LGST 224 HUMAN RIGHTS AND GLOBALIZATION FALL TERM 2009 -- BACKGROUND INFORMATION AND TENTATIVE SYLLABUS

Description and Course Requirements:

This course examines the problems involved in applying international human rights law to international business, with a special focus on how human rights impact the operations of transnational corporations (TNCs). These problems are placed in the general context of the globalization forces that are altering the landscape in which business and governance functions are carried out.

The Global Compact adopted by the UN in July 2000 provides one impetus for studying this topic. This innovative UN agreement is designed to bring TNCs into the UN system and to establish universal standards to guide their operations around the globe. Setting up this compact involved input from a variety of constituencies, including UN officials, executives from fifty major TNCs, unions, and NGOs. The compact stipulates that the companies will henceforth adhere to universal standards in the area of human rights, labor -- a subset of human rights, and the environment. Many TNCs have subsequently joined the compact. The compact was followed by the 2003 UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, which provide in the first article that: Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

TNCs being recognized by the UN as actors with an important role in the international human rights system; they are now being invited to participate with other players at the UN in developing the human rights standards. This innovation means a dramatic breakthrough; international law has traditionally been made by and for governments of nations. Many applaud this development, believing that it is high time for the UN to acknowledge the enormous power and influence of TNCs, which far exceed the wealth and power of most UN member states, meaning that TNCs have greater potential to impact human lives and welfare than do the policies of all but a few nations.

Meanwhile, other developments are pointing in the direction of imposing human rights criteria on TNCs' operations. For example, frustrated at the lack of clear legal authority to guide them in their international operations, many TNCs have decided to incorporate human rights principles in their own corporate codes of conduct. Other constituencies like shareholders and human rights activists have similarly pressed TNCs to conform to human rights. Various lawsuits have been brought that have attempted to hold TNCs liable for human rights violations. TNCs have shown an increasing sensitivity to the harm that implication in or association with human rights violations can mean for them.

These UN initiatives remain controversial; many insist that TNCs should not take on what they see as being essentially public governmental functions. Objections are made to the effect that TNCs are meant to be profit-making entities and, as such, should not be trying to carry out a human rights agenda as part of their business. Furthermore, whether the incorporation of TNCs as members the UN human rights system will be a plus or a minus for international human rights law is debatable, as is the question about whether requiring human rights compliance serves the interests of capital exporting countries at the expense of the interests of emerging economies. Governments in emerging economies may see requiring compliance with international human rights law as a threat to their national sovereignty and/or to their chances for achieving rapid economic progress. On the other hand, persons in emerging economies who are harmed by TNCs' operations may demand that TNCs be exposed to sanctions for non-compliance with human rights law.

Conflicting perspectives on the pros and cons of requiring TNCs to conform to human rights standards will be examined in this course. Skeptical assessments of the merits of imposing human rights obligations on business will be discussed, as will positions taken by those favoring this development.

In sum, with the 2000 UN Global Compact and the 2003 UN Norms on the Responsibilities of Transnational Corporations having moved debates about TNCs' responsibilities vis-a-vis international human rights law from the theoretical to the practical level, it becomes urgent to understand how international human rights law can apply to business. This course attempts to equip students to study the problems in this area and to formulate their own conclusions about this controversial topic.

Course objectives:

The course aims to provide students with the background to think critically about both the legal and policy implications of requiring business to comply with international human rights law.

Students should come away from this course with a grasp of relevant international human rights principles, typical scenarios where issues of human rights and globalization have been raised and the particular problems that these have presented, the historical context that shapes perceptions of these problems, the programs of institutions and groups that are pressuring TNCs to adhere to international human rights law, the controversies that these have engendered, the range of responses on the part of various TNCs, and lawsuits based on the theory that TNCs are liable for noncompliance with human rights.

Course pack and other assignments:

The assigned readings will be found in the course pack, which will be assembled in several parts and will be available at Wharton Reprographics, and in numerous handouts

that will be distributed in class. In addition, students may be asked to consult various Internet websites. The materials listed on the syllabus may be updated and the topics altered to reflect current developments and new publications.

