

## **CHILDREN'S RIGHTS IN INTERNATIONAL LAW**

**Prof. Philip Alston**

**FH 110 Wednesdays, 2.00 – 3.50 pm**

### **SEMINAR MATERIALS, SPRING 2008**

#### **Course materials**

No course book is required. The materials will be distributed to students in the course of the semester and will include suggestions for further reading.

#### **Attendance and participation**

All students are required to attend class regularly (there will be a sign-in sheet) and those who miss more than two sessions will need to provide justification in order to satisfy the requirements. Students are expected to do the reading in advance of the session, and to participate actively. Two students will be asked to lead the discussion each week and this will require meeting with Prof Alston in advance in order to review the issues to be highlighted. Supplementary materials might also be suggested by those leading the discussion. Seminar participation will be taken into account in the final grade.

#### **Assessment**

Students are required to write a paper on a topic which must be approved by the instructor no later than the end of the fifth week of the semester. It may be either a 2 credit paper or a 3 credit paper.

## Outline of sessions

### *Part I: Children's rights in context*

- Jan. 16        1. The past and future of children's rights
- Jan. 23        2. Should children have rights?
- Jan. 30        3. The international legal framework for children's rights

### *Part II: Balancing rights and responsibilities: state, family, and child*

- Feb. 6         4. Juvenile justice: reflecting the 'evolving capacities' of the child
- Feb. 13        5. Corporal punishment
- Feb. 20        6. Balancing the role of the state vis-à-vis other actors
- Feb. 27        7. Children's rights and adolescent sexuality
- March 5        8. Inter-country adoption

### *Part III: Economic, Social and Cultural Rights*

- March 12      9. ESR and the right to education
- March 26      10. The right to education –religious rights and exemptions
- April 2        11. The right to health
- April 9        12. Culture and gender: child marriage

### *Part IV: Actors*

- April 16      13. International actors, case study: children and armed conflict
- April 23      14. The role of international actors: multilateralism v. unilateralism, the case of trafficking

## **Seminar 1: The past and future of children's rights**

2007 Child Rights Roundup, CRIN (Children's Rights Information Network)

Harry Hendrick, 'Children and Childhood', in ReFresh (Recent Findings of Research in Economic and Social History), No. 15, Autumn 1992

Martha Minow, 'What Ever Happened to Children's Rights?', *80 Minn. L. Rev.* 267 (1995)

European Court of Human Rights, *Odièvre v. France*, Judgment of 13 Feb. 2003

## **Seminar 2: Should children have rights?**

Eekelaar, J. 'The Emergence of Children's Rights,' 6 *Oxford Journal of Legal Studies* 1986, pp. 161-182.

Jimmy Carter, 'What's Right for Children', 20 *Emory Int'l L. Rev.* 1

Martin Guggenheim, 'Ratify the U.N. Convention on the Rights of the Child, but don't Expect any Miracles', 20 *Emory Int'l L. Rev.* 43 (2007)

Howard Davidson, 'Children's Rights and American Law: A Response to What's Wrong with Children's Rights', 20 *Emory Int'l L. Rev.* 69 (2006)

David Weissbrodt, 'Prospects for Ratification of the Convention on the Rights of the Child', 20 *Emory Int'l L. Rev.* 209 (2006)

## **Seminar 3: The international legal framework for children's rights**

Declaration on the Rights of the Child 1924

Declaration on the Rights of the Child 1959

Convention on the Rights of the Child 1989

Committee on the Rights of the Child, General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child (2003) UN doc. CRC/GC/2003/5

William A Schabas, 'Reservations to the Convention on the Rights of the Child', 18 *Human Rights Quarterly* (1996) 472-491.

Sample of reservations and declarations

Committee on the Rights of the Child Concluding Observations for Peru (March 2006)

## **Seminar 4: Juvenile Justice: Reflecting the 'Evolving Capacities' of the Child**

Excerpts from the Convention on the Rights of the Child

Committee on the Rights of the Child, General Comment No. 10 (2007):  
Children's Rights in Juvenile Justice

'Bloomberg Says He Has Qualms About Charging an 8-Year-Old', *New York Times*, May 25, 2006

The Difference between Youth and Adults, from Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* (Oct. 2005)

*Roper v. Simmons*, US Supreme Court, No. 03–633, March 1, 2005

'Age of criminal responsibility', in UNICEF, *Juvenile Justice*, Innocenti Digest No. 3 (Florence, 1998)

*T. v. The United Kingdom*, European Court of Human Rights, Application no. 24724/94, 16 December 1999

Life Without Parole: Human Rights Watch, *The Rest of Their Lives*, Case study and Summary of report

Gerison Lansdown, *The Evolving Capacities of the Child* (UNICEF, Innocenti Insight, 2005)

## **Seminar 5: Corporal punishment**

Human Rights Watch, *Spare The Child: Corporal Punishment in Kenyan Schools*, (1999), at 3

'Many in U.S. Back Singapore's Plan to Flog Youth', *New York Times*, April 5, 1994, p. A6

Initial Report of Singapore to the UN Committee on the Rights of the Child (2003)

United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc A/60/316 (2005)

*Regina (Williamson and others) v Secretary of State for Education and Employment*, House of Lords, 24 Feb 2005

Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment ...

