

Course Syllabus
Law 339c 001 Human Rights in Asia

Term 1, Fall 2008
Faculty of Law, University of British Columbia

Classes:

Tuesday 9:00-10:30AM Room 184
Thursday 9:00-10:30AM Room 184

Instructor:

Professor Tae-Ung Baik

Office hours:

Tuesday 10:30AM-11:30AM
Thursday 10:30AM-11:30AM

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Scope and Objectives of the Course

The purpose of this course is to convey an understanding of the current situation concerning human rights in Asia, and to facilitate a chance to think about what the future may bring. Toward that end, this course will explore human rights norms, institutions and enforcement of human rights standards in the region. In the part of norms, the sources and contents of international human rights law in Asia including the question of cultural relativism, regional and sub-regional level institutional cooperative efforts, Asian contribution to the human rights regime, and the incorporation of international human rights norms into domestic legal settings will be examined.

Asia is the only region that does not have a regional human rights court or commission, and the efforts to build regional institutions will be one of the main topics in the course. Bearing in mind that East Asia is an area that is rapidly democratizing, the class will try to understand the trends of human rights protection in Asia, and the measures for transitional justice. A key aspect of human rights is the implementation of normative standards that are adopted as a form of treaties. Accordingly, continuous efforts will be made to help students to consider human rights as a concrete real-time problem in particular societies. Students' thematic or country-specific interests in the region will be encouraged.

Course requirements

- Attendance and class participation: 20%
- A class presentation: 30%
- One paper (approximately 15 double-spaced pages in length): 50%
 - The topic and outline of paper due on Tuesday, October 21, 2008
 - Final submission due on Thursday, November 27, 2008
- You are reminded that the Faculty of Law now has strict rules on automatic penalties for late submission of papers. Extensions must be approved by the Chair of the Examinations Committee.

Attendance and Class Participation

Class attendance and participation will count for 20% of your grade. Assessment will be based on the class attendance and contributions to the class.

Class Presentation

Each member of the class should participate in one in-class group presentation (30%). The presentation will consist of a 35-minute presentation as a group, which will be followed by a 25-minute question and answer session. Each team, composed of four to eight students, will give a

presentation on a specific topic in a session, and four sessions will be allotted to presentations. A sign-up sheet will be posted in front of Professor Baik's office (Curtis 150) on September 23, 2008. You can freely choose a relevant topic subject to professor's approval. In order to avoid duplication of topics, each team should jointly submit the title of presentation and an outline of it by October 2, 2008.

Your group presentation will be graded based on your collective and individual performance. The criteria of grading will be (1) the choice of topic, (2) the art of collaboration, (3) the method of presentation, (4) the clarity of arguments and recommendations, and (5) the performance in question and answer session.

Course Paper

A course paper will count for a half of your grade. Please submit a proposal of your essay (approximately 500 words) by Tuesday, October 21, 2008, on the topic you have selected, indicating the working title, the questions you will address, a working outline and a preliminary bibliography. The essential aim of the paper is to apply the knowledge and insights you have gained during the course to a topic not covered in depth. The clarity and originality with which you address the issues, the coherence of your arguments, and the appropriate and accurate use of sources will all be considered in evaluating your paper. Your own conclusions and, where appropriate, recommendations should be given. Your paper should be approximately 15 pages in length, and double-spaced. It should have (a) a title page, (b) a table of contents, (c) numbered pages, (d) footnotes at the bottom of the page (do not use parenthetical documentation), and (e) a bibliography. Footnotes should be used to identify every direct quote, expression of opinion, and factual statement of significance (other than facts of common knowledge).

A hard copy of the paper must be submitted in class or in Professor's office (Curtis 150) by November 27, 2008, and an electronic copy should be sent separately to the professor's email, baik@law.ubc.ca.

Course Materials

Course materials are available at WebCT (<https://www.vista.ubc.ca>), and students can download the readings from the website with CWL id and password.

