

NEWSLETTER

AALS Section on International Human Rights



Message from the Chair Zachary D. Kaufman

What a year 2023 has been! I'll review just a few highlights and then summarize our programming at the upcoming AALS Annual Meeting.

Throughout the year, Russia has continued its assault on Ukraine that began in February 2022. In March of this year, the International Criminal Court (ICC)—where I was privileged to be the first American to serve—issued arrest warrants for Russian President Vladimir Putin and Presidential Commissioner for Children’s Rights Maria Lvova-Belova for their alleged atrocity crimes in the Russia-Ukraine conflict. These ICC arrest warrants were the first against leaders of a permanent member of the UN Security Council, raising an age-old question about how the rule of law will fare amid great power politics.

Another conflict that has raged throughout the year is in the Ethiopian state of Tigray, despite an official, supposedly permanent cessation of hostilities in November 2022. Some experts characterize the attacks against Tigrayans, which include widespread and systematic murder and rape, as genocide. That the atrocity crimes in Ukraine have received so much more attention than those in Tigray is criticized as the latest example of prioritizing the Global North over the Global South.

In May, the World Health Organization ended its declaration of COVID-19 as a “public health emergency of international concern” but continued to refer to it as a pandemic. The international community is still reeling from this crisis’s consequences, which have included amplifying widespread inequalities around the world.

Also in May, Charles III was coronated King of the United Kingdom and the fourteen other Commonwealth realms, the 62nd British monarch to serve over the past 1,200 years. His ascension has raised questions about the ongoing relevance, desirability, and wisdom of hereditary monarchies. Amid an era of increasing attacks on democracy

Contents	
Message from the Chair.....	1
In Memory.....	3
Message from the Chair-Elect.....	3
Announcing the Winner of the Nelson Mandela Award.....	4
Recent Scholarship Highlights.....	5
In Focus.....	5
Schedule of Panels at the 2024 Annual Meeting.....	7

—including in the United States—an inherently undemocratic dynastic system of wealth, power, and privilege is being scrutinized.

Technological and environmental changes accelerated this year. In June, scientists reported the creation of the first synthetic human embryo-like structures from stem cells, without the need for sperm or egg cells, raising legal and ethical questions about human development and reproductive rights. July and August brought record-breaking high temperatures around the world, compelling us to address human rights amid climate change. Throughout the year, generative Artificial Intelligence (AI) tools grew in number, purpose, and popularity, prodding us to consider AI's impact—both positive and negative—on human rights. How will we manage AI's risks, such as its potential to exacerbate discrimination and authoritarian control?

In October, the terrorist organization Hamas attacked Israel, and Israel has been striking Gaza in response. Both sides are accused of violating international humanitarian law and international human rights law. Since this conflict erupted, antisemitism and Islamophobia have surged around the world, including in the United States.

Throughout the year, members of our Section have sought to address these and many other pressing international human rights issues through scholarship, teaching, and service (including media engagement and direct services to those affected). Again and again, we have endeavored to promote and protect human rights despite abuses all around us.

Our Section's programming at the AALS Annual Meeting in 2024 will continue to be first rate and shine a spotlight on these and other crucial international human rights concerns. The main panel our Section is sponsoring is titled: "A Transitional Justice Perspective on the Trump Prosecutions," and will feature Jonathan Hafetz, Darin Johnson, Lisa Laplante, Rachel López, and me. Another program our Section is sponsoring is titled: "The Forgotten Crises in International Human Rights Law," and will feature Yvonne Dutton, Darin Johnson, Milena Sterio, and me. As usual, we are also sponsoring our annual "New Voices" panel, which this year will feature presentations by junior scholars Paul Linden-Ratek, Vanessa Racehorse, Alex Sinha, and Jessica Tueller and which Sahar Aziz and Catherine Baylin Duryea will moderate. The Section on International Law is cosponsoring all three of those programs. Our Section is also cosponsoring three programs: "Are Courts in South Asia Defenders of Democracy?" (sponsored by the Law & South Asian Studies Section), "The Right to Protest Under International Law" (sponsored by the Section on International Law), and "Legal Education in the Americas" (sponsored by the Law in the Americas Section). Details on all of these programs are included in this Newsletter.

At the 2024 AALS Annual Meeting, our Section will also bestow our Nelson Mandela Award for the second time. After a comprehensive process of soliciting and considering candidates, our Section's Executive Committee decided this year to honor Dinah Shelton, a prolific scholar and impactful practitioner of international human rights. The award description and Dinah Shelton's biography are included in this Newsletter.

