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United Nations Special Rapporteur on Trial

by Aklilu Tedla ('98)

The international community is seriously concerned about Malaysia's non-recognition of immunity from civil suit for United Nations human rights officials acting in the course of their official duties.

Recently, a private libel suit was brought in Malaysia against Dato Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers. The Malaysian courts have allowed the suit to continue despite the immunity that Mr. Cumaraswamy enjoys as a UN Special Rapporteur.

Facts Surrounding the Suit

The libel action is based on statements made by Mr. Cumaraswamy, who is a citizen of Malaysia residing in Kuala Lumpur, Malaysia. While speaking in an interview with International Commercial Litigation, a London-based magazine, Mr. Cumaraswamy, acting in his capacity as a UN Special Rapporteur, commented on his investigation into human rights abuse complaints in Malaysia.

In particular, his comments were construed as suggesting that various businessmen were compromising the independence of the Malaysian judicial system. Two Malaysian corporations then filed suit, claiming damages equivalent to US \$25 million and seeking to enjoin Mr. Cumaraswamy from making any defamatory statements regarding the plaintiffs. In defense, Mr. Cumaraswamy claimed that as a UN Special Rapporteur, he was immune from suits that are based on his work under his official UN mandate.

Status of UN Special Rapporteurs

Special Rapporteurs are independent experts mandated by resolution of the UN Commission on Human Rights. They monitor either specific human rights problems arising globally, or specific countries in which gross human rights violations are alleged. Mr. Cumaraswamy's mandate requires him to investigate and provide independent expert evidence on situations that undermine the independence of judges and lawyers anywhere in the world, including Malaysia.

Special Rapporteurs are immune from legal process pursuant to the privileges and immunities provided under Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations. Malaysia, which is a party to this convention, is obliged under section 34 to "be in a position under its own law to give effect to the terms of this convention."

Malaysia at Conflict with the UN

The UN Office of the Legal Counsel, the UN Secretary General, and the UN Economic and Social Council have all urged Malaysia to uphold its obligation to recognize Mr. Cumaraswamy's immunity from legal process. Furthermore, a UN immunity certification was issued.

However, the Malaysian Court ruled that the certificate was an "opinion" which has little probative value. The High Court of Malaysia held that it possesses jurisdiction to determine the immunity of Mr. Cumaraswamy and refused to recognize his immunity. Mr. Cumaraswamy was ordered by the High Court to file his defense, which the court subsequently denied.

International Law and the Dispute

Mr. Cumaraswamy appealed his case to the Malaysian Supreme Court. The Supreme Court upheld the High Court's decision. The case has now been referred to the International Court of Justice (ICJ) in the Hague, pursuant to section 30 of the UN Convention, which requires that any dispute arising out of the interpretation or application of its provisions be referred to the ICJ.

If the UN Special Rapporteur's immunity is not upheld, the UN system of monitoring gross and continuous human rights violations will be undermined. The independence of all Special Rapporteurs will be compromised if they are amenable to claims arising from their official United Nations duties.

1998 Interns Around the World

Sydney, Australia Intern Experience

by Jody S. DeFord ('98)

The Program in International Human Rights Law provided me the opportunity to spend the 1998 summer in Sydney, Australia, working for the Australian Human Rights and Equal Opportunity Commission (HREOC). The HREOC, which is an Australian federal agency, is responsible for observing and implementing national legislation pursuant to international human rights instruments ratified by Australia.

During my internship, I worked within the Race Discrimination and the Aboriginal and Torres Strait Islander Social Justice Unit of the HREOC. These two Units have the same Commissioner, Ms. Zita Antonios, and many of their functions and purposes overlap. I had occasion to work closely with Commissioner Antonios, and I was directly supervised by HREOC Counsel Mr. David Allen.

The HREOC

The HREOC is charged with promoting "respect for, and observance of, the human rights of all people

in Australia and their access to equal opportunity." Its mandate and functions are much broader than similar commissions within the United States, which deal only with employment discrimination.

The work of the HREOC can be divided into four categories:

- (1) investigating alleged infringements of individual rights covered by anti-discrimination and privacy legislation and attempting to resolve these matters through conciliation or hearing;
- (2) inquiring into general acts or practices that infringe on human rights and recommending a resolution;
- (3) fostering public discussion and implementing educational programs to promote human rights and eliminate discrimination; and
- (4) advising on the making and implementation of human rights-related legislation by Parliament.

First Project: Indigenous Intellectual Property

My first major project was researching trademark and copyright law and their applicability to Aboriginal art in light of the indigenous communal property scheme. I researched and collected materials related to Aboriginal and Torres Strait Islander intellectual property rights.

Indigenous Australian artwork has gained international recognition in recent years. The Sydney 2000 Olympics have helped expand the market for the art and helped provide valuable economic opportunities to a population that lives largely in poverty.

Unfortunately, many non-indigenous persons are exploiting the burgeoning popularity of Aboriginal art by producing inauthentic, cheap imitations which undercut the market and financial opportunities of indigenous artists. Current intellectual property schemes provide inadequate remedies to indigenous artists because of the nature of the artwork (with traditional designs often considered "in the public domain," and therefore not protected) and the nature of its ownership (traditionally belonging to the group as a whole, not to the individual artist).

Economic reasons aside, co-opting Aboriginal art is viewed by many indigenous groups as highly offensive because of the sacred nature of the images depicted. Only certain members are allowed to create or view certain types of artwork, for example, and the mass production of a sacred image on cheap souvenir t-shirts is inimical to Aboriginal cultural ideas. Current law does not prevent co-option because the images are generally defined as "in the public domain."

Intellectual Property Research

I identified and compiled a comprehensive compendium of resources, including international instruments, law review articles, and books which address the complicated issues involved in indigenous intellectual property rights. Additionally, I identified different approaches that have been tried or suggested, both in Australia and in other countries, where similar situations exist. For example, Canadian First Nations Peoples and Native Americans have faced similar issues. Furthermore, I identified various Australian organizations concerned with these issues.

I found this assignment challenging and interesting. My research provided me with a crash course in Aboriginal culture and intellectual property law, for which I am grateful.