I. Introduction

Session 1: Thursday, September 4, 2008

What is Asia? Why Asia?

Required readings:

- David P. Fidler, *The Asian Century: Implications for International Law*, 9 SYBIL 19 (2005)

Discussion topics:

- The concept of Asia
- The classifying parameters for regional categorization
- The political implication of the regional approach
- Asia as a group -- benefits and hurdles
- Current situation and the future

Session 2: Tuesday, September 9, 2008

The Particularities in Human Rights

Required readings:

- Onuma Yasuaki, *Chapter 4. Toward an Intercivilizational Approach to Human Rights in The East Asian Challenge for Human Rights* 103-23 (Joanne R. Bauer et al. eds., 1999).
- Eva Brems, HUMAN RIGHTS : UNIVERSALITY AND DIVERSITY, INTERNATIONAL STUDIES IN HUMAN RIGHTS 323-339 (2001).

Discussion topics:

- What are human rights?
- The development of international human rights law
- Universal Declaration of Human Rights
- How to understand human rights problems in different cultures
- Universalism and cultural relativism
- Cross-cultural dialogue
- Filtering mechanism

Session 3: Thursday, September 11, 2008

Systems approach to human rights

Required readings:

- Jack Donnelly, *International Human Rights: A Regime Analysis*, 40 INT'L ORG. 599,

628 (Summer, 1986).

Discussion topics:

- Realism vs. liberalism
- Does international regime have power?
- Regime approach
- Origins of systems approach
- Elements of a human rights system

II. Norms

Session 4: Tuesday, September 16, 2008

Domestic treatment of international human rights law

Required readings:

- C. H. Heyns and Frans Viljoen. THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS TREATIES ON THE DOMESTIC LEVEL 1-46 (2002).

Reference readings:

- Oona A. Hathaway, *Do Human Rights Treaties Make A Difference?*, 111 YALE L.J. 1935-42; 2020-25 (2002)
- Thomas Risse-Kappen et. al, THE POWER OF HUMAN RIGHTS : INTERNATIONAL NORMS AND DOMESTIC CHANGE 1-38 (1999).

Discussion topics:

- Sources of international law
- Status of international law in domestic legal system
- Status of international treaties in Asia
- Hierarchy of international HR law
- Reasons for treaty acceptance (ratification/accession)
- Reasons for non-ratification
- Impacts of the treaties

Session 5: Thursday, September 18, 2008

Constitutional rights in the domestic legal system

Required readings:

- Tom Ginsburg, *Confucian Constitutionalism? The Emergence of Constitutional Review in Korea and Taiwan*, 27 LAW & SOC. INQUIRY 763, 798 (2002).

Discussion topics:

- The development of constitutions in Asia

- Constitutionalism in Asia
- The dynamics of constitutionalism

Session 6: Tuesday, September 23, 2008* [*Presentation group sign-up at Curtis 150.]

Regional human rights norms developing in Asia

Required readings:

- Tae-Ung Baik, *Asia, The Reality of Human Rights*, in THE ESSENTIALS OF HUMAN RIGHTS 13-16 (Christien van den Anker, ed., 2005).
- ASEAN Declaration (Bangkok Declaration), Bangkok, August 8, 1967.

Reference readings:

- Asian Human Rights Charter
- Summary of Bangkok NGO Declaration
- Vienna Declaration and Programme of Action. A/CONF.157/23 (1993).

Discussion topics:

- Asian human rights traditions
- Negotiations in Vienna Conference, 1993
- The development of Asian HR norms

III. Institutions

Session 7: Thursday, September 25, 2008

The UN Human Rights Institutions and Asia

Required readings:

- Sian Lewis-Anthony, *Chapter 3. Treaty-Based Procedures for Making Human Rights Complaints within the UN System*, Hurst Hannum ed. GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 41-59 (1999).
- Nigel S. Rodley, *Chapter 4. United Nations Non-Treaty Procedures for Dealing with Human Rights Violations*, Hurst Hannum ed. GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 61-84 (1999).