Potential modifications of/additions to listed assignments:

The assignments listed on the syllabus should be regarded as tentative. Because we are discussing current developments and new materials are constantly appearing, we may need to add current subjects and/or substitute newer materials during the semester. Students will be told well in advance if new readings will be substituted for those currently on the syllabus. Depending on what materials are added and the length of class discussions, we may well fall behind schedule proposed on the syllabus, meaning that materials listed at the end of the syllabus may not be covered.

Course prerequisites:

Junior or senior standing or the special permission of the professor. Previous training in law or international business is definitely not required. Excellent verbal skills -- including the ability to read easily with good comprehension and to communicate ideas clearly and effectively -- are essential in this course!! Please do not take this course if your verbal skills and/or your English vocabulary are in any way deficient!

Format:

A combination of lectures and discussions will be used. Students will be expected to come to class prepared for discussing issues raised in the materials and any problems that the professor has assigned. The quality of classroom participation will be counted in the course grades.

Grading:

Grades will be calculated with the midterm counting 40% and the final 50%. Class participation will count 10%. If the class prefers take home exams, this may be accommodated. In past semesters, the take home format has been preferred. It is important for students to be mindful of the fact that the professor is committed to upholding the Penn Code of Academic Integrity and that any breaches will be referred to the Penn Committee on Student Conduct.

Optional project:

With the advance approval by the instructor, students may write papers assessing problems of human rights and international business. The papers must be problem-oriented assessments that are based on original research and offer reasoned conclusions about the problems being assessed. Students should consult the separate handout on the paper option. To get a project approved, by the end of the fourth week of the semester, students wanting to do papers must submit outlines of their proposed papers with a specific listing of the sources that will be utilized. Under no circumstances should students proceed without getting the professor's approval. The completed paper must be turned in by the last day of class, or it will be graded down one full grade. When students submit the optional project, the course grade will be based on an adjusted version of the normal scheme, with the paper counting for 30% of the course grade, the midterm 30%, and the final exam 30%. Consult the professor about any questions pertaining to the project and for more details about the format.

The importance of student input:

Students' inputs are valued and are strongly encouraged. Feedback from class members will be welcomed at all stages! Useful ideas for improving the course and enhancing the learning experience are solicited. If class members decide that a current development not on the present syllabus deserves attention, this can be taken into account. Among other things, when students identify informative source materials, websites, and speakers, they are invited to bring these to the attention of the class and the professor. Students who have relevant experience with human rights and globalization are likewise urged to share what they have learned.

UNIVERSITY OF PENNSYLVANIA
The Wharton School
Fall 2009
LG ST 224 – Dr. Ann Mayer

Human Rights and Globalization

Syllabus

Sessions 1-2. Historical background of discussions on the relationship of the West with the developing world. Western imperialism and its historical legacy. A case of egregious abuses by European business ventures in Africa in the era before international human rights law. A current case that exemplifies how similar issues persist.

A notorious case from the late nineteenth century and present day parallels. The infamous schemes of King Leopold of Belgium (ruled 1865-1909) to extract maximum profits from trade and investment in the Congo. Related patterns of exploitative business practices by Europeans becoming historically associated with European colonialism/ imperialism and with treating "natives" as less than full human beings. The scandalized responses in the United States and Europe to the exposes of how Belgians abused Africans. The impact of journalism, humanitarian investigations, and appeals to Christian morality in an era before the establishment of international human rights law. Comparison with recent exposes of slavery in cocoa production in the Ivory Coast and the reactions to these.

Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa (Boston: Houghton Mifflin, 1998): 115-23, 167-81, 209-13, 235-65, 300-306.

Articles from the June 2001 Philadelphia Inquirer on slavery in cocoa production in the Ivory Coast

Session 3-4. Continuation of previous material. Introduction to international law and its precursor, the law of nations.

The system of international law as it has traditionally been conceived – laws based on the consensus of states and focused on the rights and duties of states vis-à-vis other states. The sources of international law. How this law emphasized issues of broad political concern to the nations of the world and largely sidestepped the conduct of international business operations. Problems of emerging custom and soft law.