The knowledge of Aboriginal history, art and culture has enriched my private life, and the knowledge of intellectual property schemes will benefit my legal career. I developed an interest in how these issues play out in Native American artwork, and I may pursue this field in the future.

Second Project: Educational Publications

My second major project was producing an educational document for the general Australian public to be published both in a pamphlet and on the HREOC web site. The document dealt with Australia's Federal Constitutional "Race Power."

Unlike the US Constitution, the Australian Constitution does not have a bill of rights. There is no general constitutional guarantee of equality. The Australian Constitution has, in striking contrast to the US, a "Race Power," which gives the Government power to legislate with respect to the people of any race for whom it is deemed necessary to make special laws.

This Race Power, which may permit both protective and discriminatory legislation, has become the focus of intense political debate. The Australian High Court recently interpreted the scope of the Race Power broadly. The power may even support laws which interfere with the fundamental common law rights and freedoms of a particular race.

As I was only familiar with the US Constitution and Bill of Rights, I was shocked to discover that a country like Australia possesses the constitutional power to discriminate against racial minorities.

My work on this project was gratifying. Though I began the project working with two full-time HREOC staff members, one left for a new job, and the other left for a long holiday. As the Australian political environment began focusing heavily on racial issues, it became imperative that the project be done quickly. Thus, responsibility for the final drafting and refining of the document fell on me.

By this time, I was very familiar with the material and was able to package it for final delivery. The

most challenging aspect of the final preparation was conveying the message in simple English for its intended audience the average Australian and avoiding linguistic pitfalls that might enable certain antagonistic political groups to twist the HREOC's words to their own benefit.

After my immediate supervisor and the Race and Social Justice Commissioner approved the final draft, I was asked to distribute a copy to every Commissioner, to the legal department, and to an outside Queen's Counsel (Barrister) for input and approval, as required for all politically sensitive materials that the HREOC distributes. The feedback was positive. I was delighted to receive a memo from Mr. Chris Sidoti, the Human Rights Commissioner, congratulating me on my good work and with nary a speck of red ink on my draft. I was particularly pleased because someone had informed me that Mr. Sidoti was notorious for editorial changes.

Other Internship Activities

In addition to working with intelligent, friendly people in the HREOC, I met with Aboriginal community leaders, High Court Justice Kirby, a delegation of Chinese officials assembled in Australia to learn about the HREOC, and Professor Irwin Cotler, who is a leading Canadian human rights expert. I also observed a murder trial before the Chief Justice of the New South Wales Supreme Court and was present for the inaugural "Sorry Day" a day to commemorate and empathize with indigenous Australians who were forcibly removed from their parents and sent to live in group homes in what has sometimes been characterized as "genocide" of the Aboriginal race.

Leisure in Australia

Beyond the office, I went to the beach and several wineries, saw an opera at the famous Sydney Opera House, cuddled koalas and fed kangaroos, and even spent a weekend riding horses in the mountains, where I slept in a sheep shearing shed!

My internship was during Australian winter months, which occur during the Northern Hemisphere summer months. Fortunately, winters are mild Down Under, which enhanced my leisure experiences.

A Rewarding Experience

At the conclusion of my internship, the staff of the Race Discrimination and Social Justice Unit presented me with a poster designed by an Aboriginal artist and a sterling silver platypus brooch, which was hand-made by an Aboriginal craftsman.

Although I was only at the HREOC in Sydney for a brief time, I left feeling like I had made a valuable contribution to the organization.

I highly recommend a similar intern experience to any law student.

Summer in Hong Kong SAR, China

by Kevin E. Green ('00)

Upon my arrival in Hong Kong, I initially felt like an unwelcome stranger in a foreign city. Subsequently, I developed several personal and professional relationships, such that the "foreigner go home" feeling did not sour my Hong Kong experience. In fact, these relationships added an unexpected charm that helped make my summer interesting, fun, and rewarding.

I interned at the Hong Kong Human Rights Monitor. The Monitor is a non-governmental organization (NGO) that promotes and protects human rights in Hong Kong.

Election Watching

I arrived in Hong Kong six days before election day. My involvement as an election monitor exposed me to a new area of international human rights law (applied domestically); to meet interesting human rights workers from different parts of the world; and to meet various Hong Kong government officials and ordinary citizens.

The 24 May 1998 elections were for the Hong Kong Legislative Council. These were the first elections held in Hong Kong since the July 1997 change of sovereignty from British to Chinese rule. There was concern in Hong Kong, and in many other countries, that Hong Kong citizens would be denied electoral rights at the polls.

The rights in question are contained in several international human rights treaties that apply to protect the human rights of Hong Kong citizens. These rights, which are also incorporated into the Basic Law of the Hong Kong Special Administrative Region (the new "mini-constitution" of Hong Kong) and the Hong Kong Bill of Rights Ordinance, provide, inter alia, that Hong Kong people have the right to participate in electoral affairs and the right to universal and equal suffrage.

Concern over human rights in Hong Kong brought numerous international election monitors to Hong Kong. The Monitor served as the unofficial host to these monitors and arranged meetings with local Hong Kong officials.

On May 22, two days before the election, I joined the Monitor Director, Monitor staff, and two election monitors of the Sri Lankan Law and Society Trust, on an official visit to Mr. Chief Justice Woo, a Hong Kong High Court judge entrusted with administering the elections. That visit was interesting and offered

me insights into the Hong Kong judiciary and the electoral process.

On Sunday, May 24, I joined an election observer team as it traveled around Hong Kong Island to monitor polling sites. When I toured the precincts, I failed to witness any legally significant differences between polling stations in Hong Kong and polling stations back in Indianapolis. However, I did note differences in lifestyles, which added to the overall cultural education I gained in Hong Kong.

Hong Kong polls tend to be in densely populated urban areas replete with public high-rise housing. As I viewed the polling sites, I also viewed common living conditions of the people of Hong Kong. Each of the tens of thousands of dwellings within the public high-rise structures sported gray, jail-like bars in front of the doors for security, as do many Hong Kong residences. Some were decorated with ribbons to ward off evil spirits.

