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Syllabus for INTS 4945 Human Rights Law and Advocacy Course (Fall 2006); and INTS 4955 (Winter 2007and/or Spring 2007 Clinic)

This human rights clinical course is designed to teach the prospective human rights advocate the various systems available for pursuing human rights claims as well as the methods that may be used to advocate for improving human rights. The course will cover the assorted global, regional and (U.S.) domestic mechanisms and instruments available for addressing human rights abuses, as well as methods of addressing abuses through more informal channels, e.g., the influence of civil society and U.S. foreign policy. Departing from prior practice in this course, there **WILL BE** a final examination.

Students who complete the course will be invited to participate in **INTS 4955** – the 5 hour clinical follow-on to this substantive course. (Students who have not taken INTS 4945 may be admitted to INTS 4955, the **clinical course**, if they have had taken other relevant human rights courses and/or had relevant human rights work experience, and with the instructor’s permission.) Students in INTS 4955 will be asked to undertake a case study on a human rights violation and provide an Advocacy Report (roughly 5000 words, i.e., 20 double-spaced pages) that includes (a) a synopsis of relevant facts, (b) pertinent domestic (usually Constitutional) law of the country where the violation occurs as well as relevant international human rights law, and (c) a recommended course of remedial action using the *rule of law*.

Non-graduating law and GSIS students in INTS 4955 may seek an overseas assignment in order to either advance their research, or initiate the implementation of the recommendations in their Advocacy Report. Additional internship or independent research credit may be available for these overseas ventures.

Grades in INTS 4945 will be determined as follows: 90% on the written examination (identifying the relevant questions and answering them correctly; readability – prose, style, etc.), 10% on the quality of their class participation. Students are expected to read and be able to discuss the readings and the hypothetical scenarios and questions for each class, including the questions following the readings in Weissbrodt, et al., International Human Rights, Law, Policy and Practice (2001), as they will frequently be discussed in class.

Students in INTS 4955 will be graded on the merit of their Advocacy Reports (how well researched, written and organized; and analytic quality – whether remedial options are correctly identified, and a recommended option thoughtfully defended).

The following texts are on reserve at both the Penrose and Westminster Law Libraries. Weissbrodt, et al., International Human Rights, Law, Policy and Process (2001); Guide to International Human Rights Practice (Hurst Hannum, 4th ed. 2004); Weissbrodt, et al, Selected International Human Rights Instruments (2001), and Steven R. Ratner and Jason S. Abram, Accountability for Human Rights Atrocities in International Law 2nd Ed. (2001). These books are also available for purchase at the bookstore on and after August 1st. I strongly recommend that you purchase at least the first three. The Weissbrodt 2001 text (Int. Human Rights Law, Policy & Process) is pretty expensive so you are encouraged to find a second hand version (e.g., through one of last year's INTS 4945 students). The other books are paperback and reasonably priced.

Readings not on reserve or available for purchase through the bookstore are available off of the internet or through LEXIS or Penrose Library's E-Resources. **All Human Rights Quarterly articles are available through Project Muse and/or Goldrush.**

There are additional readings in the Course Packet available which will be available at the D.U. Bookstore on or about August 1. Readings in the course packet are designated in the Syllabus with "CP". At least one copy of the Course Packet will also be on Reserve at each the Penrose and the Law Library..

Week 1 - Introduction to Clinical Course (September 14, 2006)

Readings:

1. Richard A. Bilder, *An Overview of International Human Rights Law*, Chapter 1 (pp. 3-18), in Hannum text.
2. *Introduction to Human Rights*, Chapter 1 (pp. 1-23), in International Human Rights, Law, Policy and Practice, Weissbrodt, et al., Eds. (2000), (hereafter referred to as Weissbrodt text).
3. UN Bill of Human Rights: Universal Declaration of Human Rights; International Convention on Civil and Political Rights and Optional Protocol; International Convention on Social, Economic and Cultural Rights in Weissbrodt, et al, Selected International Human Rights Instruments (20001); also, Weissbrodt text at 189

Questions for consideration:

1. What is the CORE concept predicated the development and general acceptance of the international human rights movement, i.e., what is its fundamental premise?
2. What are the components of human rights law? Be prepared to discuss the concept of "customary international law", e.g., when and how is it established?
3. Who is bound by international human rights law?
4. How (and where) is that law enforced?
5. What do you see as the main obstacle(s) to the enforcement of human rights (including "humanitarian") law?
6. What can be done to make the application and enforcement of human rights law more effective (see Hannum text, pp. 17-18).
7. How do you feel about the "universality" of human rights law? Why do you think the U.S. has not ratified the International Covenant on Economic, Social and Cultural Rights?
8. Do you agree that there are first and second "tiers" (or "generations") of human rights, and if so, what are they?
9. Are there any collective, as opposed to individual, human rights protected under the International Bill of Rights (i.e., the UN Declaration and the two major covenants)? If so, what are they and where can they be found?
10. How can individuals be held accountable for human rights abuses? In what capacity can individuals be held accountable and for what kinds of "abuses" or violations? Where (in what forums) can individuals be held accountable for human rights violations? And, finally, what do you see as the main obstacle to individual accountability?

Week 2 - United Nations Treaty and Non Treaty Human Rights Mechanisms and Procedures (September 21, 2006)

Readings:

1. *What U.N. Charter-Based Mechanisms are Available for Violations of Human Rights*, Chapter 6, Weissbrodt text at pp. 85-93; 125-127; 134-141; 228-241, 246-252; 273-278.

