HUMAN RIGHTS IN INTERNATIONAL & DOMESTIC LAW & INSTITUTIONS
U6142y
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FINAL EXAMINATION

Time Allowed — 24 Hours (Take Home)

This examination consists of 7 pages. Check now to see that your copy of the examination has all the pages.

INSTRUCTIONS:

DO NOT PUT YOUR NAME ON YOUR PAPER. INCLUDE ONLY YOUR CUID NUMBER (AND YOUR SOCIAL SECURITY NUMBER IF IT DIFFERS FROM YOUR CUID NUMBER) ON THE FIRST PAGE OF EACH QUESTION (OR ON EACH PAGE IF YOUR PREFER). PLEASE ALSO INDICATE IF YOU ARE GRADUATING.

RETURN YOUR EXAM ANSWERS TO ROOM 1108 IAB BY 9.00 AM. DO NOT EMAIL YOUR ANSWERS.

There are three questions; answer each of them. Please answer each question starting on a new page. All answers must be written in ink or typewritten. The suggested time for the examination is no more than 8 hours (4 hours for the first question and 2 hours for each of the second two questions). If a question has more than one part, answer all parts. Read the questions carefully and be sure to address your answer to what is asked. Deal with all the genuine issues that you see, and state the issues clearly. If the question asks you to assume certain facts, do so; do not be misled by any similarities to actual situations. If you assume or need to know any additional facts, state what you assume or need to know, but you should focus primarily on the facts that are given.

You should not need to consult any materials other than those listed on the Course Guide. Extra research beyond the assigned readings for the course is strongly discouraged and will not result in a better grade. You should focus instead on the quality of your arguments and the application of human rights norms and standards to the facts as set out in the questions.

Please note that the total word limit is 3,000 words or approximately 12 pages (12 point font, 1.5 spacing). The word limit will be strictly enforced and
points will be deducted from those papers that exceed the word limit by a reasonable margin.

Good luck!

Question I
30 points — 1,500 words (6 pages)

Assume the following:

Bosovo is a semi-autonomous province within the Socialist Federal Republic of Patrislavia, a formerly communist state in Eastern Europe. The population of Bosovo is made up of approximately 2 million Muslim Bosovars, 200,000 Orthodox Patrislavans, and a small number of other religious and ethnic minorities that make up no more than 1% of the total population of the province. The remainder of the population of the Republic of Patrislavia comprises approximately 8 million Orthodox Patrislavans, 1,000 Muslim Bosovars, and a small number of other religious and ethnic minorities that together comprise less than 1.5% of the total population.

The Bosovars are a proud people with a history extending back at least a thousand years. They were under Ottoman rule until the redrawing of international borders following World War I, when their region became part of Patrislavia. They have their own language (Bosovarian) and cultural traditions, and they are devout Muslims. They are further united by at least one shared characteristic — their hatred for the Patrislavians who have, for many centuries, persecuted the smaller Bosovar Muslim minority in Patrislavia. While the Bosovars comprise an ethnic and religious majority group within a distinct territorial region within Patrislavia (i.e., Bosovo), in reality they possess very little political or economic autonomy. The Patrislavians control both the treasury and the legislature in Bosovo. The police force (which comprises mainly Patrislav soldiers) is entirely under the control of the central administration in Utopia, the capital of Patrislavia.

The compulsory school system in Bosovo is also entirely controlled by the Patrislav Ministry of Education, and all children are required to learn Patrislavian history and language. Accordingly, the teaching of Bosovarian history or culture, or the teaching of Bosovarian itself, is expressly prohibited in all schools by legislation. In a desperate attempt to preserve their own faith and culture, the leaders of the Bosovar Clerical Council have issued their own regulations prohibiting Bosovarian children from following any religion or faith other than Islam. Any child found to be following Orthodox, Protestant, Catholic or Jewish faiths faces serious penalties (as do their parents). Any child found associating with any “dangerous sects”, such as the Mormons or the Jehovah’s Witnesses, or adopting atheistic beliefs, is deemed an apostate and is subject to
the penalties prescribed for hodud offences under shari’a law (the most serious of offences in Islamic law).

