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Human Rights and Development in the 21st Century: The Complex Path to Peace and Democracy

Douglas Lee Donoho

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HUMAN RIGHTS AND DEVELOPMENT IN THE 21ST CENTURY: THE COMPLEX PATH TO PEACE AND DEMOCRACY: THEMES FROM THE 2000 GOODWIN SEMINAR

*Douglas Lee Donoho**

I.	INTRODUCTION	605
II.	THEMES FROM THE 2000 GOODWIN SEMINAR	608
	A. <i>There is a Profound Relationship Between Peace, Democracy, and Human Rights</i>	608
	B. <i>The International Community Must Identify and Address Systemic Causes of Human Rights Violations such as Poverty, Economic Disparity, Debt Burden, and Militarization</i>	611
	C. <i>The Effective Protection of Human Rights Requires the Development of Stable, Independent Domestic Civic Institutions, and a Culture of Democracy</i>	613
	D. <i>A Meaningful Commitment to Leadership Accountability is Essential to Elimination of Human Rights Atrocities</i>	614
III.	CONCLUSION	617

I. INTRODUCTION

As the twenty-first century begins, the international human rights system faces a profound anomaly. Despite enormous normative and institutional achievements,¹ the system seems incapable of delivering its ultimate promise to

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1. Among the hundreds of international human rights instruments promulgated under United Nations authority since 1945, there are at least seven major multilateral treaties with over one hundred state parties each. International conventions on Civil and Political Rights, Economic and Social Rights, Genocide, Racial Discrimination, Women, Torture and Children have 142, 144, 130, 156, 165, 119, and 191 state parties, respectively. See *The United Nations Treaty Collection*, at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_ll.html (last visited Mar. 24, 2001); *Millennium Summit Multilateral Framework: An Invitation to Universal Participation*, U.N. Doc. DPI/2130 (2000), available at <http://untreaty.un.org/English/millennium/law/index.html>. There are also three comprehensive

those who need it most.² A comprehensive, albeit underdeveloped,³ network of lofty norms has been created, theoretically binding governments to follow a universal moral code. An almost bewildering array of institutional mechanisms, although virtually invisible to most of humanity, is set in place to supervise and monitor implementation of these collective aspirations.⁴ Well-financed, nongovernmental organizations, devoted to the enforcement of rights, have gained the ears of international institutions and governments alike, exposing violations and working tirelessly for change.⁵ Even the politically cynical and formerly stodgy United Nations Security Council has significantly raised the profile of human rights, justifying a series of interventions based upon a perceived connection between human rights and threats to peace.⁶ Perhaps most dramatically, the international community has begun to take leadership accountability more seriously, endorsing the use of criminal sanctions, both domestic and international, to bring human rights violators to justice.⁷ Human rights have, in essence, become a critical part of international relations. More importantly, they have become a dynamic force for change that provides hope for millions of oppressed people around the world.

regional human rights treaties covering a wide variety of human rights concerns in Europe, Africa, and the Americas. See generally GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE chs. 7-9 (Hurst Hannum ed., Ardsley, N.Y.: Transnational, 3d ed. 1999); HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS ch. 10 (Oxford Univ. Press 1996).

2. Professors Helfer and Slaughter have perceptively described the "sad paradox" that human rights institutions are "most effective" in the states that "arguably need them the least: those whose officials commit relatively few, minor, and discrete human rights violations." Lawrence R. Helfer & Anne-Marie Slaughter, *Towards a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273 (1997).

3. Although the international system has developed a comprehensive network of human rights norms, the manifestation of many human rights is still nascent and their specific meaning unsettled. See Douglas Lee Donoho, *The Role of Human Rights in Global Security Issues: A Normative and Institutional Critique*, 14 MICH. J. INT'L L. 827, 837-43, 847-50 (1993); Henry Steiner, *Book Review*, 84 AM. J. INT'L L. 603, 604-05 (1990) (reviewing THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL (1988)). Thus, the specific meaning of many human rights remains underdeveloped. Reasons for this include the relative newness of the norms and the international system's limited capacity for rendering authoritative interpretations of rights. Donoho, *supra* at 866-68.

4. In addition to United Nations Charter based institutions such as the Commission on Human Rights, each of the three existing regional systems and six of the major multilateral human rights treaties have enforcement mechanisms in the form of monitoring institutions and, in some cases, judicial or quasi-judicial procedures. See generally STEINER & ALSTON, *supra* note 1; THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL (Philip Alston ed. 1992).

5. See generally STEINER & ALSTON, *supra* note 1, at ch. 8.

6. See Douglas Lee Donoho, *Evolution or Expediency: The United Nations' Response to the Disruption of Democracy*, 29 CORNELL INT'L L.J. 329, 331, 351 n.117, 358-70, 375-76 (1996); Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia and Beyond*, 15 MICH. J. INT'L L. 519 (1994).