2. Sian Lewis-Anthony & Martin Scheniur, *Treaty -Based Procedures for Making Human Rights Complaints within the U.N. System*, Chapter 3 (pp. 43-62), in Hannum text; Weissbrodt text, 923-928 (on ILO)
3. Nigel S. Rodley, & David Weissbrodt, *United Nations Non-Treaty Procedures for Dealing with Human Rights Violations*, Chapter 4 (pp. 65-88), in Hannum, *Guide to International Human Rights Practice* (2004).
4. Case: Sandra Lovelace v. Canada, Views of the United Nations Human Rights Committee, Communication No. R.6/24 (29 December 1977), U.N. Doc.
5. Supp. No. 40 (A/36/40) at 166 (1981) (pp 1-9). Available on the internet at <http://www1.umn.edu/humanrts/undocs/session36/6-24.htm>
6. ECOSOC Resolutions 1235, 1503, Weissbrodt, et al., *Selected International Human Rights Instruments* (2001), at pp. 183-186

Questions for Consideration:

1. What mechanisms exist in the U.N. System for addressing human rights violations? What are the advantages and disadvantages of using these differing mechanisms to address human rights abuses?
2. What are some of the things that you would take into consideration in deciding whether to file a 1235 or 1503 complaint against a country that is violating the human rights of a particular segment of its population?
3. What are the differences between the 1235 and 1503 procedures and the First Optional Protocol to the ICCPR?

The following questions are in regard to the *Lovelace* case:

1. As an advocate for Ms. Lovelace, what violations of the ICCPR will you advise her to allege?
2. Is there a distinction between "minorities" and "indigenous people" that should be made under the ICCPR?
3. Are Economic and Social Rights enforceable rights or goals that the country should strive for?
4. Why do you think the U.S. has thus far refused to ratify the ICESR?

5. Please review the “live” human rights situations below and be prepared to discuss which UN mechanisms (treaty and non-treaty) your human rights NGO would want to use in seeking UN intervention:

- a. American Indian activist Leonard Pelletier's prolonged incarceration in the U.S., while in rapidly deteriorating health;
- b. “Honor” killings of women in Pakistan (i.e., those accused of marital or sexual improprieties);
- c. The execution of 13 Liberian “rebels” convicted of treason in a kangaroo court;
- d. India's plan to construct a series of dams/reservoirs on the Narmada River, which will destroy the homelands, and force the dislocation, of tens of thousands of indigenous villagers.
- e. See, also, and consider, the following questions in the Weissbrodt text at pp. 229-331: 1-10, 13-18, 22(a)-(c), (h)

Week 3 - Regional Systems (September 28, 2006)

Readings:

1. *European Convention for the Protection of Human Rights and Fundamental Freedoms; American Declaration on the Rights and Duties of Man; American Convention on Human Rights; and African (Banjul) Charter on Human and People’s Rights*, Weissbrodt, et al., *Selected International Human Rights Instruments* (2001).
2. Dinah Shelton, *The Jurisprudence of the Inter-American Court of Human Rights*, Chapter 7 (pp. 127-141), in Hannum text; also, Weissbrodt text, pp. 491-502; 591-600; 608-614
3. Kevin Boyle, *Europe: The Council of Europe, the OSCE and the European Community*, Chapter 8 (pp. 143-160; 166-169), in Hannum text; also, Weissbrodt text, pp. 623-625; 647-658, 660-665.
4. Cees Flinterman and Evelyn Ankumah, *The African Charter on Human and Peoples’ Rights*, Chapter 9 (pp. 171-185), in Hannum text; also, Weissbrodt text, pp. 617-619.
5. *Bamaca Velasquez v. Guatemala: An Expansion of the Inter-American System’s Jurisprudence on Reparations*, in *Human Rights Brief*, Vol. 9 Issue 3 available at <http://www.wcl.american.edu/hrbrief/09/3bamaca.cfm>

Questions for Consideration:

1. Compare the three regional systems: What are the major differences between the systems? Which system has the strongest enforcement mechanism?
2. What are the advantages and disadvantages of bringing a complaint under a regional system as opposed to one of the UN mechanisms?
3. What are the main institutional structures and processes of the regional arrangements in Europe, the Americas and Africa? How do they compare to the UN system?
4. Why is there no Asian regional human rights system?
5. The European and American human rights conventions do not include definitions of, and protective enforcement mechanisms for, economic, social and cultural rights. Should these rights be protected and refined using the mechanisms already established for the protection and refinement of civil and political rights? Why? Why not?
6. What are the most effective means for the protection of “second generation” (economic, social and cultural) rights? How does the Africa system work in this regard?
7. Do you think that a country should be compelled to compensate the victims, families of victims, of human rights atrocities committed by a prior regime? Explain.
8. Are there benefits and advantages to bringing a claim before the Inter-American Commission as opposed to the U.N. Human Rights Committee? If so, what are they?
9. Why do you think the United States has not become a party to the American Convention on Human Rights? What precautions or reservations do you believe will need to be made before the United States becomes a party?
10. What is the significance of the Bamaca Velasquez decision?

Please be prepared to discuss the following hypothetical questions on regional systems:

Hypothetical on Inter-American System

The mother of Flor de Maria Hernandez Rivas brought in July 1999 a petition before the Inter-American Human Rights Commission on behalf of her daughter, alleging the following:

In January and February 1991 the FLMN engaged in a series of bombings in San Salvador, prompting the government of El Salvador to declare a state of emergency. Although there have been no bombings or other terrorist attacks since February 1991, the state of emergency has never been lifted.

At approximately 4:00 p.m. on March 30, 1991, Flor de Maria Hernandez Rivas, age 14, was taken by force by National Guardsmen who accused her of having participated in the January-February FLMN offensive. That day the girl was near the San Miguelito Market in San Salvador when National Guardsman patrolling the area apprehended her and forced her into a vehicle, threatening to kill her. Even though she protested that she was innocent and that they had no warrant to arrest and hold her in custody, the agents took her to the National Guard's Central headquarters where they blindfolded her, put a hood over her head, mauled and groped her and hit her on the head to force her to cooperate with them. When she asked for water, they told her she would get no water until she told them the "truth." When she refused to acknowledge the charges made against her, electric shocks were applied to her breasts. The next day, March 31, she was transferred to a small cold cell where she spent the entire day listening to the screams of others being tortured. She was given no food.

