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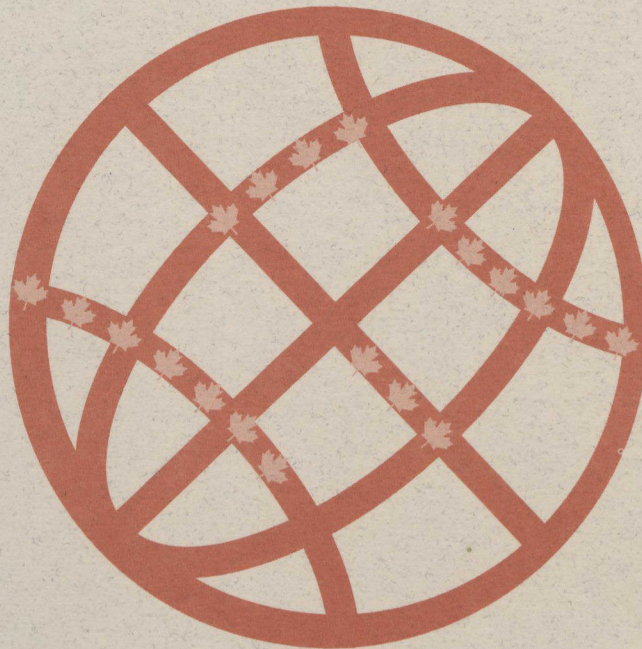
Canadian Centre
For Foreign Policy
Development



Centre canadien
pour le développement
de la politique étrangère

**LINKING THE DOMESTIC AND THE INTERNATIONAL:
HUMAN RIGHTS INTO THE 21ST CENTURY**

**October 2-4, 1998
Toronto**





Linking the Domestic and the International: Human Rights into the 21st Century
October 2-4, 1998, Faculty of Law, University of Toronto

Summary of Key Recommendations

On October 2-4, 1998, the University of Toronto Faculty of Law held a three-day conference marking the 50th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the law school's International Human Rights Programme. The conference attracted 175 human rights scholars, academics, activists and governmental/United Nations representatives, under the theme of *Linking the Domestic and the International: Human Rights into the 21st Century*. Much of the discussion focused on Canada's role in the creation, promotion and implementation of international human rights law. The attached Final Report outlines in detail the foreign policy recommendations arising from each plenary and panel discussion, a brief summary of which follows:

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- The government's present focus on human security is pro-active and forward-looking, as preventing human rights abuses is the best way to prevent conflict. Canada should continue its leadership role on humanitarian law issues, such as the International Criminal Court. It should support measures and emergency measures and emergency support means of seeking justice and building a lasting peace in post-conflict societies, which requires a nuanced, multifaceted response such as facilitating the return of refugees, providing technical expertise for domestic prosecutions or with amnesties and reconciliation commissions. Dialogue, education and training about rights are key to rebuilding a war-torn society. Canada should support such initiatives wherever it provides a substantial country with financial or other assistance packages.
- Canada must continue to think broadly about human rights - for example, how can the laws of war further incorporate the rights set out in the Convention on the Elimination of All Forms of Discrimination Against Women? It is important that Canada recognizes the impact that non-human rights organizations, such as the International Monetary Fund can have on human rights implementation. In addition, Canada should take a leadership role in encouraging the cooperative integration of the different United Nations and regional human rights bodies. The Department of Foreign Affairs has already taken the first step in this by sponsoring the publication of *On the Record*. As well, Canada should support research into the possibility of expanding non-judicial institutions, such as ombudspersons, to provide a viable avenue of complaint at the international or regional levels about particular human rights violations. Canada should continue to promote provision of human rights information on the internet, as well as widespread internet access.
- Trade, development and labour standards are inexorably linked. For Canada's foreign policy of "constructive engagement" to work, it must actively promote reporting on human rights, selectively purchase from companies concerned with human rights and labour standards, ensure that the benefits from trade missions are dependent on human rights observance, and actively pursue the link between free trade, labour standards and human rights.
- Nongovernmental organizations and other citizens promoting human rights and human security. Canada should continue to work closely with civil society on these issues, particularly with respect to the promotion of human rights.
- Many countries agree to ratify treaties because they are required to do so. Canada should therefore focus on implementation and effective enforcement of existing treaties when it is examining human rights situations in other countries. It should also continue to examine international law dealing with emerging issues, for example, cloning, genetic engineering, information and genetic technologies.

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Linking the Domestic and the International: Human Rights into the 21st Century
October 2-4, 1998, Faculty of Law, University of Toronto

Summary of Key Recommendations

On October 2-4, 1998, the University of Toronto Faculty of Law held a three-day conference marking the 50th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the law school's International Human Rights Programme. The conference attracted 275 human rights scholars, academics, activists and governmental/United Nations representatives, under the theme of *Linking the Domestic and the International: Human Rights into the 21st Century*. Much of the discussion focused on Canada's role in the creation, promotion and implementation of international human rights law. The attached Final Report outlines in detail the foreign policy recommendations arising from each plenary and panel discussion, a brief summary of which follows:

- The government's present focus on human security is pro-active and forward-looking, as preventing human rights abuses is the best way to prevent conflict. Canada should continue its leadership role on humanitarian law issues, such as the ban on landmines and the promotion of an effective International Criminal Court. In addition, Canada must continue to be involved in developing global preventive measures and emergency procedures for refugee crises. Canada should support means of seeking justice and building a lasting peace in post-conflict societies, which requires a nuanced, multifaceted response such as facilitating the return of refugees, creating rule of law, restarting an economy, providing technical expertise for domestic prosecutions or the founding of truth and reconciliation commissions. Dialogue, education and training about rights are key to rebuilding a war-torn society; Canada should support such initiatives whenever it provides transitional countries with financial or other assistance packages.
- Canada must continue to think laterally about human rights - for example, how can the laws of war further incorporate the rights set out in the Convention on the Elimination of All Forms of Discrimination Against Women? It is important that Canada recognizes the impact that non-human rights organizations such as the International Monetary Fund can have on human rights implementation. In addition, Canada should take a leadership role in encouraging the cooperative integration of the different United Nations and regional human rights bodies. The Department of Foreign Affairs has already taken the first step in this by sponsoring the publication of *On the Record*. As well, Canada should support research into the possibility of expanding non-traditional institutions, such as ombudspersons, to provide a viable avenue of complaint at the international or regional levels about particular human rights violations. Canada should continue to promote provision of human rights information on the internet, as well as widespread internet access.
- Trade, development and labour standards are inextricably linked. For Canada's foreign policy of "constructive engagement" to work, it must: actively promote reporting on human rights; selectively purchase from companies concerned with human rights and labour standards; ensure that the benefits from trade missions are dependent on human rights observance; and actively pursue the link between free trade, labour standards and human rights.
- Nongovernmental organizations and other members of civil society are crucial partners in promoting human rights and human security. Canada should continue - and expand - its policy of active consultation with civil society on these issues, particularly with respect to monitoring and accountability.
- Many countries agree to ratify treaties because they have no effective enforcement mechanisms. Canada should therefore focus on implementation and effective enforcement of existing treaties when it is examining human rights situations in other countries. It is important for Canada to continually monitor international law dealing with emerging rights, for example, rights relating to disabilities, housing, sexual orientation and genetic technologies.

INTRODUCTION

On October 2-4, 1998, the University of Toronto Faculty of Law held a three-day conference to celebrate the tenth anniversary of the Faculty's International Human Rights Programme, founded by Professor Rebecca Cook, and to celebrate the 50th anniversary of the Universal Declaration of Human Rights. The conference brought together 100 leading scholars, academics, activists and practitioners from around the world. The conference sold out, with 275 people attending.

FINAL REPORT

for the Canadian Centre for Foreign Policy Development

There were over 100 student and alumni participants, including speakers, Chairs, audience members and a host of student volunteers who assisted with note-taking, logistics and preparing follow-up publicity on the conference. Student attendees took part in all of the conference activities. The conference was a dynamic and successful event. Chairs were former human rights workers and thinkers in their fields.

Linking the Domestic and the International: Human Rights into the 21st Century

The conference was exciting, not the least because of the cutting-edge topics discussed by the speakers. The conference was also uniquely Canadian, in that it explored Canada's role in the creation, promotion and implementation of international law. Conference speakers, Chairs and audience members identified and explored emerging and challenging human rights issues, and outlined future legal and policy directions for Canada in the protection and promotion of human rights, particularly directions where academic institutions, nongovernmental organizations and government can work together.

Conference in Celebration of the 10th Anniversary of the International Human Rights Programme University of Toronto, Faculty of Law October 2-4, 1998

Rapporteur:

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May 11, 1999

INTRODUCTION

On October 2-4, 1998, the University of Toronto Faculty of Law held a three-day conference to celebrate the tenth anniversary of the Faculty's International Human Rights Programme, founded by Professor Rebecca Cook, and to celebrate the 50th anniversary of the Universal Declaration of Human Rights. The conference brought together 100 leading scholars, academics, activists and representatives of government who are active contributors to the field of international human rights through publications, advocacy and fieldwork. The conference sold out, with 275 people in attendance.

There were over 110 student and alumni participants, including speakers, Chairs, audience members and a roster of student volunteers who assisted with note-taking, logistics and preparing follow-up publicity on the conference. Student attendees took part in all of the conference activities, including the dinner banquet. Many of the speakers and Chairs were former human rights interns with the International Human Rights Programme, as well as dynamic thinkers in their fields.

The conference was exciting, not the least because of the cutting-edge topics discussed by the speakers: how can justice be achieved in the aftermath of severe human rights abuses in transitional countries such as South Africa, Rwanda and the former Yugoslavia? Are economic, social and cultural rights the "new rights" of the 21st century? How does constitutional law fit within international human rights law? Can economic development and labour rights co-exist? A final agenda, listing the conference panels and speakers is enclosed (see Appendix 1).

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SUMMARY OF CONFERENCE PANEL PRESENTATIONS AND PANEL RECOMMENDATIONS

OPENING PLENARY:

KEYNOTE SPEAKER:

Paul Heinbecker: “The Universal Declaration at 50: New Challenges and New Opportunities for Canadian Foreign Policy”

Paul Heinbecker discussed the role of Canadian foreign policy in protecting human rights, which is adapting to a world of interconnectivity and dissolving state sovereignty. Every country’s foreign policy focuses on peace and security, but this is now approached in conjunction with a concern for human rights: *preventing* human rights abuses can be the best way to avoid conflict. Canada has created a niche in the human rights community by directing its efforts to bringing about gradual change from recalcitrant governments; however, along with this comes a need for responsible trade. Canada is also engaged in bilateral programmes to protect human rights such as legal and police training in Indonesia, as well as training for Chinese judges. It is a balance of idealism, which sustains foreign policy objectives, and realism, which is obtained through long experience.