Given this situation of prolonged repression, a group of nationalistic Bosovars formed in early 1992 calling themselves the “Bosovar Liberation Front” (the “BLF”). The BLF seeks to obtain independence and autonomy from Patrislavia and, by mid-1992, is beginning to gain increased support within Bosovo. The leader of the BLF, the militant cleric Petros Danchinvar (a flamboyant and enigmatic figure in Bosovarian clerical circles) has made several addresses to his followers calling on the Bosovars to ‘throw off the yoke’ of their oppressors, and to reclaim Bosovo as their own country (naturally with him as their leader). This, he claims, is the will of Allah as revealed in the verses of the Koran to Muhammad. While Danchinvar has been careful to stop short of advocating the use of force in overthrowing Patrislavian rule, his rousing speeches have had an immediate impact on rank and file Bosovars, and there have been reports of young Bosovar “rebels” taking up arms and firing on Patrislavian policemen. The most recent reports from the northern part of Bosovo claim that three high-ranking Patrislavian officers in the police force have been assassinated and their police station torched by an angry mob of Bosovar militant “guerillas”.

In response to what is perceived to be an escalating “fundamentalist threat” in Bosovo, the President of Patrislavia, Stephan Markosovic has decided to act quickly and decisively. He issues an official decree prohibiting public speeches or press reports that in any way advocate the independence of Bosovo or that threaten the “constitutional integrity or safety of Patrislavia”. The decree also prohibits Bosovars from attending mosques for worship or from assembling in groups of more than twelve in any public place.

With the situation in Bosovo steadily deteriorating, Markosovic finally decides on September 14, 1992 to declare a state of emergency. Pursuant to Article 85 of the Patrislavian Constitution, he officially proclaims that he is taking this action in order to save the integrity of greater Patrislavia from the threat posed by the BLF militants. He orders the police to arrest Danchinvar (whom he sees as the prime instigator of the unrest), forcibly remove him from his mosque, and detain him for an indefinite period in a high security prison in Utopia. He orders the authorities keep Danchinvar in solitary confinement until such time as the “Bosovo question” is resolved. In prison, the Patrislavian secret police repeatedly beat and psychologically abuse Danchinvar in an attempt to discover the headquarters and military bases of the Bosovar rebels deemed responsible for terrorist activities directed against Patrislavian personnel and property.

At the same time, Markosovic, his generals and his chief political advisors begin to implement a long-term plan for a “Greater Patrislavia”. The policy is to establish a homogenous Patrislavia (that is, an ethnically pure Patrislav state) comprising “all the areas where Patrislavs live”, this being the “first and fundamental duty of all Patrislavs”.

The objective is to ensure that the “borders of the de facto Patrislav lands should be set with only Patrislav population left inside” and “particular attention should be paid to the speedy and radical cleansing of the cities and to their repopulation with fresh elements”. The directive is clear: “cleanse the territory of the state from all minorities and non-national elements”. Already there are preliminary reports of Patrislav soldiers forcibly removing Bosovars from their dwellings and their homes being incinerated. There are also rumors circulating of “death squads” and temporary “concentration camps” being established in more remote villages in those parts of Bosovo that most closely neighbor Patrislavia.

For the purposes of this problem, you can assume that Patrislavia is a Member of the United Nations and is a party to the International Covenant on Civil and Political Rights (the “ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”). Patrislavia is also a party to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the “CAT”) and the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”). Patrislavia has entered no reservations to any of these covenants. While Patrislavia is also party to the European Convention on Human Rights, and is subject to the entire European system for protecting human rights, you should not discuss the regional dimensions of this problem.

