

Accountability for Human Rights Violations

Human Rights Course 22100/32100

Tuesdays and Thursdays 9:00 – 10:20 AM, Room: Harper Memorial (HM) 140

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Office Hours: Tuesdays and Thursdays 10:30 – 11.30 AM

Subject: This course examines different approaches taken by countries and the international community in dealing with past serious violations of human rights, and the process by which formerly repressive States transform themselves into societies based on democracy and the rule of law. It examines the various means of establishing accountability including truth, reconciliation and historical commissions; national, international and hybrid prosecutions of perpetrators of human rights abuse; reparation for victims of human rights and humanitarian law violations; "lustration" laws and institutional reforms. It also considers the obstacles to this process including political instability, amnesty laws, and the lack of engagement by the international community in particular situations. While all these mechanisms pertain/are suited to serious violations of civil and political rights, the course will explore the possibility of accountability processes for gross violations of economic, social and cultural rights.

Class Requirements: This course will be conducted in a lecture and seminar format and thus requires student preparation, attendance and active participation. Grading will take account of the **quality of participation** and **oral presentation** (20%), and two assignments. The first paper is due October 31 (40%) and final paper due December 4 (40%). All assignments must be completed to receive a grade (Paper topics will be determined by mutual consultation).

Participation: To improve discussion for each session, students leading class discussions must write a brief comment posing questions or/and comments on issues regarding the assigned material. Comments must be posted on Chalk **two hours** before each session.

Required Texts:

TINA ROSENBERG, THE HAUNTED LAND: FACING EUROPE'S GHOSTS AFTER COMMUNISM (1996)

GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY: THE STRUGGLE FOR GLOBAL JUSTICE (3rd ed., 2006)

STEVEN R. RATNER & JASON ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY (2001)

September 25/27, 2007, October 2, 2007: Accountability in Context

Discuss the legal, political, ethical and social ramifications of legacies of human rights abuses and the need for policies to overcome it. Discuss the setting of transitions to democracy and options available to successor regimes. Discuss the history of accountability in the last 25 years and its effects on the emergence of new human rights norms.

Readings

- ✚ TINA ROSENBERG, *THE HAUNTED LAND*, *Introduction* (pp. xi-xxiv), & *Haunted Lands* (pp. 395-407).
- ✚ Aryeh Neier, What Should Be Done About The Guilty? Vol. 37(1), *THE NEW YORK REVIEW OF BOOKS*, February 1, 1990.
- ✚ Craig S. Smith, *Many Algerians Are Not Reconciled by Amnesty Law*, *NEW YORK TIMES*, June 28, 2006, at **A3**.
- ✚ Craig Whitlock, *Algerian Program Offers Amnesty, but Not Answers About Past*, *WASHINGTON POST*, September 17, 2006, at **A17**
- ✚ Jeffrey Gettleman, *Uganda Peace Hinges on Amnesty for Brutality*, *NEW YORK TIMES*, September 15, 2006, at **A1**.

Video: HBO Film: **Sometimes in April** (2005)

October 4, 2007: Accountability in Context (Continued)

Examine the nature and scope of the problem of impunity. Basic definitions: gross and consistent pattern of human rights violations, crimes against humanity, war crimes, and genocide. Examine domestic responsibilities and role of the international community. The “ethics of responsibility” and the dangers of not letting bygones be bygones. The need to safeguard transitions to democracy and the destabilizing effects of attempting truth and justice. Political arguments in favor of settling accounts. History and memory, and settlement of conflicting versions of history.

Readings

- ✚ TINA ROSENBERG, *THE HAUNTED LAND*, **Chapters 2, 3, & 8**.
- ✚ Craig Whitlock, *In Reconciling Its Past, Poland Is Divided Anew*, *WASHINGTON POST*, April 1, 2007, at **A07**

✚ Jose Zalaquett, *Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations*, 43 HASTINGS L.J. **pp. 1425-1438** (1992)

✚ Alex Spiegel, *More and More, Favored Psychotherapy Lets Bygones Be Bygones*, NEW YORK TIMES, February 14, 2006, at **F5**.



Supplementary:

✚ Luc Huyse, *Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past*, 20 LAW & SOCIAL INQUIRY **pp. 51-78** (1995).

✚ Readings from **October 2**.

October 9/11, 2007: Transitional Justice

Discuss South Africa and other African countries; differences with Europe and Latin America. Discuss the context of ending civil wars. Amnesties and national reconciliation. The UN and the OAS and negotiations to end conflict. The involvement of the international community in peace-making, peace-keeping and justice.