Recommendations for Canadian Foreign Policy

- Heinbecker defended Canada’s policy of engagement with countries such as China, Indonesia and Cuba and suggested an increasing need for human rights monitoring and education, either through bilateral initiatives or through adding the strength of our voice to multilateral actions.
- Preventing human rights abuses is the best way to prevent conflict.
- We should not solely target strong states because weak states can be equally guilty of human rights abuses.
- Any human rights strategy will need to be designed on a case-by-case basis and will have to be in balance with the concerns of trade, development and culture. A “one size-fits-all” foreign policy is not effective. States must be taken on an individual basis.

PANEL: LINKING THE DOMESTIC AND THE INTERNATIONAL: HUMAN RIGHTS INTO THE 21ST CENTURY

David Beatty: "Comparative Constitutional Law and the Protection of Human Rights"

David Beatty discussed the explosion of human rights jurisprudence throughout the world. Courts in South Africa, Spain and Germany have sent down landmark decisions on issues as diverse as religion, freedom of expression and torture. This allows for the comparative development of human rights law. However, judgements are meaningless without enforcement. He also suggested that comparative studies of human rights law will lead to more sensitive developments. As an example, he contrasted the U.S. and German approaches to freedom of religion and concluded that the U.S. is not sensitive enough while the German approach appears to be very balanced.

Brenda Cossman: "Comparative Feminism and Women's Rights in India"

Brenda Cossman spoke on the difficulties of doing comparative law and the conceptual separation in the West between here and there. She cited the example of dowry death in India, which is viewed as a cultural phenomenon, rather than a violent form of gender-specific murder. This is the problem of an ethnocentric gaze that takes culture too seriously. Again citing Indian law, Brenda Cossman noted how some Western terms are part of the Indian culture, but one can only understand their meaning by placing oneself in the opposite position. This allows the cultural lens to be turned back on itself.

Adele Dion: "Protection and Promotion of International Human Rights: Finding a Canadian Niche"

Adele Dion stated that Canada has three roles to play in finding its niche in international human rights: (1) as a rules-based society, it can stand as an example in its observance of international treaties; (2) it has several areas of expertise in the rights of women, rights of children and freedom of expression, which it can use to develop new law; and (3) it can forge links with the nongovernmental (NGO) community to push the envelope of human rights.

John Hucker: "The Implementation of Human Rights at the National Level: the Role of the Canadian Human Rights Commission"

John Hucker discussed the history and the role of the Canadian Human Rights Commission (CHRC). Although based in international law such as the Universal Declaration of Human Rights, it a Canadian institution. However, its role has now been overtaken somewhat by the Charter. It is shifting towards a public awareness and international advisory function, including work in China and Indonesia. John Hucker noted that the procedures and processes of the CHRC are problematic, but places the fault for this with the Commission and with the courts who made the CHRC in their own image.

Laurie Wiseberg: "Linking the Domestic and the International: NGO Access to International Human Rights Mechanisms and Arenas"

Laurie Wiseberg discussed the role of NGOs in international human rights arenas. The relationship between NGOs and the United Nations is closer than it has been in the past, with the U.N. relying on NGOs for information and often also for implementation of U.N. projects. NGOs also play a critical role in getting new items on the human rights agenda.

Recommendations for Canadian Foreign Policy

- The Canadian government should support educational programs that encourage nuanced thinking in students about culture, gender and human rights violations. Brenda Cossman cited the University of Toronto Faculty of Law's International Human Rights Programme, especially the internship programme, as an excellent example of such a program.
- The Canadian government needs to ally itself with groups in civil society, particularly in the area of monitoring and holding other states accountable. It is unable to accomplish its foreign policy goals alone: this was demonstrated by the important role played by NGOs at the International Criminal Court negotiations.
- The Canadian government should try to ensure access for NGOs to U.N. meetings and international arenas. NGOs are key actors on world scene. We need to overcome the perception of national governments that NGOs are the opposition. This view has slowed NGO access and reduced the credibility of NGO reports. Although the internet has given NGOs a vastly increased ability to disseminate information, the fees for website access (especially in many developing countries) creates accessibility concerns.

WORKSHOP #1: GLOBAL ECONOMIC INTEGRATION AND LABOUR RIGHTS

Ian Chambers: "The ILO Declaration on Basic Principles and Rights of Labour and the Situation of the Maquila in Central America"

Ian Chambers discussed the nature of globalization and its effect on labourers. He dealt with two issues: 1) the place of international labour law within the context of global economic integration; and 2) the maquila in Central America -- the objective of ILO is not to abolish these factories, but to ensure that they operate with acceptable standards. Several attempts, such as the 1998 Declaration of the International Labour Organization (ILO), have been made to ensure that greater globalization does not lead to greater exploitation of workers.

Milos Barutciski: "Honk if you Love Labour Rights: Reflections from a Trade Lawyer's Perspective"

Milos Barutciski discussed the influence of labour concerns on trade policies. Trade liberalization has led to a decrease in union strength but it is likely that labour will increasingly be an issue in international trade negotiations. This has led to an evolving set of alliances, where labour tends to be allied with groups such as environmentalists, social activists, and economic nationalists who are interested in international standard-setting.

Gerry Barr: "Putting the Tiger Back in the Cage"

Gerry Barr spoke of the eroding labour standards that come with trade liberalization. Labour standards in developing countries are often set by the corporation and workers who challenge these standards are often fired or disciplined. However, the rejection of the Multilateral Agreement on Investment (MAI) and the spreading Asian crisis may show that the link between globalization and declining labour standards is not inevitable. A hopeful labour activist should look to new institutions and mechanisms such as: multilateral tables of shared union alliances and employer connections; cross-border bargaining and exchange of information between local unions (such as between mining unions in British Columbia and Chile), and public advocacy of labour rights both in terms of local labour agreements and international trade agreements.

Ton Zijdwijk: "International Trade and Labour"

Zijdwijk discussed adding labour to the international trade agenda. The Uruguay round of GATT on intellectual property was the first time that domestic law was brought into the international trade arena and that set a precedent for labour. The NAFTA round also included a side agreement on labour. Now, there is the possibility of including labour clauses in international trade agreements, but the debate has just begun as to the content of such clauses.

Brian Langille: "Labour and the World Economy – New Waves"

Brian Langille discussed the possible inconsistencies and problems in the June 1998 ILO Declaration on Basic Principles and Rights of Labour. Attempting to reach an international consensus forces us to focus the agenda on core rights or classic rights, such as freedom of association. In addition, he questioned whether the ILO is starting to sound like the WTO when it states that comparative advantage of States cannot be called into question.

Recommendations for Canadian Foreign Policy

- Canada needs to support documents such as 1998 Declaration of ILO to ensure that all human beings have the right to pursue work in conditions of freedom and dignity.
- Yet, we need to ensure that labour standards are not used as protectionist measures by countries, which will then erode their value. Although the generation of employment in

developing countries is a good objective, we need to ensure that the fundamental rights of workers are respected and that the benefits are not reaped only by a few.

- Brian Langille suggested that the ILO should look more closely at the issue of comparative advantage of States with respect to the labour market. It should not be used as a smokescreen to disguise lower labour standards. We need to consider the unequal division of goods between developing and developed countries.
- Although some see the World Trade Organization (WTO) as an effective enforcement mechanism for labour agreements, Ton Zuijdwick offers the caveat that we do not want to overload the WTO dispute resolution mechanism. One would not want to solve human rights issues through the WTO. However, this debate does have the advantage of considering who has enforcement rights.

WORKSHOP #2: THE CONVENTION ON THE RIGHTS OF THE CHILD: ADEQUATE PROTECTION?

Reem Bahdi: "The Convention on the Rights of the Child: More than Illusion but Less than Reality"

Reem Bahdi stated the Convention on the Rights of the Child (CRC) was poorly drafted and often ignored by hostile governments but that it did provide protections not found elsewhere. She discussed two examples: a) the Baker case in Canada -- reluctance of Canadian courts to take children's rights seriously; and b) Israel's responsibility towards Palestinian children -- a bill introduced in Israeli legislature to deny care to Palestinian children injured by Israeli soldiers in spite of article 39 of CRC.

Martha Shaffer: "Canada's Child Support Guidelines: Do they Really Address Child Poverty?"

Martha Shaffer spoke on the methods used in Canada to ensure child welfare as set out by the Convention on the Rights of the Child. Shaffer believes that Canada has done well to emphasize child support as a private obligation on shoulders of parents, but less well in its obligation to provide when parents cannot. The Child Support Guidelines are indicative of this phenomenon. The Child Support Guidelines are useful, but too little time and money was spent on those children who will not benefit from the new Guidelines. For example, there are children who will not benefit from the Guidelines simply because the parents do not earn enough. As the guidelines are addressed towards child support they will not have any impact in many low-income families. As a whole, too much time was spent revising the Child Support Guidelines and not enough on the larger issue of child poverty.

Chris Bondy: "Supplementing the CRC: Subsequent Additions to International Law Regarding Children"

Chris Bondy spoke of the evolution of children's rights and discussed the goals and future of the Convention on the Rights of the Child. He suggested that the focus of the international Convention should be a binding commitment to the rights set out in the treaty. In terms of advocacy, most of the work should be done on domestic implementation, although this can be done internationally. When NGO suggestions are not legally feasible, such as in a confederation, the government should engage in a dialogue with them to overcome the lack of technical (legal) knowledge and work towards a solution.

Peter Dalglish: "The Inadequacies of Legislation in the Protection of Rights of Poor Children"

Mr. Dalglish commented that, although the Convention is one of the most ratified treaties, it is also one of the most ignored. At least the U.S. is honest in its refusal to be a signatory. He also noted that the Convention does little to help street children, who view the State as corrupt. Mr. Dalglish stated how little faith he had in pieces of paper. To have any actual affect, one has to be involved in the lives of street children. The most effective action is at the local level. Treaties and laws are just an easy "out" for politicians; work on poor children must be more substantive. In addition, he noted that the U.N. Security Council has never taken action to limit atrocities perpetrated against children all over the world.

Recommendations for Canadian Foreign Policy:

- Chris Bondy noted that only two countries are not signatories to the Convention. Thus, the focus should be on implementation and not on redrafting.
- Canada should lobby for effective enforcement mechanisms for the CRC. Countries jump to ratify the Convention because they know that it cannot be enforced. For example, Canada could push for an international complaints procedure.
- Any redrafting to the CRC should only be made where there is international consensus and such revisions should flow from the principles embodied in the Convention.
- In addition, we should think laterally about children's rights to consider what other efforts would have a substantial impact on children. For example, the 1997 Mine Ban Treaty will have an enormous impact on the lives of children.
- Canada should lobby the UN Security Council to take action to limit atrocities perpetrated against children all over the world.