The only time she was taken from the room was when she was fingerprinted.

On April 1, she was removed from the cell and taken elsewhere where she was again physically and verbally abused. At one time she was taken to yet another room where three men raped her. The questioning continued until April 2 at which time the guards returned her to cell and gave her drugs "to ease the pain." She did not take the drugs because she was afraid. That afternoon they removed the blindfold, returned her clothes and released her. The guards threatened her and told her that they would kill her if they ever picked her up again.

The Hernandez Rivas family, with the help of the Center for Equality, Justice and International Law (CEJIL) in Washington, D.C. brought suit for compensatory damages in a Salvadoran court in early 1993. The trial court dismissed the case within 30 days. After a lengthy delay, an appeal to the Salvadoran Supreme Court was likewise summarily dismissed on December 31, 1998.

On July 2, 1999, again with the help of CEJIL, a petition was filed by the Hernandez Rivas family with the Inter-American Commission soon began processing the case and requested the government of El Salvador to supply information on the material facts in the petition, and any other material facts to enable it to determine whether remedies under domestic law had been exhausted. The Government was given 90 days in which to reply.

On August 20, 1999 2 the government of El Salvador sent a note of reply stating the following:

"Apprehended on March 30 by the National Guard in the city of San Salvador on suspicion of being a terrorist and released on April 2, 1991. Since none of (petitioner's) rights were violated and because she continues to enjoy the full exercise of her rights, the government of El Salvador respectfully requests the case be closed. Furthermore, a state of emergency had been in effect since February 1991 and thus, to the extent any of petitioner's rights were violated, El Salvador had the right to derogate from the guarantee of the protection of such rights."

El Salvador has ratified the Inter-American Convention on Human Rights.

- 1.As a commission member, how do you respond to the government of El Salvador's contention that petitioner's rights were not violated? What articles of the American Convention on Human Rights may have been violated?
- 2.How do you respond to the government's argument regarding the state of emergency?
- 3.What if El Salvador had NOT ratified the American Convention on Human Rights? Does Mrs. Rivas have any other recourse in the Inter-American human rights system, and if so what provisions of what document(s) would she invoke?
- 4.Assume El Salvador had ratified the International Covenant on Civil and Political Rights, as well as its Optional Protocol 1. Assuming you were Ms. Rivas' advocate, what additional advice (if any) do you have for her?

Hypothetical on the European Human Rights System

Assume a similar factual situation, except that the petitioner in this case is the mother of Irena Suleman, who was abducted in late 2003 by law enforcement personnel in Tashkent, Uzbekistan. Irena was suspected of being associated with a fundamentalist Islamic organization that had been detonating small bombs in government buildings over the last six months. Seven Uzbeki civil servants had been killed, and more than 30 wounded, some seriously. A week before Irena's abduction, a state of emergency had been declared in Tashkent by the mayor.

No effort was made by Irena's family to press charges in an Uzbeki court. Instead, the proceeded directly to the European Court of Human Rights, with the assistance of Freedom House advocates based in Tashkent and in Strasbourg, France.

- 1.What provisions of the European Convention of Human Rights will the Sulemans claim have been violated?
- 2.How will Uzbekistan defend itself?
- 3.And assuming the Court takes jurisdiction of the case and finds in favor of the Sulemans, what remedy will it provide?

Hypothetical on the African Human Rights System

In Uganda the Museveni regime has been experiencing street protests in Kampala and civil unrest in other parts of the country. It decides to take a hard line. On October 1, 2002, it arrests seven street protesters, and incarcerates them without filing charges for more than 90 days in an old armory outside Kampala. The protesters are given one meal a day, one cup of water and virtually no sanitation amenities. One protester dies. A few days later four others are released, though several are suffering from severe malnutrition and dehydration and one of the women has contracted a serious case of malaria.

You are working for the Human Rights and Peace clinic at Makerere University in Kampala. You are asked by the clinic director to advise the victims, the family of the decedent and the families of the two remaining prisoners on what to do. What is your advice, and why?

Week 4 - The Role of NGOs in Addressing Human Rights Abuses (October 5, 2006)

Readings:

1. Laurie S. Wiseberg, *Human Rights Non-governmental Organizations* Chapter 25 (pp. 372-383), in *Human Rights in the World Community*, Claude and Weston Eds. (1992). CP
2. *Intervention at the U.N. by NGOs*, Ch. 4, Hannum text, supra, pp.78-84
3. Bell, Daniel A, Carens, Joseph H: *The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue Between Practitioners and Theorists*, *Human Rights Quarterly*, 2004, vol. 26, issue 2, p. 300-329
4. Robinson, Mary: *Advancing Economic, Social, and Cultural Rights: The Way Forward*, *Human Rights Quarterly* 2004, vol. 26, issue 4, p. 866-872
5. *Human Rights Fact Finding*, Ch. 4, Weissbrodt text, pp. 456-482 (note and be prepared to address questions at 457-460); 502-522

Questions for Consideration (in addition to Weissbrodt questions at 457-460):

1. The number of NGOs involved in human rights and humanitarian work has increased dramatically over the last 50 years. What is a "human rights NGO" and why have they played such a central role in challenging the authority of governments and in seeking to protect and monitor human rights?
2. Some large NGOs, such as Amnesty and Human Rights Watch, have to a large extent ignored economic and social rights. Why do you think this is so?
3. What are the various ways that human rights NGOs have brought attention to human rights abuses such as genocide, torture, extrajudicial killings, imprisonment for political beliefs, etc.?
4. What role has the Internet played in mobilizing grass roots human rights movements?