Readings:

✚ DEALING WITH THE PAST: TRUTH AND RECONCILIATION IN SOUTH AFRICA, (Alex Boraine *et al.*, eds., 2nd ed., 1997) **Introduction & Chapter 1**

✚ THE HEALING OF A NATION? (Alex Boraine & Janet Levy, eds., 1995) **Chapters 2, 5 & 7**

✚ THE UNITED NATIONS AND EL SALVADOR 1990-1995, **pp. 6-16, 35-43** (United Nations, New York, 1995).

✚ Andrew Rice, *The Long Interrogation*, NEW YORK TIMES, June 4, 2006, §6 (Magazine), **p. 50**.

Video: Long Night's Journey into Day: South Africa's Search for Truth and Reconciliation

Supplementary

✚ Elizabeth Rubin, *If Not Peace, Then Justice*, NEW YORK TIMES, April 2, 2006, §6 (Magazine), **p. 42**.

October 16, 2007: Emerging Principles of Accountability

Discuss the current state of the law after these experiences. Identify obligations imposed by the international community, e.g. the Conventions on torture, war crimes and disappearances adopt an “extradite or prosecute” regime for alleged offenders found on a party’s territory, while the Genocide Convention obligates only the party where genocide took place to prosecute an alleged offender. Discuss difficulties with implementation. Choices and obligations. Prosecutions, truth telling, reparations and purification of armed and security forces. Relationship between domestic obligations and international crimes, and international cooperation in law enforcement and extradition theory.

Readings

- ✚ GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY, **Chapter 2** (The Post-war World), pp. 41-88.
- ✚ STEVEN R. RATNER & JASON ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY: **Chapter 7**
- ✚ Diane Orentlicher, *Addressing Gross Human Rights Abuses: Punishment and Victim Compensation*, in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY (Louis Henkin & J. L. Hargrove, eds., 1995), pp. 425-475.

Supplementary:

- ✚ Revised Final Report Prepared by Mr. Louis Joinet pursuant to Sub-Commission decision 1996/119 on the *Question of the impunity of perpetrators of human rights violations* (civil and political), E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997).

October 18, 2007: Prosecutions and Amnesty Laws

The problem of impunity in the context of internal conflicts. The duty to prosecute and punish grave breaches, genocide, torture and crimes against humanity. Relationship between the duty to prosecute, and international crimes and universal jurisdiction. National, international and hybrid tribunals. The validity of amnesty laws and their domestic and international legal effects. The difference between pardons and amnesties, between self-amnesties and Lincoln-style amnesties.

Readings

- ✚ GEOFFREY ROBERTSON, *CRIMES AGAINST HUMANITY*, Chapter 7 (Slouching Towards Nemesis), **pp. 281-331**
- ✚ ARYEH NEIER, *WAR CRIMES: BRUTALITY, GENOCIDE, TERROR, AND THE STRUGGLE FOR JUSTICE* (1998) **Chapters 6 (pp. 75-95) & 7 (pp. 96-107).**
- ✚ RATNER & ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW*, **pp. 166-178.**

October 23/25, 2007: Truth, Reconciliation and Historical Commissions

Truth Commissions and their relationship to justice, the strengths and weaknesses of truth commissions, the differences in the nature, power and functions of truth commissions, and the importance of the process relative to the result; an emerging “right to truth” and its enforcement.

Readings:

- ✚ ARYEH NEIER, *WAR CRIMES*, **Chapter 4** (The Battle for Truth) **pp. 32-55.**
- ✚ PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS* (2001), Chapters **2, 3 & 6** (Confronting Past Crimes **pp. 10-23**; Why A Truth Commission? **pp. 24-31** & What is The Truth? **pp. 72-85**)
- ✚ *DEALING WITH THE PAST: TRUTH AND RECONCILIATION IN SOUTH AFRICA*, **Chapter 3** (Acknowledgment, Truth and Justice)
- ✚ ARGENTINA: COMISIÓN NACIONAL SOBRE LA DESAPARICIÓN DE PERSONAS. NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED; WITH AN INTRODUCTION BY RONALD DWORKIN, (English ed., 1986) *Introduction (pp. xi-xxviii) & Prologue (pp. 1-5).*
- ✚ RATNER & ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW*, **Chapter 10, pp. 228-240.**
- ✚ Eric Brahm, *Uncovering the Truth: Examining Truth Commission Success and Impact*, Vol. 8(1), *INTERNATIONAL STUDIES PERSPECTIVES*, **pp. 16-37** (2007)

Video: Confronting the Truth: Truth Commissions and Societies in Transition (2006)

October 30, 2007: Institutional Reforms (Lustration) and Reparations

Cleansing the security forces and other state offices. Lustration laws and disclosure of personal files. Disciplinary measures and due process. Measures of reparations and non-monetary reparations. The UN Human Rights Committee and the question of an “atmosphere of impunity.”

