

SESSION 10

HUMAN INTERNATIONAL LAW

13 Principles Week of Action

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While Australia Shirks Its International Human Rights Obligations, Australians Wait On The Rest Of The World to Act



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One of the most important treaties of international human rights law is the International Covenant on Civil and Political Rights (ICCPR), which has been signed and ratified by most of the world's countries. Contained within the rights and liberties set out in this treaty are the right to free expression (Art 19) and the right to privacy (Art 17). Although all of these countries have signed and ratified the ICCPR, Australia, Canada, New Zealand, the United Kingdom and the United States have exhibited blatant disregard for the rights contained therein by forming the Five Eyes (FVEY) coalition of countries which engage in mass surveillance of their populations.

The 'above the law' existence of FVEY was only brought to the public's attention as a result of Edward Snowden's leaked documents, and was revealed to be fundamentally at odds with international human rights principles. Indeed, this lack of compliance with human rights has resulted in various legal challenges to the FVEY activity. One of these challenges has been spearheaded by

advocacy group Privacy International, which has been tackling the UK arm of FVEY. Initially attempts to compel the release of information relating to the scope and powers of FVEY via Freedom of Information requests to Government Communications HQ (GCHQ) were denied. Now Privacy International has brought a claim before the European Court of Human Rights.

The essence of this claim is that the refusal to release this information is a violation of free expression as enshrined in Art 10 of the European Convention on Human Rights. The lack of public information about the exact nature of the FVEY partnership, given its impact on the rights to free expression and privacy of millions of people throughout the world, ought to be of grave concern to all. We in Australia are watching these developments overseas with great interest, particularly given the lack of means at our disposal to challenge aspects of FVEY and/or Australia's very participation in the partnership and disregard for its international obligations.

Australians suffer from a lack of enforceable human rights compared to citizens of the other FVEY countries. While the ICCPR has been signed and ratified by Australia, the rights it contains are, on the whole, not actionable in national law. At the domestic level, Australia does have a written Constitution, but no comprehensive bill of rights. A weak right to political communication has been implied into the Constitution by the Australian courts, but its scope is very limited, and there remains no enforceable right to privacy. So as Australians we are left to watch developments in other FVEY countries, and hope that these challenges to mass surveillance and aspects thereof are successful.

Any striking down of the FVEY partnership by courts in other countries could possibly have spillover effects for Australians and their free expression and privacy rights. Thus they may cause the rights recognized in these other countries' legal systems to have some positive extraterritorial reach in Australia. However, the fact remains that despite our country being an enthusiastic participant in FVEY's mass surveillance activities and shirking from its international human rights obligations, we are disadvantaged compared to citizens of

the other FVEY countries in our scant rights protection and must await developments in other parts of the world rather than be able to hold the Australian government to account for violations of our human rights.

International

The Internet is global, and so are threats to digital freedom. The EFF international team fights to defend privacy, free expression, digital consumer rights, and innovation throughout the world. We educate organizations, individuals, governments, the media, and companies around the globe on the emerging threats to Internet users' rights, providing information through our [Deeplinks](#) blog, Action Center, white papers, legal analysis and campaigns.

We fight against legislative proposals that are anathema to users' rights in many venues. We combat ill-conceived Internet treaties and agreements created obscurely and outside democratic processes. When the US attempts to launder its anti-privacy, anti-free expression, and anti-innovation proposals in international organizations, we educate all governments, the media and the public on the detrimental impacts of those initiatives on human rights. We also pressure large corporations and governments to take a stand in upholding human rights standards and the rule of law.

Protecting Freedom of Expression Worldwide

EFF works with organizations, individuals, and companies around the globe to encourage governments and Internet intermediaries to take a stand against the increasing threat of online censorship. We educate our members and readers about online censorship throughout the world through our [Deeplinks](#) blog. We also track threats to bloggers worldwide through [Threatened Voices](#), in partnership with Global Voices Advocacy.

Our research has also found that authoritarian regimes are increasingly relying on [mass surveillance technologies](#) to spy on activists and dissidents in their state. We publicize cross-state dealings through blogging and Twitter and help vulnerable populations understand how to maintain their privacy and security despite threats from hostile governments. We also pressure

governments and those companies that develop surveillance tools to halt their censorship practices by administering campaigns, often in concert with fellow free speech and civil liberties organizations.

Securing Privacy and Civil Liberties Worldwide

EFF fights national and international laws that weaken civil liberties, trample coders' rights and fail to address real security problems. Alongside our fellow travellers, we fight laws and Treaties legitimizing mass surveillance, and spotlight privacy violations throughout the world. We fight back when influential governments seek to increase law enforcement and intelligence agencies' power while weakening civil liberties safeguards, transparency and the rule of law. EFF fends off proposals for mandatory data retention, wiretapping friendly legislation, National ID schemes, biometrics initiatives, and location tracking. We uphold legal safeguards protecting innocent users' data from being shared across borders for law enforcement purposes by countering treaties, regional and global initiatives that would weaken these protections. We also push back against international and national "cybersecurity" proposals that impact privacy rights of Internet users worldwide and leverage Internet companies to act as agents of the State. Most of our work is focused on global initiatives and Treaties, or national legislation and privacy violations, in democratic countries and countries in transition.