After touring the polling stations and observing local Chinese living traditions, our team joined other Monitor-led groups to witness final vote collating at the Hong Kong Convention Center. The scene there was virtually identical to those I have witnessed on election nights in my years as a Marion County poll inspector.

A general comment I have regarding elections in Hong Kong is that although promoted as being democratic, most outside observers recognized that the elections were actually somewhat undemocratic. First, the electoral system is a sort of "functional constituency system" that lawfully permits some individuals to have more than one vote. Second, the elections seemed to be predetermined because the two-thirds legislative majority for the Legislative Council was already guaranteed by a hand-picked, pro-Beijing electoral committee. This rendered the common vote tallying at the Convention Centre to be only superficially satisfying, at best.

Race Discrimination Project

After the elections, I focused on a project I designed related to race discrimination in Hong Kong. The goal of the project was to raise awareness of the plight of racial minorities and to pressure the Hong Kong government into initiating protective anti-discrimination legislation.

As I began the project, I telephoned an established Hong Kong solicitor with a reputation for work with minorities and asked how a racial minority might complain about race discrimination if someone blatantly denied them goods or services solely based on race. There was no satisfactory answer from that call or from the many other telephone calls I made.

Eventually, I reached Ms. Wong in the Hong Kong Home Affairs Branch. She is in charge of rooting out racial discrimination in Hong Kong. Ms. Wong revealed the ineffectual bureaucratic remedy. If someone complains that they have suffered from race discrimination in employment, the marketplace, or anywhere else, Ms. Wong will telephone, write a follow-up letter, and send literature and videos to educate the alleged perpetrator.

Following those unsatisfactory responses, I attempted to better understand peoples' experiences by distributing a questionnaire to establish a baseline experience of life in Hong Kong as perceived by racial minorities. This specific targeting sought to achieve things not possible under an earlier survey attempt that had been made by the Hong Kong government. My questionnaire gave an ear to those most likely to suffer from racial discrimination, the minorities.

My questionnaire gave the minority voices a megaphone to help counterbalance the overwhelming dominance of the 96% ethnic Chinese majority in the general population. The Government had concluded that because most people in Hong Kong are Chinese, there can be no racial discrimination.

With the assistance of others, I produced a two-sided, self-mailing questionnaire in English and Chinese which was distributed to NGOs and racial minorities in Hong Kong. The results were collected, tallied, and prepared for dissemination. The Monitor arranged for a meeting with the Chief Executive of Hong Kong, Mr. Tung Chee Hwa, for presentation of the survey results. The day before we met with the Chief Executive, the Monitor disseminated the questionnaire results to local newspapers, radio and television.

At the July 30 meeting between the Chief Executive, Mr. Tung Chee Hwa, and the Hong Kong Human Rights Monitor, a congenial Mr. Tung verified that I was from Indiana, and cheerfully said, "Your team almost won." He was of course referring to the July 1998 NBA playoff games, in which the Chicago Bulls defeated the Pacers, four games to three.

Following those preliminary greetings, Mr. Tung acknowledged that Hong Kong has racial discrimination problems the same as any other community, but that "compared to cities of comparable size, Hong Kong is not too bad. We can hold our head high." He summarily denounced all forms of discrimination, but did not warm to the results of our racial minority survey.

When Mr. Tung was asked of the anticipated pace of democracy, he responded with a question: "How long did it take for the United States to get universal suffrage?" Everyone glanced at me; obviously Tung was thinking of a century or more. "We had some intermediate hurdles," I offered. Most of the group laughed, but the Chief Executive said with a straight face, "We have our hurdles, too."

It was personally satisfying to design and carry out a human rights project and to identify race discrimination as a problem that the government could realistically address. However, it was disheartening for my host organization to experience Mr. Tung's brush off.

Though Mr. Tung emotionally said to us that Hong Kong "cares about human rights as much as any other community," his sentiment was not obvious to me, and was certainly not obvious to my Monitor colleagues.

Other Internship Activities

In addition to working on my discrimination project, I joined the Monitor staff in distributing booklets on basic human rights in various languages at the well-attended pro-democracy vigil in Victoria Park, the first remembrance of the 4 June 1989 Tiananmen Square Massacre on Chinese soil.

I also joined the rest of the staff in actively observing a protest march while Chinese President Jiang Zemin was in town, the same week President Clinton came to visit Hong Kong. A protest group held a legal and peaceful rally and march near the Hong Kong Convention Center, while President Jiang entertained local officials at a banquet. Dozens of police stopped the marchers in their tracks at an intersection within view of the Center. The protesters chanted, sang, flaunted signs with the names and faces of political prisoners, and burned a mock coffin representing the dead of Tiananmen Square. Only one woman was arrested. Maybe there is freedom of speech in Hong Kong!

Leisure in Hong Kong

My weekends were usually free to experience the many sights and sounds of Hong Kong. My roommate and I took a few hikes on Lamma Island, an outlying island that served as our homebase. My work commute was about three hours each day, by ferry, foot, and subway. My wife and son visited over the July 4th weekend, during which we went to a beach on neighboring Lantau Island, ate ice cream bars at the Giant Buddha, saw Godzilla, shopped, and enjoyed several restaurants.

The flight out of the new Chek Lap Kok airport on July 31 brought an abrupt end to my Hong Kong summer. I had traveled with some of the world's best and brightest; I had worked with individuals utterly committed to their cause; I had helped contribute to the understanding of Hong Kong's minorities, even as I learned; and I had given my best questions to high-ranking Hong Kong government officials.

I could not possibly ask for more from a single trip abroad. And yet, at the end, I could not help but be troubled by what the truth is up against, and how little comfort awareness of the truth actually brings.

I left Hong Kong feeling happy and, when I later saw the US, privileged.

50th Anniversary Reflections on the Universal Declaration of Human Rights

by Chancellor Gerald Bepko

"I'll Fly Away"

In the early 1990s, a dramatic program set in the US civil rights era aired on television. It was called I'll Fly Away. The format of each show was that Lily, the main female character, who was a housekeeper and caregiver to the children of a white southern lawyer, would read aloud from her diary, putting the experiences portrayed in each episode into perspective.