7. See *infra* text accompanying notes 32-39.

Yet, despite these advances and so many reasons for hope, the world remains mired in widespread and profound violations of human dignity. Despite the world's collective mantra "never again," genocidal episodes have repeatedly marred the consciousness of human kind since World War II.⁸ Floods of refugees, and newly refined forms of oppression such as "ethnic cleansing," have challenged the international community's capacity to respond. Grotesque forms of physical abuse, such as torture and summary execution, continue to haunt many societies and despite a tide of democratic transitions around the world, violations of basic civil liberties remain commonplace.⁹ Most disheartening of all, the two greatest enemies of human dignity, armed conflict and poverty, persistently plague the vast majority of human kind.¹⁰

Responding to these sober realities while embracing our many reasons for hope, the Law Center chose to focus the 2000 Goodwin Seminar on human

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8. The persistence of genocidal episodes prompted Michael Scharf's wry observation that: [T]he pledge of "never again" quickly became the reality of "again and again" as the world community failed to take action to bring those responsible to justice when 4 million people were murdered during Stalin's purges (1937-1953); 5 million were annihilated during China's Cultural Revolution (1966-1976); 2 million were butchered in Cambodia's killing fields (1975-1979); 30,000 disappeared during Argentina's Dirty War (1976-1983); 200,000 were massacred in East Timor (1975-1985); 750,000 were exterminated in Uganda (1971-1987); 100,000 Kurds were gassed in Iraq (1987-1988); and 75,000 peasants were slaughtered by death squads in El Salvador (1980-1992).

Michael P. Scharf, *The Prosecutor v. Dusko Tadic: An Appraisal of the First International War Crimes Trial Since Nuremberg*, 60 ALB. L. REV. 861, 861-62 (1997). Scharf might have also mentioned mass killings in Nigeria (Biafra, 1966-1971), Bangladesh (1970-1971), Burundi, and Sudan. See Robert Melson, *The Holocaust: Remembering for the Future: Paradigms of Genocide: The Holocaust, the Armenian Genocide, and Contemporary Mass Destruction*, 548 ANNALS 156 (1996). The most recent examples, of course, are the tragic events in Bosnia, Kosovo, and Rwanda. The dramatic difference in the international community's response to these more recent events is cause for optimism. Freed of cold-war constraints, the international community's reactions to Bosnia, Rwanda, and Kosovo, although flawed and somewhat halting, were ultimately decisive.

9. See, e.g., AMNESTY INTERNATIONAL U.S.A., *The Campaign to Stop Torture*, at <http://www.amnesty-usa.org/stoptorture/>; HUMAN RIGHTS WATCH, *2001 World Report*, available at <http://www.hrw.org/wr2k1/> (last visited Mar. 21, 2001); U.S. DEPT. OF STATE, *Country Reports on Human Rights Practices*, at <http://www.state.gov/g/drl/rls/hrrpt/2000/> (last visited Mar. 21, 2001); see also http://www.state.gov/www/global/human_rights/hrp_reports_mainhp.html.

10. See, e.g., SIPRI YEARBOOK 1998: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY (Oxford Univ. Press 1998), at <http://editors.sipri.se/pubs/yb98/ch1.html> (surveying armed conflicts around the world); UNITED NATIONS CHILDREN FUND, *The State of the World's Children 2001*, available at <http://www.unicef.org/sowc01/> (last visited Mar. 21, 2001) (describing, among other things, the effects of armed conflict on children, estimating that conflicts during the last decade have left two million dead, between six and eight million children seriously injured, and twelve million children homeless). For detailed reports surveying world poverty and efforts to eliminate it, see UNITED NATIONS DEVELOPMENT PROGRAM, *Poverty Report 2000*, available at <http://www.undp.org/poverty/publications/> and WORLD BANK POVERTY NET, available at <http://www.worldbank.org/poverty>.

rights, peace, and democracy in the twenty-first century. Through the generosity of the Leo Goodwin, Sr. Foundation, the Law Center hosted the following five distinguished visitors over the course of our semester long seminar: Dean Claudio Grossman, Judge Gabriel Kirk McDonald, Dr. Hanan Ashrawi, President Jean Paul Aristide, and Nobel Peace Laureate President Oscar Arias.¹¹ These distinguished visitors brought to the Law Center a wealth of profound personal and professional experience in the front line struggle for human rights. For each visitor, the quest for human rights has been a lifelong commitment. The visitors spent several days at the Law Center, teaching, listening, and sometimes debating with students and faculty about the current status of human rights and their potential for realization in the twenty-first century.