5. What are the advantages and disadvantages of NGOs that are devoted to a single-class of persons or the rectification of a single abuse?

Week 5 - Influencing Human Rights through U.S. Foreign Policy (October 12, 2006)

Readings:

1. Stephen Zunes, *U.S. Foreign Policy, Democracy and Human Rights in the Middle East* (pp. 226-242), in *The United States and Human Rights, Looking Outward*, David Forsythe, Ed. (2000) CP.
2. David Forsythe, *U.S. Foreign Policy and Human Rights, The Price of Principles after the Cold War*, Part 1, Chapter 2 (pp.21-49), in *Human Rights and Comparative Foreign Policy*, Forsythe Ed. (2000). CP
3. *Incorporating Human Rights Goals into U.S. Foreign Policy*, Weissbrodt text, 528-551
4. Hoffman, Paul, *Human Rights and Terrorism, Human Rights Quarterly*, 2004 Vol. 26, No. 4, pp. 932-955
5. UN Charter, Weissbrodt, *Selected International Human Rights Instruments*

Questions for Consideration:

1. What are the major means of "coercive" intervention by the U.S. in the affairs of other countries allegedly abusing internationally-guaranteed human rights, how would you characterize their advantages and disadvantages and how do you assess their relative efficacy?
2. How, if at all, do you justify the NATO bombing of Belgrade and other parts of Serbia in 1999? What about the US bombing of Libya in the early '70s? Invasion in 1983 of Grenada? Panama in 1988? Can "unilateral intervention" in the interests of protecting human rights ever be justified?
3. Why didn't the U.S. bother to get UN Security Council approval or Congressional approval before taking aggressive action in Serbia in 1999? Was NATO's support of the U.S. intervention an adequate international law justification for the action? What was the purported legal basis for NATO's support, and do you agree with it?
4. What reasons did Bill Clinton give to support his claim that intervention in Kosovo was a "moral imperative"?

5. Would you consider "humanitarian intervention" on the cusp of "customary international law"? Why or why not? How elastic is the concept of "humanitarian intervention" (e.g., could it be used to justify U.S. intervention in Afghanistan in 2003? Was it so used? Kosovo in 1988?)
6. In your view, is the United States concern with Castro's human rights record in Cuba and Milosevic's abuse of human rights in the former Yugoslavia based primarily on moral or pragmatic grounds? What are the human rights in Cuba and Yugoslavia with which we (the U.S.) are (or, in the case of Yugoslavia, were) concerned? In China?
7. Is it legitimate for the U.S. to actively promote human rights values in the developing (non-western) world, what cautions would you advise, and how do you account for the increased attention being paid by "developed" countries to alleged human rights abuses in "developing" countries? Is the U.S. practicing "cultural imperialism" in spreading the gospel of democracy, free market economies and the "rule of law", all in the name of promoting "human rights"?
8. Do you see a necessary linkage between liberal democracy and human rights? Why or why not? How about the connection between free market economy and human rights — are the two intrinsically bound? The rule of law and human rights? Do you agree that "all stable democracies are based on some version of capitalism"?
9. Do you agree that in developing countries, particularly in the Mid-East, "western style elections are not as important a test for freedom as a just and equitable social and economic system"? For what reason(s) has the U.S. been more reticent in addressing human rights abuses in the Mid-East than in other parts of the world? Would it arguably be in the long-term interest of the U.S. to take a harder line on human rights violations (and what are they?), e.g., in Saudi Arabia, Egypt and Syria; and if so why? Israel (what are they)? Would you be willing to argue that our traditional "hands off" policies, vis-a-vis the Islamic Mid-East, is the right approach and if so why; if not, why not?
10. Do you agree with Jim Baker (Reagan's Secretary of State) that "democracies are more likely to open their economies to the world" and that "legitimate democratic governments are more likely to focus on the livelihood of people than on foreign conquest or aggression"? Do you agree that universal democracy would bring good things to most people and likely end international conflict, and that therefore the U.S. should be aggressively marketing democratic governments?
11. Do you agree with a Clinton appointee's view that the interests of the U.S. are "most secure in a world where the rule of law protects both political rights and free market economies?"

12. Does Title VII of the UN Charter justify multilateral (UN) intervention to "preserve international security and order" in cases of economic, social and ecological disruptions, as well as military threats?
13. Would you agree with David Forsythe that the U.S. may not claim itself a "social democracy" since it "does not recognize socio-economic human rights"? If so, does the unwillingness of the U.S. to endorse the International Covenant on Economic, Social and Cultural Rights hamper its ability to spread the gospel of democracy, rule of law and human rights?
14. Jim Baker (see pp. 543-544, Weissbrodt text) in 1990 opined that there were five major foreign policy challenges confronting the U.S. at that time. What were they are, and how (if at all) are those challenges being met at THIS time? What are the obstacles to promotion of democracy as a foreign policy goal?
15. When is unilateral intervention in the affairs of another country legally permissible?
16. What are some of the ways that Congress can shape U.S. international human rights policy?
17. How effective have economic or diplomatic sanctions been in positively influencing the human rights policies of other countries. How might they be made more effective?
18. What are the arguments for and against legalizing unilateral humanitarian intervention under international law?

