Reading Summary Quizzes, a group presentations, and the final exam. Students will also be required to participate actively in small group activities and presentations.

Each session will last 90 minutes, with classes held twice per week. Some classroom time will be allotted to small groups to discuss and prepare for assigned presentations.

Regular attendance is required for this course. Attendance will be taken before the start of each class. Please listen for your name and raise your hand when it is called. Missing more than five (5) classes will result in a 2.5% reduction in your overall grade, with a further reduction for each additional absence. Attendance policy is lenient. If you are ill, please do NOT come to class. No official doctor's certificate is required. If you will be absent, please notify me BEFORE class. **Attendance policy is suspended during the COVID-19 pandemic.**

Course Readings: Readings for this course have been uploaded to [Blackboard](#). No textbook is required.

Course Schedule: *(subject to change)*

Introduction	
1 - 8/30	Lecture 1: Introductions / Syllabus <ul style="list-style-type: none">❖ Please review the course syllabus, become familiar with Blackboard, access all required course readings and familiarize yourself with the KGU Library.
2 - 9/1	Lecture 2: What are Human Rights? <ul style="list-style-type: none">❖ Class will include small group discussions on the origins of human rights as well the limits of universality.
3 - 9/6	Lecture 3: Enforcing Human Rights <ul style="list-style-type: none">❖ Koh, Harold (1999) "How Is International Human Rights Law Enforced?," Indiana Law Journal: Vol. 74: Iss. 4, Article 9
History, Philosophy and the Role of the State	
4 - 9/8	History and Philosophy of Human Rights <ul style="list-style-type: none">❖ Whelan, D. & Donnelly, J., (2007) "The West, Economic and Social Rights and the Global Human Rights Regime: Setting the Record Straight," Human Rights Quarterly, 29, pp. 908-949❖ UPR Groups Created
5 - 9/13	The Universal Declaration of Human Rights (UDHR) <ul style="list-style-type: none">❖ The UDHR (online): http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf❖ Waltz, Susan, (2002) "Reclaiming and rebuilding the history of the Universal Declaration of Human Rights," Third World Quarterly, Vol. 23, No. 3, pp. 437-448

	<ul style="list-style-type: none"> ❖ Ramcharan, B. & Ramcharan R. (2019). "Crafting Universal Values: The UDHR Model, Context, and Process." 10.1007/978-981-13-2104-7_2
6 - 9/15	<p>State Compliance</p> <ul style="list-style-type: none"> ❖ Hathaway, Oona A., (2003). "The Cost of Commitment". John M. Olin Center for Studies in Law, Economics, and Public Policy Working Papers. Paper 273. ❖ Hathaway, Oona A., (2007). "Why Do Countries Commit to Human Rights Treaties?" Journal of Conflict Resolution, Vol 51, Issue 4, pp. 588 - 621
7 - 9/20	<p>Reading Summary Quiz #1</p> <ul style="list-style-type: none"> ❖ Prepare for Quiz #1 on course readings, lecture, and class discussions. The quiz will be e-mailed to you and completed online during the class period via Google Forms.
Human Rights Enforcement Mechanisms - The Universal Periodic Review (UPR)	
8 - 9/22	<p>United Nations Treaty Bodies</p> <ul style="list-style-type: none"> ❖ United Nations Treaty System, Fact Sheet No. 30, Rev. 1 ❖ Sarkin, J. (2020) "The 2020 United Nations human rights treaty body review process: prioritizing resources, independence and the domestic state reporting process over rationalizing and streamlining treaty bodies," International Journal of Human Rights, pp. 1301-1327
9 - 9/27	<p>The Universal Periodic Review</p> <ul style="list-style-type: none"> ❖ Chow, J. (2017) North Korea's participation in the Universal Periodic Review of Human Rights, Australian Journal of International Affairs, 71:2, 146-163 ❖ Davies, M. (2010). Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations. Alternatives: Global, Local, Political, 35(4), 449-468. Retrieved from http://www.jstor.org/stable/41319270 ❖ For Reference: UPR Info http://www.upr-info.org, The Office of the High Commissioner on Human Rights: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx
10 - 9/29	<p>UPR Presentation Preparation I</p> <ul style="list-style-type: none"> ❖ This research activity will require significant outside research conducted in assigned groups. Use these class periods to ask your professor for assistance or discuss reviewed material among your peers.
11 - 10/4	<p>UPR Presentation Preparation II</p> <ul style="list-style-type: none"> ❖ This research activity will require significant outside research conducted in assigned groups. Use these class periods to ask your professor for assistance or discuss reviewed material among your peers.
12 - 10/6	UPR Presentations
13 - 10/11	UPR Presentations