Recognizing Dinah Shelton's outstanding contributions reminds us that there are highly impactful defenders of international human rights throughout the world. As we continue to face abuses, let us all rededicate ourselves to emulate such upstanders.

In Memory

Our section has recently lost several individuals who greatly contributed to the field of human rights. Rachel López, Chair-elect, put together a video honoring some of those who recently passed away. The video was shown at the annual meeting in 2023. It features tributes to Elizabeth Abi-Mershed, Karen Knop, and Mario López Garelli. We have included a few quotations below and encourage you to watch the entire video here:

<https://www.youtube.com/watch?v=yZueAdbWop0>.

Elizabeth Abi-Mershed



"Elisa was a remarkable human being. There are very few human beings who contributed more than she did to the development of human rights law, particularly the inter-American system of human rights." – Claudio Grossman

Karen Knop

Karen Knop was "one of the brightest, most original, most generous international lawyers of our generation... [she] was both one of the most important international lawyers of her generation and one of the most important feminist scholars of her generation." – Annelise Riles



Mario López Garelli



"Mario's most profound imprint is his significant influence on new generations of inter-American lawyers. Mario has been a larger than life figure in the legal careers of hundreds of...young colleagues." - Nelson Camilo Sánchez León

Message from the Chair-elect Rachel E. López

Finding a "Human Rights" for Our Time



As AALS convenes in person for the second time since the global pandemic, now seems as good a time as any to take stock of our role as academics, and as human rights scholars in particular, in shaping the near and far future of our world. In some ways, the global pandemic made our worlds smaller and more intimate as we cabined with those in our immediate family or "bubbles." Yet, in others, the world expanded, as zoom or other virtual platforms made it possible to share ideas with people across the globe. Now, as we fully emerge into a world characterized by its hybridity, the question becomes how do we stay connected, locally and globally, and how do we bridge the fault lines that continue to divide us in the interest of a more humane future?

This conundrum has unique implications when it comes to human rights and also speaks to other polarities that we are experiencing in the modern day, some of which are replicated in the field of human rights. First of all, given that so much of human rights discourse is backward-looking, taking account for past wrongs, human rights law is likely to experience challenges in light of how fast our world is changing. In partnership with others, academics like us thus have a responsibility to think through how human rights should change and adapt considering our evolving technological and scientific realities. At a time when so many are asking whether human rights law is obsolete or irrelevant, we must help to push the field forward into the future.

Additionally, in a world increasingly characterized by polarity, another task at hand for academics is to push past the binaries that have divided our field for too long. Thus, instead of debating whether we should prioritize collective vs. individual rights or civil/political rights vs. economic/social rights, we might

ask another question: What rights are needed to promote human flourishing? This question might push us to examine how aspirations and intangibles like hope, reconciliation, and mercy fit into the law. We might also question whether the “rights” framework still has any purchase or is it in itself too polarizing and individualistic?

As we emerged from some of the most isolating years in our memories, another felt need is a sense of connection, both locally and globally, and a deep look at how human rights law operates on the ground. Here, too, academics have an important role to play. We are charged with a renewed purpose of taking stock of international law’s on-the-ground benefits and limitations. In light of the confluence of contemporary crises (the global pandemic, growing authoritarianism, climate challenges, and persistent racial injustice, to name a few), our call might be to examine the ways that international law meets or fails to meet expectations and to explore how international law could better address these and other challenges.

The panels our section is hosting at the Annual Meeting are meant to prod us in this direction. “Forgotten Crises” is meant to shed light on the places where major human rights violations have occurred but been overlooked. One of the goals of that panel is to take a hard look at the inherent selectivity and enforcement gaps of international human rights law that these difficult situations reveal. In addition, “A Transitional Justice Perspective on the Trump Prosecutions” will explore how theories and experiences of transitional justice inform our understanding of the current prosecutions of former President Donald J. Trump. In a country often criticized for its belief in its own exceptionalism, we must grapple with the challenges posed by the first-ever indictments of a former president in the United States and ask whether we can really prosecute our way to transition.

But the AALS is not just a crucial forum to learn and exchange ideas, it is also a unique setting for reconnecting with old friends and meeting new colleagues. As a Section, we also hope to facilitate these connections, some foreseen and others unexpected, to bridge the distance between us, and to start to envision the boundary-pushing solutions that are needed to confront the challenges of our new reality.

I look forward to working together on all of these essential aspects of our mission!

Nelson Mandela Award

We are pleased to announce that Professor Dinah L. Shelton has won the Nelson Mandela Award for 2023-2024. Professor Shelton is a leading expert in public international law, with a particular focus on international human rights. She has combined her command of theory and doctrine with a wealth of practical experience, including as President and Commissioner of the Inter-American Commission on Human Rights (2010-2014). Professor Shelton is also an expert in international environmental law, and her groundbreaking work underscores the link between human rights and the environment.



