TRADE & HUMAN RIGHTS IN THE AMERICAS
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW

SYLLABUS

LAW 6936, Section 0840

Fall 2015
Monday 1:00 – 1:50; Tuesday 1:00—2:50
Room 354 Holland Hall

Professor Berta Esperanza Hernández-Truyol

Paper Deadlines:

Topic Selection: Paper themes are due no later than 9:00 A.M. on September 14 (Monday of Week 5).

Paper Due: Final papers are due no later than 2:00 P.M. on Tuesday, November 24 (last class). No extensions.

Course Description

Although human rights law and trade law have developed well-established regimes through a series of negotiations on parallel tracks since World War II, there is increasing criticism from a variety of fronts that international trade rules are insensitive to basic human rights and that globalization has done little to alleviate the gap between rich and poor. Must trade and human rights regimes necessarily conflict? This seminar will explore the premises of the trade and human rights debate from the perspectives of both free trade advocates and human rights activists, with the purpose of imparting a better understanding of the rationales for both systems of law and the ways each is attempting to avoid a clash that could have profound impact on the protection of human rights and on the global market. Using actual examples from the 35 nations of the Hemisphere, the seminar will examine the effect of international trade on human rights policies in the Americas, including conscripted child labor, sustainable development, health promotion, equality of women, trafficking, indigenous peoples, poverty, citizenship, and economic sanctions.

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1 Room 312C Holland Hall, 273-0928, Hernandez@law.ufl.edu. Office Hours: Tues. 1:30 – 2:30 pm (other times by appointment). Secretary: Betty Donaldson. Room 340 Holland Hall, 273-0664, donaldso@law.ufl.edu.
Course Materials
Students should purchase Berta Esperanza Hernández-Truyol and Stephen J. Powell, JUST TRADE: A NEW COVENANT LINKING TRADE AND HUMAN RIGHTS (New York: NYU Press 2012). The text is available in the law school bookstore and other local booksellers. Please note: in lieu of a Documents Supplement to the text, we have placed excerpts from important treaties, cases, and other documents used as sources in the text in a Documents Annex on the publisher’s web site (see Table of Contents at end of this Syllabus). Other assigned course materials are available at the Internet address given in the “Class Schedule” below or will be distributed in class.

Course Web Site
Students must register as Course Participants on the web site, which is listed on The West Education Network (TWEN) (password is trade&hr). The web site is used to post important messages and material and you will use it for essential class communications. If you are a law student without a Westlaw password or if you experience problems with your Westlaw account, contact your Westlaw class representative immediately. If you are not a law student and do not have a Westlaw password, contact Krista Fields in Room 341, Holland Hall, 273-0665, fields@law.ufl.edu, or Betty Donaldson, 340 Holland Hall (Faculty Support) at 273-0664, donaldso@law.ufl.edu.

Grading
Fifty (50) percent of your grade for the seminar will be based on class participation and discussion, and fifty (50) percent on your research paper.

Class Participation and Discussion
Reflections. Read and think about the materials before class. Beginning Week 5, post on the web site under Reflections by 8:00 am of the first day of class for the week a 1-page memo reflecting your thoughts on the readings (Discussion Leaders for the week are excused from this assignment). From past use, I know that these Reflections add breadth and depth to the class discussion, as well as better ensuring that you will play an active role in the discussion to crystallize your understanding of the concepts at issue through a diversity of opinions.

Discussion leaders. Each student will choose (from the Sign-up Sheets on the course web site) one class in which to prepare questions and otherwise lead the discussion during the Tuesday class. Normally, your choice will reflect the topic of your research. Discussion leaders will also use the last portion of that class to present the results of their research (as a rule, your professor will present an overview of the week’s topics during the Monday class). Part of the discussion leader’s responsibility is to develop and post before class under Questions for

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2 In accordance with University procedure, we advise that, as the authors of JUST TRADE, your instructors have a financial interest in this publication.
Class Discussion on the course website a list of questions that critically probe conclusions reached by the assigned materials. Students may use computer slides such as Microsoft PowerPoint or Corel Presentations for either or both class segments.