14 - 10/13	<p>Universal Periodic Review Blog Assignment</p> <ul style="list-style-type: none"> ❖ On Blackboard, I will create a course <u>blog</u>. You will write an 800-word blog post on your own observations of the UPR process. Please use outside research and your experience with the UPR Process to inform your blog posts. Additionally, please comment on, respond to and/or critique the blog posts of your peers. The more posts and comments you make, the higher your grade.
Human Rights Law in the Domestic Courts	
15 - 10/18	<p>International Law Explained</p> <ul style="list-style-type: none"> ❖ Paquete Habana, 175 U.S. 677 (1900)
16 - 10/20	<p>Filartiga v. Pena-Irala - (Torture)</p> <ul style="list-style-type: none"> ❖ Filartiga v. Pena-Irala, 630 F.2D 876 (2D Cir. 1980)
17 - 10/25	<p>Burmese Villagers Versus Big Oil - Doe v. UNOCAL (Forced Labor, Torture, Rape)</p> <ul style="list-style-type: none"> ❖ Doe v. Unocal, 395 F.3d 932 (9th Cir. 2002) ❖ Documentary/Activist film
18 - 10/27	<p>Extraterritoriality and Foreign Policy</p> <ul style="list-style-type: none"> ❖ Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) ❖ Kiobel v. Royal Dutch Petroleum, 133 S.Ct. 1659 (2013)
19 - 11/1	<p>Reading Summary Quiz #2</p> <ul style="list-style-type: none"> ❖ Prepare for Quiz #2 on course readings, lecture, and class discussions. The quiz will be e-mailed to you and completed online during the class period via Google Forms.
Cambodia Case Study	
20 - 11/3	<p>Restorative vs. Retributive Justice</p> <ul style="list-style-type: none"> ❖ Sperfeldt, C. (2013). From the Margins of Internationalized Criminal Justice: Lessons Learned at the Extraordinary Chambers in the Courts of Cambodia. <i>Journal of International Criminal Justice</i>, 11(5), 1111–1137. ❖ ECCC Archive: https://www.eccc.gov.kh/en ❖ Jasini, R., & Phan, V. (2011). Victim participation at the Extraordinary Chambers in the Courts of Cambodia: are retributive and restorative principles enhancing the prospect for justice? <i>Cambridge Review of International Affairs</i>, 24(3), 379–401. ❖ Mydans, S. (2017). 11 Years, \$300 Million and 3 Convictions. Was the Khmer Rouge Tribunal Worth It? <i>New York Times</i>. https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html?mcubz=1 ❖ Ainley, Kirsten (2014) Justifying justice: Verdicts at the ECCC. <i>Justice in Conflict</i> (16 Sep 2014) ❖ Fawthrop, T. (2017) Cambodia's Khmer Rouge Tribunal: Mission Accomplished?, <i>The Diplomat</i>. https://thediplomat.com/2017/07/cambodias-khmer-rouge-tribunal-mission-accomplished/