Professor Shelton is one of the most prolific human rights scholars of her generation. She has published several acclaimed and award-winning books and articles. In addition to her exceptional scholarly productivity, Professor Shelton has engaged in an extraordinary range of professional activities. Aside from her distinguished service with the Inter-American Commission of Human Rights, she took on the responsibilities of Rapporteur for the English-speaking Caribbean, Haiti, Chile, Guatemala, Ecuador. She also served as Rapporteur on the rights of indigenous peoples, participating in onsite missions to Dominican Republic, Guatemala, Suriname, and Canada. Professor Shelton’s teaching has also reverberated through the work of the multitudes of her former students who have gone on to work in human rights.

Please join us at a ceremony at 12 pm on Thursday, January 4 to honor Professor Dinah Shelton.

Recent Scholarship Highlights

Raquel E. Aldana, UC Davis School of Law, was selected to serve on the Council of Foreign Relations. She has also recently published two articles. "Taming Immigration Trauma" was published in the *Cardozo Law Review*: <https://cardozolawreview.com/taming-immigration-trauma/>. "Trauma as Inclusion" was published in the *Tennessee Law Review*: <https://ssrn.com/abstract=4087777>.

Lauren Bartlett, Saint Louis University School of Law, has published "Human Rights and Lawyer's Oaths" in the *Georgetown Journal of Legal Ethics*: <https://ssrn.com/abstract=4317252>

Jorge Contesse will be a Distinguished Visiting Professor at the University of Toronto in Winter 2024. He has also recently published "Conventionality Control and the Limits of Pro Persona Jurisprudence" in the *Italian Review of International Law and Comparative Law*: <https://doi.org/10.1163/27725650-03010006>.

Catherine Baylin Duryea has recently published two articles. "Mobilizing Universalism: The Origins of Human Rights" appeared in the *Berkeley Journal of International Law*. This article examines how early Arab human rights activists in Morocco, Palestine, Egypt and Kuwait mobilized and produced universality through their work: <https://ssrn.com/abstract=4498454>. "The Roots of Collapse: Imposing Constitutional Governance," in the *Pennsylvania Journal of International Law*, showed how the Afghan Constitution of 2004 failed to resolve a fundamental issue of governance: what institution had the authority to interpret the constitution. The resulting confusion contributed to an ineffective central government and, eventually, the quick downfall of the Afghan government: <https://ssrn.com/abstract=4501609>

Tamar Ezer, University of Miami School of Law, has published "Localizing Human Rights in Cities" in the *Southern California Review of Law and Social Justice*. This article examines the growing phenomenon of human rights cities and argues that local human rights implementation is a critical frontier, enabling a human rights approach to governance, strengthening participation and equality: <https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/volume31/winter2022/ezer.pdf>

In Focus: Melissa Stewart, University of Hawaii School of Law

Melissa Stewart has recently accepted a position as Assistant Professor of Law at the University of Hawaii at Mānoa, William S. Richardson School of Law. Her newest article, "Cascading Consequences of Sinking States," was recently published in the *Stanford Journal of International Law*. The article examines the phenomenon of low-lying island states that are at risk of the submergence of the entirety of their territory due to sea level rise. The existence of sinking states raises complex and profound questions related to statehood, nationality, and human rights, to which international law currently provides no sufficient answer. The article earned the New Scholar Award from Section on International Law and is available here: <https://ssrn.com/abstract=4321214>



Professor Stewart was also awarded an Honorable Mention by the American Society of International Law International Legal Theory Interest Group Scholarship Prize for the best article or book chapter in the field of international legal theory published in 2020 or 2021 by a non-tenured scholar based at an institution in the United States. Her award-winning article, "A New Law on Earth' Hannah Arendt and the Vision for a Positive Legal Framework to Guarantee a Right to Have Rights," was published in the *Virginia Journal of International Law* and is available here: <https://ssrn.com/abstract=3791785>

Zachary D. Kaufman, University of Florida Levin College of Law, has published "Police Policing Police" in the George Washington Law Review: <https://ssrn.com/abstract=4119580>. This Article argues that Congress and state legislatures should enact criminal laws creating a law enforcement officer duty to intervene in their colleagues' misuse of force. In addition, Kaufman's article, "Transitional Justice Delayed Is Not Transitional Justice Denied: Contemporary Confrontation of Japanese Human Experimentation During World War II Through a People's Tribunal," originally published in the Yale Law & Policy Review, has been translated into Chinese, republished in the Journal of War Crimes and Trials (a Chinese academic journal), and permanently archived in the Unit 731 Museum in China: <https://ssrn.com/abstract=4585499>.