Week 6 - Refugees and Asylum Seekers (October 19, 2006)

Readings:

1. *1951 Convention Relating to the Status of Refugees and 1967 Protocol* (in Weissbrodt, et al., *Selected International Human Rights Instruments* (2000)).
2. Pamela Goldberg, *Where in the World is Safe for Me: Women Fleeing Gender-Based Persecution*, Chapter 32 (pp. 345-355), in *Women's Rights, Human Rights*, Peters and Wolper. (1995). CP
3. *Refugee and Asylum Law: Jurisprudence of Human Rights: Cultural Relativism* Chapter 15, pp. 824-876, Weissbrodt text; also, pp. 252-260.
4. Maryellen Fullerton, *The International Protection of Refugees*, Chapter 12 (pp. 245-265), in Hannum text

5. *Current and Future Challenges to Refugee Protection*, Chapter 14 (pp 969-988), in *Refugee Law and Policy*, Musalo, et al., Eds. (1997). CP
6. *Human Rights First, Will U.S. Continue to Grant Asylum to Women Fleeing Domestic Abuse?*, Published in the Washington Post on October 8, 2004 at http://www.humanrightsfirst.org/asylum/asylum_09.htm; and Human Rights First, Who is Rodi Alvarado? http://www.humanrightsfirst.org/asylum/asylum_02.htm

Questions for Consideration

1. Please read and be prepared to discuss (a) Questions 1-5 on pp. 828-829 in the Weissbrodt text, and (b) the following questions dealing with the material in the other readings:
2. What is the test that has to be met in making a successful asylum application?
3. What is the theory behind not allowing “economic refugees” the same privileges as “political refugees”?
4. When faced with waves of Haitian refugees, the United States interdicted the refugees in international waters and returned them to Haiti. What was the alleged justification? Do you believe this practice violated the right to non-refoulement?
5. To what extent can women making a gender-based claim of fear of persecution successfully rely on one or a combination of the five enumerated grounds under the Refugee Convention?
6. Should a woman be able to claim asylum because her country mandates gender based discrimination – for example, where the country dictates that when couples divorce, custody of the children is automatically granted to the father with no determination as to which party is the better parent?
7. What is the difference between a "refugee" and an "asylum seeker"? A "refugee" and an "asylee"? How does one claim "refugee" status, and what are the benefits of so doing?
8. Recently Australian authorities intercepted Indonesian refugees on the high seas (but within Australia's 3-mile territorial limit), then diverted the Indonesians to Palau or some other South Pacific island. Did that interdiction violate international law?
9. Suppose the Indonesian refugees had landed on the Australian north coast, were picked up and then sent to some third country? Suppose they were sent back to Indonesia? Violations of international law?
10. What are “de facto” refugees and to what kinds of protections, if any, are they entitled?

11. What is the ultimate goal of a successful "refugee program"? Put another way, what is the solution to the so-called "refugee dilemma" — and what is that dilemma?
12. The U.S. Congress enacted in 1990 an amendment to U.S. law, creating a new "temporary refugee status" classification. Why, and what were the advantages and disadvantages in being accorded that status?
13. Is someone who is a member of a society or community subject to generalized oppression and/or persecution (e.g., by widespread anarchy and violence, e.g., in Somalia) entitled to claim refugee status? Or people, e.g., Roma (gypsy) in Hungary, oppressed by pervasive poverty and discrimination? Peasants in Colombia caught in a recurrent cross-fire (civil war) between right-wing paramilitary forces and left-wing guerrillas?
14. What are "IDPs", and why don't they qualify for refugee status? What do the IDPs lose by NOT having refugee status? Should they be considered and treated as refugees, and if so, why? If not, why not?
15. If you were going to attack the root causes of the "refugee dilemma", what steps would you take? Put another way, what has given rise to the increasing flood of refugees and IDPs world-wide?
16. In putting together a "repatriation" program, what criteria would you use to determine whether a refugee could go back to his/her home country in "safety and dignity"?
17. In what way does the concept of GLOBAL INTERDEPENDENCE relate to resolving the "refugee dilemma"?

Week 7 - Rights of Minorities and Indigenous Peoples (October 26, 2006)

Readings:

1. *U.N. Draft Declaration on Indigenous Rights* (available on the Internet at <http://www1.umn.edu/humanrts/instree/declra.htm>; Weissbrodt text, pp. 587-588)
2. *Convention on the Elimination of All Forms of Racial Discrimination*, (in Weissbrodt, et al., *Selected International Human Rights Instruments* (2000)).
3. *ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries* (1989) (www.unhcr.org/html/menu3/b/62.htm); also, Weissbrodt text, pp. 584-585
4. Chapters 4 (Minorities) and 5 (Indigenous Peoples) in Hannum, *Autonomy, Sovereignty and Self-Determination: the Accommodation of Conflicting Rights* (1996). CP

5. *Indigenous Law Bulletin, Case of the Mayagna (Sumo) Awas Tingni Community v. The Republic of Nicaragua* (summary) <http://www.worldlii.org/cgi-worldlii/disp.pl/au/journals/ILB/2002/43.html?query=awas+tingni>

6. Weissbrodt text, pp. 578-590 (Santa Clara Pueblo v. Martinez)

Questions for Consideration

1. What is meant by "self-determination"? What did it mean back in 1948 and what does it mean today? The goals of national unity and sovereignty?
2. How do you distinguish "minorities" from "indigenous peoples"? Aren't "indigenous peoples" minorities? Are there rights that indigenous peoples enjoy under the International Bill of Rights that other "minorities" don't have under those instruments, or under the Convention to Eliminate all forms of Racial Discrimination; and if so what are they?
3. Is it possible to reconcile the American Indians' quest for preservation of cultural integrity with rights guaranteed under the International Covenant on Economic, Social and Cultural Rights?
4. Were you an indigenous person would you strive harder for ratification by your home country of ILO Convention 169 or the UN Draft Declaration on the Rights of Indigenous Peoples?
5. What do you think is more important to an indigenous community: land rights or the right to self-determination? Explain.
6. What is the Awas Tingni case about (what are the basic facts) and what does the case stand for? Did the Inter-American Court of Human Rights in reaching the result in the case rely more on Nicaraguan law or the Inter-American Convention of Human Rights? Do you think American Indian tribes will be able to reap benefits from the decision? Explain.
7. Do you see a conflict between Article 4 of CERD, requiring state parties to declare illegal and prohibit organizations and activities that promote or incite racial discrimination, and the 1st amendment (free speech) of the U.S. Constitution?
8. How can the right of Indigenous Peoples to self-determination be reconciled with the right of the State to territorial sovereignty?
9. What are some of the arguments raised by states against the right to self-determination?