The discourse prompted by our distinguished guests covered a wide array of current human rights issues ranging from the Middle East peace process, international criminal law, transitions to democracy and reconciliation, the future of the Inter-American system, disarmament, and debt relief. Despite the breadth of the subjects discussed, and the diversity of opinions expressed, a clear set of central themes emerged. These inter-related themes focused steadily on the future of human rights and the various ways in which politics, economics, power, and oppression are entangled in the struggle to achieve basic human dignity for all. While some of these themes are clearly expressed in the essays prepared by our guests for publication in this volume, others emerged only in classrooms, in offices, and over dinner tables. They involve both insights regarding the causes of continuing human rights violations and speculations regarding the next phase in a movement that has bettered the lives of millions, yet fallen frustratingly short of its objectives. What follows is a brief description of the four most significant themes that emerged from the seminar and some observations regarding each one.

II. THEMES FROM THE 2000 GOODWIN SEMINAR

A. There is a Profound Relationship Between Peace, Democracy, and Human Rights

The notion that human rights, democracy, and peace are profoundly interrelated was a consistent theme of each Goodwin visitor. For each, this central belief is one founded on personal experience. President Arias, for example, was awarded the 1987 Nobel Peace Prize for his work nurturing this

11. For pertinent biographical information regarding these five distinguished guests, see James D. Wilets, *The Building Blocks to Recognition of Human Rights And Democracy: Reconciliation, Rule of Law, and Domestic and International Peace*, 7 ILSA J. INT'L & COMP. L. 825 (2001), 25 NOVA L. REV. 387 (2001).

relationship into concrete results during the Central American Peace Process.¹² For both President Aristide and Dr. Ashrawi, the complex dynamics of armed conflict, violence, oppression, and the hope for human rights and democracy pose a continuing daily struggle.¹³ Dean Grossman spoke poignantly of his bitter experience watching from forced exile as General Pinochet dismantled a proud Chilean tradition of democracy and systematically violated the basic rights of all those who opposed him. Judge McDonald presided over the creation and development of the War Crimes Tribunal for the Former Yugoslavia, an institution whose very existence was founded on the premise that human rights violations may constitute a threat to international peace.¹⁴

The idea that peace, democracy, and human rights are interdependent is not a novel idea. Indeed, Immanuel Kant suggested such a connection in 1795, when he argued international peace is tied to democracy.¹⁵ In recent years, international institutions increasingly sounded this message, often justifying international initiatives on this basis. The United Nations, for example, engaged considerable resources in the promotion of democracy, including extensive election monitoring.¹⁶ The United Nations Security Council increasingly relied on human rights concerns in finding threats to peace, justifying interventionist activities believed unthinkable just a decade earlier.¹⁷ The Security Council's unprecedented decision to authorize the use of force to restore democracy in

12. See John J. Moore, Jr., Note, *Problems with Forgiveness: Granting Amnesty Under the Arias Plan in Nicaragua and El Salvador*, 43 STAN. L. REV. 733, 735, 738-45 (1991) (providing a detailed description of the Arias Plan and the role of President Arias in the peace process).

13. See, e.g., Edward Cody, *Haiti Torn by Hope and Hatred as Aristide Returns to Power*, WASH. POST, Feb. 2, 2001, at A1; Mike Williams, *Aristide Takes Office, Calls for Peace: Poor in Haiti Joyous, but Foes Ready to Act*, ATLANTA CONST., Feb. 8, 2001, at 3A; Jessica Berry, *Women: Five and Kicking*, THE GUARDIAN, Feb. 8, 1996, at T7; Associated Press, *Arafat Critic Demands "Genuine Democracy"*, CHI. TRIB., Aug. 13, 1998, at N17; Ilene R. Prusher, *Why a Human Rights Advocate Leaves Arafat's Cabinet: Real Issues of Reform "Not Addressed,"* CHRISTIAN SCI. MONITOR, Aug. 31, 1998, at 8.

14. S.C.Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993); *infra* text accompanying notes 32-35.

15. IMMANUEL KANT, PERPETUAL PEACE AND OTHER ESSAYS ON POLITICS, HISTORY, AND MORALS 107 (Ted Humphrey, trans., Hackett Publishing Co. 1983); see also Fernando R. Teson, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 53 n.1 (1992).

16. See Donoho, *supra* note 6, at 333-40; see generally David Stoelting, *The Challenge of UN-Monitored Elections in Independent Nations*, 28 STAN. J. INT'L L. 371 (1992).

17. See S.C.Res. 688, U.N. SCOR, 46th Sess., 2982d mtg., U.N. Doc. S/RES/688 (1991) (implicit authorization of force to protect Iraqi Kurds); S.C.Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992) (intervention in Somalia to prevent humanitarian crisis, including force); S.C.Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992) ("all necessary means" to deliver aid in Bosnia); S.C.Res. 940 U.N. SCOR, 49th Sess., 3413th mtg., U.N. Doc. S/RES/940 (1994) (restoration of democracy in Haiti by "all necessary means"); S.C.Res. 929 U.N. SCOR, 49th Sess., 3392nd mtg., U.N. Doc. S/RES/929 (1994) (safe zones in Rwanda); S.C.Res. 1262, U.N. SCOR, 54th Sess., 4038th mtg., U.N. Doc. S/RES/1262 (1999) (East Timor); Donoho, *supra* note 6; Gordon, *supra* note 6.

