HUMAN RIGHTS IN INTERNATIONAL & DOMESTIC LAW & INSTITUTIONS
U6142y
Spring 2000

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FINAL EXAMINATION

Time Allowed — 24 Hours (Take Home)

This examination consists of six (6) 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 THE INSTRUCTOR AT THE SPECIFIED LOCATION IN 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 approximately 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 in 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.
Good luck and have a great summer break!

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

Assume the following:

In September 1993, a commercial aircraft belonging to a U.S. aviation company was hijacked en route from New York to Nairobi. The passengers on board included citizens from many countries, most of whom were U.S. nationals. The hijackers were identified as members of a specialist guerrilla unit made up of soldiers formerly part of the armed forces of the State of Narnia, a small country in sub-Saharan Africa. The guerrillas were led by a man called Aslan, known across the continent as the “Lion of Africa”, a former General in the Narnian Army. There was some evidence that while Aslan no longer held any military rank in the Narnian armed forces, his break-away guerrilla force was closely linked to the military Narnian Government. For example, the Government was known to support covertly (financially and politically) the guerrillas’ manifesto of maintaining military rule in Narnia and suppressing any pro-democratic dissenters or opposition. The Narnian Government, however, has always denied that Aslan had any official connection with the Government. It has also denied any complicity in, or advance knowledge of, the hijacking.

The aircraft was diverted by the guerrillas to Cair Paravel, a city in the northern region of Narnia. Upon arrival, the guerrillas tortured (by beatings and infliction of grievous bodily wounds) and then executed by public hanging five passengers who were Narnian citizens known to have fled from Narnia to try and gain the support of the international community for the struggling pro-democracy movement in Narnia (all five had been flying from meetings held in New York at a special United Nations summit on human rights in Africa). Aslan appeared via a national broadcast on Narnian television (also controlled by the military Government) and stated that the executions were the just price for seditious traitors and should serve as a warning to both “subversive agitators” within Narnia and to “foreign aggressors” that the people of Narnia would not tolerate any interference with their country’s sovereignty or the military Government’s legitimate rule over the country.

In addition to the executions, the guerrillas held captive the remaining seven Narnian passengers who had been on the flight and also four U.S. nationals all of whom they alleged had engaged in “anti-Narnian” activities over the previous two years by encouraging dissent amongst Narnian citizens and supporting the illegitimate overthrow of the Government. The remaining 180 passengers were released and allowed to return to their countries.

The eleven prisoners were held captive in a secret unmarked building on the outskirts of Cair Paravel where they were subjected to repeated beatings, cramped conditions, almost total darkness, and improperly cooked and infrequent food. They were held in this way until U.S. Government diplomatic efforts were finally successful in
securing their release at the end of 1999. In exchange for certain undertakings and political compromises, the Narnian Government agreed to intervene and compel the guerrillas to release the prisoners. By then, however, three of the prisoners had died (two Narnian nationals, and one U.S. national all died during 1998). The remaining eight prisoners had also become severely ill during their almost six years in confinement as a result of the harsh and unsanitary conditions, many suffering from intestinal diseases, muscular atrophy and complete mental breakdown.

After securing the release of the remaining prisoners, the U.S. authorities indicted Aslan charging that he was responsible for hijacking a U.S.-owned aircraft, kidnapping and holding hostage U.S. nationals and committing an array of related serious criminal offences. Pursuant to an extradition treaty between the United States and Narnia, the U.S. authorities have requested the extradition of Aslan to the U.S. for trial under U.S. law. The Government of Narnia has refused to extradite him on the ground that, if convicted of the offence of murder, he might be subject to the death penalty by electrocution, after spending many months on death row.

The families of the five Narnian victims who were executed and the two who died while being held prisoner by the guerrillas have subsequently been allowed by the Narnian emigration officials to travel to the U.S.. In conjunction with the family of the U.S. victim who died while being held captive, these families – together with all the surviving prisoners – have formed an informal “Association” to “pursue justice by all available means” in the circumstances.