Andre R. Imbrogno, 'Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of The Child: A Case for Nonratification', 29 *J.L. & Educ.* 125 (2000)

## **Seminar 6: Balancing the role of the state vis-à-vis other actors**

OSI Justice Initiative, European Court fails to find Czech Roma children victims of racial discrimination in education, 2006

*D.H. v The Czech Republic*, European Court of Human Rights, 2007

Maxine Eichner, 'Who should Control Children's Education?: Parents, Children, and the State', 5 *U. Cinn. L. Rev.* 1339 (2007)

## **Seminar 7: Children's rights and adolescent sexuality**

Case Scenario: Biased Sexuality Education Programs

Readings on US law relating to contraception, including *Casey v Population Services International* (1977)

International Standards on the Human Rights of Children and their Sexual and Reproductive Health

Center for Reproductive Rights, Briefing Paper: Adolescents Need Safe and Legal Abortion, Sept. 2005

*K.N.L.H. v. Peru*, Views of the UN Human Rights Committee, 24 Oct. 2005

## **Seminar 8: Intercountry adoption**

CRC, articles 20 and 21

Marc Lacey, 'Guatemala System Is Scrutinized as Americans Rush In to Adopt', *NYT*, Nov. 5, 2006, p. A1.

UNICEF Innocenti Digest, *Intercountry Adoption* (1998), pp. 1-16.

Elizabeth Bartholet, 'International Adoption: Thoughts on the Human Rights Issues', 13 *Buff. Hum. Rts. L. Rev.* 151 (2007)

## **Seminar 9: Economic and social rights and the right to education**

Convention on the Rights of the Child, selected provisions.

Aryeh Neier, 'Social and Economic Rights: A Critique', 13 No. 2 *Hum. Rts. Brief* (2006)

*Government of South Africa v. Grootboom*, Constitutional Court of South Africa, Case CCT 11/00, 4 Oct. 2000

Human Rights Watch, *Failing our Children: Barriers to the Right to Education* (2005)

*Campaign for Fiscal Equity, Inc. v State of New York*, 2006

Somini Sengupta, 'Education Push Yields Little for India's Poor', *NYT*, January 17, 2008, p. A1

Alston & Bhuta, 'Human Rights and Public Goods: Education as a Fundamental Right in India'.

Balakrishnan Rajagopal, 'Pro-Human Rights but Anti-Poor? A Critical Evaluation of the Indian Supreme Court from a Social Movement Perspective', *Human Rights Review* 2007

## **Seminar 10: The Right to Education –religious rights and exemptions**

Various provisions of relevant international law including Convention on the Rights of the Child 1989, articles 14, 29 and 41

Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) 30/07/93.

*Yoder v Wisconsin*, US Supreme Court (1972)

*Konrad v Germany*, European Court of Human Rights, 2006

Kimberly A. Yuracko, *Education Off The Grid: Constitutional Constraints on Homeschooling*, 2007

Martha Minow, 'Should Religious Groups be Exempt from Civil Rights Laws?', 48 *B.C. L. Rev* 781 (2007)

### **Seminar 11: The right to health**

The right to health as formulated in human rights instruments

'Why veto a popular health-care bill?,' *The Economist*, Oct 4, 2007, at

UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) 'The right to the highest attainable standard of health'

Jennifer Prah Ruger, 'Toward a Theory of a Right to Health: Capability and Incompletely Theorized Agreements', 18 *Yale J.L. & Human.* 273 (2006)

United States Government Response to ... a Report on Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, Dec. 2007

### **Seminar 12: Culture and gender: child marriage**

PBS segment on Child Marriage

Forced marriage of the girl child: Report of the Secretary-General Commission on the Status of Women, UN Doc. E/CN.6/2008/4

Sally Engle Merry, 'Human Rights and Transnational Culture: Regulating Gender Violence through Global Law', 44 *Osgoode Hall LJ* 53 (2006)

Jaya Sagade, *Child Marriage in India: Socio-legal and Human Rights Dimensions* (2005), Chap. 5.

### **Seminar 13: International Actors, Case study**

International standards on children and armed conflict: An annotated chronology

Tim Allen, *War and Justice in Northern Uganda: An assessment of the international criminal court's intervention* An Independent Report, February 2005 Draft

Redress, *Victims, Perpetrators or Heroes? Child Soldiers before the International Criminal Court*, September 2006

Trial Watch, *The Lubanga Case*

Excerpts from the *Rome Statute of the International Criminal Court*  
Michael Cottier, 'Participation of children in hostilities', and Andreas  
Zimmermann, 'Recruitment of children', in O. Triffterer (ed.), *Commentary on  
the Rome Statute of the International Criminal Court* (1999)259-62, and 280.(pdf)  
The Security Council and Child Soldiers: Security Council debate, Feb. 12, 2008  
Security Council Report, *Children and Armed Conflict*, Feb. 4 2008

### **Seminar 14: The Role of International Actors: Multilateralism v. Unilateralism, The Case of Trafficking**

Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to  
Combat Human Trafficking', 27 *Mich. J. Int'l L.* 437 (2006)

Anne Gallagher, 'A Shadow Report on Human Trafficking in Lao PDR: The US  
Approach vs. International Law', 16 *Asian and Pacific Migration Journal*, (2007)