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(DRAFT IN PROGRESS)

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HISTORY OF THE INTERNATIONAL MIGRANTS BILL OF RIGHTS PROJECT

The International Migrants Bill of Rights (IMBR) project began in 2008 as a part of Georgetown Law's Global Law Scholars program. Since then, students, academics, and practitioners with interest and expertise in migration issues and international human rights have discussed, commented on, and contributed to the project. As part of the ongoing effort to improve and publicize the IMBR, the Global Law Scholars collaborated with the Georgetown Immigration Law Journal to hold the IMBR Symposium on April 9, 2010, at Georgetown University Law Center. This history lays out the path this project has taken and the people who have worked along the way to make it the success it has been.

I. THE GLS PROGRAM

The Global Law Scholars program began in 2000 as part of Georgetown Law's response to the increasing internationalization of the legal field. The school's administration recognized that even practice areas that were previously domestic now often have an international component, and that lawyers with skills and training in these areas will be called on to address the increasing transnational component of all areas of legal practice. Furthermore, the administration sought a way to increase networking and connections among students with mutual interests and similar experiences.

The program seeks to connect internationally-minded students with previous exposure to and interest in issues raised by work across borders and cultures. Each year, approximately 15 students from the entering class of roughly 600 are selected through a competitive application process. Selection is based on international experience and career goals in international fields; proficiency in a language other than English is also required.

Throughout their three years in the program, GLS students are involved in international activities and coursework. Guest speakers active in various areas of international law address the group during their first year. During their second year, students participate in a special seminar focused on an international law topic chosen by the group. Students must complete an introductory course in public international law and a course focused on international trade. They must also complete Georgetown's upper-class writing requirement in a class with an international theme. Upon starting in the program, each new student is assigned an upper-class mentor. Upon completion of the program, GLS students graduate with special honors.

The program is largely student-run, with leaders chosen by the group to plan social events, facilitate the mentor program, and arrange all necessary

logistics. In addition, a faculty sponsor is responsible for overseeing the academic aspects of the program, including selecting guest speakers and selecting readings once students have chosen a topic for their second year seminar. The faculty sponsor for the beginning years of the program was Professor Julie O'Sullivan. Though she remains involved with the program, stewardship of the program passed to Professor David Stewart in 2009.

II. 2008–2009

The IMBR project began with the 2007 GLS entering class. At the end of their first year, the students brainstormed interesting international law topics around which to focus their 2L seminar. From among a diverse list of suggestions, from law of the sea to international water sharing agreements, the students chose to focus on the human rights of international migrants. This project had the advantages of drawing on Georgetown's rich resources in the field of migration law and policy, and dealing with a relevant, interesting topic that has not been fully addressed in international law. Also particularly appealing to the students was the idea of centering their academic work on a concrete long-term project, namely a document framing the international legal norms protecting migrants that could be promoted by states and civil society alike.

The idea of a migrants bill of rights also found strong support with T. Alexander Aleinikoff, then Dean of Georgetown Law, who had been calling for such a document in his own scholarship for years. Dean Aleinikoff took the lead on directing the seminar, assembling a reading list of important books and articles on human rights, migrant and refugee issues, and relevant international law. Drawing on his extensive contacts in the migration world, Dean Aleinikoff also put together an impressive list of speakers to discuss migration issues with the group during the fall semester, including President of the Migration Policy Institute Demetrios Papademetriou, Executive Director of the Institute for the Study of International Migration Susan Martin, migration law expert Andrew Schoenholtz, and others. The students also divided into groups to conduct research and give presentations on specific topics in migrants' rights.

As the Georgetown Law students spent the fall of 2008 exploring international migration and human rights issues, similar studies were taking place at schools around the world. As the project took shape, the GLS students reached out to partner schools and found willing and able collaborators. At Hebrew University in Jerusalem, Avinoam Cohen led a seminar of third and fourth year students in the undergraduate law program. The Hebrew University students were selected based on international coursework and interest, and many of them had participated in international moot court competitions and completed substantial coursework in the discipline. Basic courses in public international law and human rights law were prerequisite for participa-

tion, and the group conducted research and met with experts in the fields of migration and human rights to prepare for collaboration on the bill. The project was supported by the HU law faculty and the Minerva Center for Human Rights, headed by Professor Yuval Shany. In Cairo, Michael Kagan carried out a similar process of selecting students from his refugee law program at the American University. He led a diverse group, including students from Kenya and Canada, in researching issues related to refugees and forced migrants.