Peter Malanczuk, Akehurst's Modern Introduction to International Law, 7th ed (New York: Routledge, 1997): 1-8, 35-39, 42-44, 48-62.

Anthony D'Amato, ed. International Law Anthology (Anderson Publishing, 1994): 73-75, 81-84, 93-94, 148-54.

Session 5-6. International law concerning human rights.

Historical background . Slavery and the slave trade as special problems with international dimensions that were long recognized as falling within the purview of international law. The international campaigns to ban slavery and the slave trade as precursors of current efforts to extend international human rights law to cover international business carried out in emerging economies. The nature of contemporary international law concerning human rights and the reasons for its emergence.

A.Yasmine Rassam, Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade under Customary International Law, 39 Virginia Journal of International Law (1999): 303-09, 316-37.

Jack Donnelly, Universal Human Rights in Theory and Practice (Ithaca: Cornell University Press, 1989): 9-19, 23-27.

Richard A. Falk, A Half Century of Human Rights: Geopolitics and Values in The Future of International Human Rights, Burns H. Weston and Stephen P. Marks, ed., (Ardsley, New York: Transnational Publishers, 1999): 1-15.

Louis Henkin, The Universal Declaration at 50 and the Challenge of Global Markets, 25 Brooklyn Journal of International Law (1999): 17-25.

Session 7-9. Continuation of previous material. Introduction to the principles of economic, social and cultural rights and the right to development.

The dichotomy between civil and political rights, the so-called first generation rights, and second and third generation rights. Do some rights deserve a higher priority than others, or are they all interlinked? Are the rights provided in the second category actually "rights" or more abstract concepts of social entitlements – and what are their implications for the conduct of international business? Is the right to development correctly classified as a "right" – and, if so, what kind of duties should flow from recognizing this right? What does recognizing a right to development potentially mean for international business operating in developing countries?

Henry Steiner and Philip Alston, International Human Rights in Context: Law, Politics, Morals (Oxford: Clarendon Press: 2000): 237-25, 254-60, 265-71, 274, 286-304, 1315-26.

Isabella D. Bunn, The Right to Development: Implications for International Economic Law, 15 American University International Law Review 1425 (2000): 1425-67. Note that in section C, the most important subsections are 3 and 6; the other subsections can be briefly skimmed.

Louis Henkin, The Age of Rights [edited excerpt reprinted in Louis Henkin et al, Human Rights (New York: Foundation Press, 1999): 68-71.

Session 10. Case studies on the new roles of TNCs and related human rights controversies.

Materials on water privatization and controversies over treating access to water as a human right.

Materials on South African anti-AIDS drugs controversies; pressures on governments and TNCs to supply drugs either free or at cost to prevent HIV/AIDS transmission and to treat HIV/AIDS sufferers.

Session 11. The International Labor Organization and its role in setting standards for workers' rights. Special responsibilities for the rights of indigenous peoples.

The mandate of the ILO and the ILO conventions affecting human rights. The role of the ILO, which antedates the UN, as the oldest international institution with a human rights mandate. How setting ILO standards relates to the disputes about the conduct of international business. A particular ILO concern in addition to the world of work: the human rights of indigenous peoples, whose human rights claims now often conflict with business projects.

Class members are encouraged to check the ILO website < www.ilo.org/public > for information on the ILO, rules affecting the world of work, and current projects.

International Labor Organization, in Edward Lawson, Encyclopedia of Human Rights, 2d ed. (Taylor & Francis: Washington DC, 1996): 853-866.

ILO Declaration on Fundamental Principles and Rights at Work – Declaration: Text of Declaration and Reports: Executive Summary

Harry Arthurs, Reinventing Labor Law for the Global Economy, 22 Berkeley Journal of Employment and Labor Law 271 (2001).

Benedict Kingsbury, The Applicability of the International Legal Concept of "Indigenous Peoples" in Asia, in The East Asian Challenge for Human Rights (Cambridge: Cambridge University Press, 2000): 336-70.