Research Paper
Research papers will address one of the many topics of current importance involving the intersection of human rights law and international trade law. The best place to find a topic of interest is your course materials—this method not only guarantees a relevant subject, but also ensures you will have a head start on the research and be well prepared to lead your classmates during the week you are discussion leader. I will help you choose a topic during class or in individual discussions, as you prefer.

Papers must be at least 25 pages in length, but not more than 40 pages. Papers should be typed on 8½ x 11 inch paper using a 12-point font with numbered pages, double-spaced lines, and one-inch margins all around. All lengths are exclusive of title page, table of contents, and footnotes. Your research should include relevant and substantively rich sources, preferably primary sources. If you are a law student, the majority of your sources should be treaties, cases, articles in legal journals, and texts. You should use THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Cambridge: Harvard Law Review 2010, updates at http://www.legalbluebook.com/) as your citation format. If you are not a law student, use the appropriate sources and citation format for your discipline. Your paper grade will be based on the quality of your analysis, the depth and breadth of your research, and the style and organization of your paper.

Paper Deadlines:

Topic Selection: Submit your paper theme to the Assignment Drop Box on the TWEN course web site by 9:00 A.M. on September 14 (Monday of Class 5).

Paper Due: Submit your final research paper in electronic form to the Assignment Drop Box on the TWEN course web site, and deliver one hard copy to Betty Donaldson, Faculty Support, Room 340 Holland Hall, no later than 9:00 A.M. on the day of the last class, Tuesday, November 24. No extensions.

To help you avoid accidental infringement on copyrights held by others, you may check your term papers through Turnitin prior to submitting them for grading on the TWEN web site. Turnitin is a UF service that encourages original writing and responsible use of source material and teaches proper citation form. Turnitin does not make any determination of improper use of other materials. Rather, it identifies parts of an assignment that may have significant matches with other source documents found on the Internet, in the Turnitin database, or from other sources. If the Turnitin Originality Report indicates the possibility of inclusion of material that is not properly cited, you may wish to make corrections prior to
submitting your paper on TWEN for grading. Your use of Turnitin.com is completely voluntary and nothing you submit on Turnitin.com will be graded.

Documents submitted to Turnitin.com become part of a database used for comparison with other papers submitted for analysis. Thus, having your paper in the database will protect you from having others inappropriately use your scholarly work. To protect your privacy, you should delete your name, e-mail, UF ID number, or any other personally identifying information from the assignment before submitting it to Turnitin.com.

Click on “New User” from the Turnitin link and create a New Student Account using the Class ID (4677459) and the Class Enrollment Password (trade&hr). Step-by-step videos on how to create a student profile, enroll in a class, and submit an assignment may be accessed at Turnitin Videos.

Class Schedule

Week 1 (Aug. 17-18)

Basic Concepts and Legal Regimes of Human Rights Law in the Americas

After review of the syllabus guidelines for research papers, reflections and other course proceedings, in this class we will explore the human rights legal regime, focusing on the inter-American regime, both in terms of existing rights as well as the structures available for their enforcement. The discussion will include taking a look at the sources and origins of human rights norms, their historical development, and their present state. We also will consider the universality/relativism debate as it becomes significant in the trade and globalization discourses on trade and human rights in particular as it pertains to labor standards and environmental protections.

Reading Assignments:

Introduction to Trade and Human Rights in the Americas

Text 1-7.

Text Chapter 3 and Items 1-5 in the http://www.nyupress.org/justtradeannex/index.html.


Week 2 (Aug. 24-25) – Guest Lecturer: Wentong Zheng, UF Law (expert on Trade)

We will present an overview of the relationship between human rights and international trade, including how globalization both promotes and harms human rights causes and the philosophical differences in the approach of the two disciplines. We will review the basic concepts of international trade and explore the history of trade pacts in the Western Hemisphere.


Basic Concepts of International Trade

Text Chapter 1 (skim if you already have taken an international law course), 26-40, and Chapter 4.


Trade in the Americas

Text 41-48.