WORKSHOP #3: TRANSITIONAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND TRUTH AND RECONCILIATION COMMISSIONS

Jennifer Llewellyn: “The South African Truth and Reconciliation Commission: A Restorative Approach to Dealing with Conflicts of the Past”

Jennifer Llewellyn gave an overview of the structure of the South African Truth and Reconciliation Commission. She then contrasted the goals of retributive justice (as usually found in a criminal justice context) and restorative justice, which attempts to deal with the relationship between the perpetrators and the victims. Llewellyn believes that in cases of systematic or widespread human rights violations, restorative justice and truth and reconciliation commissions may be more effective than war crimes tribunals or mass trials.

David Dyzenhaus: “Judicial Independence and the Rule of Law”

David Dyzenhaus discussed the role of the South African Truth and Reconciliation Commission and its examination of the role of the legal profession in upholding apartheid. Dyzenhaus suggested that more judges should have come before the Commission to reveal the role of the law and the legal profession in promoting and prolonging apartheid. South African judges should not have cited judicial independence as a reason for refusing to appear in front of the Commission. Their appearance would have increased the accountability of the law and the legal profession, and would have informed South Africans about the crucial role they played in the apartheid regime.

Tawia Ansah: “Law, Literature and the Pursuit of Justice in the Postgenocide Context”

Tawia Ansah examined the role of the law and its relation to local stories. The stories told by women in Rwanda about the violence they suffered has led to a better understanding and a broadening of the definition of genocide. More importantly, however, is the local understanding of the genocide that flows from the stories. He also contrasted the local memorials in Rwanda (skulls left in piles in churches) with the state memorial (an unemotional concrete slab) to demonstrate how the law creates a static image of the genocide that may not lead to justice.

Ariane Brunet: “A Holistic Approach to Addressing Gender Crimes at the Rwandan Tribunal”

Ariane Brunet spoke of the history of gender-related war crimes in the 1990s and described the activities of the U.N. in addressing or failing to address these crimes. She noted the poor record of war crimes trials in addressing gender-related crimes. The International Centre for Human Rights and Democratic Development sponsored the creation of the NGO Coalition for Women’s Rights in Conflict Situations, which employs a monitor and an investigator on gender-related crimes in Rwanda. This creates important interaction between NGOs in the West and NGOs in

Rwanda. Together, these groups have written *amicus curiae* (“friend of the Court”) briefs to the International Criminal Tribunals for the Former Yugoslavia and Rwanda to remind these bodies to be gender-sensitive in their war crimes prosecutions.

Valerie Oosterveld: “Gender and the International Criminal Court”

Valerie Oosterveld discussed the link between retributive justice and restorative justice in the International Criminal Court (ICC). The restorative model, one example of which is the South African Truth and Reconciliation Commission, is present in certain articles of the ICC Statute, such as those addressing witness protection and participation, as well as victim compensation. These crossover provisions tend to address gender-related concerns in a particularly useful manner. These articles represent an important link between restorative and retributive justice, which is a reflection of the evolution of human rights laws addressing armed conflict issues.

Recommendations for Canadian Foreign Policy:

- The Canadian government should support the crucial work being done by NGOs in helping women in war-torn regions to heal from the gender-related crimes, such as rape, committed against them.
- Where applicable, Canada should support the use of truth and reconciliation commissions as an alternative means of dealing with cases of widespread human right abuses.
- Canada should continue its long-standing support of the innovative approach of The International Criminal Court, especially insofar as it incorporates human rights standards into the Statute alongside traditional humanitarian law standards. This nuanced and forward-thinking approach should be encouraged, especially through Canada’s support of widespread ratification. Again, since this was partly the result of NGO advocacy through, for example, the Women’s Caucus for Gender Justice in the ICC, the Canadian government should continue to consult with NGOs to achieve these international objectives.

PLENARY: THE INTERSECTION OF INTERNATIONAL HUMAN RIGHTS AND CONSTITUTIONAL LAW

Trudo Lemmens: “Selective Justice and Genetic Discrimination”: the Ethics of Singling out Genes in our Laws”

Trudo Lemmens spoke of the developments in genetic technology and its possible uses for discriminatory purposes. This could include the creation of actuarial classes for life and health insurance purposes based on genetic grounds. This is less of a problem in Canada because of universal access to health care. In comparison to other countries, Canada has done little to address (in law) how genetic material should and should not be used.

David Lepofsky: “International and National Recognition of Disability Equality: Who’s Ahead of Whom?”

David Lepofsky spoke of the barriers faced by the disabled and the fact Canada has been slow to act to remove these barriers in recent years. Four years ago, Canada was a model for other countries such as Israel in this area; now Israel is a model for Canada. Domestic and international human rights instruments have achieved very little of concrete value with respect to disability issues. Mr. Lepofsky noted the need for more tailored responses to deal with the concerns of the disabled beyond relying on human rights instruments. Canada should move towards adopting a Disabilities Act.

Margaret Parsons: “An Analysis of the ‘Danger to the Public’ Provision of the Immigration Act in the Context of Canada’s International Human Rights Obligations”

Margaret Parson discussed the impact of Canada's deportation policy on minority immigrants. Specifically, more Caribbean people are deported than any other group and Jamaicans are deported out of proportion to other deportees. Deportation of long-term residents can isolate the deportee in the receiving country and also disrupt families. It also can leave the deportee’s children stateless. Canada's deportation policy should be challenged based on the Charter and also in international law. Canada does not seem to be living up to its international obligations under the Convention on the Elimination of Race Discrimination and other treaties. If children are involved, then the Ministry should consider the best interests of the children prior to deportation. The Ministry should also consider how long the deportee has spent in Canada.

Joanne Rosen: “The Use of the Ontario Human Rights Code as an Instrument to Vindicate Domestic Equality Rights”

Joanne Rosen discussed the similarities and differences between the Charter of Rights and Freedoms and the Ontario Human Rights Code. She noted that both have advantages and disadvantages and that there are some conflicts between the Code and the Charter and within the Code itself, for example, with respect to non-discrimination based on sexual orientation. Joanne Rosen noted the use of the Universal Declaration of Human Rights in the Preamble to the Code and suggested that international human rights instruments can be useful in advocating for human rights at the domestic level, particularly on novel points.

Recommendations for Canadian Foreign Policy:

- Canada should support the aspects of the UNESCO Declaration on the Human Genome that include the right not to be discriminated against on genetic grounds.
- Canada should be one of the first countries to take a leadership role internationally on the rights of the disabled, and must work simultaneously to improve the rights of disabled people within Canada – both through legislation and implementation.

- Canada must be aware of the significant international impact of deporting people under the Immigration Act. For example: 1) we risk creating “stateless children” when we deport non-citizen children born in Canada; 2) many deportees are long-term residents of Canada who are sent to their “home” countries but have no ties to that country and the countries are often not willing to welcome or accept them.
- Canada's deportation policy does not seem to be living up to its international obligations under the Convention on the Elimination of Race Discrimination and the Convention on the Rights of the Child.

WORKSHOP #4: INTERNATIONAL GLOBAL DEVELOPMENT AND THE LAW

Chisanga Puta-Chekwe: “From Legal Rights to Basic Human Rights”

Chisanga Puta-Chekwe discussed the relationship between guaranteeing human rights and development. Rights cannot exist in a vacuum -- rights such as freedom of the press can be less meaningful in a country where half the country is illiterate. Some countries, such as Ghana and South Africa, have attempted to guarantee rights in a way that addresses these issues.

John Lobsinger: “The Place of Law in International Development”

John Lobsinger discussed the Canadian International Development Agency's legal projects. These are directed towards capacity building (such as teaching how to do legal drafting) as well as supporting the application of legal rules, legal education and promoting public awareness of public advocacy.

Kevin Davis: “Ensuring Equal Access to Economic Opportunities”

Kevin Davis discussed how rights guaranteed in international law, particularly social and economic rights, are dependent on mechanisms that indirectly ensure these rights. One mechanism is laws that guarantee minimum access to resources and opportunities. For this, an economic analysis of the law is useful in order to examine how it affects an equitable distribution of resources.

Craig Forcese: “Human Rights Mean Business: Canadian Corporations, Human Rights and Development”

Craig Forcese challenged the idea of “constructive engagement”, noting that while economic growth leads to political opening in developing countries, there is no correlation between economic growth and increased protection of human rights. For example, in China, human rights abuses went up in 1996-7 at the same time as Canada invested millions of dollars in foreign investment.

Recommendations for Canadian Foreign Policy:

- Canada must consider the broader context of human rights. We may be too focused on overt violations of human rights and not focused enough on using human rights instruments in innovative ways. For example, how can extremely poor countries such as Mozambique guarantee basic education and health care when the International Monetary Fund demands massive debt repayment?
- International legal development projects must be based on an analysis of the local legal/social context; otherwise they may miss the real problem. Projects should also be adapted to the local perception of the law and should start by building a local coalition to foster support, followed by an analysis of the legal structure, before embarking on changes.
- International aid should support institutions, such as middle-credit institutions, debt repayment and trade policies that indirectly support human rights.
- For Canada's foreign policy of "constructive engagement" to work, the government must: (1) actively promote reporting of human rights; (2) selectively purchase from companies concerned with human rights; (3) ensure that the benefits from trade missions are dependent on human rights observance; and (4) actively pursue the link between free trade and human rights.

WORKSHOP #5: CRITICAL RACE THEORY AND HUMAN RIGHTS LAW

Lillian Pan: "Racial Discrimination and Challenge for Cause in the Canadian Jury System"

Lillian Pan discussed the future of jury selection in Canada in the post-Parks and Williams era (regarding whether jurists can be dismissed if they are racially prejudiced). It has been a struggle to broaden the applicability of these precedents, either to other situations or to other racial groups. The law has reduced the amount of judicial discretion in taking into account racial prejudice, but it now must consider what questions may be asked of the potential jurors. She suggested that a few tightly controlled questions would be best.

Michelle Williams: "Critical Race Theory and the Internationalization of Anti-Racist Advocacy in Canada"

Michelle Williams gave an overview of the role of Critical Race Theory in law. It highlights the permeation of racism in all aspects of society, and attempts to overcome the general societal resistance to the recognition of racism. One strategy to overcome racism in law is to internationalize any legal issue. She noted that this is a developing area and the theories are new.

Williams suggested that we must be critical of the liberal model of international human rights protections to see if they really work for the African community. By internationalizing the issues, rights prohibiting racial discrimination will be more complete legally.