21 - 11/8	Human Rights Backsliding <ul style="list-style-type: none"> ❖ Ciorciari, J. D. (2020). Cambodia in 2019: Backing Further into a Corner. <i>Asian Survey</i>, 60(1), 125-131. ❖ Subedi, S. (2014). Report of the Special Rapporteur on the Situation of Human Rights in Cambodia. Report. Office of the United Nations High Commissioner for Human Rights (OHCHR)
22 - 11/10	Reading Summary Quiz #3 <ul style="list-style-type: none"> ❖ Prepare for Quiz #3 on course readings, lecture, and class discussions. The quiz will be e-mailed to you and completed online during the class period via Google Forms.
Thailand Case Study	
23 - 11/15	Thailand Human Rights Primer <ul style="list-style-type: none"> ❖ Human Rights Watch Report, Events for 2019: https://www.hrw.org/world-report/2020/country-chapters/thailand ❖ Gerson, K. (2018). Thai Junta Shows No Signs of Halting Assault on Human Rights. <i>The Diplomat</i>. https://thediplomat.com/2018/06/thai-junta-shows-no-signs-of-halting-assault-on-human-rights/ ❖ Lese-majeste explained: How Thailand forbids insult of its royalty, BBC News, 2017, https://www.bbc.com/news/world-asia-29628191
24 - 11/17	Thailand's Human Rights Origins <ul style="list-style-type: none"> ❖ Possible Guest Speaker, Readings to be determined.
Regional Human Rights Challenges	
25 - 11/22	LGBT Rights in Asia <ul style="list-style-type: none"> ❖ Bunch, C. (1990) "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights." <i>Human Rights Quarterly</i>, Vol. 12, No. 4, pp. 486-498 ❖ Lau, H. (2020) "Courts, the Law, and LGBT Rights in Asia," <i>Oxford Encyclopedia of LGBT Politics & Policy</i> (Don Haider-Markel, ed.) (2020)., <i>Oxford Research Encyclopedia of Politics</i> (2020)., <i>UNC Legal Studies Research Paper</i>, https://ssrn.com/abstract=3573177 ❖ Weiss, M.L. (2020). "Can Civil Society Safeguard Rights in Asia?" <i>Asian Studies Review</i>, pp. 1-15.
26 - 11/24	Discussion on CEDAW and Women's Rights in Japan <ul style="list-style-type: none"> ❖ Become familiar with the CRC and CEDAW conventions, available on Blackboard or http://www.unicef.org/crc/ ❖ "This is How Women are Exploited in Today's Global Workforce," HRW. https://www.hrw.org/news/2016/03/08/how-women-are-exploited-todays-global-workforce ❖ The Global Gender Gap Report 2020, WEF http://www3.weforum.org/docs/WEF_GGGR_2020.pdf
27 - 11/29	Death By Overwork - Karoshi in Japan <ul style="list-style-type: none"> ❖ North, S. & Morioka, R. (2016) "Hope found in lives lost: karoshi and the pursuit of worker rights in Japan." <i>Contemporary Japan</i>, 28:1, pp. 59-80. ❖ Kanai, A. (2009) "Karoshi (work to death)" in Japan. <i>Journal of Business Ethics</i>, 84(2), pp.209-216. https://www.istor.org/stable/pdf/40294785.pdf

28 - 12/1	Online Surveillance and Political Rights in the Asia-Pacific ❖ Readings to be determined
29 - 12/6	Reading Summary Quiz #4 ❖ Prepare for Quiz #4 on course readings, lecture, and class discussions. The quiz will be e-mailed to you and completed online during the class period via Google Forms.
Final Exam	
30 - 12/8	Final Exam Preparation/Review ❖ Prepare for the Final Exam, which covers the course readings, lecture, and class discussions over the entire semester. The Final Exam will be e-mailed to you and completed online during the class period via Google Forms.

Class Etiquette:

- Come to class prepared to learn and engage.
- Tuning out class discussions because you are too tired to learn is counterproductive. If you need a drink of water or need coffee to help maintain focus, do so.
- Cellular phones or other mobile devices must be put on silent. Put your microphone on mute while on Zoom, unless speaking. If you feel comfortable, leave your video switched on.