Discussion topics:

- The UN HR system
- The UN Charter-based mechanism
- The UN Treaty-based mechanism
- Asian States in the UN HR systems

Session 8: Tuesday, September 30, 2008

National Human Rights Institutions and the Asia-Pacific Forum

Required readings:

- The Asia-Pacific Forum of National Human Rights Institutions, Report of the 10th Annual Meeting (2005)

Reference readings:

- Paris principle
- Linda C. Reif, "*Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection.*" 13 HARV. HUM. RTS. J. 1, 1-30, 68-69 (2000).
- Vijayashri Sripati, "*India's National Human Rights Commission: A Shackled Commission.*" 18 B.U. INT'L L. J.1, 46 (2000).

Discussion topics:

- The history of NHRIs
- Paris principle
- Selected NHRIs
- Truth Commissions

Session 9: Thursday, October 2, 2008 [*Presentation outlines due.]

Domestic courts

Required readings:

- Zhaojie Li (James), *The Role of Domestic Courts in the Adjudication of International Human Rights: A Survey of the Practice and Problems in China*, in ENFORCING INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS. INTERNATIONAL STUDIES IN HUMAN RIGHTS 329-52 (Conforti and Francioni eds., 1997).

Discussion topics:

- Application of international human rights law in domestic courts
- Remedies for the domestic citizen's claims
- International criminal Justice
- Use of domestic courts for transnational civil remedies
- Case study- Killing Field in Cambodia

Session 10: Tuesday, October 7, 2008

Efforts to establish a regional human rights institution in Asia

Required readings:

- Vitit Muntarbhorn, *Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?* 8 TRANSNAT'L L. & CONTEMP. PROBS. 407, 418 (1998).
- The Conclusions of the 13th UN Workshop for the promotion and protection of human rights in Asia-Pacific Region (2005)

Discussion topics:

- Regional HR system: Pros and Cons
- The efforts to establish one in Asia

IV. The Reality of Human Rights in Asia

Session 11: Thursday, October 9, 2008

Fact-finding and Reporting Human Rights Violations

Required Readings:

- Diane Orentlicher, *Bearing Witness: The Art and Science of Human Rights Fact-Finding*, 3 HARV. HUM. RTS. J. 83, 108 (1990).

Discussion topics:

- Purposes of Fact-finding
- Credibility
- On-site visits or other missions
- How to interview the sources?
- Where to look at for HR documents?
- Writing, dissemination of reports, documentation
- Special considerations in Asia

Session 12: Tuesday, October 14, 2008

Human Rights in Northeast Asia- Group presentation 1

Session 13: Thursday, October 16, 2008

Human Rights in Southeast Asia - Group presentation 2

Session 14: Tuesday, October 21, 2008* [*Course paper proposals due.]

Human Rights in South Asia - Group presentation 3

Session 15: Thursday, October 23, 2008

Human Rights in the Pacific region - Group presentation 4

V. Implementation

Session 16: Tuesday, October 28, 2008: No class

Creative Methods of Enforcement: Death Penalty

Required readings:

- David Forsythe, *Chapters 7, Non-governmental Organisations and Human rights, in Human Rights in International Relations* 163-90 (2000).

Reference readings:

- Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 *International Organization* 887-917 (1998).

Discussion topics:

- The difficulties of implementation
- Case study: death penalty

Session 17: Thursday, October 30, 2008

Human Rights Advocacy Strategy: Comfort Women Case

Required readings:

- *Hwang Geum Joo v. Japan* 332 F.3d 679 (C.A.D.C., 2003)
- *Hwang Geum Joo v. Japan* 172 F.Supp.2d 52, 56 (D.D.C.2001).