The Association has approached the Center for Justice and Human Rights, a U.S.-based non-governmental organization dedicated to the values indicated in its name. In a preliminary discussion, the representatives of the Association have declared that in their pursuit of justice they seek the severest possible punishment for General Aslan and his guerrillas, public exposure of any government implicated, as well as money damages for the wrongful death and torture of their kin.

You are a representative of the Center for Justice and Human Rights who has been approached for advice by the Association. You are obviously sympathetic to the demands of justice but you are equally sensitive to the human rights of all parties involved and the demands of both national and international law. You decide to prepare a Memorandum addressing the feasibility as a matter of national and international human rights law of each of the measures proposed by the Association (as to the details of which, see further below).

You should note before commencing your Memorandum that the State of Narnia is a member of the United Nations. It is party to the International Covenant on Civil and Political Rights and its two Protocols; the Convention against Torture, as well as the African (Banjul) Charter on Human and Peoples’ Rights.

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

The Association first propose that Aslan be tried under U.S. criminal law for terrorist acts (more precisely, the hijacking of an aircraft), extra-judicial killing (murder)
and torture. If Narnia will not surrender him for trial, the Association wish for Aslan to be seized forcibly (presumably by U.S. officials or some private persons) at the earliest opportunity and brought to trial.

In proposing these actions, the Association seeks your advice on two sets of questions. First, issues of procedure: (a) Does the U.S. have jurisdiction to try Aslan for any of these offences in a U.S. court? (In addressing this issue, you may wish to consider pages 1021-25 of Steiner and Alston.) (b) If the U.S. can exercise jurisdiction, and proceeds to seek personal jurisdiction over Aslan under the U.S.-Narnia Extradition Treaty, does Narnia have any valid argument under international human rights law to refuse extradition? (c) If Narnia does have a good argument and refuses to extradite Aslan, and some U.S. officials or private persons decide to forcibly seize him and bring him to trial in the U.S., would this action give rise to any violations of international human rights law? What would a U.S. court say in these circumstances in relation to the U.S.’s international obligations? (Note that the Association do not want you to consider any legal issues that may arise under the U.S. Constitution on these questions. They have hired a law firm for that purpose. They only want you to advise them on the international human rights dimensions of these actions).

Second, the Association seeks your advice on the likely merits of any action that may be brought against Aslan in a U.S. court. The Association is confident that if the U.S. is able to obtain valid personal jurisdiction over Aslan and the matter proceeds to trial, he will be found guilty of the crimes of unlawful seizure of a U.S.-owned aircraft and murder (at least for the death of the U.S. national). The Association is further obtaining criminal law advice on whether Aslan would be guilty of murder under U.S. law for the deaths of the seven Narnian nationals, and they have not asked you to consider this question either.

The Association is uncertain, however, whether Aslan may be found guilty of the crime of torture under U.S. law. They have heard about the recent Pinochet case in the United Kingdom but they are unclear what that case may mean in relation to any trial of Aslan in the U.S. for torture. They are particularly confused about how conventional and customary international human rights law may apply to these facts. Accordingly, they seek your advice as to whether any of the acts performed by the guerrillas against any of the Narnian or U.S. nationals may render Aslan guilty of the crime of torture under U.S. law?

In drafting your advice on the likely merits of such an action, please note the following two points: (1) Before proceeding to ratify the Torture Convention, the U.S. enacted the Torture Convention Implementing Legislation which is discussed on page 806 of Steiner and Alston. You can assume that this occurred in August 1994. For the purposes of this problem you can also assume that the definition of “torture” under that criminal legislation is identical to the definition of torture in Article 1 of the Torture Convention set out on page 71 of the Red Basic Documents Book. (2) All the information that you require to answer this part of the question was either discussed in class or is in the assigned readings (including, of course, the materials that you have read regarding the recent Pinochet case).
Part Two — 10 points (500 words; 2 pages)

The Association second propose that a civil suit should be instituted against Aslan as well as against the Government of Narnia to recover money damages for both wrongful death of the eight passengers killed by the guerrillas and for the torture of all the passengers held prisoner by the guerrillas.

The Association have heard about the Alien Tort Statute and the Torture Victim Protection Act and they seek your advice on how these may apply to the acts committed by the guerrillas against the passengers. Will these two statutes apply in different ways?