Learning Assessment/Course Rubric:

Class Participation:	10%
Reading Summary Quizzes:	25%
Class Presentations:	25%
Final Exam:	40%

Reading Summary Quizzes (25%): Four (4) reading summary quizzes will be distributed at the beginning of class. Each quiz will consist of four (4) essay questions covering key messages in assigned readings or as presented during lectures. You will be graded not only on your recollection of key arguments or concepts, but your ability to *critically* think about the material. Each quiz should take you no longer than the classroom period to complete. The quiz will be e-mailed to you and completed online during the assigned class period via Google Forms. Regular attendance in class is critical to ensuring above average academic performance. Please see the course schedule for quiz dates.

Class Presentations (25%): You will be divided into small groups. Each group will give a 45-50 minute presentation on the Universal Periodic Review (UPR) for a country of your choice within continental Asia. UPRs occur every 4.5 years. Your task is to provide a comprehensive analysis of the UPR in that country using information that was provided by the country under review, by civil society organizations, or by national consultations, or through outside research. The focus of your analysis does not need to be broad. What is of concern in one country is less important in another. The treatment of refugees and internally displaced persons remains a challenge for Myanmar, while gender inequality remains problematic for Japan. All presentations should include significant reference material. A PowerPoint presentation would be helpful. NOTE: This presentation is challenging and you will no doubt have additional questions about it. Please review all material on the UPR well ahead of time.

Final Exam (40%): The final exam will feature four (4) short-answer essay questions over required readings, class lectures, and discussions. The exam is cumulative. The exam should take you no longer than the length of a class period to complete. The quiz will be e-mailed to you and completed online during the assigned class period via Google Forms. There is NO mid-term examination.

Class Participation (10%): Come to class prepared to engage in discussions. Ask questions. Ask each other questions. Participate in all small group activities. The higher the participation, the higher the grade.

Classroom Policy Information:

- **Plagiarism** (*the practice of taking someone else's work or ideas and passing them off as one's own*) of any kind will not be tolerated. If you intentionally copy an article without crediting the source or original author, it is unethical and will be considered cheating. As a rule, I use plagiarism detection software to screen for potential cases. It is in your own best interest to summarize ideas *in your own words*, or use quotes around thoughts or material that is not your own.
- **Syllabus:** I reserve the right to modify the course syllabus at any time, especially if I feel it enhances the learning experience. I will provide advanced warning of any changes.
- **Free Speech/Safe Space:** This course will likely cover difficult topics which will result in a wide range of personal opinions and emotions. It is important to come to class with an open mind and a respect for diversity of opinion. Discrimination, marginalization or other abhorrent behavior based on gender, sex, race, age, national origin, ethnicity, religion, socio-economic status, or sexual orientation will not be tolerated. Violators will be asked to leave the classroom. In this classroom, we respect each other.

Recommended Reading:

Alston, P. (Author), Goodman, R. (Author), Steiner, H. (ed), *International Human Rights in Context: Law, Politics, Morals*, (3rd edn, OUP 2007).

Baderin, M. and McCorquodale, R. (eds), *Economic, Social and Cultural Rights in Action*, (OUP 2007).

Breyer, S. (2015). *The Court and the World: American law and the new global realities*. Vintage.

Brownlie, I. and Guy Goodwin-Gill, *Brownlie's Documents on Human Rights*, (5th edn, OUP 2006).

Dallaire, R. (2009). *Shake hands with the devil: The failure of humanity in Rwanda*. Vintage Canada.

Donnelly, J. (2003) *Universal Human Rights in Theory and Practice*, Cornell University Press.

Easterly, W. (2015). *The Tyranny of Experts*. Basic Books.

Glendon, M. A. (2002). *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. Random House Trade Paperbacks.

Moyn, S. (2012). *The last utopia*. Harvard University Press.

Nickel, J. (2007) *Making Sense of Human Rights*. Wiley-Blackwell.

Sen, Amartya., (1999) *Development as Freedom*. OUP.

Short, P. (2005). *Pol Pot: Anatomy of a nightmare*. Macmillan.

Strangio, S. (2014). *Hun Sen's Cambodia*. Yale University Press.

White, R. A. (2004). *Breaking Silence: The Case that Changed the Face of Human Rights*. Georgetown University Press.