



**CONFRONTING DIFFICULT CHOICES IN PROMOTING HUMAN RIGHTS
AND ADVANCING U.S. INTERESTS
Spring 2022**

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The Study Session will meet five times in the Spring of 2022 on these dates: 03/07, 03/14, 04/04, 04/18, 4/25. Each session will meet from 1:00 to 2:30 p.m.

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. Ambassador Harper graduated from University of California, Berkeley with a B.A. in Sociology and Psychology and he received his J.D. from New York University School of Law. After NYU, he clerked for the Honorable Lawrence W. Pierce on the U.S. Court of Appeals for the Second Circuit.

Objective: A principal objective of the study group is to rigorously assess and reevaluate United States foreign policy generally and the methods for the promotion of human rights specifically in the 21st Century. We will commence with an examination of both the way human rights are traditionally understood and how they are evolving. The study group will evaluate the means by which the United States - as a core part of its foreign policy - promotes the observance of human rights. Specifically, we will assess 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 U.N. Human Rights Council to treaty bodies and the Security Council among others. One of the central themes throughout the semester will be an assessment of 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. In addition, we will tackle some of the most challenging questions in international affairs writ large. These will include questions such as: when it is legal and appropriate to use military intervention to prevent atrocities and crimes against humanities; what is the interplay between human rights and economic development and what are the best practices in ensuring that we meet both of these goals; how does the human rights system address the modern information age with the emergence – and in some ways dominance – of tech companies; what is the role of businesses in ensuring the protection and in some instances the promotion of human rights; and finally, with democratic norms being challenged in the United States, how, if at all, should that modify the United States approach to promoting democracy and human rights norms throughout the globe.

Structure: At least a week prior to each study session, Ambassador Harper will distribute a short reading that will aid in framing that week’s discussion. For example, for the first session, we will circulate the Universal Declaration of Human Rights and the International Covenant of Civil & Political Rights and a couple of resolutions from the U.N. Human Rights Council. 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 and The Multilateral Human Rights System

This conversation will set the stage for the remainder of the study sessions. 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.

In addition, we will explore the architecture of the multilateral human rights system, including, but not limited to, the Human Rights Council, the General Assembly, the Security Council, various mandate holders and the treaty bodies. 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?

Session 2 – When Should the Multilateral System and Global Powers Use Force to Prevent Atrocities?

One of the most vexing issues in international affairs generally and for United States’ foreign policy in particular, is the question of when to intervene militarily to stop grave and systematic human rights abuses, crimes against humanity or genocide. There are countless examples where human rights abuses were used as justification for intervention, but the end result was greater human suffering. Yet, there are similarly numerous examples of where certain countries or the UN could have intervened but failed to do so with catastrophic results for civilian 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, Kosovo among others. One key aspect of this discussion is the role of the UN Security Council which under Chapter VII is charged with addressing “threats to international peace and security.” The Council has been relatively powerless of late because of the division between its permanent five members each of which wields a veto on Council action.

Session 3 – Follow Up to Intervention Conversation and The Broader Topic of Accountability

This Session, we will begin with a follow up from our discussion of intervention by running a simulation. The study session will be asked to play the role of US foreign policy advisor within a U.S. Administration from the National Security Council, State Department, Department of Defense etc. We will have a fact scenario where a nation is undergoing growing atrocities in real time by an autocratic government. What information do we need to make a determination of whether to intervene and if so how to use force? Is this an occasion to use military force?

The second part of this session, we will discuss alternative means of accountability and attempts to ensure nonrecurrence. Here, we will discuss the role of the International Criminal Court, other *ad hoc* judicial tribunals and the United States position regarding international

justice. In addition, where does the use of sanctions fit into this model including by the US unilaterally, the UN and regional organizations (*e.g.*, ECOWAS re Mali).

Session 4 – Business and Human Rights and the Impact of Big Tech on Human Rights

Among the most significant issues in human rights and one that is continuing to evolve is the relationship between businesses and human rights. The question is complicated because on the one hand, we recognize that businesses through their products and power can have a positive impact on promoting rights promotion (*e.g.*, use of social media during Egyptian protest of Mubarak). At the same time, businesses are at times a profoundly negative actor and involved in gross human rights abuses, whether certain extractive industries in their environmental degradation, the use of social media platforms in spreading disinformation or apparel companies in using child or slave labor. How should the UN system balance all these interests? Should there be a treaty that places obligations on companies or are the Guiding Principles a superior means to promote a healthy relationship between businesses and human rights. During this session, we will have a thorough discussion of how nations are struggling to address the impact of tech companies in the body politic. Misinformation is a major challenge to be sure, but what we permit or do not permit online gives rise to freedom of expression concerns. What is the right balance? What is the right norms to both protect freedom of expression and prevent the spread of untruthful, harmful and often rights-eroding expression?

Session 5 – The United States and China

The final session of our semester will explore the complicated and multifaceted relationship between the United States and China. Like the relationship between the United States and the USSR during the Cold War, the relationship between the United States and the Peoples Republic of China impacts in dramatic fashion all aspects of geopolitics and U.S. foreign policy. On the one hand, it is widely acknowledged that there are a series of global issues, some existential, that can only be addressed effectively with cooperation – or at least not outright hostility – between the U.S. and China. Climate Change is the most readily apparent example but there are many others. On the other, China does not share values with the U.S. especially on human rights. China is a gross and systematic rights-abusing state while at the same time seeks to shield other rights abusing states. In this way, it fundamentally undermines the multilateral human rights system. At the same time, China is working to dismantle or fundamentally reshape the international rules-based order with its increasingly muscular approach to, among other things, the South China Sea, Taiwan and Hong Kong. A corollary is when and how does the U.S. and likeminded countries call out China's abuses and other lawless activity.

We will spend the last 30 minutes of this sessions with a more global discussion of all the issues we discussed during our semester.