Sessions 12-13. The human rights of women and children.

In what ways do the problems of women's and children's human rights warrant separate consideration? How do standards protecting their human rights relate to problems relating to the conduct of business in an era of globalization?

Christine Chinkin, Gender and Globalization, United Nations Chronicle, Online Edition, vol. 37, no. 2, 2000
http://www.un.org/Pubs/chronicle/2000/issue2/0200p69.htm

Barnali Chaudhury, The Façade of Neutrality; Uncovering Gender Silences in International Trade 15 William & Mary Journal of Women & Law (2008):113-159.

Selections from Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean, Kamala Kempadoo, ed. (Lanham, Md.: Rowman and Littlefield, 1999): Beverly Mullings, Globalization, Tourism, and the International Sex Trade, 55-80; Joan L. Phillips, Tourist-Oriented Prostitution in Barbados, 183-200.

Nancie Caraway, Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse. 14 Tulane Journal of International & Comparative Law (2006): 295-316.

William E. Myers, The Right Rights? Child Labor in a Globalizing World, 575 The Annals (May 2001): 38-55; Geeta Chowdhry and Mark Beeman, Challenging Child Labor: Transnational Activism and India's Carpet Industry, 575 The Annals (May 2001): 158-175; Rachel Baker and Rachel Hinton, Approaches to Children's Work and Rights in Nepal, 575 The Annals (May 2001): 176-193.

Session 14. Midterm examination.

This midterm date is only tentative. The precise date of the midterm will be set by majority vote after class members discuss whether they prefer a take home exam or one

to be held in class, after which a date that is most suitable in terms of students' schedules will be selected.

Session 15. Cultural relativism and developmentalism as grounds excusing non-compliance with international human rights law.

Are human rights standards "too Western" to be properly applied to TNCs' operations outside OECD countries? Is the insistence that international business in non-Western societies follow international human rights standards a form of cultural imperialism? Do Western calls for adherence to international human rights law constitute ploy to delay Third World development and to preserve Western power and economic advantages or to protect jobs in the West? Is there a distinctive Asian version of human rights? Can the Third World legitimately prioritize development concerns and downgrade human rights? How does the "Asian values" debate relate to developmentalism?

Xin Chunying, Can the Pluralistic World Have a Unified Concept of Human Rights? in Human Rights: Chinese and Dutch Perspectives, Peter van Baehr, et al., eds. (The Hague: Kluwer Law International, 1996): 43-56; Liu Nanlai, Developing Countries and Human Rights in Human Rights: Chinese and Dutch Perspectives: 103-17.

Ozay Mehmet, Errol Mendes and Robert Sinding, Cultural Relativism and Human Rights in Towards a Fair Global Labour Market: Avoiding a New Slave Trade (New York: Routledge: 1999): 170-93.

Karen Engle, Culture and Human Rights: The Asian Values Debate in Context, 32 New York University Journal of International Law and Politics (2000): 291-94, 303-333.

Michael J. Sullivan, Developmentalism and China's Human Rights Policy in Debating Human Rights: Critical Essays from the United States and Asia, Peter Van Ness, ed.(New York: Routledge, 1999): 120-143.

Human Rights Standards Relevant for Assessing the Role of Culture

Session 16. Debates about globalization, international business, and traditional principles of national sovereignty.

At a time when globalization is weakening states and enhancing the power of TNCs, TNCs are being pressed to take on responsibilities that many claim are inherently governmental and/or that infringe national sovereignty. Have globalization and the mounting power of TNCS already dealt a fatal blow to principles of national sovereignty? Should the world accept the idea that states are outmoded, or are the modern democratic

state and the principle of national sovereignty ultimately an essential requisite for protecting human rights and human welfare? Or, can the world adjust to a system where free markets decide all issues.

Clyde Summers, The Battle in Seattle: Free Trade, Labor Rights, and Societal Values, 22 University of Pennsylvania Journal of International Economic Law (2001): 61-90.

David J. Saari, Global Corporations and Sovereign Nations: Collision or Cooperation? (Quorum: Westport, CT: 1999): 46-65.