Naomi Overend: "The Evolution of Race Discrimination in Domestic Human Rights Law"

Naomi Overend discussed her work at the Ontario Human Rights Commission. Over the years, the knowledge and experience of the Commission in the area of racial discrimination has grown. The Commission has exploded several myths regarding racism, such as: 1) that minority employees are "oversensitive"; 2) that the discriminatory incident was an anomaly; 3) that racism must be overt and hostile, and 4) that a minority employer could not be racist towards someone of their own minority. She also discussed how this has played out in cases she has worked on, such as: *Ahmed v. Canada* (F.C.T.D., 1998).

Recommendations for Canadian Foreign Policy

- Canadian human rights commissions should continue to undertake bilateral outreach programs to human rights commissions in other countries on how to explode myths of racial discrimination.
- Canada should initiate a dialogue on the implementation of the Convention on the Elimination of Discrimination (CERD), especially with organizations that have not traditionally discussed these issues such as ASEAN, CARICOM, the OAS, la Francophonie and commonwealth states.

WORKSHOP # 6: CONSTITUTIONAL LAW IN THE POST-W.W.II WORLD: THE INFLUENCE OF CANADA'S CHARTER ON ISRAELI AND SOUTH AFRICAN CONSTITUTIONALISM

Lorraine Weinrib: "The Charter in the World"

Lorraine Weinrib described the process that led to the Canadian Charter of Rights and Freedoms as the first to create a comparative constitutional document. The Canadian experience had a remarkable influence on South Africa and Israel. Similar comparative models have been adopted in both Israel and South Africa. Weinrib noted, however, that Israel has extended fewer rights than Canada, particularly regarding freedom of religion.

Tsvi Kahana: "Constitutionalism, Importation and Uniqueness"

Tsvi Kahana discussed the Israeli adoption of aspects of both Canadian and American constitutional law, particularly the "notwithstanding clause" or override provision. He gave the example of the use of the override provision in Israeli law to protect a Kosher meat law.

Kahana noted that while Canada's well-developed democratic institutions protect against misuse of the clause, this may not be the case in Israel where it could be abused.

Amy Francis: "Equality Rights in Canadian and South African Constitutional Law"

Amy Francis discussed the South African constitution, particularly the judicial interpretation of the equality provisions. She noted that South African courts are giving these provisions a narrow interpretation because they fear that the equality provisions will be used primarily by previously privileged groups. Francis believes, however, that the best way to achieve the ultimate goal of equality is to widen the interpretation and work towards ensuring that test case litigation is brought to the courts.

Recommendations for Canadian Foreign Policy

- Canada should promote knowledge of our constitutional experience to other countries who are undergoing democratic development.
- In order to assist this process, Canada should provide copies of Charter jurisprudence and decisions of human rights commissions to countries adopting a similar bill of rights.

WORKSHOP #7: THE FUTURE OF WOMEN'S HUMAN RIGHTS

Vasuki Nesiah: "Human Rights Discourse on Women and Religion"

Vasuki Nesiah spoke of the difficulties of using Western secularized concepts of human rights in the context of countries such as India. While she did not advocate a return to cultural relativism, she noted the need to rethink the central position of secularism in human rights so that women in India are not forced to choose between religion and human rights. There needs to be critical work that considers the role of tradition, religion and human rights together.

Dianne Otto: "Economic and Social Rights as Women's Human Rights Post-Beijing: Some Thoughts on Indivisibility"

Dianne Otto discussed the concept of indivisibility of human rights -- the idea that human rights apply equally without exception to all people -- and its use in promoting women's human rights. Although some states recognize the indivisibility of human rights, priority is given to civil and political rights. Many southern states, such as Swaziland, Egypt, Pakistan and China, are very hostile to the language of indivisibility. Otto believes that the recognition of the interdependency and indivisibility of socio-economic and civil and political rights is necessary for protecting women's human rights.

Kerry Rittich: "Marketing Women: Feminism After the Era of the State"

Kerry Rittich spoke of the reconfiguration of the relationship between the state and the market -- that is, the position of the state is being eclipsed by the ascendance of the market. The interventionist state, however, has been crucial in protecting women's human rights. Now, however, we are told that the state can no longer guarantee protections to women and other marginalized groups because of the overriding importance of market goals. Thus, Rittich asks how arguments in favour of human rights can be sold using market ideas. The problem is, however, that when market reformers refer to human rights, they mostly use civil and political (often property rights and freedom of contract), and rarely incorporate other key human rights, such as women's rights.

Tracey Robinson: "Protection of Funda(men)tal Rights and Freedoms in the Caribbean: The Indivisibility of Women in Caribbean Constitutions"

Tracey Robinson discussed the place of women and women's rights in Caribbean law. Although the Bill of Rights was received favourably, it is relatively impotent and only guarantees the rights already secured in colonial law. The Bill of Rights has not guaranteed gender equality even if the words are there. For example, the law of citizenship is constructed so that the patriarchal notion that men pass their citizenship to women is still very evident in Caribbean jurisprudence. In addition, the interpretation of the Bill of Rights uses a test that guarantees inequality, referred to as the rationality model, and this should be changed.

Recommendations for Canadian Foreign Policy:

- When trying to promote human rights in countries such as India, Canada must be sensitive to the importance of religion and tradition in such countries. Canada should avoid promoting a purely secular human rights agenda that forces the country's citizens to choose between human rights and their religious traditions.
- Canada should be a proponent of the idea that human rights are indivisible from any other international social and political rights. Such a stance will aid in the prevention of hierarchical categories of rights that undermine social and economic guarantees of the human rights regime. Such an erosion would be particularly upsetting because it disproportionately affects women.
- Canada should recognize the important role of international institutions such as the World Bank in human rights, even though these organizations are often not identified as human rights organizations per se. Since they have the power to undercut or promote human rights, this makes them part of the human rights regime. Thus, Canada should identify them as human rights institutions.

WORKSHOP #8: ADVOCACY ACROSS BORDERS: TRANSNATIONAL LITIGATION AND HUMAN RIGHTS

Ed Morgan: "Discovery"

Ed Morgan discussed the U.S. civil procedure rules that allow applications for discovery in U.S. in aid of foreign litigation. U.S. discovery rules are much wider than Canadian rules and allow discovery of testimony and witnesses not allowed in Canada. He discussed the use of the U.S. rules in two cases before the 1st and 2nd Circuit that came to two different conclusions. One court held that in order for a U.S. court to allow discovery under Rule 1782, discovery must be allowed in the home jurisdiction. The other court, however, found that the discovery rules of the home jurisdiction should be ignored when considering applications because it would undermine Congressional intention in passing the discovery rules. Thus, the rules of civil procedure are subject to the same uncertainty as seen in international law regarding the concept of legal sovereignty.

Jennifer Green: "International Human Rights Litigation in U.S. Courts: Using the Alien Tort Claims Act and the Torture Victim Protection Act"

Jennifer Green spoke of various ways to prosecute human rights abuses civilly in the United States, specifically through the Alien Tort Claims Act, the Torture Victim Protection Act and under international law in U.S. courts (since international law is included in U.S. federal common law). She provided examples of a number of pending cases, including one against the Islamic Salvation Front in Algeria (for attacks on journalists and human rights activists) and another against a joint natural gas pipeline project in Burma (for forced and slave labour).

Bruce Broomhall: "A Window for Justice: Will the International Criminal Court Promote Justice Through National Litigation?"

Bruce Broomhall discussed the impact of the International Criminal Court (ICC) Statute on rights protection. Specifically, he addressed three questions: 1) what does the court require from its state parties; 2) how might the ICC play out on a national level?; 3) where are we now and where are we going? In addition, NGOs are working and will need to continue to lobby both for ratification and at the Preparatory Commission which will be drafting the ICC's Rules of Procedure and Evidence.

Bill Graham: "Transnational Human Rights Issues: A Parliamentary Perspective"

Bill Graham compared U.S. and Canadian approaches to human rights litigation. In U.S., which is hesitant to sign many international documents, domestic courts are more willing to take jurisdiction of human rights violations. In Canada, there is very little jurisdiction to bring foreign human rights claims in Canadian courts. He suggested there are two reasons for the differences:

1) a philosophical reason -- unlike the U.S., Canada is hesitant to tell other countries how to run their affairs. Thus, Canada is looking towards the creation of truly global system with international norms rather than trying to apply its domestic norms internationally; 2) it is easier to get laws passed regarding human rights in a U.S.-style congressional system, as opposed to a parliamentary democracy like Canada which needs the PMO to take interest in the matter before a bill is even introduced.

Recommendations for Canadian Foreign Policy:

- To prosecute human rights abuses, one must be creative: the case against the Islamic Salvation Front is difficult because it is against a non-state actor. Canada should support the use of civil remedies to pursue those who have committed human rights abuses. For example, the Alien Tort Claims Act in the United States has so far been successful against multinational companies and this could be a valuable tool in the future.
- Canada should continue to vigorously support the ratification of the ICC and should continue to consult with NGOs (especially domestic NGOs) on specific issues with respect to the Court.
- Canada is attempting to find universal human rights norms, as opposed to simply allowing its domestic courts to take jurisdiction as in the U.S. However, as it does this, it must ensure that it has put all of the domestic "pieces" in place in a timely manner in order to do so. For example, it took several years for Canada to amend the Extradition Act so as to be able to extradite war criminals to the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

WORKSHOP #9: NATIONAL AND INTERNATIONAL PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES

James Anaya: "Indigenous Peoples and the International Human Rights Movement"

James Anaya discussed international protections for indigenous peoples and cited some of the problems that arise under international law. In Nicaragua, for example, the rights of indigenous peoples are technically protected by the Nicaraguan constitution, but the situation on the ground is very different. In order to receive protection for their ancestral lands, the indigenous people turned to the Inter-American Commission on Human Rights and the case is still pending.

Tara Letwiniuk: "John Locke, Colonialism and the Aboriginal"

Tara Letwiniuk spoke of the "recolonization" of indigenous peoples in Guyana. Little has changed since colonial independence -- multinational corporations continue to exploit indigenous lands. Ms. Letwiniuk drew a comparison to Delgamuuk in Canada, which allows for a government taking of aboriginal title in the name of forestry and agriculture. Letwiniuk

suggested that the international sphere could allow for domestic laws to be held up to scrutiny to analyze not only their intentions but also their impact, in an effort to protect indigenous rights.

Patrick Macklem: “Indigenous Rights and the Relation Between Constitutional Law and International Law”

Patrick Macklem discussed the relationship between constitutional law and international law with respect to indigenous rights. In a case regarding a hotel in French Polynesia no mention was made of local laws, whereas in Delgamuuk the court was silent as to international law. Avoiding the interaction between international and national or constitutional law will inevitably fail to adequately address the question of aboriginal sovereignty.