In one episode, she writes in her diary about a conversation she had over breakfast with her young daughter. The child asked: "Mama, why does a newly opened box of cornflakes look half-empty?"

After a moment's thought, Lily answers: "It's a process called settling. It's settling that makes it seem less full. This happens when things are moved a great distance."

In the context of the program, Lily had just come to terms with a disappointing series of events as she was becoming more deeply and personally involved in the struggle for civil rights.

And so it is with universal human rights today. In this 50th anniversary year of the Universal Declaration of Human Rights, we feel both triumphant and chastened, optimistic and disappointed.

We have moved a great distance, but there is some settling that makes us seem less full.

Fifty Years--Trials and Tribulations

Fifty years have past, and still ethnic strife rends apart families and communities. Fifty years have past, and still violence poisons children's lives, even into adulthood. Fifty years have past, and still nations sacrifice human rights in their struggle for power.

But there hasn't been another World War. Cold War tensions have dissipated. Legal protection of civil rights has taken root in American life, and apartheid has ended in South Africa. There is greater recognition that women are important to economic and political progress around the globe. When women and men are healthy, well-educated, free of violence, and have a chance to be equal partners in society, families flourish, nations flourish.

Women and men are making gains in personal freedoms, from the right to be free of persecution to the right to assemble, organize, and debate openly.

Increasingly, freedom and dignity have come to people and nations not through violent revolution but through peaceful protest and determined civil resistance.

From Eleanor to Madeleine

In 1945, Eleanor Roosevelt was appointed the U.S. delegate to the United Nations by her husband's successor, Harry Truman. She was the first former First Lady to be named to a high-level public position in government, and she became chair of the United Nations Commission on Human Rights the following

year.

Some 50 years later, we can take pride in the fact that Madeleine Albright rose from the rank of U.S. delegate to the UN to become the first woman Secretary of State. We have come a long way.

While universal human rights is still an ideal and not a reality, we can more easily see how far we have come if we measure our progress against the scaled principles that Eleanor Roosevelt once set forth in her writings:

Where, after all, do universal human rights begin? In small places, close to home so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood, the school or college he attends, the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Fifty years from now, we are optimistic that everyone the world over will accept this personal responsibility for universal human rights by respecting the individual rights of others in their families, neighborhoods, workplaces, and communities across race, ethnicity, and international borders.

People around the world will renew their commitment to the Universal Declaration of Human Rights at various events during the year leading up to December 10, 1998 its 50th anniversary date. Among the events are lectures and conferences hosted by the Program in International Human Rights Law at Indiana University School of Law - Indianapolis. We are proud of the students and faculty involved in this program, and we hope you will take part in the activities they have planned.

Human Rights Lecture Series - Spring 1998

**The Legal System in Cambodia:
Human Rights, Law, Order & Institutions**

by Judge Sathavy Kim

In the 1970s, the Pol Pot regime grossly violated the human rights of millions of Cambodians. The gravity of these violations has caused great concern throughout the world. However, Cambodia has now developed a constitutional system which ensures that rights of Cambodians are protected and that

democracy flourishes.

Cambodia: 1950s-1990s

In 1954, after decades of French and Japanese rule, Cambodia was led by its hereditary king, Norodom Sihanouk, to become an independent state. In March 1970, General Long Nol overthrew King Sihanouk and established an authoritarian government.

Five years later, the Democratic Kampuchea Party (commonly known as the Khmer Rouge) led by Pol Pot gained control and renamed the country Democratic Kampuchea. That year marked the beginning of the most inhumane and destructive regime in Cambodian history.

The three years and eight months of the Khmer Rouge regime was a period of unmitigated suffering for Cambodians. Millions of people starved, died from disease, or were executed. "New people" (the intelligentsia and those people from the cities - those new to the rural areas), were considered politically unreliable and were special targets of terror and a harsh, unremitting regime of forced labor.

In December 1978, Vietnamese forces invaded the country. On January 7, 1979, they captured Phnom Penh and established the People's Republic of Kampuchea. The Khmer Rouge then fled to isolated corners of the country and resumed their guerilla struggle, which continued in the late 1980s.

In 1990, the UN General Assembly convened an International Conference on Kampuchea. The United Nations Transitional Authority in Cambodia (UNTAC) was established to supervise the Vietnamese force withdrawal from Cambodia and to conduct free and fair national elections for a constituent Assembly in May 1993.

UNTAC was also mandated to develop human rights education, monitor human rights during the transitional period, and investigate human rights complaints. The UN had never before undertaken such an extensive rights program in any country.

Human Rights and Law and Order

In 1991, the Cambodian government signed the Paris Peace Accords, which raised the issue of gross human rights violations under Pol Pot.

The United Nations Commission on Human Rights (UN Commission) had been apprised of the human rights violations in Kampuchea as early as 1977, when Australia, the United Kingdom, the United States, Canada, and Norway brought charges before the UN Commission for massive violations of human rights. The charges were substantiated by thousands of pages of testimony and documentation.

The UN Sub-commission for the Elimination of All Forms of Discrimination Against Minorities appointed a rapporteur who concluded in the Boudhiba Report that the situation in Cambodia

represented the worst case of human rights violations since the Nazi era.

Although slow in getting under way, the UNTAC Human Rights Component commendably conducted human rights awareness courses, disseminated information, helped establish a wide range of Cambodian human rights groups (with membership reaching 150,000), investigated incidents, and helped ensure that Cambodia became a part of all the major international human rights conventions. Also, the Component left behind an important institutional legacy, the Human Rights Center, headed by a special envoy with a continuing responsibility to monitor Cambodia's progress in implementing a liberal democracy.

The Cambodian Constitution & Human Rights

The Cambodian Constitution firmly embraces widely accepted tenets of human rights. Chapters III and VI of the Constitution provide for the protection of a wide range of civil, political, economic, social and cultural rights.

The Constitution includes by reference those human rights stipulated in the UN Charter, the Universal Declaration of Human Rights, and the covenants and conventions relating to human rights and the rights of women and children.