10. When business interests and maximum growth development policies come into conflict with indigenous rights, how should the conflict be resolved?

Week 8 - Rights of Women and Children (November 2, 2006)

Readings:

1. *Convention on the Elimination of All Forms of Discrimination Against Women, and Optional Protocol to CEDAW, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.* (in Weissbrodt, et al., Selected International Human Rights Instruments, (2000)).
2. Christina M . Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts in Human Rights Quarterly* 1994 (Vol. 16), pp. 741-755.
3. Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, Chapter 3 (pp. 533-558) in *Human Rights of Women, National and International Perspectives*, Cook, Ed. (1994). CP
4. Amnesty International, *Child Soldiers, Criminals or Victims?* AI Index: 50/02/00 <http://web.amnesty.org/ai.nsf/Index/IOR500022000?OpenDocument&of=THEMES\CILDREN+JUVENILES>
5. LaShawn R. Jefferson, *Refusing to Go Away: Strategies of the Women's Rights Movement Human Rights Dialogue* 2.10 (Fall 2003) available at <http://www.carnegiecouncil.org/viewMedia.php/prmID/1060>
6. **Human Rights Watch, Briefing to the Special Envoy for the Abducted Children in Northern Uganda** (Feb. 27, 2003); and **The Death Penalty and Juvenile Offenders** (Feb. 27, 2003) both available at http://hrw.org/doc/?t=children_pub&document_limit=20,20
7. Hillary Charlesworth, *Human Rights as Men's Rights*, 103-113, in *Women's Rights, Human Rights*, Peters and Wolper, eds., (1995) CP
8. Weissbrodt text, pp. 786-794; 851-858; 869-871; 877-878; also, 63-65; 128

Questions for Consideration:

Questions Pertaining to CEDAW

1. Does CEDAW add to the protections provided women under the Universal see, e.g., ICCPR Articles 23, 26; ICESCR Articles 10)? If so, what provisions (articles) do you consider of particular importance in that regard? Was CEDAW really necessary, and if so, why?
2. It can be said that CEDAW sets forth three different categories of rights for women (apart from economic, social and cultural rights). What are they and where are they found? And are political, economic, social and cultural rights all covered by CEDAW? If so, where (what provisions)? What are those rights?
3. What are the strengths and weaknesses of CEDAW? How effective do you think it is in eliminating discrimination against women? Where does ideological resistance to CEDAW come from? Does that resistance reflect a "cultural divide" on women's rights? Should national customs or norms take precedence over the civil and political rights of women? If Article 16 was stricken, would the divide be closed?
4. What are the different categories of Violence to which women, world-wide, are subject? Is violence proscribed by CEDAW, and if so where? If not, why not? What is the so-called "public vs. private" divide in the conversation about violence towards women; and is it a meaningful distinction?
5. What are the structures in the UN that monitor the protection of women's rights?
6. Do women's rights require special protection?

B. Questions Pertaining to the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict)

1. What would you characterize as the three worst infringements on the rights of children, and are they addressed in the Convention? If so, where and how?
2. Given the protection of children in the International Bill of Rights (see, e.g., ICCPR Articles 2, 6, 10, 14, 24; ICESCR Articles 10, 12, 13) was the Convention of the Child really necessary? What did it add to the rights of children, i.e., what provisions of the CRC are particularly important to the collection of children's rights?
3. What are the three basic tenets of the "children's rights movement", and are they internally consistent? Explain.
4. With respect to the involvement of children (those under 18) in armed conflict: how does one reconcile the need to promote the "best interest of the child" with the competing international demand for accountability of persons perpetrating war crimes, crimes against humanity, torture and/or genocide?

5. Are the "due process" rights of a child subject to "criminal" punishment the same as those of any adult criminal defendant? Greater? See Articles 37, 39 and 40, CRC.
6. Why is the U.S. not a party to the Convention on the Rights of Children?
7. How might the CRC be strengthened?

Week 9 - Humanitarian Law and Transitional Justice (November 9, 2006)

Readings:

1. Skim the Geneva Conventions of 1949 relative to the treatment of prisoners of war (III), and relative to the treatment of civilians (IV), and the 1977 Additional Protocols, available at <http://www.ohchr.org/english/law/index.htm> (scroll down to Humanitarian Law); also, Weissbrodt, text, Chapter 1, at pp. 21-22,
2. Hans Peter Gasser, *International Humanitarian Law Excerpt from Human Rights Defender's Training Manual, Diplomacy Training Program* (February 2001). (Available at <http://beta.austlii.edu.au/au/other/HRLRes/2001/7/>)
3. Chapter 3 *Crimes against Humanity*, (pp. 46-79)[SKIM]; Chapter 4 War Crimes (pp. 80-103) [SKIM]; Chapter 5 Other Humanitarian Abuses (pp. 114-115, 117-124); and Chapter 10 Non-prosecutorial Options (pp. 228-240), in *Accountability for Human Rights Atrocities in International Law*, Ratner and Abrams Eds. (2001).
4. John Cerone, *Status of Detainees in International Armed Conflict, and their Protection in the Course of Criminal Proceedings* January 2002 American Society of International Law, ASIL Insights. Available at <http://www.asil.org/insights/insigh81.htm> [SKIM]
5. Rhonda Copeland, *Gendered War Crimes, Reconceptualizing Rape in Time of War* Chapter 21 (pp. 197-214), in *Women's Rights, Human Rights*, Peters and Wolpers, Eds. (1995). CP
6. *Human Rights First, Supreme Court Hears Cases of U.S. Citizen "Enemy Combatants"* April 28, 2004, http://www.humanrightsfirst.org/us_law/inthecourts/supreme_court_padilla.htm and Human Rights First, The case of Yasar Hamdi, http://www.humanrightsfirst.org/us_law/inthecourts/supreme_court_hamdi.htm
7. Weissbrodt text, pp. 291-297; 352-357; 371-375; 377-380; 446-451.