Louis Henkin, That "S" Word: Sovereignty and Globalization and Human Rights, Et Cetera, 68 Fordham Law Review (1999): 1-14.

Session 17. Views pro and con regarding whether TNCs should incorporate social goals like furthering human rights as part of their missions.

Debates over demands that businesses assume major responsibilities as agents of the UN human rights system are relatively recent and are far from being resolved. Arguments are made that protecting human rights can and should be the sole responsibility of governments and concerned NGOs, that imposing such responsibility on TNCs involves fundamental distortions of their functions. In response, claims are made that the peculiar circumstances of globalization not only mean that business must follow international human rights law but that it must undertake affirmative steps to ensure its implementation.

Milton Friedman, The Social Responsibility of Business is to Increase its Profits. [Originally published in The New York Times Magazine, September 13, 1970, 32, this famous essay has been reprinted in many publications subsequently.]

Milton Friedman, Economic Freedom, Human Freedom, Political Freedom, lecture delivered at the Smith Center, November 1, 1991, from www.sbe.csuhayward.edu/~sbesc/frlect.html

Robert L. Heilbroner, The Road to Selfdom [review of Free to Choose: A Personal Statement by Milton and Rose Friedman], The New York Review of Books, 27 no. 6, April 17, 1980.

Robert B. Reich, Supercapitalism: The Transformation of Business, Democracy, and Everyday Life (New York: Vintage, 2007): 168-208.

Chris Marsden, Dealing with Joel Bakan's Pathological Corporation: A strategy for campaigning human rights and environmental NGOs, Global Policy Forum July 2004 from http://www.globalpolicy.org/socecon/tncs/2004/07pathological.htm

Noreena Hertz, New ethic: Just do it right – Smart firms know acting socially helps the bottom line, May 15, 2005 http://www.business-humanrights.org/Categories/Individualcompanies/U/UnocalpartofChevron?&&&batch_start=31

Mark A.A. Warner, Globalization and Human Rights: An Economic Model, 25 Brooklyn Journal of International Law (1999): 99-112.

Capitalism and Ethics. A series of articles taken from The Economist, January 20, 2005.

Globalization and Human Rights, a speech given by Amnesty International Secretary General Pierre Sane, February 2, 2000.

Amartya Sen, An enduring insight into the purpose of prosperity, Financial Times, September 21, 2004.

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Sessions 18-19 The 2000 UN Global Compact and the 2003 UN Norms on the Responsibilities of Transnational Corporations.

A milestone in the UN system comes as many major TNCs agree to join in partnership with the UN in supporting and upholding standards affecting human rights, labor, and the Differing assessments of the significance of this historic initiative. Critical perspectives on the Global Compact. How should we assess guidelines for companies produced by the UN Commission on Human Rights? What is the significance of the 2003 Norms on the Responsibilities of Transnational Corporations?

Class members are encouraged to check materials available at the Global Compact website www.unglobalcompact.org

UN Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2 2003. http://www1.umn.edu/humanrts/links/norms-Aug2003.html

Corporate complicity materials

Session 20. The role of human rights NGOs.

How non-governmental organizations came to play a central role in the human rights domain and in the monitoring of TNCs' compliance with international human rights law. Debates on the roles they can/should they play in regulating the conduct of international

business. Can the work of human rights NGOs and TNCs be cooperative, or is their relationship necessarily adversarial?

Selections from NGOs and Human Rights: Promise and Performance, Claude E. Welch, ed. (Philadelphia: University of Pennsylvania Press, 2001): Claude E. Welch, Amnesty International and Human Rights Watch: A Comparison, 85-118; Makau Mutua, Human Rights International NGOs: A Critical Evaluation, 151-163; Claude E. Welch, Conclusion, 261-280.

Kenneth Anderson, Review Essay: What NGO Accountability Means – and Does Not Mean, 103 American Journal of International Law (2009): 170-178.

Materials on the controversy on the Enron plant in Dabhol, India, sparked by the Human Rights Watch report charging Enron with complicity in human rights violations in Dabhol, Report links Enron to abuses, etc.