Every Cambodian is treated equally before the law and enjoys the same rights regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or any other status. The Constitution guarantees the right to due process by protecting citizens from physical abuse and confessions obtained by physical or mental force.

The Constitution ensures that all citizens are entitled to a defense through judicial recourse and that the criminally accused shall be considered innocent until final adjudication.

Cambodians are also guaranteed freedom of expression, press, publication and assembly. Assertive language providing women's rights is also found in the Constitution, including a prohibition on exploitation by prostitution and obscenity, which affect the reputation of women.

The Judiciary

Before 1975, Cambodia had a relatively well-developed judicial system based on the French civil law system. From 1975 to 1979, the Khmer Rouge demolished this system. Court houses were dismantled. Law books were burnt. Judges, lawyers, and law professors were killed or fled, leaving only about ten alive in the country by January 1979. The judicial system is now being reconstructed.

Court of Appeal

The right to appeal is a constitutional right in all circumstances. There is only one intermediate Court of Appeal, "Sala Outor." Located in Phnom Penh, the capital of Cambodia, it has nine judges and hears appeals from the provincial courts, municipal courts and the military court.

The Court of Appeal sits to review the facts and legal decisions of trials held in lower courts. The Court of Appeal hears witnesses, weighs evidence and imposes new verdicts. If the verdict is affirmed, the loser's usual recourse is to attempt an appeal to the Supreme Court.

Supreme Court

In Cambodia, the Supreme Court is called the Tolaka Kamporel. The Supreme Court, which has nine judges, is a court of last resort that reviews questions of law relating to the facts of cases as determined at the trial level. The Supreme Court ensures that trial courts have followed the substantive or procedural law correctly. The Supreme Court does not impose new verdicts. It affirms or reverses the verdict or judgment of the court below or remands the case back to the Court of Appeal.

Conclusion

Many irreversible atrocities occurred under the leadership of Pol Pot. Despite these horrors, Cambodians have developed a solid constitutional basis and judicial system to thwart future inhumanity. The resurgence of a stable democracy has occurred with the aid of UNTAC. Cambodians can once again embrace the democratic values which the Khmer Rouge stole from them under Pol Pot's dictatorship.

Human Rights Day & the 50th Anniversary of the Universal Declaration of Human Rights

by Scott L. Goodroad ('99)

For other 50th Anniversary information visit:

Indiana University PIHRL, <http://indylaw.indiana.edu/humanrights>

UN Human Rights Centre, <http://www.unhchr.ch/html/50th/50anniv.htm>

Franklin and Eleanor Roosevelt Institute, <http://www.udhr50.org//main.htm>

Many people around the globe are oblivious to Human Rights Day, which occurs 10 December each year.

Why?

Some of those who are oblivious are political prisoners, refugees, and others who have no exposure to mass media reports of the celebration. Such people do not even know that they have protectable human rights. They do not know that 10 December is the one day of each year that those rights are recognized and celebrated.

Many nations throughout the world do not advertise the existence of Human Rights Day and take no steps to celebrate it. In fact, in many countries, the lack of human rights protection, and the lack of human rights celebrations, ring more loudly than freedom from abuse. Burma, Algeria, Rwanda, Congo, Libya, China, Indonesia and the United States are only a few countries where individual and political rights abuses abound.

A Special Human Rights Day in 1998

The central theme of Human Rights Day is to foster the promotion and protection of civil, political, cultural, economic, social, and other rights for the global citizenship.

The next Human Rights Day is one of special remembrance. December 10, 1998, marks the 50th anniversary of the UN adoption of the Universal Declaration of Human Rights (UDHR). The UDHR is the cornerstone of the international human rights movement and it set the stage for subsequent human rights instruments, such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

The breadbasket of human rights standards based on the UDHR forms a common understanding of governmental obligations to people within their jurisdiction.

Recalling Human Rights -- December 1997 World Activities

Fifty years after the UDHR, its promises go unfulfilled.

In Zimbabwe, on 10 December 1997 the beginning of the 50th year celebration sixty lawyers in full court garb marched through the hot streets of Harare to protest past police abuse. In Israel, concerns

arose over Israeli Defense Forces and Palestinian Terrorist practices in the region as Human Rights Day coincided with the start of intifada. The US was attacked because it is one of six nations in the world that executes people for criminal acts committed before age 18, and also for its failure, for "security reasons," to accept a treaty banning anti-personnel landmines.

Organizations such as Amnesty International staged demonstrations in Dublin against the deportation of asylum-seekers who were subject to abuse and execution in their home countries. In Hong Kong, the April Fifth Action Group and the Confederation of Trade Unions gathered to protest the dilution of civil liberties by the Chinese government, which had months earlier reclaimed sovereignty over Hong Kong.

Human Rights Day in the US

On Human Rights Day 1997, Hillary Rodham Clinton delivered a speech to the UN General Assembly. She called on nations throughout the world to "complete the circle of human rights" begun by the UDHR. President Clinton called human rights a "central pillar" of US foreign policy amidst criticisms of putting economic concerns above human rights in China. In California, Harry Wu, jailed for 19 years in China for opposing Chinese security policies, delivered the keynote address at Amnesty International's Ninth Annual Walk for Human Rights.

Human Rights Day in Indianapolis 1997/1998

On Human Rights Day 1997, in Indianapolis, Amnesty International launched its yearlong celebration of the 50th Anniversary of the UDHR. Amnesty sponsored a special dinner and invited Professor George Edwards to address attendees on the topic of the UDHR.

Professor Edwards traced the history of the UDHR, including its drafting and development into the backbone of the modern human rights movement. He concluded that the United States falls short of full compliance with the human rights treaties it has ratified and has failed to ratify many other treaties.

During 1998, the Law School's PIHRL will sponsor several events to highlight the importance of human rights and the UDHR. Among those events are presentations at IU by international human rights speakers, from academia, from NGOs, and from other governmental and inter-governmental organizations. The PIHRL is a co-sponsor to an October 1998 IU international conference (with 300 delegates from dozens of countries) entitled Women in Africa & The African Diaspora: Health & Human Rights. The PIHRL is also a co-sponsor of a December 1998 celebration entitled Stand Together for Human Rights in Chicago. The PIHRL will be sending students to this celebration.