Questions for Consideration

1. Who can be bound by the Geneva Conventions?
2. Has the concept of sovereignty changed since the Nuremberg trials?
3. Does the rationale for having a separate scheme for internal vs. international conflicts under the Geneva Conventions still make sense or should it be abandoned?
4. What are the advantages and disadvantages of a prosecutorial tribunal versus a truth commission, and in what situations might one option be more preferable than the other?
5. What influences has the field of international human rights had on the development of humanitarian law?
6. Why do you believe that gender violence largely escaped sanction prior to the development of the Ad Hoc Tribunals?
7. What U.S. Constitutional protections, if any, must the U.S. provide to captured enemy terrorists? Under the Geneva Conventions?
8. Which of the defendants in the scenarios below can be tried for Crimes Against Humanity? For any that you believe could NOT be charged with Crimes Against Humanity, be prepared to explain why not.
 - a. During the course of hostilities in former Yugoslavia, a captain in the JNA, acting on orders from his superiors, rounds up the inhabitants of a Muslim community in Bosnia, interns them in a concentration camp and forces the men to act as slaves and the women to become sexual conscripts.
 - b. During the course of the Yugoslavian conflict, a unit from the JNA attacks a Bosnian Territorial Defense Unit. After a brief battle in which the Bosnians are overpowered, the JNA unit tortures them and summarily executes the commanders.
 - c. During the course of the conflict in Yugoslavia, a Muslim member of a Bosnian Territorial Unit, upon learning that his brother was killed by JNA forces, goes on a one man killing spree, executing a number of ethnic Serbs in the nearest community.

Hypothetical scenarios pertaining to the Geneva Conventions

- a. In 1967 Israel fought the Six Day War against its Arab neighbors. Israel emerged victorious and after the war it controlled territory three times larger than its previous

- borders. After the war Israel had taken possession of the following areas: the Gaza strip from Egypt and the West Bank from Jordanian Control. Egypt had never claimed sovereignty in Gaza but considered it to be part of Palestine as previously constituted, even though Palestine had ceased to function. Jordan did claim sovereignty in the West Bank subject to possible developments in Palestinian self-determination. However, its claim was not generally recognized. Israel contends that the Fourth Geneva Convention is not applicable to the occupied Territories. On what provision of the Convention does Israel claim base its claim of inapplicability? Is Israel's claim valid?
- b. The defendants below are in now in the custody of the International Criminal Tribunal/Yugoslavia (ICTY). You are an advisor to the prosecutors of the Tribunals. Do you advise prosecution for War Crimes?
1. In 1991 During the course of hostilities in the former Yugoslavia, Milan Blaskic, member of the Serbian armed forces, rounds up the men of a town in Bosnia Herzegovina that his unit has captured, tortures them and summarily executes them.
 2. In 1991 during the course of hostilities in the former Yugoslavia, Elic Hrnac an ethnic Serb from Bosnia_Herzegovina enters a predominately Muslim community in Bosnia_Herzegovina, and, along with members of his military unit, tortures and murders the men of this village.
 3. In 1993 during the course of hostilities in the former Yugoslavia, Emir Muslimovic, an ethnic Serb from Bosnia_Herzegovina and member of the Akron's Tigers, a paramilitary group supporting the JNA (Yugoslavian Army) enters a predominately Muslim community in Bosnia-Herzegovina, and forces the men of the community to commit acts of mutilation on one another.
- c. Which of the defendants in the scenarios below can be tried for Crimes against Humanity and/or War Crimes? For any that you believe could NOT be charged with either or both, be prepared to explain why not.
1. During the course of the War in Yugoslavia defendant Milan Blaskic, a member of the Serbian armed forces, raped a number of Muslim and Croat women in a Bosnian town captured by his military unit.
 2. During the course of hostilities in Rwanda, Mr. Ephran Baril, a member of the FAR (Rwandan Army), finds a group of Tutsis seeking refuge in a church. He orders his men to spray the church with gunfire and then sets it afire, killing the Tutsis inside.

Week 10 - Torture and Genocide; Accountability in U.S. for Human Rights Violations Committed Abroad against non-U.S. citizens (November 16, 2006)

Readings:

1. Genocide Convention, Torture Convention (in Weissbrodt, et al., *Selected International Human Rights Instruments* (2000)).
2. *Genocide and the Imperfections of Codification*, Chapter 2 (pp 26-45), in *Accountability for Human Rights Atrocities in International Law* Ratner and Abrams, Ed. (2001)
3. Carin Benninger-Budel and Lucinda O'Hanlon, "Expanding the Definition of Torture", *Human Rights Dialogue* 2.10 (Fall 2003) available at <http://www.carnegiecouncil.org/viewMedia.php/prmID/1048?PHPSESSID=ba0eb47d5e6b8e62b46cf6ce743aa14b>
4. Aida Facio, "How the Seed Was Planted", *Human Rights Dialogue* 2.10 (Fall 2003) available at <http://www.carnegiecouncil.org/viewMedia.php/prmID/1049?PHPSESSID=ba0eb47d5e6b8e62b46cf6ce743aa14b>
5. Weissbrodt text, at pp. 123-125; 186-188, 744-747; 758-759; 1010-1021

Questions for Consideration:

