



PROMOTING HUMAN RIGHTS IN AN INCREASINGLY CHALLENGING & AUTOCRATIC WORLD

Fall 2021

Ambassador Keith M. Harper, Senior Fellow
Watson Institute

The Study Session will meet five times in the Fall of 2021 on these dates: 10/05, 10/19, 11/02, 11/16 and 11/30. Each session will meet from 2 to 3:30 PM.

Ambassador Keith M. Harper served as U.S. Ambassador and Permanent Representative to the U.N. Human Rights Council from 2014 to 2017 based in Geneva, Switzerland. He is now a Partner at the law firm of Jenner & Block and serves as the Chair of the Native American Practice as well as Co-Chair of the Human Rights & Global Strategy Practice. President Obama appointed him as a Commissioner on the President's Commission on White House Fellowships in 2010 and he served until 2014. He also served as a chair for Native American policy in the 2008 Obama for America presidential campaign and then as a member of the Obama-Biden Presidential Transition Team in the Energy and Environment Cluster. For the lion share of his legal career, Ambassador Harper has represented Indian Tribes and individual Indians. He represented the plaintiff class of 500,000 individual Indians and served as class counsel in the landmark Indian trust funds lawsuit, *Cobell v. Salazar*. Ultimately, the case settled for \$3.4 billion in 2009, which at the time represented the largest settlement of a lawsuit against the United States in history.

Objective: A principle objective of the study group is to rigorously assess and reevaluate United States foreign policy generally and the promotion of human rights specifically in the 21st Century environment. We will start with an examination of both the way human rights are traditionally understood and how they are evolving. The study group will evaluate the means the United States - as a core part of its foreign policy - promotes the observance of human rights. Specifically, we will evaluate what works; what doesn't; how could we do better? We will explore what the modern human rights system is and how it works from the Human Rights Council to treaty bodies and the Security Council. One of the central themes throughout the semester will be – an assessment what impact do these institutions have in the real world and real people and how they might be reformed so as to have greater efficacy.

Structure: At least a week prior to each study session, Ambassador Harper will distribute a short reading that will aid in the discussion of the class. For example, for the first session, we will circulate the Universal Declaration of Human Rights and the International Covenant of Civil & Political Rights. The study session will start with 10 to 15 minutes of a general introduction of the topic and the questions presented. We will explore the topic thoroughly, including a guided discussion regarding the most challenging issues and emerging considerations facing the modern human rights system.

Sessions:

Session 1 – Human Rights in the 21st Century – Getting Back to Basics

In this session we will explore the traditional understanding of human rights as restraints on state action and how the concept of human rights is evolving. We will evaluate whether the understanding of human rights as part of the international rules based order is reasonable. We will address the relative virtues and vagaries of expanding what constitutes a human right. For example:

- (1) Should economic, social, and cultural rights be considered human rights?
- (2) Should healthcare or access to food be a human right?
- (3) Should failure to address climate change be construed as a violation of human rights?

We will also examine how technology and social media is causing reconsideration of our conceptualization of human rights and their underpinnings.

Session 2 – The Multilateral Human Rights System – How Does It Work and Is it Effective

In this session, we will analyze the extant multilateral human rights system and its efficacy. We will begin with a mapping out of the multiple parts of the system, including the UN Human Rights Council (with discussion of the Universal Periodic Review), the Office of the High Commissioner for Human Rights, the Security Council, the UN Third Committee, Treaty Bodies, and non-governmental organizations. Our discussion will include an assessment of these issues:

- (1) What is the purpose of the multilateral system?
- (2) How well does the system work to promote human rights around the world?
- (3) What is effective and what is not?
- (4) How can the system be improved?
- (5) When is it effective to call out rights-abusing states (i.e., “naming and shaming”) for their violations of human rights and when is it better to use other tools, such as institutional capacity building?
- (6) Do businesses have a role in human rights?

Session 3 – Human Rights and Sustainable Development – When is it Best to Use a Rights Paradigm and When is it Best to Use a Goals Paradigm

While many people around the world strive for greater freedom and desire prevention of the violation of their human rights, they also want to enjoy greater economic development. For many years, the world has been split among the “Developed Global North” and the “Developing Global South.” But the landscape has shifted over the last few decades. The end of the Cold War and more recently the emergence of China as a global economic power among other developments has set the stage for new ways to conceptualize the interplay of human rights and development? We will explore an older model for this discussion – the Right to Development – and more recent modalities as encapsulated in the Sustainable Development Goals. Does it make better sense to explore the expansion of sustainable economic development as a set of rights or set of goals? What is more like to achieve widespread sustainable development? An essential aspect of this discussion is the role of women’s rights (e.g., freedom from violence, equal access to capital, equal educational opportunities, the right to avoid child or forced marriage, freedom from discrimination and harassment in the work place, sexual and reproductive freedom etc.) in successful sustainable development?

Session 4 – When Should the Multilateral System and Global Powers Use Force to Prevent Atrocities?

One of the most vexing issues in international affairs writ large and for the United States foreign policy specifically, is when to intervene militarily to stop grave and systematic human rights abuses, crimes against humanity or genocide? There are many examples where human rights abuses were used as justification for intervention but the end result was greater human suffering. Yet, there are also examples of where certain countries could intervene but did not with catastrophic results for civilians populations. We will explore whether we can determine some guiding principles as to when intervention is appropriate and when it is not. What lessons can we learn from situations such as Rwanda, Iraq, Libya, Syria, among others. One key aspect of this discussion is the role of the UN Security Council which under Chapter VII is charged with dealing with “threats to international peace and security.”

Session 5 – Delving Deeper on a Specific Subject Area, the Rights of Indigenous Peoples / Wrap Up

We will spend the first hour of this session diving deeper into a specific set of rights, those enjoyed by Indigenous Peoples. Recognizing Indigenous Peoples rights raises interesting questions regarding the overall conceptualization of human rights. For example, the rights as articulated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) speaks to rights of a collective – “Peoples” – even though human rights are generally conceived, traditionally, of as individual in nature. How can we reconcile this? Though the UNDRIP has now been endorsed by every UN member state, many of its provisions are routinely honored in the breach. How can we improve the observance of indigenous peoples’ rights? What a

The last half hour of this session, we will look back at our discussions together and see if collectively we can determine some overarching conclusions and identify what additional questions are worthy of further exploration.