Spreading The Message in the 50th Year

For the December 1998 celebration, many activities have been planned by human rights governmental and non-governmental organizations around the globe.

On December 10, 1997, Amnesty International began a year long campaign to rededicate the articles of the UDHR for the "Pledge to Humanity." The pledge is aimed at collecting signatures, starting with Nelson Mandela's, which will culminate in the presentation of the "World's Largest Book" to UN Secretary General Kofi Annan on December 10, 1998.

UN bodies, including the Commission on Human Rights and the General Assembly, have planned extensive activities and publications aimed at promoting the principles of the UDHR. The plan is to develop a "dynamic partnership" among governments, UN agencies, international organizations and academic institutions in order to foster a greater understanding of human rights principles.

Human Rights Day is different from many other celebrations. It is a day that recognizes the ongoing abuse and oppression of peoples and strives to change State responsibility to their populace. It is a day of achievement, not merely remembrance.

The golden birthday will be one of great celebration throughout the world. It will not only recognize past achievements, but also it will recognize the progress needed in all corners of the world.

Overseas Summer Internships 1999

by Professor George Edwards
Director, Program in International Human Rights Law

The Law School's Program in International Human Rights Law (PIHRL) provides students with opportunities to do human rights legal work around the globe. Since 1997, our students have received Law School Scholarships to intern in Australia, Hong Kong, South Africa, India, New York and Switzerland.

The Internship Program is expanding!

This article addresses internship questions you may have.

Selection Criteria

All IU law students are eligible. We consider whether students will likely have a solid educational experience and significantly contribute to the host organization. We strive to match students and organizations so both will reap rewards.

Placement criteria include: the students' interests; the students' experience; special skills of the student (e.g., language skills); the students' general abilities; and the needs of the organization.

Scholarships

Law School Scholarships cover airfare, food and accommodation, and miscellaneous expenses. Scholarship amounts vary, depending on need and the costs associated with the particular internships. Students may apply for financial aid to cover expenses the scholarships might not cover.

Academic Credit & Internship Length

Students receive 4 credits for the internship. Students must work 10-12 weeks, submit time logs, and complete several internship assignments.

Which Countries in 1999

Internships may be in any country, including the US.

In 1999, we may send students to new locations, including: Italy (Pisa), Jamaica (Kingston), Costa Rica (San Jose), Norway (Oslo), Puerto Rico (San Juan), Malaysia (Kuala Lumpur), France (Paris), Morocco (Casablanca), England (London), Hungary (Budapest), Zimbabwe (Harare), Nepal (Katmandu), Tanzania (Arusha), Argentina (Buenos Aires), and Brazil (Sao Paulo or Rio de Janeiro).

Students might also work in places where previous interns were placed, such as South Africa (Cape Town), Switzerland (Geneva), Hong Kong, India (New Delhi), New York, or Australia (Sydney).

These lists are not exhaustive. If there is a place not listed where you would like to work, please let us know.

Host Organizations

Host organizations generally fall into three categories: (a) non-governmental organizations ("NGOs," e.g., Amnesty International or Human Rights Watch); (b) governmental bodies (e.g., Australian Human Rights and Equal Opportunity Commission); and (c) inter-governmental organizations (e.g., United Nations).

All host organizations engage in human rights legal work.

1997-1998 Intern Placements

During the 1998 summer, four IU law students worked at international human rights organizations, in four different countries. Following are a few words about each of the 1998 internships.

New York

Ms. Samira Irsane ('97-'98 IU/Lille exchange student) worked at the United Nations in New York. She was assigned to the UN Division for the Advancement of Women. Ms. Irsane participated in meetings of various UN Committees of experts comprised of delegates from around the globe. The committees included the Committee on the Elimination of All Forms of Discrimination Against Women. Ms. Irsane's French and Arabic language ability permitted her to participate in otherwise confidential meetings concerning human rights violations in particular countries.

Cape Town, South Africa

Mr. Aklilu Tedla ('98) interned in Cape Town, South Africa, for the South Africa Health and Human Rights Project. This project was conceived as a follow-up to the South African Truth and Reconciliation Commission, which explored human rights violations during the apartheid era. Mr. Tedla began his internship in August 1998, so he is not due back in the United States until mid-Autumn. We will keep you posted on Mr. Tedla's South African experiences!

Hong Kong

Mr. Kevin Green ('00) worked for the Hong Kong Human Rights Monitor in Hong Kong. His work assignments included: escorting European Parliament members to observe local elections; designing and disseminating a race discrimination survey; and participating in a meeting with Hong Kong Chief Executive, Mr. Tung Chee Wha.

Sydney, Australia

Ms. Jody DeFord ('98) worked for the Human Rights and Equal Opportunity Commission in Sydney, Australia. Ms. DeFord had many challenging experiences, including: hosting delegations of overseas officials; researching and writing in areas related to aboriginal legal rights; and drafting Commission human rights materials to be distributed to the public.

[Stories about the Hong Kong and Sydney, Australia interns can be found at the beginning of the Law Bulletin.]

1997 Intern Placements

During the 1997 summer, two students worked as overseas interns in New Delhi and Geneva.

New Delhi, India

Ms. Toma Guha ('98) worked for the South Asian Human Rights Documentation Centre (SAHRDC) in New Delhi, India. The SAHRDC is a non-governmental organization that investigates, documents, and disseminates information about human rights violations in South Asia.

Ms. Guha drafted a chapter of a human rights "know your rights" manual, to be disseminated in India; she researched international human rights and development issues; and she researched and wrote about the human rights of Indian women in prison.

Geneva, Switzerland

Mr. Aklilu Tedla ('98), who is now interning in South Africa, worked at the United Nations Centre for Human Rights in Geneva, Switzerland. Mr. Tedla worked with a UN Special Rapporteur Dato Param Cumaraswamy who investigates and reports on human rights abuses related to the independence of judges and lawyers. Violations include threatening or causing violence to lawyers because they handle politically sensitive or unpopular cases, corruption within a national judiciary, and the inability for fair trials to be conducted because of undue influences on the judiciary.