Jean Teillet: “Domestic Individual and Collective Aboriginal Rights in Canada”

Jean Teillet discussed the place of the Métis in Canada's indigenous populations. The Métis have always been considered individuals and not a collective group. This has denied them the ability to work towards collective rights and to define themselves as a people. In the end it is likely that the Supreme Court of Canada will be the body that decides what it is to be Métis. Teillet noted that a definition of rights is crucial to an equitable distribution of resources.

John Tyynela: “State of Indefinition: Reflections on Ethnicity and the Peace Process in Guatemala”

John Tyynela spoke of the history of indigenous peoples in Guatemala. The 1996 Guatemalan peace agreement included an Agreement on Identity and Rights of Indigenous Peoples, but it is an agreement that was negotiated in secret and is thus of questionable legitimacy. In addition, there is a growing gap between the political state and the rural communities, which has led to a gap between the normative orders coming from the state and local dispute resolution mechanisms -- for example, lynching has returned to rural Guatemala as an acceptable form of public punishment. There is a need for a model that looks both to local justice and traditional law and balances Mayan and European norms.

Recommendations for Canadian Foreign Policy:

- Canada should look to ensure that countries who take credit on the international arena for legal developments in human rights protection are actually enforcing those protections on a local level. James Anaya noted the development of norms on indigenous rights which are useful but stated that it is crucial that we consider the actual results on the ground. Protections in law are useless unless the domestic courts of the country are willing to recognize them. To date, many indigenous peoples have felt it necessary to go to international courts to convince their home State to enforce the laws they have already enacted.

- In Guatemala, Canada should promote a vision of socio-economic rights that takes into account the specific needs of that country. For example, since 60-70% of Guatemalans are Mayan, we must develop models of rights that are a blend of Mayan tradition and European ideals.

WORKSHOP # 10: Rethinking Economic Social And Cultural Rights

Barbara von Tigerstrom: "Implementing Economic, Social and Cultural Rights: The Role of Non-Judicial Institutions"

Barbara von Tigerstrom discussed the role of non-judicial institutions in implementing economic, social and cultural rights, particularly the Ombudsperson. While they have been successful in Europe, they only tend to be resorted to when there is no other remedy available. The advantages are that they are generally accessible and flexible. However, the remedies are not always enforceable and such institutions are viewed as lying outside the legal system. This tends to lead to their marginalization in Canada.

Leilani Farha: "Bringing Social and Economic Rights Home: The Case of Palestinians in East Jerusalem and inside Israel"

Leilani Farha spoke on the right to housing and the activities of the Palestinians in East Jerusalem. Recently, there has been increasing NGO action both locally and internationally that highlights and questions Israeli housing practices. Some of the most successful have been Palestinian action through U.N. mechanisms, such as the Committee on Economic, Social and Cultural Rights. Ms. Farha stressed the importance of activists learning how to express themselves in order to gain international attention. In addition, pressure can be exerted on Israel, which promotes itself as a Western democracy, by demonstrating how it is not living up to its democratic commitments in relation to housing.

Lucie Lamarche: Gender Mainstreaming and Women's Economic Rights: the Risks of a Methodology Built Upon Conceptual Flaws"

Ms. Lamarche discussed the conceptualization of women's rights. She noted that even within discussions of social and economic rights, women's rights are not always a part of the dialogue. She gave the example of the International Labour Organization and the World Bank, which are concerned about sustainability but do not consider this in terms of women's rights. We need to ensure the integration of women's rights into all human rights organizations, whether U.N. agencies like UNICEF or UNHCR, governmental departments such as Foreign Affairs, and NGOs that focus on human rights but not women's human rights. In addition, she noted that women's groups should be actively participating in U.N. meetings on social rights. It is important that women's voices are heard in the "male" issues of finances and development.

Juan Antonio Blanco: "To Rescue Hope"

Juan Antonio Blanco discussed some of the lessons of the twentieth century: nature cannot sustain the world's burgeoning population indefinitely; technology will not solve all of the world's problems; and happiness cannot be achieved by unlimited accumulation of wealth. Furthermore, neither the market nor the state alone can guarantee human rights - there is an interaction. In order to protect human rights, we must confront the apparent deficit of hope, imagination and wisdom to creatively develop solutions based on critical thinking. There is an urgent need for this type of dialogue on all levels -- family, community, national and international.

Craig Scott: "The Interpretive Reception of International Human Rights Treaty Law into the Canadian Legal Order: Toward a Transformational Ethic"

Craig Scott suggested a need to think of human rights in a way that returns to the fundamental premise of the Universal Declaration that incorporated both civil/political and economic/social rights. There must be a holistic approach to human rights that considers all treaties and incorporates all U.N. bodies in cooperative integration. For example, the six major human rights treaty bodies must initiate a process of integration. As it stands currently, the ICCPR, ESCR, CEDAW, CRC, CERD and CAT are more or less ignorant of what happens in each of their respective areas.

Recommendations for Canadian Foreign Policy:

- Canada should support research into the possibility of non-traditional institutions, such as Ombudspersons, to provide a viable avenue of complaint about certain human rights violations. At the international level, there are already some ombudspersons – the European Ombudsman; and the Inspection Panel established in 1993 at the World Bank.
- Canada should pressure Israel, which promotes itself as a Western democracy, to live up to its democratic commitments in relation to Palestinian housing rights in East Jerusalem.
- We need to ensure the integration of women's rights into all human rights organizations, whether it be U.N. agencies like UNICEF or UNHCR, governmental departments such as Foreign Affairs, or NGOs.
- Canada should encourage the cooperative integration of the different human rights treaties and human rights bodies (ICCPR, CEDAW, ESCR, CRC, CERD, CAT).

WORKSHOP # 11: SLOW PROGRESS: RECOGNIZING INTERNATIONAL GAY AND LESBIAN RIGHTS

Scott Long: "What We Talk About When We Talk About Sex: Imagining 'Sexual Orientation', Defining Rights"

Scott Long discussed the various problems faced by gays and lesbians in various countries such as Turkey and Cyprus, including discrimination found in direct laws outlawing homosexual sex (usually called "indecent" laws) and in indirect laws that are violations of freedom of expression. Although there have been some victories on the international scene with respect to gay and lesbian rights, we need to be careful in imposing a definition or image of sexual orientation and attempting to make it universal. People do not necessarily identify as gay or lesbian. The long-term goal is to fight for sexual autonomy and to fight against state control over the body.

David L. Corbett: "Human Rights and Sexual Orientation: Towards International Justice – Reflections on the Role Canada Can Play in Establishing the Right to be Free of Discrimination on the Basis of Sexual Orientation in the International Community"

David Corbett spoke on the advancement of gay and lesbian rights in Canada and how these successes can be used internationally. There are some advantages to pushing for these rights in Canada (as opposed to elsewhere), such as it is a single criminal jurisdiction and it has a weaker tradition of fundamentalist politics. Mr. Corbett recommended a nine-point course of action: (1) continue to pursue advances domestically; (2) continue holding conferences such as this one to mobilize the focus from the West and get information out to the general public; (3) distribute information on gay and lesbian rights in Canada as widely as possible to other countries/jurisdictions, including by using the internet; (4) resign ourselves to incrementalism – change will take place in steps; (5) listen to local groups, (6) use recourse to international instruments where possible (for example, could we take Alberta (post-Vriend) to the U.N.?); (7) use international law to argue cases in Canada on gay and lesbian rights; (8) piggyback gay and lesbian rights onto other rights, so they are unavoidable (for example, put gay and lesbian rights in with equality rights in the European Union – if a State wishes to join the E.U., it must adopt all rights); and (9) avoid incendiary topics (such as sex with children) when establishing fundamental rights.

Richard Elliott: "Amnesty International, Human Rights and Sexual Minorities"

Richard Elliott picked up on David Corbett and Scott Long's concern regarding state control of the body. Often the state ignores the socio-economic concerns of gays and lesbians, thus marginalizing them and making gays and lesbians more prone to be violently attacked. Amnesty International had a checkered history on the rights of sexual minorities but this has improved in recent years. Protecting the rights of gays and lesbians will only come when the silence is broken. Thus, their rights cannot be protected simply as part of other statutes. There must be

explicit protection. In addition, few resources are devoted to protecting these rights. Changing this will require pressure from outside groups, not just from sexual minorities.

Recommendations for Canadian Foreign Policy:

- The Canadian government should support holding conferences such as this one to mobilize the focus from the West and get information out to the general public
- The Canadian government should distribute information on Canadian gay and lesbian rights as widely as possible to other countries/ jurisdictions, including by using the internet.
- The Canadian government should listen to local groups.
- The Canadian government should encourage litigants to use international instruments where possible.
- The Canadian government should support the piggybacking of gay and lesbian rights onto other human rights, so they are unavoidable (for example, put gay and lesbian rights in with equality rights in the European Union – if a State wishes to join the E.U., it must adopt all rights).

WORKSHOP #12: IMMIGRATION AND REFUGEE LAW IN THE AGE OF ARMED CONFLICTS

Barbara Jackman: “Effective Remedies in International Refugee and Immigration Law”

Barbara Jackman reviewed Canadian immigration policies and also highlighted some of the situations which the Immigration Act does not adequately address including: 1) people who will be at risk when returned to their country but who are found to be a security risk in Canada; 2) family integrity; and 3) persons coming from countries with ongoing wars. Although there has been litigation to deal with these gaps, the remedies available through the courts are problematic, particularly when the Federal courts tend to look at the cases in an ethnocentric manner.

Lorne Waldman: “Developments in International and Canadian Law on the Right of States to Expel Aliens”

Lorne Waldman noted that the Chiarelli case was the low point in immigration law and has restricted the remedies available to aliens. Canada should observe its commitments to the right to life and its commitments under the Convention Against Torture and the CRC in its immigration and deportation policies. One must also consider the right to community for those individuals who have been in Canada for a long time. In addition, the review process is completely discretionary which is also problematic from a human rights point of view. Furthermore,

Waldman believes that Canadian law should integrate the decisions of international bodies such as the Committee Against Torture.

Rana Khan: "UNHCR's Role in Situations of Armed Conflict"

Rana Khan discussed the role of the United Nations High Commissioner for Refugees (UNHCR). She noted that forced displacement has become a common method of war. The 1990s have been particularly turbulent with both the collapse of states and the creation of new states. This has required a shift at the UNHCR which used to concentrate on those people who cross borders, as opposed to mass displacement within a country within a very short period of time. The international system must be ever aware of changing circumstances. Massive and extremely fast displacements are becoming the norm at the end of this century, whereas even a decade ago, this was not imagined and therefore there was no comprehensive action plan in place until very recently.