Discussion topics:

- Comfort women case
- Advocacy strategy
- Nature of the problems
- The future of the comfort women

Session 18: Tuesday, November 4, 2008

Transitional Justice and Right to Remedy

Required readings:

- Terence Roehrig, *Democratization, the Military and Transitional Justice*, THE PROSECUTION OF FORMER MILITARY LEADERS IN NEWLY DEMOCRATIC NATIONS : THE CASES OF ARGENTINA, GREECE, AND SOUTH KOREA 1-29, 186-200 (2002).

Reference readings:

- Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 *HASTINGS INT'L & COMP. L. REV.* 157, 219 (2004).

Discussion topics:

- What is transitional justice?

- What are the elements of the justice?
- What is the legal basis for transitional justice?
- What should be done to achieve transitional justice?
- Is transitional justice different in each society?

Session 19: Thursday, November 6, 2008

Human Rights and Humanitarian Aid: the North Korean dilemma

Required readings:

- Vitit Muntarbhorn, Situation of human rights in the Democratic People's Republic of Korea (2005), A/60/306

Reference readings:

- Dinah PoKempner, Tae-Ung Baik, and Mike Jendrzeczyk, Invisible Exodus, Vol. 14, No. 8 (C) (2002)
- David Hawk, The Hidden GULAG Exposing North Korea's Prison Camps (2003)

Discussion topics:

- Key human rights issues in North Korea
- Human rights system in North Korea
- Human rights, humanitarian aids and other issues
- How to improve human rights situation in North Korea

Tuesday, November 11, 2008 [Remembrance day]- No Class

Session 20: Thursday, November 13, 2008

Human Rights Cooperation

Required readings:

- Kal Raustiala, *"The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law."* 43 VAJIL 1,26; 70,92 (2002).

Discussion topics:

- How to enforce treaties: Cooperation or confrontation?
- Why is the cooperation important?
- Liberal Internationalism vs. Trans-governmental networks
- Multi-dimension of cooperation

VI. Challenges

Session 21: Tuesday, November 18, 2008

Gender, Poverty, and Rights to Development

Required readings:

- Ranjani K. Murthy and Lakshmi Sankaran, *Chapter Five. Emerging Vulnerable Groups and Issues: Gender, Poverty, Human Rights*, DENIAL AND DISTRESS: GENDER, POVERTY AND HUMAN RIGHTS IN ASIA 119-44 (2003).

Discussion topics:

- Tensions among rights
- Women's rights
- Poverty and human rights
- Right to development

Session 22: Thursday, November 20, 2008

Human Rights, National Security, and Counter-Terrorism

Required readings:

- William W. Burke-White, *Human Rights and National Security: The Strategic Correlation*, 17 HARV. HUM. RTS. J. 249, 280 (2004).

Reference readings:

- Ioannis A. Tassopoulos, *THE CONSTITUTIONAL PROBLEM OF SUBVERSIVE ADVOCACY IN THE UNITED STATES OF AMERICA AND GREECE : A COMPARISON OF THE LEGAL GUARANTEES OF POLITICAL SPEECH IN TIMES OF CRISIS* 13-42 (1993).

Discussion topics:

- What is national security?
- Can national security be used as a legitimate reason for restricting individual's rights?
- The rationale of National Security Law
- War against terrorism
- Challenges

Session 23: Tuesday, November 25, 2008

Human Rights and Social Movement

Required readings:

- David Kennedy, *"The International Human Rights Movement: Part of the Problem?"* 15 HARV. HUM. RTS. J. 101, 125 (2002).
- Rajagopal Balakrishnan, *International Law and Social Movements: Challenges of*

Theorizing Resistance, 41 Colum.J. Transnat'l L. 397, 433 (2003).

Discussion topics:

- Criticisms against human rights approach
- Human rights approach and social movement
- Human rights and social movement in Asian society

VII. Conclusion

Session 24: Thursday, November 27, 2008 [*Course paper due.]

Conclusion- Human Rights in Asia and the future

Readings are subject to additions and deletions that will be announced in class.