As a part of your advice, the Association direct you to address two concerns: (a) In relation to any action that may be brought against the State of Narnia itself, the Association seek your advice about the potential effects of the so-called Act of State and Sovereign Immunity doctrines. (b) In relation to any action that may be brought against Aslan, the Association seek your advice on whether Aslan was committing “official torture” or whether he will be regarded instead as a “non-state” actor, and what relevance this may have for any action brought under the legislation referred to above.

In answering this part, you can assume that the U.S. has obtained valid jurisdiction over Aslan.

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

The Association finally propose that complaints should be brought against the Government of Narnia as well as against Aslan before some appropriate international body. The Association therefore seek your advice as to the best strategies for pursuing justice against Narnia and Aslan at the international level. In particular, they have heard about the Human Rights Committee and the African Commission on Human Rights, but have no idea how these institutions may be of assistance to them here. What do you advise?

Question II
15 points — 750 words (3 pages)

Rosalyn Higgins in PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT (1994) at 96 makes the following comment:

It is sometimes suggested that there can be no fully universal concept of human rights, for it is necessary to take into account the diverse cultures and political systems of the world. In my view this is a point advanced mostly by states, and by liberal scholars anxious not to impose the Western view of things on others. It is rarely advanced by the oppressed, who are only too anxious to benefit from perceived universal standards. The non-universal, relativist view of human rights is in fact a very state-centred view and loses sight of the fact that human rights are human rights, and not dependent on the fact that states, or groupings of states, may behave differently from each other so far as their politics, economic policy and culture are concerned. I believe, profoundly, in the universality of the human spirit. Individuals
everywhere want the same essential things: to have sufficient food and shelter; to be able to speak freely; to practise their own religion or to abstain from religious belief; to feel that their person is not threatened by the state; to know that they will not be tortured, or detained without charge, and that, if charged, they will have a fair trial. I believe there is nothing in these aspirations that is dependent upon culture, or religion, or stage of development. They are as keenly felt by the African tribesman as by the European city-dweller, by the inhabitant of a Latin American shanty-town as by the resident of a Manhattan apartment.

Comment critically on Higgins’ comment, indicating where you agree or disagree, and citing examples from your readings during the course.

Question III
15 points—750 words (3 pages)

The International Center for the Promotion of the Dignity of Women (ICDW) is an international non-governmental organization with headquarters in Geneva, Switzerland. Its Board of Directors has decided to mount a campaign to alleviate the condition of “battered women”, principally wives subjected to gross physical abuse by their husbands. As part of that campaign, ICDW will seek to establish local branches in selected countries, which would seek to promote the ICDW campaign by exploiting opportunities offered by domestic law as well as by international human rights law and institutions.

Among the countries targeted by the Board of Directors is Patria, a developing country in which wives have traditionally been subject to strict control and abuse. Preliminary exploration by ICDW staff, and consultations with local human rights activists in Patria, have indicated that

(a) the Constitution of Patria protects “privacy, family and home” and includes a provision copied from Article 16(3) of the Universal Declaration of Human Rights;
(b) the laws of Patria explicitly exclude violence between spouses from both the tort law of assault and the law of criminal assault; and
(c) the authorities of Patria would probably refuse to permit the establishment of a local ICDW branch.

The ICDW Board sees, however, some hope for its cause in that Patria has been seeking to improve its human rights image and has become party to the international human rights covenants and the principal human rights conventions (including CEDAW).

You are a human rights expert working at ICDW.

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

A request by ICDW for permission to establish a branch office in Patria has been denied on the ground that its activities and its publications would contravene local
 Traditions and morality, and would be inimical to public order. You have decided to challenge that decision in the Patria courts, raising (amongst others) objections under international human rights law which, under Patrian law, is the law of the land.

Outline your argument.

Part Two — 10 points (500 words; 2 pages)

Patria’s Minister of Justice has agreed to meet with you. You plan to leave with the Minister a brief Memorandum setting forth Patria’s obligations under international human rights law (as you see them), including the steps it must take to prevent, deter, punish, and otherwise protect women against gross physical assault by their husbands.

Outline your Memorandum.

END OF EXAMINATION