In early 2009, the Georgetown Law and Hebrew University students divided up into groups, each focusing on a specific theme. Topics included economic, social, cultural, and family rights. Meanwhile, the American University in Cairo students focused on refugee issues. Students researched gaps in the current international instruments and considered provisions to include in a draft bill. They also familiarized themselves with some of the political issues that could prevent provisions from gaining acceptance among states and in the international community.

New technologies greatly facilitated the students' global collaboration. Within each small group, students discussed their topics extensively via email, chat programs, and Skype. Students also reported on their progress and discussed planning and strategy issues at internet meetings attended by the entire group from all three schools, which was made possible by Georgetown's state-of-the-art classrooms and video conference technology. Time differences, of course, caused some problems, as did language differences and divergent collaborative styles, but students were able to work through these issues and learn valuable lessons about international legal work.

The culmination of a year of academic work on these topics was a four-day meeting in London in April, 2009. The first two days were spent drafting language for the bill, followed by two days of discussion and editing. The meeting was hosted by Georgetown's Center for Transnational Legal Studies. The Georgetown Law delegation was led by second-year students Randy Nahle and Lorinda Laryea and advised by David Stewart, a long-time veteran of the State Department's Office of the Legal Adviser and visiting professor at Georgetown Law. The group from Hebrew University was led by Avinoam Cohen and included nine students. The six students from American University in Cairo were led by Michael Kagan. Dean Aleinikoff was able to join the group for a debriefing session at the end of the weekend.

Upon arrival in London, the students met their international partners for the first time. The groups that had been working together virtually worked together during the first two days to draft the language of the articles pertaining to their subject areas. The students often used the phrasing of existing human rights instruments, such as the UDHR, ICCPR, and ICESCR, but they also brought to the table their own research over the last nine months and their perspectives on the strengths and weaknesses of the existing documents.

As a group, all of the students from all three schools went through article by article and voted on the provisions drafted by their peers. Discussions surrounding the language of the bill were vigorous and thorough, and students honed their negotiating skills by wrestling with a number of complex issues. Not only did the three delegations see the issues through the differing lenses shaped by the migration situations in their own countries, but they also came face to face with the differences in customs and negotiating styles that make international transactions interesting and challenging. The resulting document represented a number of compromises, but left some particularly intractable questions open for further consideration. Due to time constraints, the participants agreed to think more about these open questions in the following weeks and votes were held over email to arrive at a final first draft.

In addition to long days of active discussion, the participants also had some time to get to know each other and the city. At the end of the weekend, the students agreed to not only reconsider the open issues, and to continue researching and refining the bill, but also to stay in touch as they went their separate ways.

Directly following the meeting in London, Hebrew University students prepared preliminary commentaries explaining the initial drafting choices. These commentaries described the influence of existing international human rights instruments, various policy considerations, and the actual drafting process of the students in London. In May 2009, on the occasion of an international conference on Human Rights and Justice in Immigration held by the Minerva Center at Hebrew University, the Hebrew University group discussed the bill with Dean Aleinikoff. The students highlighted a number of particular provisions of the bill for reconsideration, setting the stage for the continuation of the project.

III. 2009–2010

With the new academic year, the group of students working on the IMBR project changed. Of the 11 Georgetown Law students who helped craft the original draft of the bill in London, only Brian Cooper, Julia Follick, Lorinda Laryea, and Randy Nahle remained substantially involved with the project in the fall. These four were joined by seven Global Law Scholars from the class of 2011. The student leadership also shifted, as previous leaders Laryea and Nahle studied abroad for a semester and a year, respectively. Though they remained involved with the project, Laryea and Nahle passed major organizing responsibility to second year student Ian Kysel. At Hebrew University, Avinoam Cohen selected a new cohort of students to continue the collaboration and work more closely on the commentaries.¹ Please see the attached

1. For a complete list of all students who have participated in the project to date, see the IMBR Contributors on page 397.

appendix for a complete list of all students who have participated in the project to date.