Part One — 15 points (750 words; 3 pages)

You are an independent human rights expert employed by the Commission on Human Rights in Geneva. You have just received an urgent joint Memorandum from the Chairperson of the Commission, the Chairperson of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the High Commissioner for Human Rights detailing the facts set out above. They are extremely concerned about the reports coming out of Bosovo and they ask you to prepare a concise but comprehensive report that provides an analysis of the human rights situation in Bosovo.

In particular, they want to know whether the actions of the Patrislavian government are consistent with Patrislavia’s obligations under the ICCPR and CAT? In addition, they seek your advice on whether the situation in Bosovo gives rise to any minority rights issues under the ICCPR (and any other declarations or covenants dealing with minority and group rights)? Finally, they seek your advice as to the relevance of the declaration of a state of emergency by Markosovic to the legality of the government’s actions under international human rights law after September 14, 1992.

Part Two — 10 points (500 words; 2 pages)
The Commission on Human Rights has also received an urgent request for advice from the Secretary-General of the United Nations and the Deputy Secretary-General for Human Rights and Humanitarian Affairs. They too are deeply concerned by the situation in Bosovo. Their concern is the claim by the Bosovars for some measure of independence from Patrislavia. They seek your advice as to whether the Muslim Bosovars have a right to self-determination under international human rights law, and what the implications of this right might be for the future of Patrislavia (and neighboring countries)? In particular, does this right give the Bosovars a right to secede from Patrislavia or does it merely require the Patrislavs to enter into some form of power-sharing arrangement with the Bosovars that guarantees effective democratic participation in Bosovo?

Part Three — 5 points (250 words; 1 page)

Assume now that you are an advisor on the staff of the U.S. Permanent Mission to the United Nations. Given the escalating situation in Bosovo, the Chief Legal Counsel of the Mission has asked you to brief him on the human rights situation in Bosovo under international human rights law. Given the urgency of the situation, and with full knowledge of the complexity of the issues involved, he only wants you to prepare 1 page of general comments (that is, not including any details or examples) that inform him on the legal position and the options for action.

Specifically, he seeks your advice as to (a) whether the U.S. should bring this situation to the attention of the Security Council or (b) whether the U.S. should refer the matter to the Commission on Human Rights? You are asked to state under what circumstances this matter will be considered by the Security Council and what actions it can, and notwithstanding the high possibly of a veto, should take. If the situation is handled exclusively by the Commission, what are their alternatives for action and what, in your view, would be the best course for the Commission to take or the best procedures to activate? What is the relevance of the Genocide Convention to both (a) and (b)?

Question II
15 points — 750 words (3 pages)

In last week’s *New York Review of Books*, Michael Ignatieff states in his article “Human Rights: The Midlife Crisis” that:

Fifty years after its proclamation, the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a “worldwide secular religion.” U.N. Secretary General Kofi Annan has called the Declaration the “yardstick by which we measure human progress.” Nobel Laureate Nadine Gordimer has described it as “the essential document, the touchstone, the creed of humanity that surely sums up all other creeds
directing human behavior.” Human rights has become the major article of faith of a secular culture that fears it believes nothing else.

Another commentator on Human Rights has written:

The approaching fiftieth anniversary of the proclamation of the Universal Declaration of Human Rights promises a flood of congratulatory effusions but little sober appraisal and stocktaking. Scholars, advocates, as well as citizens, in all countries, might do well to recall the purposes and hopes of 1948, and then take inventory of the condition of human rights at the end of the millennium. Were the hopes too ambitious? Can we expect better in the next half-century?

The instrument proclaimed in 1948 was denominated a “Universal Declaration” of Human Rights; did that denomination describe a fact or only proclaim a hope, and has that hope been realized in any significant measure? Have the 50 states of 1948, or the 190 states of 1998, taken “progressive measures, national and international, to secure [the] universal and effective recognition and observance” of the rights in the Declaration? Have all the declared rights been recognized and have they flourished, or have some rights withered? Are not important human rights missing from the Declaration?

Some have acclaimed the Universal Declaration as the most important international instrument of our times; what in fact has been its importance?