1. Does the forced impregnation of Bosnian Muslims by Serbian forces on the belief that the children will carry their fathers' ethnic identity constitute Genocide?
2. Should Article II of the Genocide Convention defining groups protected under the Convention be expanded to include social and political groups? How adequate is the legal definition of the term "Genocide"?
3. Why do you believe the Clinton Administration was reluctant to label the massacre of Rwandan Tutsis as genocide?
4. Some scholars have proposed revising the Genocide Convention to do away with the Convention's intentionality clause and replacing it with a definition that turns on the volume of mass deaths of a category of persons. What are the advantages and disadvantages to this proposal?
5. Should the term "genocide" be only used in cases in which large numbers of people have been killed, or is there such a crime as "cultural genocide"? For example, could the forced assimilation of indigenous cultures such as the American Indians or

Mexican indigenous groups through laws that prevent them from practicing their religion, teaching in their own languages, etc., constitute genocide?

6. Currently only torture committed by, or at the direction of, a public official is a violation of customary international law. What is the rationale for this?
7. Under what theories can one prosecute a non-state actor for torture?
8. Using the definition of Genocide put forth in the 1948 Genocide Convention, read the following short scenarios and decide whether perpetrators of the crimes described can be charged with Genocide.
 - a. During the civil war in the former Yugoslavia Serbian and Bosnian-Serbian soldiers engaged in a systematic practice of raping Bosnian Muslim women with the intent to impregnate them.
 - b. In 1986 the nuclear power plant in Chernobyl exploded. The people of Chernobyl were exposed to radiation 90 times greater than from the Hiroshima bomb. Radiation specialists predict that the Chernobyl accident will cause 475,000 fatal cancers world-wide, and an equal number of non-fatal cancers. Almost 400,000 people have been forced to leave their homes as a result of the nuclear power plant explosion. Chiefly affected is the state of Belarus where over 70% of the 100 million curies of radiation released fell. Belarus is home to the Hunds, people of Armenian descent who live together and shun modern advances. It is estimated that disease relating to Chernobyl will decimate the Hund population in the next 2 decades.
 - c. During World War II, the Nazis round up all mentally ill and mentally impaired Germans and exterminate them on the grounds that they constitute "life unworthy of life."
 - d. 1970, after oil was discovered under land in British Columbia that had been used as a reservation by the Poti Indian tribe, Canadian officials removed the tribe from the land and relocated them sporadically throughout Saskatchewan and Alberta. While the Indian children had previously been taught part of their classes in their native language on the reservation, there was no instruction in their native language in their new schools. Traditional religious practices that included the use of animal sacrifices and the smoking of marijuana were against the law in the provinces where the Indians had been relocated. Because the population had been scattered, the Indians were unable to reconvene their tribal courts, which adjudicated disputes on the reservation according to Indian tradition.

- e. In 1928 Stalin initiated a program of forced requisition, requiring peasants to turn over their surplus grain. Grain procurement quotas were set at levels that were impossible for the peasants to meet. When they were not met and it was clear that large areas of the country were suffering famine, Stalin placed the blame on the Kulaks, the upper class of most productive peasants, whom he accused of hoarding grain and stirring up opposition to the collectivization of farms.. Kulaks who did not meet their grain quotas were "dekulakized." Dekulakization meant the forced sale of the Kulak's property, and the killing and deportation to the Arctic of millions of Kulaks. On December 27, 1929 Stalin announced the aim of the liquidation of the Kulaks as a class.
- f. In April 1975 the Khmer Rouge seized control of Cambodia. Immediately after taking power the Khmer Rouge emptied the cities and forced millions into the countryside to work on collective farms modeled after the collectives created by China's Mao. The Khmer Rouge's leader, Pol Pot, sought to return to the country to a self-sufficient agrarian society of peasants. The educated elite, including intellectuals, doctors, teachers, businessmen, and students, were systematically executed, as were all persons who held positions in the prior civil government, right down to members of the forestry service.. Up to two million Cambodians are estimated to have died during the time the Khmer Rouge was in power.
- g. After a coup in which the former socialist president Salvadore Allende is killed, Augusto Pinochet installs himself as President of Chile and proceeds to have his security forces found up and execute persons who were supporters of the prior socialist regime.

UNDER THE TORTURE Convention and/or Using the Alien Tort Claims Act:

- h. Members of al- Quada kidnap and torture a British journalist. Several years later the journalist, who has moved to the U.S., discovers one of the torturers living in Denver. He brings an Alien Tort Claims Act suit alleging torture, among other causes of action. Will his torture cause of action stand? What if the journalist sued under the Torture Victims Protection Act?
- i. Kresimir Siladjdizi, a Bosnian Muslim businessman, and several companions, go into a number of Bosnian villages, round up all of the men that they find, and torture and kill many of them. Silajdzic relocates to New York City. One of the victims discovers him in New York and sues Silajdzic under the Alien Tort Claims Act alleging torture and crimes against humanity. Will he prevail on these claims?

- j. Carlos Mendez, a police lieutenant in Mexico City and strong supporter of the PRI, the party that ruled Mexico for 70 years until 2000, kidnaps and tortures Raphael Molinas, a PRD opposition party politician. Assuming Molinas could get jurisdiction over Mendez in the U.S., could he sue him under the ACTA? The Torture Victims Protection Act? Can he submit a complaint under the Torture Convention, assuming that Mexico has ratified the Convention and recognized the competence of the U.N. Committee against Torture to receive individual complaints under Art. 22?
- k. Michael Smith is an American teenager living in Singapore. He goes on a vandalism spree, spray-painting cars and shop windows. He is sentenced to, and receives, 40 lashes with a whip. Can Michael file a complaint against Singapore under the Torture Convention? (Assume Singapore has ratified the Convention and recognized the competence of the Committee against Torture to receive individual complaints under Art. 22).