Ninette Kelley: "Canadian Refugee Determination Procedures and the Minor Claimant"

Ninette Kelley discussed the processes surrounding child refugee claimants in Canada. Often children arrive alone, sent by their parents to escape civil war, or sent as mules for narcotics or for prostitution. Upon arrival, they are treated as adults for the purpose of a refugee hearing, with the sole proviso that they have an adult representative. Requiring children to meet the same substantive tests as adults may be unreasonable. In addition there are no mechanisms to ensure the child's representative is appropriate. Ninette Kelly would like to see an independent agency responsible for representing children for the Immigration and Refugee Board. In addition, the Board should recognize that, while adults may be able to return to a different part of their country of origin, this is rarely an option for children.

Recommendations for Canadian Foreign Policy:

- Canada must be ever aware of the changed circumstances in refugee law. Massive and extremely fast displacements are becoming the norm at the end of this century, whereas even a decade ago, this was not imagined and therefore there was no comprehensive action plan in place until very recently.
- Canada should continue to support the work of organizations such as the UNHCR to respond effectively and expeditiously with these changes.
- Canada should continue its involvement internationally in developing preventive measures and emergency procedures for refugee crises.

WORKSHOP #13: PROTECTION OF HUMAN RIGHTS IN ASIA

Ian Hamilton: "Facing the Challenges in Southeast Asia: Examining the Role of Canada"

Ian Hamilton highlighted the impact of the Asian economic crisis on human rights, particularly economic and social rights. For example, the price of rice has tripled, leading to malnutrition, and up to 3,000 people per day are losing their jobs in Indonesia. This has led to violations of the right to work (through discrimination for scarce jobs), the right to housing, and the right to an adequate standard of living. We need to increase our advocacy, especially in relation to economic and social rights. We also need to promote learning and person-to-person contacts through such projects as internships (such as those through the International Human Rights Programme at the Faculty of Law). In Canada, we should share international experiences with those working in domestic human rights, thus linking domestic and international human rights.

Craig Martin: "Kokuseki-Ho: Japan's Nationality Law and the Courts' Consideration of Constitutional Rights and International Law"

Craig Martin discussed the problems of stateless children in Japan due to the nationality laws. A case that has challenged the Japanese nationality laws was decided on an evidentiary basis and it is unclear if international obligations were discussed. However, nationality is a precondition to protection domestically and to protection of individual rights within the international system.

Li-Ann Thio: "Implementing Human Rights in ASEAN Countries: Problems and Prospects"

Li-Ann Thio discussed the development of human rights mechanisms in ASEAN countries. Several obstacles stand in the way of adopting a Western-style human rights mechanism. However, many ASEAN countries usually point to the West's hypocrisy due to its own rights violations. As well, ASEAN countries argue that these types of duties should not be imposed on them until they have reached a sufficient stage of development whereby they can provide such human rights.

Edward Wu: "Human Rights in China: My Perspective on the Path to Development of Human Rights Protection in China"

Edward Wu spoke of the development of human rights in China. Essentially there is a need for human rights in China as the government has only accepted international human rights norms when they do not oppose government interests or expose human rights violations. China claims to be developing a rival concept of human rights that is consistent with its own history as opposed to the "Western" and "capitalistic" values of international human rights instruments.

Simon Young: "Democratic Rights in Hong Kong"

Simon Young discussed the problems with democracy in Hong Kong: (1) only one third of the legislature is elected; (2) there is weighted voting according to occupation; (3) the constituencies range in size from 50 to 40,000 people; (4) the body in Hong Kong that criticizes the government is effectively appointed by the government; and (5) there are constitutional restrictions that limit the power of the legislature.

Recommendations for Canadian Foreign Policy:

- The Canadian government should continue to promote learning and person-to-person contacts through such projects as internships (such as those through the Youth International Internship Programme of the Dept of Foreign Affairs).
- Japan should be pressured to bring its nationality laws into conformity with its international obligations, including the right to nationality, the right of a child to acquire nationality and general human rights norms. The jus sanguinis approach to nationality is inconsistent with norms of non-discrimination.
- The Canadian government should explore the possibility that Western-style human rights mechanisms may not be appropriate to the country involved. For example, ASEAN countries resist implementation of Western-style human rights mechanisms.
- Canada must continue to try to persuade China to improve its human rights record and to sign international human rights instruments.
- It is important for Canada to monitor democracy in Hong Kong carefully, especially because it will be an important bellwether for either the growth or stifling of democracy by China.

CONCLUDING THOUGHTS: BRINGING INTERNATIONAL HUMAN RIGHTS LAW HOME

Warren Allmand: "Bringing Human Rights Law Home: NGO Thoughts"

Mr. Allmand noted that although there are a number of human rights treaty instruments, States do not always act according to these instruments even when they have ratified the treaty. This is also the case with economic, cultural and social rights as shown by the growing gap between the rich and poor in all areas of the world. However Mr. Allmand noted the activities of some bodies, such as the U.N. Commission of Human Rights and the Human Rights Committee, which add strength to otherwise weak international instruments. Mr. Allmand noted that access to international bodies should be easier, through reduced 'red tape' in procedures and reduced cost.

In addition, NGOs should be supported in their efforts to implement treaty provisions. In Canada, laws and commissions that implement the treaties have done good work but are limited by personnel and bureaucracy. In order to bring home human rights effectively, Canada requires

a widespread education campaign of the international human rights program. NGOs and intergovernmental organizations need to speak to each other and to the general public about human rights.

Reed Brody: “The United States and International Human Rights”

Mr. Brody discussed the implementation of international human rights instruments in the United States. Due to the way the U.S. signs treaties with many reservations, and its unwillingness to acknowledge human rights as something other than a left-wing concern, international treaties have been particularly unsuccessful in the U.S. He also noted the problem of the U.S. standing in the way of a number of key international initiatives such as the International Criminal Court, the Ottawa Convention on landmines and the Convention on the Rights of the Child.

Kerry Buck: “Human Rights into the 21st Century: Some Thoughts on Future Directions in Canadian Policy”

Kerry Buck noted that international human rights law, as a subset of international law, is dependent on the strength of the international system and the ability of States to implement at the local level. The declining capacity of States to intervene and the rise of new States without resources to build judicial systems threaten the international system of human rights protections.

At the same time, the concept of human rights is expanding outside of the field of human rights and into other fields. This leads to a growing universalization of human rights norms. There is a continuing need to integrate human rights law at the domestic level. Hopefully, the intersection of the international and the domestic will help in the reinvention of human rights that are better able to deal with the changes to the international system including declining resources and an overstretched U.N.

Roger Clark: “The ‘Human Rights Movement’: The Work of NGOs as Key Players in the ‘International Community’”

Mr. Clark discussed the role of human rights NGOs in three categories: monitoring, advocacy, and the relationship between NGOs and Nation-States. Mr. Clark suggested that in these three areas the human rights movement and human rights NGOs share a commonality of interests. In relation to monitoring, we must make sure we are accurate and address the challenge of impartiality, and know when to avoid being political (but there are times when human rights violations themselves are political). The monitoring must also make the violations a matter of the public record so they do not disappear from memory. We need to ensure that advocacy is done responsibly so that it does not overshadow the violation. As for NGOS, they should work with the Canadian government but we must also bring to light the hypocrisy of the State, such as its relation to indigenous people.

F. Pearl Eliadis: "The Future of Women's Human Rights: Making Rights Relevant"

Pearl Eliadis discussed the multifaceted nature of women's human rights. She noted that women are bearing disproportionate burdens in society today and that prominence of women's issues in Canada and the U.S. is dropping. Pearl Eliadis noted that women's movements need to get better at the "media spin" in order to make "rights" relevant for today. Women's movements also need to demonstrate how their actions are important. She also suggested that women's movements have failed to address major issues such as women's health. This is a dangerous failing when health is currently a significant concern for the public. She suggested that a key issue is the amount of time women spent in the hospital after childbirth; in the U.S. it is eight hours.

Recommendations for Canadian Foreign Policy

- In order to bring home human rights effectively, Canada requires a widespread education campaign of the international human rights program. NGOs and intergovernmental organizations need to speak to each other and to the general public about human rights.
- Canada needs to press the United States to support international human rights instruments. There are three possible strategies: 1) to demonstrate the illogic of some U.S. reservations, such as its reservations on the rights of the child regarding the age of soldiers; 2) to publicize the U.S. violation of international treaties, including execution of foreign nationals who were not given access to counsel; 3) as in the case of the 1997 Mine Ban Treaty, to create international treaties that do not depend on U.S. ratification and participation in order to effectively come into force.

Appendix 1: Final Conference Agenda

Linking the Domestic and the International: Human Rights into the 21st Century

October 2-4, 1998

University of Toronto, Faculty of Law, Flavelle House

FRIDAY, OCTOBER 2, 1998:

10:00 - 1:00 Registration

1:00 **Opening Remarks:** (BENNETT LECTURE HALL)

- **Ron Daniels** (Dean, University of Toronto, Faculty of Law)
- **Rebecca Cook** (Founder, Human Rights Programme, University of Toronto, Faculty of Law)
- **Isfahan Merali, Valerie Oosterveld** (Former Programme Interns; conference organizers)

Opening Plenary:

Keynote Speaker:

Paul Heinbecker

Senior Assistant Deputy Minister, Global and Security Policy,
Department of Foreign Affairs and International Trade

"The Universal Declaration at 50: New Challenges and New Opportunities for Canadian Foreign Policy"

Panel: *Linking the Domestic and the International: Human Rights into the 21st Century*

Chair: Isfahan Merali (Former Programme Intern; Ontario Human Rights Commission)

- **David Beatty** (University of Toronto, Faculty of Law)
"Comparative Constitutional Law and the Protection of Human Rights"
- **Brenda Cossman** (Osgoode Hall Law School)
"Comparative Feminism and Women's Rights in India"
- **Adele Dion** (Department of Foreign Affairs and International Trade)
"Protection and Promotion of International Human Rights: Finding a Canadian Niche"
- **John Hucker** (Canadian Human Rights Commission)
"The Implementation of Human Rights at the National Level: the Role of the Canadian Human Rights Commission"
- **Laurie Wiseberg** (Human Rights Internet, Ottawa)
"Linking the Domestic and the International: NGO Access to International Human Rights Mechanisms and Arenas"

3:15-3:30 Refreshments (LOWER ROTUNDA)

3:30 - 5:30 **WORKSHOPS** (participants choose one of three)

1. ***Global Economic Integration and Labour Rights*** (FLAVELLE CLASSROOM A)

Chair: Michael Mazzuca (Former Programme Intern; Koskie Minsky, Toronto)

- **Gerry Barr** (Steelworkers Humanity Fund)
"Putting the Tiger Back into the Cage"
- **Milos Barutciski** (Davies, Ward and Beck, Toronto)
"Honk If You Love Labour Rights: Reflections from a Trade Lawyer's Perspective"
- **Ian Chambers** (International Labour Organization, Costa Rica)
"The ILO Declaration on Basic Principles and Rights of Labour and the Situation of the Maquila in Central America"
- **Brian Langille** (University of Toronto, Faculty of Law)
"Labour and the World Economy - New Waves"
- **Ton Zuijdwijk** (Department of Foreign Affairs and International Trade)
"International Trade Law and Labour"

2. *The Convention on the Rights of the Child: Adequate Protection?*

(FLAVELLE CLASSROOM B)

Chair: Yedida Zalik (Koskie Minsky, Toronto)

- **Reem Bahdi** (Former Programme Intern; Centre for Equality Rights in Accommodation)
"The CRC: More Than Illusion But Less Than Reality"
- **Chris Bondy** (Former Programme Intern; Tory Tory DesLauriers & Binnington, Toronto)
"Supplementing the CRC: Subsequent Additions to International Law Regarding Children"
- **Peter Dalglish** (Founder, Street Kids International)
"The Inadequacies of Legislation in the Protection of Rights of Poor Children"
- **Martha Shaffer** (University of Toronto, Faculty of Law)
"Canada's Child Support Guidelines: Do They Really Address Child Poverty?"