"The Myth of Slavery Abolition," by **Jocelyn Getgen Kestebaum**, Cardozo Law, is forthcoming in the UC Law SF Law Journal. This Article offers a novel account of why international human rights law advocacy neglects slavery and the slave trade. Specifically, this Article demonstrates that the abolition of the Transatlantic and East African slave trades was achieved through a legal framework that marginalized the human rights of enslaved persons while consolidating empire: <https://ssrn.com/abstract=4451328>

Rachel López has published "Black Guilt, White Guilt at the International Criminal Court," a chapter in Race and National Security edited by Matiangai Sirleaf. This chapter elucidates how the jurisdictional and substantive law that governs the ICC systematically results in Black guilt being heightened while White guilt is minimized: <http://dx.doi.org/10.2139/ssrn.4237581>

"Forced Back into the Lion's Mouth: Per Se Reporting Requirements in U.S. Asylum Law" by **Amelia McGowan**, University of Arkansas School of Law, is forthcoming in the Marquette Law Review. The article describes how U.S. immigration courts have imposed per se reporting requirements on asylum seekers with increasing frequency, denying applicants protection if they did not first report non-state persecutors to the authorities--even if reporting would have been futile or dangerous. This article exposes the spread of these unlawful requirements, analyzes how they violate U.S. and international law and expose asylum seekers to greater danger, and argues for their abolition: <https://ssrn.com/abstract=4389738>

"Tribal Health Self-Determination: The Role of Tribal Health Systems in Actualizing the Highest Attainable Standard of Health for American Indians and Alaska Natives" by **Vanessa Racehorse**, University of New Mexico School of Law, will be published by the Columbia Human Rights Law Review.

Alex Sinha, Hofstra Law, has published "Executing Racial Justice," co-authored with **Ian M. Kysel**, in the UCLA Law Review Discourse. This article argues that the Biden administration should anchor its executive initiatives on racial justice in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the U.S. ratified nearly three decades ago. It suggests a number of powerful steps President Biden can take to implement the treaty without congressional cooperation: <https://ssrn.com/abstract=4355026>

Jessica Tueller, Tulane University Law School, has two upcoming articles. "Sex/Gender Segregation: A Human Rights Violation, Not a Protection" will be published in the Yale Journal of Law and Feminism. "A New Path Forward? How Attention to Economic, Social, Cultural, and Environmental Rights Could Increase U.S. Indigenous and African-American Civil Society Engagement with the Inter-American Human Rights System," co-authored with James L. Cavallaro and Silvia Serrano, is forthcoming in the UCLA Journal of International Law and Foreign Affairs.



AALS Annual Meeting Events Sponsored by the Section on International Human Rights

Please check the online program for the most up to date schedule and locations of panels.

Wednesday, January 3

8:00 - 9:40 am Legal Education in the Americas, Co-Sponsors: Law in the Americas and Comparative Law
Roundtable discussion of current issues and pedagogical developments in legal education in the Americas (and other continents as well). Law teachers from every country are welcome.

1:00 - 2:40 pm A Transitional Justice Perspective on the Trump Prosecutions, Co-Sponsor: International Law
The panel will examine the criminal prosecutions of former President Donald J. Trump from a transitional justice perspective. Election of section officers will directly follow this session.

3:00 - 4:40 pm New Voices in International Human Rights Law & International Law, Co-Sponsor: International Law
This program features new members of the law academy and their scholarly work related to human rights and international law. It highlights innovative contributions to the field.

Thursday, January 4

8:00 - 9:40 am Forgotten Crises in International Human Rights Law, Co-Sponsor: International Law
This panel will focus on several "forgotten" crises where major human rights violations have occurred, such as the Rohingya refugee crisis, the conflict in Tigray, and the ongoing violence in the Central African Republic.

12:00 pm - 1:00 pm Awards Ceremony

Friday, January 5

8:00 - 9:40 am Are Courts in South Asia Defenders of Democracy? Co-Sponsors: Law and South Asian Studies and Comparative Law
This panel draws upon in-depth research of courts from a range of South Asian countries to examine the role of the judiciary in countering encroachments on democratic institutions and functions.

10:00 - 11:40 am The Right to Protest Under International Law, Co-Sponsor: International Law
This panel will explore the international law of protest.

6 - 7:30 pm Happy Hour, Co-Sponsor: Criminal Procedure
Held at Taffer's Tavern, 700 6th St NW. Please RSVP to Mike Gentithes at crimproaals@gmail.com.