Advocating for Balanced Intellectual Property Laws

Overbroad enforcement of intellectual property rights can harm online freedom of expression, privacy, due process, and innovation. EFF's international program focuses on educating global policy-makers about the need for balanced intellectual property laws and policies that protect creators, preserve access to knowledge, foster technological innovation, and empower digital consumers. EFF fights to protect Internet users' rights and the free and open Internet from threats posed by secretive, multi-nation trade agreements that would extend restrictive intellectual property laws across the globe, such as the Anti-Counterfeiting Trade Agreement (ACTA), and the Trans-Pacific Partnership Agreement (TPP).

As international policy-making institutions such as the Organization for Economic Co-operation and Development (OECD), the United Nations' World Intellectual Property Organization (WIPO), the European Commission, and national governments consider proposals to turn Internet intermediaries into copyright police, we work to ensure that Internet users' rights are respected, and that content is not removed, filtered, or blocked without judicial review or appropriate due process. We work with our global network to strengthen advocacy against both governmental efforts to justify online censorship under the guise of copyright enforcement and voluntary agreements by ISPs to block content and terminate Internet access through our Global Chokepoints coalition website. To facilitate citizens' ability to communicate, create, collaborate, and educate across national borders, we work with libraries, archives, educators, academics, the free software community, technology and telecommunications companies, and national policymakers, to advocate for robust copyright exceptions and limitations in national laws, plurilateral agreements and international treaties.

Dishing Up International Law a la Carte

Official Washington honors international law when it's politically useful, such as in condemning a global adversary, but then dismisses it as useless if it gets in the way of some desired U.S. action. This "international law a la carte" undermines the concept's fundamental value, says Lawrence Davidson.

By Lawrence Davidson

International law is vital to the welfare of every man, woman and child on this planet, although the vast majority of them do not know this is so. The vital aspect lies in the fact that the universally applicable nature of human rights – which prohibit such actions as the use of torture, arbitrary arrest and detention while supporting freedom of movement, conscience, cultural rights and the right to a

standard of living adequate for health and well-being, among other things – has its primary foundation in international law.

Examples of this can be found in the Universal Declaration of Human Rights and the various Geneva Conventions.



President George W. Bush.

To understand just how important international law is to the universal application of human rights, one has to consider just how inadequate to this end are national and local laws. This inadequacy should come as no surprise. For hundreds of years now, the dominant form of political organization has been the nation-state. The most common sort of law is that specific to the state, and in the vast majority of cases, protection of rights under such law is reserved for the citizen.

In other words, if you are not a citizen of a particular state, you cannot assume you have any rights or protections within that state's borders. Worse yet, if you happen to be stateless (and the number of such people is rapidly increasing), you are without local legal rights just about everywhere.

Ideally, this is not how things should go. Indeed, Article 6 of the Universal Declaration of Human Rights asserts that "everyone has the right to recognition everywhere as a person before the law." And, if

you find yourself in a country that has ratified this Declaration, you should come under its protection.

Unfortunately, this is rarely the case in practice. The mystique of the nation-state and the nativism that goes along with it often leads to the denigration of this vital legal obligation just because it originates from outside of the state.

Many people in the West assume that the denigration of international law upholding human rights occurs mostly within authoritarian states – states that do not protect such rights for their own citizens, much less recognize them as universally applicable. But that is not the case.

Such flouting of international law is common among democracies as well. It is even noticeable in the behavior of the United States. Take for instance the current treatment of illegal immigrants. Their human rights are certainly not respected in this country which, historically, is a nation of immigrants.

The problem goes beyond the maltreatment of immigrants. In fact, the current dismissive attitude toward human rights and the international laws that uphold them has its roots in the fear of terrorism. Such actions as arbitrary arrest, indefinite detention, the use of torture, and so forth are all justified by the so-called “war on terror.”

These actions by the U.S. government are illegal under international law, but because the enforcement of law is almost always the business of the state, and the United States is a “superpower,” who is to call U.S. officials to account for their crimes? No one. International law has no designated policemen.

Culpability of Special Interest Politics

Although the “war on terror” appears to be an open-ended one, its influence on policy and national behavior may wax and wane. There are other obstacles that are actually structurally embedded within U.S. democratic practice that also undermine adherence to international law. One of these is the pervasive influence of apparently all powerful special interests or lobbies in the formation of state policy.

Within the United States, there are a myriad number of special interests that ply the halls of power at every level of government. Some of them are dedicated to good causes. Indeed, advocates for human rights and supporters of international law have their own, albeit not very influential, lobbies.

There are other interests of great power, however, that devote themselves to, among other things, the dehumanization of entire groups of people. A good example are the Zionists whose multiple lobbies influence U.S. Middle East policy so as to assure unquestioned support of Israel, and thereby secure American involvement not only in the destruction of Palestinian human rights, but of the Palestinians as a nation and a people.