3. *Transitional Justice: The International Criminal Court and Truth and Reconciliation Commissions*

(FLAVELLE CLASSROOM C)

Chair: Jasminka Kalajdzic (Former Programme Intern; Gignac, Sutts, Windsor)

- **Tawia Ansah** (Former Programme Intern; Ph.D. Candidate, Columbia University)
"Law, Literature, and the Pursuit of Justice in the Postgenocide Context"
- **Ariane Brunet** (International Centre for Human Rights and Democratic Development, Montreal)
"A Holistic Approach to Addressing Gender Crimes at the Rwandan Tribunal"
- **David Dyzenhaus** (University of Toronto, Faculty of Law)
"Judicial Independence and the Rule of Law"
- **Jennifer Llewellyn** (LL.B. student, University of Toronto, Faculty of Law)
"The South African Truth and Reconciliation Commission: A Restorative Approach to Dealing with Conflicts of the Past"
- **Valerie Oosterveld** (Former Programme Intern; Human Rights Programme, University of Toronto, Faculty of Law)
"Gender and the International Criminal Court"

5:30-7:30 **Welcome Reception**

(FLAVELLE FIREPLACE FOYER, FACULTY LOUNGE)

Sponsored by *Stikeman, Elliott and Baker & McKenzie*

SATURDAY, OCTOBER 3, 1998:

8:00-9:00 Registration; Breakfast (LOWER ROTUNDA)

9:00-11:00 **Plenary:**

(BENNETT LECTURE HALL)

The Intersection of International Human Rights and Constitutional Law

Chair: Sujit Choudhry (Former Programme Intern; LL.M. candidate, Harvard)

- **Trudo Lemmens** (Joint Centre for Bioethics, University of Toronto)
"Selective Justice and "Genetic Discrimination": the Ethics of Singling Out Genes in our Laws"
- **David Lepofsky** (Ministry of Attorney General, Crown Law Office)
"International and National Recognition of Disability Equality: Who's Ahead of Whom?"
- **Margaret Parsons** (African Canadian Legal Clinic)
"An Analysis of the 'Danger to the Public Provision' of the Immigration Act in the Context of Canada's International Human Rights Obligations"
- **Joanne Rosen** (Ontario Human Rights Commission)
"The Use of the Ontario Human Rights Code as an Instrument to Vindicate Domestic Equality Rights"

11:00-11:15 Refreshments (LOWER ROTUNDA)

11:15 - 1:15 **WORKSHOPS** (participants attend one of four)**4. *International Global Development and the Law*** (FLAVELLE CLASSROOM A)

Chair: Veera Rastogi (Former Programme Intern; Health Canada)

- **Kevin Davis** (University of Toronto, Faculty of Law)
"Ensuring Equal Access to Economic Opportunities"
- **Craig Forcece** (Canadian Lawyers Association for International Human Rights)
"Human Rights Means Business: Canadian Corporations, Human Rights and Development"
- **John Lobsinger** (Canadian International Development Agency)
"The Place of Law in International Development"
- **Kamal Monga** (lawyer, and Ph.D. candidate, Leiden University)
"Immigration Law of Canada and Human Rights"
- **Chisanga Puta-Chekwe** (representing Oxfam Canada)
"From Legal Rights to Basic Human Rights"

5. *Critical Race Theory and Human Rights Law* (FLAVELLE CLASSROOM B)

Chair: Maneesha Deckha (Former Programme Intern)

- **Naomi Overend** (Ontario Human Rights Commission)
"The Evolution of Race Discrimination in Domestic Human Rights Law"
- **Lillian Pan** (Tory Tory Deslauriers and Binnington)
"Racial Discrimination and Challenge for Cause in the Canadian Jury System"
- **Michelle Williams** (African Canadian Legal Clinic)
"Critical Race Theory and the Internationalization of Anti-Racist Advocacy in Canada"

6. *Constitutional Law in the Post-WWII World: The Influence of Canada's Charter on Israeli and South African Constitutionalism* (FLAVELLE CLASSROOM C)

Chair: Matthew Cohen (Former Programme Intern; LL.B. Student, University of Toronto)

- **Amy Francis** (Former Programme Intern; LL.B. student, University of Toronto, Faculty of Law)
"Equality Rights in Canadian and South African Constitutional Law"
- **Tsvi Kahana** (S.J.D. candidate, University of Toronto, Faculty of Law)
"Constitutionalism, Importation, and Uniqueness"

- **Lorraine Weinrib** (University of Toronto, Faculty of Law)
"The Charter in the World"

7. The Future of Women's Human Rights

(BENNETT LECTURE HALL)

Chair: Annie Bunting (Former Programme Intern; S.J.D. candidate, U. of Toronto, Faculty of Law)

- **Annette Ittiq** (Sisterhood is Global)
"Human Rights and Muslim Women"
- **Vasuki Nesiah** (S.J.D. candidate, Harvard Law School)
"Human Rights Discourse on Women and Religion"
- **Dianne Otto** (University of Melbourne School of Law)
"Economic and Social Rights as Women's Human Rights Post-Beijing: Some Thoughts on Indivisibility"
- **Kerry Rittich** (University of Toronto, Faculty of Law)
"Marketing Women: Feminism After the Era of the State"
- **Tracy Robinson** (University of the West Indies)
"Protection of Funda(men)tal Rights and Freedoms in the Caribbean: The Invisibility of Women in Caribbean Constitutions"

1:15-2:30 Lunch (FLAVELLE FIREPLACE FOYER, UPPER ROTUNDA, FACULTY LOUNGE)

Lunch-Time Sessions:

Career Opportunities and Challenges in International Law

(FLAVELLE CLASSROOM A)

Chair: **Bonnie Goldberg** (Director, Career Development, U. of Toronto, Faculty of Law)

- **Tawia Ansah** (Ph.D. candidate, Columbia University)
- **Joanna Birenbaum** (Iler, Campbell, Klippenstein, Toronto)
- **Leilani Farha** (Centre on Housing Rights and Evictions)
- **Kimberly Inksater** (UN Mission for the Verification of Human Rights in Guatemala)
- **Susan McDonald** (Ph.D. Candidate, Ontario Institute for Studies in Education)
- **Abid Qureshi** (Sonnenschein, Nath & Rosenthal, Washington D.C.)

Women's Human Rights Resources Web Site Demonstration

(BORA LASKIN LAW LIBRARY, Computer Laboratory)

2:30-4:30 **WORKSHOPS** (participants choose one of three)

8. Advocacy Across Borders: Transnational Litigation and Human Rights

(FLAVELLE CLASSROOM A)

Chair: Nicholas Devlin (Former Programme Intern; Clerk, Supreme Court of Canada)

- **Bruce Broomhall** (Ph.D. Candidate, School of Law, Kings College, London)
"A Window for Justice: Will the International Criminal Court Promote Justice through National Litigation?"
- **Jennifer Green** (Center for Constitutional Rights, New York)
"International Human Rights Litigation in US Courts: Using the Alien Tort Claims Act and the Torture Victim Protection Act"
- **Bill Graham** (Member of Parliament; University of Toronto, Faculty of Law)

“Transnational Human Rights Issues: A Parliamentary Perspective”

- **Ed Morgan** (University of Toronto, Faculty of Law)
“Discovery”

9. *National and International Protection of the Rights of Indigenous Peoples*

(BENNETT LECTURE HALL)

Chair: Karen Abbott (Former Programme Intern; LL.B. Student, University of Toronto)

- **James Anaya** (Indian Resource Law Center, New Mexico)
“Indigenous Peoples and the International Human Rights Movement”
- **Tara Letwiniuk** (Canadian Lawyers Association for International Human Rights intern; LL.M. candidate, University of Toronto, Faculty of Law)
“John Locke, Colonialism and the Aboriginal”
- **Patrick Macklem** (University of Toronto, Faculty of Law)
“Indigenous Rights and the Relation Between Constitutional Law and International Law”
- **Jean Teillet** (Ruby, Edwardh, Toronto)
“Domestic Individual and Collective Aboriginal Rights in Canada”
- **John Tyynela** (Former Programme Intern; UN Mission for the Verification of Human Rights in Guatemala)
“State of Indefinition: Reflections on Ethnicity and the Peace Process in Guatemala”

10. *Rethinking Economic, Social and Cultural Rights* (FLAVELLE CLASSROOM B)

Chair: Joanna Birenbaum (Former Programme Intern; Iler, Campbell, Klippenstein, Toronto)

- **Juan Antonio Blanco** (Felix Varela Centre, Cuba; Human Rights Internet)
“To Rescue Hope”
- **Leilani Farha** (Former Programme Intern; Centre on Housing Rights and Evictions)
“Bringing Social and Economic Rights Home: The Case of Palestinians in East Jerusalem and Inside Israel”
- **Lucie Lamarche** (l'Université du Québec à Montréal)
“Gender Mainstreaming and Women's Economic Rights: the Risks of a Methodology Built Upon Conceptual Flaws”
- **Craig Scott** (University of Toronto, Faculty of Law)
“The Interpretive Reception of International Human Rights Treaty Law Into the Canadian Legal Order: Toward a Transformational Ethic”
- **Barbara vonTigerstrom** (Former Programme Intern; Cook Duke Cox, Edmonton)
“Implementing Economic, Social and Cultural Rights: The Role of Non-Judicial Institutions”

7:00-11:00

Reception and Banquet

in Celebration of the International Human Rights Law Programme

Reception 7 p.m. East Common Room, Hart House

(sponsored by *Tory Tory Deslauriers & Binnington*)