A. *Revising the Bill and Writing the Commentaries*

While the draft of the IMBR that came out of the London conference represented the hard work and negotiating of many engaged students from around the world, it was not a polished document ready to be shared and promoted amongst the international community. Over the summer of 2009, Dean Aleinikoff carefully read and edited the bill, making both minor stylistic changes and suggestions for larger structural changes. David Stewart, Avinoam Cohen, and Michael Kagan also provided extensive comments on the draft based on their experience and expertise with international human rights instruments.

Throughout most of the fall semester, the students met bi-weekly to discuss any changes suggested by Dean Aleinikoff, Professor Stewart, or their own continuing research and reflection. To focus this reflection, the students divided themselves into five groups covering various topical areas: equality and due process; removal and asylum; civil and political rights and citizenship; property and labor rights; and integration, education, family, and social and cultural rights. A sixth group examined the preamble and a definition of “migrant.” Each group was comprised of three to five students, including at least one student from Georgetown Law and at least one student from Hebrew University. These groups conducted further research on their assigned topics, discussed the existing language and potential changes using Skype or email, and started work on the commentaries.

Drawing from the papers prepared by the Hebrew University students as part of their 2008–2009 seminar and from discussions with their counterparts in the topical groups, the Georgetown Law students wrote commentaries in an agreed-upon format similar to that used in existing instruments. Of the eleven Georgetown Law students involved with the project during the 2009–2010 academic year, each student was responsible for the commentaries attached to one or two articles.

In writing the commentaries, students drew heavily upon the major instruments of human rights law. In addition, the students used all other forms of international law looked to by the International Court of Justice, including treaties, customary international law, the writings of publicists, and state practice. Though each did their own research, students used Google’s online forum to share particularly interesting or helpful articles, treatises, and websites. In addition, a shelf in Georgetown’s International Law Library was devoted to the project so that the students could share books as well. When they came across open questions or particularly tricky provisions, the Georgetown Law students again engaged their counterparts at Hebrew University in discussion and debate.

A polished draft of the bill was finished in late October, and the commentaries were completed over the winter holidays. Georgetown second-year Jordan Sagalowsky compiled the commentaries written by eleven different authors into one uniformly formatted and footnoted document. The bill was ready to be shared more widely.

B. *Expert Consultations*

This second draft of the bill was shared with local experts in human rights and migration issues in late October, 2009. Many of these experts were able to join the student authors for a productive three-hour session on November 16, 2009 on the Georgetown Law campus. Those experts present included Jeanne Butterfield (National Immigration Forum), Jesse Bernstein and Anne Sovcik (Human Rights First), Bill Frelick (Human Rights Watch), Juan Mendez (American University College of Law), and Debi Sanders (Catholic Charities). Dean Aleinikoff and Professor Stewart also attended and contributed to the discussions.

In addition to those in Washington, D.C., who were able to attend physically, project participants abroad were able to attend the meeting virtually. This was the group's first experience with WebEx, an internet-based platform that allows video and audio participation and document sharing during meetings. As is often the case, this technology did not function flawlessly, but those abroad were able to listen in to the discussions, if not participate fully. This experience served as a valuable introduction to this powerful technology, which has since been used for a number of international meetings to discuss the IMBR project.

The November meeting touched on many different aspects of the bill, but the session began with a discussion of the purpose and scope of the bill. The experts pushed the students to take a firm stance with regard to whether the document is aspirational or merely restating existing law, which led to important reflection on the goals and future of the project. The majority of the time was spent discussing the problems of defining migrants, equal protection, detention, and vulnerable migrants. The result was a major reworking of the due process and equal protection provisions, and the addition of separate articles focusing on detention, trafficking, and children. As the students continued their revisions after the meeting, these helpful discussions were referenced for various minor changes.

On December 4, 2009, Georgetown Law IMBR drafting team members Randy Nahle, Lorinda Laryea and Maher Bitar were joined in London by Justin Gest and Carolyn Armstrong of the Migration Studies Unit at the London School of Economics (LSE) for the second in a series of expert consultations. The outside experts present were: Professor Chris Brown (LSE Department of International Relations), Professor Paul Kelley (LSE Department of Government), Dr. Alexander Betts (Oxford University Department of Politics and International Relations), Dr. Eiko Thielemann (Academic

Chair, LSE Migration Studies Unit), Stephen Shashoua (Director, Three Faiths Forum), Juan Cock (Migrants Rights Network, on behalf of the Network's Director Don Flynn) and Peter Sutherland (UN Special Representative for Migration), who attended the final session of the Consultation. Students at Georgetown Law followed along via WebEx or listened later to a recording of the session.