Weeks 3 & 4 (Aug 8/31-Sept. 8)

Reading Period -- Selection of Paper Topic and Initial Research
Students may arrange individual consultation with the professor. Class does not meet.
**Week 5 (Sept. 14-15)**

*Trade and Citizenship*

Globalization is changing the nature of citizenship. What used to be considered a legal status now becomes more of a social bond; what used to be a particular relationship of an individual to the state, can now be a relationship of an individual to multiple states; a status that once defined belonging, can now signify marginalization. Moreover, the power that used to lie in individuals to define the political, social, and cultural landscape now has been shifted to corporate entities. This class will explore the meaning of citizenship in this era of globalization.

**Reading Assignments:**

Text Chapter 5.


**Week 6 (Sept. 21-22)**

*Trade and Labor*

After discussing what labor standards may properly be characterized as fundamental human rights, we will discuss the extent to which existing trade agreements have been used successfully to protect core labor rights. In particular we will look at experience under the labor side agreement of the North American Free Trade Agreement and whether the U.S.-Chile and US-Central American Free Trade Agreements may become models for addressing the role of labor rights in future trade pacts.

**Reading Assignments:**


Review Universal Declaration from **Week 1** at arts. 23-25, Item 2 of [http://www.nyupress.org/justtradeannex/index.html](http://www.nyupress.org/justtradeannex/index.html)

International Covenant on Economic, Social; and Cultural Rights (ICESCR) arts. 6-8 (1976), available at [http://www2.ohchr.org/english/law/cescr.htm](http://www2.ohchr.org/english/law/cescr.htm)
Week 7 (Sept. 28-29)

**Trade and Trafficking**

In this class, we will look at a different type of trade – the trade in persons. Some of such “trade” is inextricably linked to the trade regimes, bolstered by their demand for cheap labor. This class will look at the phenomenon of trafficking and its reasons for emerging as, what in some instances is called a modern form of slavery.

**Reading Assignments:**

Text Chapter 9.


Week 8 (Oct. 5-6)

**Trade and the Environment**

The right to a healthy and sustainable environment has increasingly faced limitations from trade rules that seek unconditional non-discrimination and distinguish products based on their physical characteristics, not on whether their production or harvesting methods cause environmental damage. We examine the present state of this debate, one that inevitably takes center stage when developed countries consider economic arrangements with smaller nations.
**Reading Assignments:**

Text Chapter 6, GATT art. XX from Item 7 of [http://www.nyupress.org/justtradeannex/index.html](http://www.nyupress.org/justtradeannex/index.html) and TBT Agreement from Item 10 of [http://www.nyupress.org/justtradeannex/index.html](http://www.nyupress.org/justtradeannex/index.html) in particular Annex 1 definition of “technical regulations.”

Review art. 25 of the Universal Declaration, art. 11 of the ICESCR, and art. 25 of the ICCPR (see **Weeks 1, 6, and 10**).


**Week 9 (Oct. 12-13)**

**Trade & Indigenous Populations**

The trade regime, in promoting certain types of work, has consequences on indigenous populations ranging from changing their life styles, to invading or appropriating their cultural knowledge. This session explores the relationship of trade to indigenous populations as well as trade’s impact on such populations.

**Reading Assignments:**

Text Chapter 11.

Review Universal Declaration arts 17 and 27(2)(see **Week 1**); arts. 2 of the Universal Declaration, the ICCPR, and the ICESCR; arts. 1 of the ICCPR and the ICESCR; and art. 27 of the ICCPR (see **Weeks 1, 6, and 8**)


Week 10 (Oct. 19-20)

Trade & Women

As written, trade laws are gender neutral. However, in so far as they effect migrations from rural to urban areas in the search for labor, they have impact on families. In addition, trade laws result in the creation of jobs, many of which are filled by women. This week explores the impact of the trade regime on women and labor, as well as the gendered issues raised by the nature of work.