Lauren Bartlett, NGO Update, 12 Human Rights Brief (2005): 40-41.

Session 21. Using national courts to impose civil and/or criminal liability on TNCs for human rights violations.

What are TNCs' current levels of exposure to legal liability in courts of countries like the USA for human rights violations in their overseas operations? What obstacles stand in the way of persons wanting to sue recover for injuries caused by the overseas activities of TNCs that violate human rights law? Where does international law stand on the question of whether or when TNCs can be held liable for human rights violations?

Ronen Shamir, Between Self-Regulation and the Alien Tort Claims Act, 38 Law & Society Review (2004) 635-661.

Rachel Chambers, The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses 13 Human Rights Brief 14 (Fall, 2005).

Session 22. Mechanisms for promoting TNCs' adherence to human rights. Pros and cons of using corporate codes of conduct and/or national legislation with extraterritorial reach to promote compliance with human rights.

What is the range of options for promoting TNCs' compliance with human rights? For making non-compliance costly? What can past experience tell us about the utility of non-binding guidelines designed to promote TNCs' compliance with human rights standards? Can TNCs' internal codes of conduct steer them away from involvement in human rights abuses or operations that make them complicit in others' human rights violations? Are other mechanisms more effective?

Ralph G. Steinhardt, Soft Law, Hard Markets: Competitive Self-Interest and the Emergency of Human Rights Responsibilities for Multinational Corporations 33 Brooklyn Journal of Int'l Law (2008): 933-953.

Amnesty International, Human Rights Principles for Companies: A Checklist.

Sessions 23-26. Case studies examining the actual experiences of TNCs in a variety of countries and contexts where human rights issues have been raised.

If time permits, we may examine questions regarding few case studies. What do the cases that have arisen to date teach us about the costs and consequences of TNCs being viewed as complicit in human rights violations? What can we learn from such experiences about the merits and/or effectiveness of various schemes designed to enforce compliance by TNCs with international human rights law? What are the responsibilities of TNCs operating in countries where the governments either violate human rights or tolerate or encourage TNC practices that violate human rights? When if ever do patterns of governmental human rights abuses become so pervasive as to justify saying that TNCs must abstain from investing in certain countries? When and in what forms is constructive engagement appropriate? To what extent can TNC policies compensate for governmental indifference or hostility towards human rights?

Depending on what issues are most current, case studies will be examined on subjects like the following using recent materials.

Burma/Myanmar and Sudan

The problems of investment in countries where human rights violations are especially egregious and pervasive. Is constructive engagement justifiable in countries like Burma and Sudan, where evils like forced labor and/or slavery still persist? How do relevatn company policies relate to actual or proposed governmental initiatives in this regard?

Textile manufacturing operations and the sweatshop controversies – problems in countries such as Cambodia, Mexico, and the Marianas

Human rights issues peculiar to light manufacturing, the garment industry, and maquiladoras. Which exploitative practices have attracted particular opprobrium? In what circumstances does salaried employment approximate slavery? What remedies have been proposed, and how effective are they likely to be?

TNCs' Potential Liability for Harms Caused to Indigenous Peoples

Materials on suits that have been brought against TNCs for violating the rights of indigenous peoples – potentially cases where TNCs' are charged with destroying or polluting their ancestral lands, ignoring their protests over the harmful impact of TNCs' operations, allowing security forces to abuse them, or failing to ensure that they benefit from economic development.

China

An irresistibly attractive market for TNCs and one where human rights violations are widespread and often egregious. What has been the experience of TNCs to date operating in this environment where the government seeks to rush rapid development regardless of the human rights consequences? How successfully have they coped with the challenges of operating in China? What is the significance of the growing Chinese movements calling for TNCs to respect human rights in their Chinese operations?

Nigeria

The problems that the extractive industries have faced in a nation where the central government is mired in corruption and indifferent to harms to members of minority communities adversely affected by foreign investment.

Cuba

Assessing a US economic boycott that is meant as a means of compelling improvements in Cuba's human rights performance.