At the meeting's outset, each expert provided a brief overview of his or her general impressions of the IMBR and accompanying legal commentary, as well as specific concerns and suggestions regarding specific articles. In comparison to the consultation in Washington, D.C., in November, most attending experts approached the IMBR draft from a political science and public policy vantage point, rather than from a legal perspective. From the beginning, the participants focused on how the IMBR could move forward and on the political hurdles that may consequently arise, as well as the advantages and disadvantages of a soft law approach as compared to a hard law approach. The participants then turned to discussing whether the IMBR should incorporate an international minimum standard or an equal protection/treatment of nationals standard. The experts also analyzed various options for enforcement of the bill and proposed additional articles in areas of the bill with less coverage.

The London consultation represented another step in the increasingly close working relationship between Georgetown Law and LSE's Migration Studies Unit (MSU). The MSU hosted the London meeting and also contributed to the April symposium. MSU's Justin Gest wrote an article on the bill for the Georgetown Immigration Law Journal and attended the symposium. Both schools agreed that future collaboration on the project would be fruitful and mutually beneficial.

Finally, on December 23rd, a third round of consultation was held in Jerusalem. The meeting was attended by all Hebrew University student-authors from both years, as well as by immigration experts, including: Dr. Yuval Livnat (Refugee Clinic, Tel Aviv University, formerly the Hotline for Migrant Workers and Physicians for Human Rights); Adv. Anat Ben Dor (Refugee Clinic, Tel Aviv University); Adv. Oded Feller (Association for Civil Rights in Israel); Adv. Reut Michaeli (Aid Center for Immigrants—Israel Reform Action Center); Adv. Nicole Maor (Israel Reform Action Center), Dr. Einat Albin (Tel Aviv University); and Dr. Tomer Broude (Hebrew University). Additionally, Dr. Adriana Kemp (Tel Aviv University) and key government officials who were unable to attend the meeting contributed comments. The group scrutinized and discussed the bill for over three hours, considering broad theoretical questions, including personal scope; the merits of hard law compared to soft law mechanisms; the appropriate balance of social, civil, and political rights; and the specific, nuanced wording from the perspective of practitioners.

Following the expert consultations, the students set out incorporating the

helpful comments and criticisms proffered by experts in three corners of the world into the bill. Georgetown Law and Hebrew University students discussed substantive changes and open questions until a third draft was finalized in March. This draft was circulated in advance of the symposium.

C. *The April 9, 2010 Symposium*

The April symposium was hosted by the Georgetown Immigration Law Journal. Much of the planning and organization for the event was done by Editor in Chief Jessica Schau and Special Events Editor and IMBR author Julia Follick. Two issues of the journal were devoted to printing the bill, the commentaries, and articles from leading academics dealing with the bill and the issues raised by it.

The journal invited potential authors in December, 2009 and January, 2010. The response was overwhelmingly positive, as experts from around the world expressed interest in the project and agreed to devote time to writing an article reflecting on the bill and the rights of migrants. Having solidified an illustrious list of authors, the organizers turned to inviting discussants to bring added expertise to the discussions on April 9th. The journal reached out to human rights organizations, the U.S. federal government, and the major players in the field of migration law and policy to assure that a wide range of perspectives were represented.

Funding for the symposium was provided largely through generous assistance from Georgetown Law. The Minerva Center for Human Rights at Hebrew University and the Migration Studies Unit at the London School of Economics also made essential contributions, making the event a truly global collaboration.

IV. NEXT STEPS

In the 2010–2011 academic year, new cohorts of students will be integrated into the project at both Georgetown Law and Hebrew University. The MSU is also looking for ways to select and support a group of students who can eventually join the collaboration. Students will focus on revising the bill in light of the wealth of comments generated by the April symposium and ongoing meetings with experts. In addition, a new phase of the project will begin, focusing on advocating the bill in the international human rights field. This undertaking will include the study of successful and less-successful efforts at creating international human rights norms, discussions with practitioners, and potential participation in conferences such as the Global Forum on Migration and Development. Students, primarily those at Hebrew University, will also begin compliance studies to determine the degree to which sample countries have already implemented the provisions called for by the IMBR.