In short, the power of some special interests is sufficient to involve the U.S. in what amounts to international criminal behavior.

The average U.S. citizen, engrossed as he or she is in their local environment, does not understand this aspect of their politics. The media, from which U.S. citizens take most of their information on government behavior, are themselves subject to the influence of the same special interests that stalk the halls of power in Washington, D.C.

Therefore, the media cannot be relied upon to educate the citizenry on the role of lobbies. We are thus faced with a messy set of problems: widespread lack of popular awareness of how special

interests can control government, what this can result in, and the fact that this lack of awareness is likely compounded by the public's equally widespread apathy regarding their own ignorance.

It is this insularity and the know-nothing attitude that goes along with it that has allowed special interests to become the main center of political power in America. Short of catastrophic political breakdown, this arrangement is not going to change. The only thing that those who value international law and human rights can do is to continue to build their own special interest lobbies and compete for influence in government against the dehumanizers and other assorted international law breakers.

Timeline

1815 The Congress of Vienna expresses international concern for human rights. Freedom of religion is proclaimed, civil and political rights discussed, and slavery condemned.

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1864 The First Geneva Convention protects the wounded in battle and gives immunity to hospital staff and the Red Cross during war.

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1919 The League of Nations is established with the aim of guaranteeing and protecting the basic rights of members of minority groups.

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1945 The United Nations is formed to build peace, protect human rights, oversee international law and to promote social progress and better standards of life.

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1948 The Universal Declaration of Human Rights (UDHR) outlines protection of rights for all people.

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1949 The Fourth Geneva Convention provides for the humane treatment and medical care of prisoners of war.

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1965 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) resolves to abolish racial discrimination and promote understanding between races.

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1966 The International Covenant on Civil and Political Rights (ICCPR) protects the individual from any misuse of government power and affirms the individual's right to participate in the political processes of their nation.

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1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees access to the resources needed for an adequate livelihood, such as food, health care, clothing, shelter, education and personal safety, and ensures participation by all in the life of society, religion and culture.

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1979 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and sets up an agenda to end it.

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1984 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines tortures and similar activities in order to prevent their use.

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1989 The Convention of the Rights of the Child (CRC) sets out the civil, political, economic, social and cultural rights of children, defined as those under 18 year of age.

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1993 The Vienne Declaration from the Second World Conference on Human Rights reaffirms the Universal Declaration on Human Rights, emphasising that human rights are universal and indivisible and rejecting arguments that some should be optional or subordinated to cultural practices and traditions.

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1995 The Beijing Declaration of The Fourth World Conference on Women declares "Women's rights are human rights";

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1999 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is adopted by the International Labour Organisation (ILO)

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2002 The International Criminal Court (ICC) is established. It is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.

civilian any person who is not a combatant

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civilian object any object that is not a military objective

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combatant member of armed forces, member of an armed group under the orders of a party to the conflict

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military objective object which by its nature, location, purpose or use makes an effective contribution to military action and whose destruction offers a definite military advantage

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hors de combat means "out of the fight" describes combatants who have been captured, wounded, sick, shipwrecked, and no longer in a position to fight

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principle of proportionality the expected number of deaths or injuries to civilians or damage to civilian objects must not be excessive compared to the anticipated military advantage

What is public international law? Rules that govern relationships involving states and international organizations. Covers a huge field involving war, human rights, refugee law, international trade, the law of the sea, environmental issues, global communications, outer space

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What is private international law? Concerned with the class between laws from different jurisdictions and is sometimes referred to the conflict of laws.

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What is the International Court of Justice and what does it do? Part of the UN and based Hague, Netherlands

Only hear cases relating to conflicts between states

Also gives legal advice to UN bodies

Doesn't follow a precedent system

NZ is one of the 60 nations that has accepted the IJC's compulsory jurisdiction

All UN members must comply with IJC decisions that apply to them

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What is the International Criminal Court and what does it do? It was established in July 2002

Jurisdiction of the ICC includes genocide, crimes against humanity and war crimes

Put individuals on trial not their states

ICC can only act when nations won't or are unwilling to

Can only hear cases from participating nations or the SC can call upon others

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What is the United Nations? Formed in 1945 after WWII

Charge with the task preventing a WWII

Encourages cooperation and compromise among different nations

Constitutional document establishing the UN is called the Charter of the UN

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What is the Security Council? It is an executive body made up of the 5 most powerful members of the allied forces that defeated Nazi Germany and imperial Japan

Us, Russia, China UK and France permanently sit on the SC and each has the power to veto any SC decision

These are joined by 10 other nations each of which get a 2 year temporary membership

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What does Article 24 of the charter state? The SC has primary responsibility of the maintenance of international peace and security and acts on behalf of UN members nations

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What does article 42 of the charter state? The council can order military action to maintain or restore international peace and security

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What does article 43 of the charter state? It instructs member nations to make military service available for UN use if necessary