Banquet Dinner 8 p.m. Great Hall, Hart House

Keynote Speaker: Madam Justice Louise Arbour

(Chief Prosecutor, International Criminal Tribunals for the Former Yugoslavia and Rwanda)

“The Establishment of the International Criminal Court and the Protection of Human Rights: Parallels and Contrasts with the Adoption of the *Charter* in Canada and the Implementation of the *European Convention on Human Rights* in the United Kingdom”

SUNDAY, OCTOBER 4, 1998:

8:00-9:00 Breakfast (LOWER ROTUNDA)

9:00-11:00 **WORKSHOPS** (participants attend one of three)

11. *Slow Progress: Recognizing International Gay and Lesbian Rights*

(FLAVELLE CLASSROOM A)

Chair: Christopher Lang (Former Programme Intern)

- **David L. Corbett** (Eberts, Symes, Toronto; Special Lecturer, University of Toronto, Faculty of Law)
"Human Rights and Sexual Orientation: Towards International Justice -- Reflections on the Role Canada Can Play in Establishing the Right to be Free of Discrimination on the Basis of Sexual Orientation in the International Community"
- **Richard Elliott** (Amnesty International Members for Gay, Lesbian, Transgendered and Bisexual Concerns)
"Amnesty International, Human Rights and Sexual Minorities"
- **Ilana Landsberg-Lewis** (United Nations Development Fund for Women, UNIFEM)
"A View of 'Sexual Rights' From Inside the UN"
- **Scott Long** (International Gay and Lesbian Human Rights Commission, New York)
"What We Talk About When We Talk About Sex: Imagining 'Sexual Orientation,' Defining Rights"

12. *Immigration and Refugee Law in the Age of Armed Conflicts*

(FLAVELLE CLASSROOM B)

Chair: Lilian Ma (Former Programme Intern; Immigration and Refugee Board)

- **Barbara Jackman** (Jackman, Waldman and Associates, Toronto)
"Effective Remedies in International Refugee and Immigration Law"
- **Rana Khan** (United Nations High Commissioner for Refugees)
"UNHCR's Role in Situations of Armed Conflict"
- **Ninette Kelley** (Immigration and Refugee Board)
"Canadian Refugee Determination Procedures and the Minor Claimant"
- **Lorne Waldman** (Jackman, Waldman and Associates, Toronto; LL.M. candidate, University of Toronto, Faculty of Law)
"Developments in International and Canadian Law on the Right of States to Expel Aliens"

13. *Protection of Human Rights in Asia*

(FLAVELLE CLASSROOM C)

Chair: Lois Chiang (Former Programme Intern; Director of Special Projects, University of Toronto, Faculty of Law)

- **Ian Hamilton** (Canadian Human Rights Foundation)
"Facing the New Challenges in Southeast Asia: Examining the Role of Canada"
- **Craig Martin** (Stikeman, Elliott, Toronto)
"Kokuseki-Ho: Japan's Nationality Law and the Courts' Consideration of Constitutional Rights and International Law"
- **Li-ann Thio** (National University of Singapore; PhD. Candidate, Cambridge University)
"Implementing Human Rights in ASEAN Countries: Problems and Prospects"
- **Edward Wu** (S.J.D. Candidate, University of Toronto, Faculty of Law)
"Human Rights in China: My Perspective on the Path of Development of Human Rights Protection in China"

- **Simon Young** (Former Programme Intern; Office of the Crown Attorney, Hamilton)
“Democratic Rights in Hong Kong”

11:00-11:15 Refreshments (LOWER ROTUNDA)

11:15 - 1:15 **Final Plenary:** (BENNETT LECTURE HALL)

Concluding Thoughts: Bringing International Human Rights Law Home

Chair: Karen Knop (Former Programme Intern; University of Toronto, Faculty of Law)

- **Warren Allmand** (International Centre for Human Rights and Democratic Development)
“Bringing Human Rights Law Home: NGO Thoughts”
- **Reed Brody** (Human Rights Watch, New York)
“The United States and International Human Rights”
- **Kerry Buck** (Department of Foreign Affairs and International Trade)
“Human Rights into the 21st Century: Some Thoughts on Future Directions in Canadian Policy”
- **Roger Clark** (Amnesty International, Canadian Section)
“The ‘Human Rights Movement’: The Work of NGOs as Key Players in the ‘International Community’”
- **F. Pearl Eliadis** (Ontario Human Rights Commission)
“The Future of Women's Human Rights: Making Rights Relevant”

1:15-1:30 **Closing Remarks**

- **Ron Daniels** (Dean, University of Toronto, Faculty of Law)
- **Rebecca Cook** (Founder, Human Rights Programme, University of Toronto, Faculty of Law)
- **Valerie Oosterveld** (Director, Human Rights Programme, University of Toronto, Faculty of Law)

1:30-2:30. Lunch (FLAVELLE FIREPLACE FOYER, UPPER ROTUNDA, FACULTY LOUNGE)

Lunch-Time Session:

Recent Intern Experiences

(FLAVELLE CLASSROOM A)

Chair: **Catherine Bickley** (Former Programme Intern; Pro Bono Students Canada)

- **Karen Abbott; Anne Carbert; Matthew Cohen; Maneesha Deckha; Jonathan Ptak**

*Linking the Domestic and the International:
Human Rights into the 21st Century*

We gratefully acknowledge the support of the following Conference Sponsors:

The Connaught Committee, University of Toronto;
The Social Sciences and Humanities Research Council (SSHRC);
The Department of Justice, Canada;
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The Students' Law Society (SLS);
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Stikeman, Elliott
Baker & McKenzie

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Angus Grant	Sophie Nunnelley	Julie Stanchieri
Penelope Hansen	Lisa Pedersen	Matthew Sullivan
Niamh Harraher	Jonathan Ptak	Andrew Wilson
I. Marcia James	Sandra Raponi	Misha Wilson

Appendix 2: Post-Conference Publication

The innovative thinking typical of the conference led to many calls for the conference papers to be published in book form. To this end, the Faculty of Law's International Human Rights Programme approached the speakers and potential funders. In addition, at the suggestion of Professor Rebecca Cook and based on her extremely positive experience in the past, we approached the University of Pennsylvania Press to consider publishing the book.

Thirty-six speakers agreed to submit final copies of their papers by April 30, 1999, for consideration for inclusion in the proposed book. These speakers range from prominent human rights academics, to heads of human rights agencies (both governmental and non-governmental), to people who have direct experience working "in the field" in places as diverse as Guatemala, Rwanda, Bosnia-Herzegovina, Guyana and South Africa. This range of experience and perspective is intentional: the conference was organized such that the conclusions of the speakers would be useful to human rights academics, as well as advocates in government, non-governmental and intergovernmental organizations. The draft book outline is included and a copy of the published book will be sent to the Canadian Centre for Foreign Policy Development once it is available.

LINKING THE DOMESTIC AND THE INTERNATIONAL: HUMAN RIGHTS INTO THE 21ST CENTURY

NOTE: This is only a preliminary grouping for chapter ideas.

BOOK 1 - LINKING THE DOMESTIC AND THE INTERNATIONAL: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

INTRODUCTION (Oosterveld, Merali and Cook)

CHAPTER 1: RETHINKING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Scott, Craig, *Towards the Institutional Integration of the Core Human Rights Treaties*

Thio, Li-Ann, *Implementing Human Rights in ASEAN Countries: 'Promises to Keep and Miles to Go Before I Sleep'*

von Tigerstrom, Barbara, *Implementing Economic, Social and Cultural Rights: The Role of Non-Judicial Institutions*

CHAPTER 2: LABOUR RIGHTS, DEVELOPMENT AND TRADE

Forcese, Craig, *Human Rights Mean Business: Broadening the Canadian Approach*

to Business and Human Rights

Barr, Gerry, Barutciski, Milos, Langille, Brian and Zuijdwijk, Ton, *Global Economic Integration and Labour Rights: Diverging Views*

Putu-Chekwe, Chisanga, *International Development: From Legal Rights to Basic Human Rights*

CHAPTER 3: THE GENDER OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Otto, Dianne, *'Last On, First Off' - Defending Women's Economic and Social Rights: Some Thoughts on Indivisibility and Equality*

Eliadis, Pearl F., *The Future of Women's Human Rights: Making Rights Relevant*

Cossmann, Brenda, *Comparative Feminism and Women's Rights in India*

Robinson, Tracy, *Protection of Funda(men)tal Rights and Freedoms in the Caribbean: Locating Women in Caribbean Constitutions*

CHAPTER 4: INDIGENOUS PEOPLES AND THE IMPORTANCE OF CULTURAL RIGHTS

Anaya, James, *Indigenous Peoples and the International Human Rights Movement*

Letwiniuk, Tara, *Land Rights of Indigenous Peoples Under Contemporary International Law: The Law of Aboriginal Title after Delgamuukw*

CHAPTER 5: APPLYING ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE INTERSECTION OF DOMESTIC AND INTERNATIONAL LAW

Hucker, John, *The Implementation of Human Rights at the National Level: the Role of the Canadian Human Rights Commission*

Farha, Leilani, *Bringing Economic, Social and Cultural Rights Home: Palestinians in Occupied East Jerusalem and Israel*

Corbett, David, *Towards International Justice for Sexual Orientation Rights*

Martin, Craig, Kokuseki-Ho: *Japan's Nationality Law and the Courts' Consideration of Constitutional Rights and International Law*

Shaffer, Martha, *Children and Economic, Social and Cultural Rights: A Case Study in Domestic Law*

CONCLUSION (Oosterveld, Cook and Merali)

BOOK 2 - SEEKING JUSTICE IN POST-CONFLICT SOCIETIES

INTRODUCTION (Oosterveld and Janus)

Graham, William C and Hurley, Mary C., *Transnational Aspects of International Human Rights*

Howse, Robert and Llewellyn, Jennifer, *Institutions for Restorative Justice: The South African Truth Commission as a Model for Dealing with Conflicts of the Past*

Ansah, Tawia, *Cordon Sanitaire: Law's Stories and Post-Conflict Justice*

Broomhall, Bruce, *National Prosecution of International Crimes: Pinochet, the ICC and the International Rule of Law*

Oosterveld, Valerie, *Restorative and Retributive Justice in the International Criminal Court*

Francis, Amy, *Inherited Incoherence: Discrimination and Privilege in South African Equality Law*

Tyynela, John, *State of Indefinition: Reflections on Ethnicity and the Peace Process in Guatemala*

Brunet, Ariane, *A Holistic Approach to Addressing Gender Crimes at the International Criminal Tribunal for Rwanda*

CONCLUSION (Oosterveld and Janus)

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