Reading Assignments:

Text Chapter 10

Review arts. 2 of the Universal Declaration (see Week 1), the ICESCR (see Week 6), and the International Covenant on Civil and Political Rights (ICCPR) (1966), available at http://www2.ohchr.org/english/law/ccpr.htm


Maria Patricia Fernández Kelly, “Maquiladoras: The View from the Inside”, in The Women, Gender, and Development Reader (N. Visvanathan et al., eds., Univ. Press, 1997) (class handout)

Week 11 (Oct. 26-27)

Trade and Health

The World Trade Organization has the potential to make the benefits of movement of goods, services, and knowledge available to an unprecedented degree. But concerns about the health impact of international trade, particularly in the poorest nations and as to food safety, environmental toxins, and access to life-saving medicines have fed doubts about the value of globalization. With Brazil’s AIDS crisis close in mind, we look at whether trade rules may continue accurately to be blamed for world health concerns.
Reading Assignments:


Senator José Serra, Minister of Health of Brazil, “Lessons from the Brazilian AIDS Program,” keynote address at AIDS 20 Years Later: An International Health Conference (2001), to be provided by your professor.


Week 12 (Nov. 2-3)

Economic Sanctions

The United States has long used economic sanctions to express its displeasure with government-sanctioned human rights abuses. Critics have questioned both the legal validity of such measures and their effectiveness in correcting the miscreant behavior. We will examine these issues in particular reference to the Helms-Burton legislation punishing Cuba economically for acts of terrorism and will contrast this result with the opposite outcome of recent Congressional debate over China=s entry into the WTO.

Reading Assignments:

Text Chapter 14.


Berta E. Hernández-Truyol, “Sanctions and Sovereignty,” 2/20/96 NYLJ S4, Col. 1 (insert “2/20/96” before “NYLJ” and “S4” after to access article).

Week 13 (Nov. 9-10)

Trade and Poverty

Part of the promise of a trade system was the spread of capitalism and capital so as to effect an improvement in the standards of living. Yet it is unclear whether indeed there has been such an improvement in wealth. This session reviews literature to generate a discussion on whether the trade regime as it has evolved
has in fact met its promise or instead had deleterious effects in perpetuating poverty.

**Reading Assignments:**

Text Chapter 12

WTO Secretariat Study:

-- “Free Trade Helps Reduce Poverty, Says New WTO Secretariat Study” (Report Summary), available as pdf and at http://www.wto.org/english/news_e/pres00_e/pr181_e.htm

-- Study (in 3 parts):

------ Chapter One: Trade, Income Disparity and Poverty: An Overview, pdf(1),
------ Chapter Two: Trade, Growth and Disparity Among Nations, pdf(2),
------ Chapter Three: Trade and Poverty: Is There a Connection?, pdf(3)

(these chapters are also available through above link)


**Week 14 (Nov. 16-17)**

**Trade and Democracy**

The emerging right to democratic governance is closely linked to economic rights. There is ongoing debate about whether trade promotes or inhibits democracy. One side notes that trade’s neo-liberal economic policies result in spending cuts that shrink the social safety net. Another side contends that trade promotes civil and political rights by opening societies to democratic ideas, and points to the correlation between countries’ economic openness and their political openness. This class explores whether trade is globalizing democracy or weakening the authority of the state and undermining the ability of governments to care for its citizens.

**Reading Assignment:**

Text Chapters 13 and 15.


http://www.brookings.edu/research/articles/2004/06/summer-globalgovernance-antholis


Week 15 (Nov. 23-24)

No Class Meeting

ALL PAPERS DUE TUESDAY, NOVEMBER 24 AT 2:00 PM.
Documents Annex Table of Contents

Item
1. Charter of the United Nations (excerpts)
2. Universal Declaration of Human Rights (excerpts)
3. International Covenant on Civil and Political Rights (excerpts)
4. International Covenant on Economic, Social, and Cultural Rights (excerpts)
5. Charter of the Organization of American States (excerpts)
6. American Declaration of the Rights and Duties of Man (excerpts)
7. WTO GATT 1994 Selected Articles
8. WTO Agreement on the Application of Sanitary and Phytosanitary Measures (excerpts)
9. EC--Measures Concerning Meat and Meat Products (Hormones), WTO Appellate Body Report (excerpts)
10. WTO Agreement on Technical Barriers to Trade (excerpts)