Readings

- ✚ HRW Policy Statement on Eligibility for Public Office of those Associated with Abusive Regimes, *in* TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, (Neil Kritz, ed., 1995), p. 488.
- ✚ DEALING WITH THE PAST (2ed., 1997), **Chapter 5** (State Security Files and Disqualification)
- ✚ Herman Schwartz, *Lustration in Eastern Europe*, *in* TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, (Neil Kritz, ed., 1995), pp. 461-483.
- ✚ Ellen L. Lutz, *After the Elections: Compensating Victims of Human Rights Abuses*, *in* TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, (Neil Kritz, ed., 1995), pp. 551-565.

Supplementary:

- ✚ TINA ROSENBERG, THE HAUNTED LAND, **Chapter 8**.

November 1/6, 2007: Individual Accountability: Individual Civil and Criminal Responsibility

Nuremberg and individual criminal responsibility under international law. Relevant principles: *nullem crimen sine lege*, sovereign immunity, superior orders and command responsibility. The authority and duty of international community to prosecute gross violations of human rights. Individual civil accountability for gross violations of human rights.

Readings

- ✚ RATNER & ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW, **Chapter 1**, & pp. 160-167, 178-186; Chapter 10, pp. 240-248

- ✚ GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY, **Chapters 6 & 8**
- ✚ Anne-Marie Slaughter & David Bosco, *Alternative Justice Facilitated by Little-Known 18th-Century Law*, CRIMES OF WAR MAGAZINE: The Tribunals, May 2001.

Video: The Trials of Henry Kissinger (2003)
 HBO Films: Filartiga: One Man's War (1991/2006)

November 8/13, 2007: Individual Accountability: International Crimes and International Penal Tribunals

International Criminal Law: Genocide, Crimes Against Humanity and War Crimes. The Geneva Conventions concept of "grave breaches" and war crimes; international and non-international armed conflict. The recognition of rape as a war crime, crime against humanity or genocide. The establishment of ad hoc tribunals by the UN Security Council under Chapter VII of the UN Charter; relationship between ad hoc tribunals and national courts; mixed national-international tribunals.

International Criminal Court: Almost 50 years after Nuremberg, adoption of statute for establishment of a permanent international criminal court to investigate and punish gross violations of human rights. US opposition to creation and operation of the ICC. Issues impacting the potential effectiveness of the ICC.

Readings

- ✚ GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY, **Chapters 5, 9 & 10**
- ✚ RATNER & ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW, **Chapters 2, 3, 4 & 9**

November 15, 2007: Terrorism and Terrorist Acts, "War on Terror"

Accountability for terrorism and acts that provoke terror among individuals, groups and civilian populations; prosecution of the "war on terror" and related abuses

Readings:

- ✚ GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY, **Chapter 12, Chapter 13 (pp.587-601)**
- ✚ PHILIPPE SANDS, LAWLESS WORLD, **Chapter 7 (pp. 143-173), Chapter 9 (pp. 205-222)**

November 20, 2007: Historical Injustices

Unrepaired historical injustices – serious violations of human rights; demand for reparations; State responses to claims of historical injustice

Readings:

- ✚ THOMAS PAKENHAM, *THE SCRAMBLE FOR AFRICA: WHITE MAN'S CONQUEST OF THE DARK CONTINENT FROM 1876 TO 1912* **Chapter 33 pp. 602-615 (1991)**
- ✚ ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* **Introduction: pp. xv-xli (2000)**

November 27, 2007: Accountability for Violations of Economic, Social and Cultural Rights

Economic, social and cultural rights as human rights; devising accountability mechanism(s) for violations of ESC rights; accountability of transnational corporations and international financial institutions for acts and policies violating ESC rights.

Readings

- ✚ 'The Politics of human rights,' *THE ECONOMIST*, August 16, 2001
- ✚ 'Righting Wrongs,' *THE ECONOMIST*, August 16, 2001
- ✚ GEOFFREY ROBERTSON, *CRIMES AGAINST HUMANITY*, **pp. 174-183.**
- ✚ Shirin Ebadi & Amir Attaran, Op-Ed., *When Politics Corrupts Money*, *NEW YORK TIMES*, June 16, 2004, at **A21.**
- ✚ *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE*, **396-406** (Richard B. Lillich, *et al.*, eds., 2006).

Web Sites

Amnesty International: www.amnesty.org

Crimes of War Project: www.crimesofwar.org

Human Rights Watch: www.hrw.org

International Center for Transitional Justice: www.ictj.org

Nuremberg Trials Project: <http://nuremberg.law.harvard.edu>

Strategic Choices in the Design of Truth Commissions: <http://www.truthcommission.org>

The Greensboro Truth and Reconciliation Commission: <http://www.greensborotrc.org/>

The Institute for Justice and Reconciliation: <http://www.ijr.org.za>

University of California, Berkeley War Crimes Studies Center:

<http://socrates.berkeley.edu/~warcrime/>