Mr. Tedla reviewed complaints filed by individuals and groups from around the world, drafted communications to governments accused of violations, and drafted portions of reports filed within the UN system.

Good Intern Experiences

The six students had a wealth of educational, legal, travel, and cultural experiences. They also helped protect and promote human rights through their work. And, they all had a great deal of fun!

You can read about 1997 and 1998 student experiences on the PIHRL Web Page, which is now up and running thanks to Professor Wilkins and Mr. Dick Bash ('99)! The Web address is: <http://indylaw.indiana.edu/humanrights>

IU Law Library Research Resources in International Human Rights Law

by Mr. Chris Long & Dr. Mahnaz Moshfegh, Librarians

The Indiana University School of Law Library-Indianapolis contains a wide variety of sources that students and scholars of international human rights law will find useful in their research. Noteworthy in our collection is the abundance of material from international organizations that have been instrumental in the effort to defend human rights.

At the core is the United Nations Collection.

United Nations Depository Library

We enjoy the distinction of being one of only four United States law libraries that has been designated a United Nations depository library. As such, we automatically receive a wealth of UN records and publications.

Many students and scholars use UN documents only to study the organization itself, not realizing the truly global scope of its publications. In fact, there are numerous human rights bodies operating under the UN's umbrella, including the Committee Against Torture, the Human Rights Committee, the Commission on Human Rights, and the United Nations Centre for Human Rights. Those organizations provide us with an abundance of human rights information, including resolutions, decisions, reports, and other documents.

Accessibility of Collection

We pride ourselves on the accessibility of our United Nations Collection. Some libraries are unable or unwilling to make these documents easily identifiable or retrievable; therefore, they go unused. Our UN sources are fully cataloged so patrons can readily locate and use needed items. Furthermore, as a depository, we receive this material in paper form, which many users consider much easier to use than microfiche, which we also receive.

Other Human Rights Library Resources

While the UN material comprises the bulk of the human rights information we receive from international organizations, it is by no means our only source. We have also collected numerous documents from the League of Nations, the European Court of Human Rights, the European Commission of Human Rights, the African Commission on Peoples' Rights, and the Inter-American Commission on Human Rights.

A Human Rights Internet Search

An enormous amount of human rights information exists beyond library walls. A good place to begin an Internet search is the Program in International Human Rights Law Website.

This site provides information on the PIHRL's overseas human rights internships, conference sponsorships, and recent publications. It also maintains links to several prominent human rights law

Internet resources.

Through these gateways the searcher will find electronic versions of a wide variety of human rights documents, reports, treaties, newsletters, and bibliographies. Information on human rights organizations, newsgroups, internships, and employment opportunities is also easily accessible from the site.

Please stop by the library and take advantage of our human rights law material!

Selected Other IU Law Library International Holdings

Consolidated Treaty Series (1648-1920)

League of Nations Treaty Series (1920-1945)

United Nations Treaty Series (1945 to date)

Hong Kong Public Law Reports

World Court Reports

International Law Reports

Commonwealth Collection

Civil Law Collection

European Court of Human Rights Reports

Swedish Judge Goran Hakansson Visits Law School

by Stephanie J. Hyatt, ('99)

In November 1997, Swedish Judge Goran Hakansson visited the Law School to speak about the drafting, adoption, and ratification of the United Nations Convention on the Rights of the Child. Formerly of the

Swedish Ministry of Health and Social Affairs, and currently of the Swedish Aliens Affairs Board, Judge Hakansson is an energetic children's rights advocate. He is one of the original working group drafters of the Children's Convention. Drafting of the Convention, which came into force on 20 September 1990, began in 1979.

Judge Hakansson served as a discussant during a session of Professor George Edwards's International Human Rights Law course.

Drafting Workgroups & Swedish Values

The often heated atmosphere of the Children's Convention drafting workgroups may have reflected social and cultural differences among the forty represented countries. Though consensus was easily reached on the major principles, several important controversial topics were raised and debated.

Among the controversial topics that Judge Hakkanson and the Swedish delegation urged were the incorporation into the Convention of a ban on corporal punishment (to match the domestic ban already in place in Sweden); recognition that children born out of wedlock should have rights equal to children born in wedlock; and the provision that children under the age of 18 should be barred from participating in armed conflict.

U.S. Non-Ratification

After the drafting and negotiation of the Children's Convention, the treaty was unanimously adopted by the United Nations General Assembly and was ratified seven months later. Today, only two countries have not ratified the Convention: Somalia and the US.

Judge Hakansson strongly advocates United States ratification of the Children's Convention. The well-being of the world's children demands that the US adopt the Convention and join in the protective regime that the rest of the world has embraced.

Children's Rights Conference

by Stephanie J. Hyatt ('99)

On November 20-22, 1997, the IU Program in International Human Rights Law and the IUPUI School

of Education hosted an international conference that focused on children's rights. The Conference Advancing Children's Futures: The Role of Non-governmental Organizations in Supporting Children's Rights welcomed US and overseas NGO representatives, government officials, UN officials, and law students to discuss the successes and failures of the UN Convention on the Rights of the Child ("Children's Convention" or "CRC").

Conference Theme

The Conference attempted to develop strategies to persuade the US to ratify the Children's Convention. Though the US signed the Convention in 1995, the US and Somalia are the only two countries that have not yet ratified it.

The conference was an arena for lively discussions within panels and small working groups. Topics included a history of the Children's Convention and the role of NGOs; the role of NGOs in monitoring the CRC; ratification of the CRC; and country reports to the UN Children's Committee.

U.S. Ratification

More than 100 treaties await Senate approval. Vigorous support and public awareness is needed to ensure that the Children's Convention is given urgent Senate approval. Ratification opponents in the US contend that the treaty threatens the family structure and interferes with American family values. Proponents argue that the treaty would ensure that children in the US are afforded all of the human rights protections promised to children in the 190 countries that have already ratified the treaty.