Based on the knowledge that you have gained in this course (particularly those parts of the course that considered “the idea, the conceptual foundations, the history and theory of human rights”, as well as the perceived conflict between “universalism and cultural relativism”), address both comments critically, identifying the principal themes and tensions raised by each quote, indicating where you agree and disagree, and answering the second author’s various queries (whether you think that they are interrogatory or rhetorical).

Question III
15 points—750 words (3 pages)

Sudan is a north African state in which the practice of female circumcision or female genital mutilation (“FGM”) is practised. The most extreme form of this practice “infibulation” or “pharanoic circumcision” involves amputation of the clitoris, the whole of the labia minora, and at least the anterior two-thirds and often the whole of the medial part of the labia majora. The two sides of the vulva are then stitched together with silk, catgut or thorns, and a tiny sliver of wood or a reed inserted to preserve an opening for
urine and menstrual blood. The girl’s legs are usually bound together from ankle to knee until the wound has healed, which may take anything up to 40 days. Initial circumcision is carried out before a girl reaches puberty, the age range being anywhere from one week to 14 years. It is carried out by older, well-respected women in villages on the request of girls’ mothers.

Formal legislation forbidding infibulation exists in Sudan (a law was first enacted in 1946 that allows for a term of imprisonment of up to five years and/or a fine). However, it is not an offence under Article 284 of the Sudan Penal Code of 1974 “merely to remove the free and protecting part of the clitoris”.

Assume the following:

Sudan wishes to become a party to both the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and the Convention on the Rights of the Child (“CRC”). In deciding whether and how to ratify these two conventions, the Sudanese government has sought the advice of its own international lawyers who work for the Sudanese Department of Foreign and International Affairs. They have advised the government that Sudan should be careful to ratify CEDAW and the CRC subject to the following reservation (which, for the sake of convenience, they have expressed as a reservation applicable to both conventions):

Sudan is a country of diverse peoples and diverse religious and cultural traditions. While Sudan accepts the legal obligations set forth in the Conventions, it does so only to the extent that those obligations do not conflict with well-established and widely accepted cultural and religious traditions and laws in Sudan. Sudan further understands that by their terms the Conventions require regulation of private conduct, in particular under Articles 2, 3 and 5 of CEDAW. Sudan does not accept any obligation under the Conventions to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of Sudan.

For the purposes of this problem, you are not required to look at any conventions other than CEDAW and the CRC. Of course, you may wish to consult materials relevant to these two conventions, such as the General Recommendations of the CEDAW Committee contained in Steiner & Alston.

Part One — 5 points (250 words; 1 page)

You are working for an international NGO whose mandate is to combat FGM practices in Sudan and other north and west African states. Assuming that Sudan has entered no reservations to CEDAW or the CRC, outline briefly how these two conventions apply to this situation and what actions or measures these international
obligations require the Sudanese government to take in the case of FGM. What do you consider to be the main strengths and weaknesses of CEDAW in relation to the practice of FGM in Sudan? State briefly whether you support recent moves to use individual complaints procedures under CEDAW, and what form (if any) they should take to be effective in cases such as this. Would you engage the Special Rapporteur on Violence against Women?

Part Two — 5 points (250 words; 1 page)

Is Sudan’s reservation compatible with the object and purpose of CEDAW (do not consider the reservation to the CRC) and thereby valid under international human rights law? More specifically, (a) to what extent can cultural practices and religious beliefs be used by Sudan to justify non-compliance with the obligations contained in CEDAW; and (b) to what extent is Sudan required to take action against “private” actors and actions that cannot be attributed directly to the “public” state, and to bring such actors directly or indirectly within the prohibitions and obligations contained in CEDAW?

Part Three — 5 points (250 words; 1 page)

Which of a “principled”, “balancing” or “dialogue” approach is best in the case of combatting FGM in Sudan? In framing your answer, consider the following (arguably contradictory) objectives: what would be most effective in practice, what best accords with international human rights law and theory, and what achieves due respect for diverse cultures and practices.