Madame Ouedrago, from Burkino Faso, who is an expert member of the UN Committee on the Rights of the Child, applauded US NGO advocacy efforts to urge US ratification. She and other overseas speakers shared their experiences with ratification of the Children's Convention in their homelands as a way of offering guidance to NGOs in the US to lobby for ratification.

German Bundestag Member Visits Indianapolis

by Jon Graf ('00)

On October 5, 1998, I had the privilege of representing the Program in International Human Rights Law at a luncheon sponsored by the International Center of Indianapolis. The luncheon speaker was Volkmar Schultz, a member of the Social Democratic Party who was elected to the Bundestag (Germany's lower house) in Germany's latest national elections.

Mr. Schultz addressed the state of democracy in Germany, as well as human rights concerns under Germany's stringent immigration policies.

Democracy in Germany

In contrast to many of the disheartening reports of apathetic American voter participation, the Germans flocked to the polls at around 82% in recent elections. Although Germans may be dissatisfied with their government, it appears that they remain confident in the ballot box as a means to effectuate political change.

Immigration Law

At the forefront of many voters' minds was the pressing issue of unemployment, which stands at approximately 10.3% in the West and 16.7% in the East. Unfortunately, many Germans have blamed the high joblessness rate on the large foreign population residing in Germany. Many believe that these foreigners unduly burden the country's strained resources and that they steal needed jobs.

It is not surprising that reform of Germany's immigration laws remained a controversial issue in the plebiscite. In contrast to Germany's liberal asylum policies, born out of the guilt of the Nazi regime that displaced so many during and after World War II, the country's immigration laws remain rather restrictive. Unlike other European nations, Germany's immigration laws are uniquely based upon the premise of *jus sanguinis*, requiring all German citizens to originate from German blood.

Contrary to the Christian Democratic Union's position that Germany is not a nation of immigrants and that more liberal immigration laws will lead to abuses, Mr. Schultz asserted that Germany is a country whose strength and success was rebuilt significantly by guest workers during the post-war years.

Many of these foreigners began new lives in Germany. They raised families who eventually spoke German and interacted in German society to the point where they adopted German culture as their own.

Foreigners who have lived productively in Germany and paid taxes for decades have more difficulty in acquiring citizenship than ethnic German Aussiedler who return after many years in exile with little knowledge of German language and culture. Mr. Schultz believes that Germany must continue to recognize the contributions made by such foreigners and create an equitable immigration policy for those deserving of German citizenship.

The new German government has the opportunity to establish reasonable guidelines to accommodate both state and foreigner interests. If implemented properly, these guidelines can enable eligible foreigners to contribute to German welfare and eventually enjoy the rights and privileges of citizenship. The guidelines will increase their sense of loyalty and commitment to their newly-adopted homeland.

All interested parties stand to benefit if the German government is willing to make meaningful changes to the country's rigid immigration laws. It is a change whose time has come.

Women in Africa & The Diaspora: Health & Human Rights

2nd International Conference on Women in Africa & the African Diaspora, Indiana University, Indianapolis, IN. October 22-27, 1998

Contact: Professor Obioma Nnaemeka, Tel: 317-274-0062, Fax: 317-274-0062, E-Mail: nnaemeka@iupui.edu.

For further information about the PIHRL, please contact:

Professor George Edwards
Director, Program in International Human Rights Law
Indiana University School of Law - Indianapolis
530 West New York Street
Indianapolis, Indiana 46202
United States of America
Tel: 317-278-2359
Fax: 317-274-8825
E-Mail: gedwards@indiana.edu
Internet: <http://indylaw.indiana.edu/humanrights>

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E-mail: gedwards@indiana.edu.

Director: George E. Edwards

Associate Editor: Scott L. Goodroad

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Other Indiana University School of Law International Programs

(<http://indylaw.indiana.edu/centers/icl>)

The Law School sponsors summer study abroad law programs at universities in Lille, France and Beijing, China. Law students wishing to study in France or China during June/July 1999, please contact:

Professor Nehf (France Program) - TEL: 317-274-8077; FAX: 317-278-3326; E-Mail: jnehf@iupui.edu

Professor Grove (China Program) - TEL: 317-274-4900; FAX: 317-274-3955; E-Mail: jgrove@iupui.edu

New IU - Indianapolis Course:
International Criminal Law

In Autumn 1999, for the first time, IU - Indianapolis will offer a course in International Criminal Law. The 3-hour course will be taught by Professor Edwards. The course will focus on: (a) the criminal law aspects of international law; and (b) the international aspects of criminal law.

Selected topics:

- Domestic & international criminal jurisdiction;

- Amnesty for international crime perpetrators;
- International cooperation in criminal matters;
- Extradition and mutual legal assistance;
- U.S. Constitution and law enforcement overseas;
- War crimes, terrorism, crimes against humanity, genocide, slave trade, money laundering, drug trafficking, aggression, and piracy;
- International Humanitarian Law;
- War Crimes Tribunals for the former Yugoslavia and Rwanda; and
- The 1998 Rome Treaty on the Establishment of a Permanent International Criminal Court.

The Program in International Human Rights Law

Mission Statement

- 1) to further the teaching and study of international human rights law;
- 2) to promote scholarship in international human rights law;
- 3) to assist human rights governmental, inter-governmental and non-governmental organizations on international human rights law projects; and
- 4) to facilitate the placement of students as law interns at international human rights organizations domestically and overseas.

How Students Can Participate in the PIHRL

The PIHRL invites students to participate in its activities.

Some ways to get involved:

- (a) Write for the Indiana International Human Rights Law Bulletin. Stories, articles, or other

commentary are welcome.

(b) Assist overseas and domestic human rights organizations. Student projects have included: research on legal services for the poor in Hong Kong; research on legal education in Caribbean and African developing countries; and human rights in Lithuania.

(c) Satisfy your Senior Writing Requirement in the International Human Rights Law area.

(d) Take a law school course such as international human rights law or a course that touches on human rights, such as International Criminal Law or International Legal Transactions.

(e) If you are a graduate, make a financial contribution to the PIHRL!

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Comments: gedwards@indiana.edu

URL: <http://indylaw.indiana.edu/humanrights>

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