Haiti is perhaps the clearest example of this promising new trend.¹⁸ Most recently, the North Atlantic Treaty Organization ("NATO") justified its forceful interventions in Bosnia and Kosovo on essentially this rationale.¹⁹

Although widely articulated, the actual relationship between human rights, peace, and democracy is rarely examined critically.²⁰ One certainty is that armed conflict is perhaps the greatest single source of human rights violations. It also seems plausible that genuine democracy lessens the potential for egregious human rights violations, violent internal conflict, and the aggressive use of armed force.²¹ The available empirical evidence to assist in the inquiry is, however, limited and controversial, making it difficult to assess the implications of this perceived relationship with any degree of certainty.

Often, even the most basic questions are never asked. Do violations of human rights cause breaches of peace, or are such violations merely symptomatic of deeper economic and social conflicts? Do we mean that respect for human rights is an important precondition for peace, or only that peace itself is a prerequisite to the effective protection of rights? Does democratic governance actually reduce the potential for international armed conflict?²² Does democracy, often itself promoted as a basic human right,²³ serve as an important precondition to the ultimate realization of human rights and, in turn, peace? If so, would not the absence of democracy justify forceful intervention or other drastic measures aimed at nondemocratic United Nations members, including the Peoples Republic of China?

While all seem to agree that the relationship between peace, human rights, and democracy is vital, the precise nature of this relationship and its implications remain somewhat elusive and dependent upon the speaker's perspective and agenda. One of the clearest lessons that emerged over the course of the Goodwin Seminar is that the relationship between peace, democracy, and human rights is far more complex than the lofty platitudes that typically emerge from such discussions. Beleguered on all sides by class

18. See S.C. Res. 940, U.N. SCOR, 3413th mtg., U.N. Doc. S/RES/940 (1994). *But see* Donoho, *supra* note 6, at 370-82.

19. See generally Richard B. Bilder, *Kosovo and the "New Interventionism": Promise or Peril*, 9 J. TRANSNAT'L L. & POL. 153 (1999).

20. See Valerie Epps, *Peace and Democracy: The Link and the Policy Implications*, 4 ILSA J. INT'L & COMP. L. 347, 350 (1998) (discussing some of the empirical studies of the Kantian thesis and pointing out some of the difficult uncertainties).

21. *Id.* at 348.

22. Even studies that have suggested that liberal democracies that do not fight each other have acknowledged that many democratic states commonly employ armed forces internationally. See *id.* The most obvious example of this phenomenon is, of course, the United States.

23. See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 53-56 (1992); Gregory Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992).

violence, rampant poverty and economic disparity, President Aristide must continually wrestle with the complex realities of nurturing an infant democracy in the context of oppressive social and economic conditions. President Aristide's frustrated efforts to build Haiti's fledgling democracy under these oppressive conditions demonstrate that genuine democracy cannot exist, and will not contribute to the protection of basic rights, absent the material conditions necessary for its development.²⁴

Similarly, Dr. Ashrawi has witnessed her aspirations for meaningful democratic self-governance for Palestinians sacrificed in the quest for "security" and peace with the oppressor. While Dr. Ashrawi steadfastly argued that peace is impossible without full respect for human rights, she readily acknowledged that the struggle for independence has itself caused the Palestinian people some self-inflicted wounds. Moreover, fundamental lingering conflicts over scarce land, power, and security raise unanswered questions regarding which rights and whose rights must be protected and under what conditions. Palestinians and Israelis alike find themselves locked in circular political rhetoric over human rights. There can be no peace, without security, no security without peace, no human rights without peace and no peace without human rights. The rhetoric of conflict has thus obscured the underlying premise that respect for human rights on all sides is a prerequisite for meaningful negotiations and the compromises necessary to peaceful coexistence.

In this regard, Presidents Aristide and Arias both astutely argued that economic justice was an essential prerequisite for peace, human rights and the development of real democracy. Yet, even this appealing insight arguably holds human rights hostage to the political realities of scarce resources and global concentrations of economic power. It gives rise to the reasonable suspicion that the most significant factor in the relationship between human rights, peace, and democracy has yet to be clearly identified. Perhaps the clearest message of all is that economic justice and development must figure more prominently in our thinking about peace, democracy, and human rights.

B. The International Community Must Identify and Address Systemic Causes of Human Rights Violations such as Poverty, Economic Disparity, Debt Burden, and Militarization

A recurring concern raised during the symposium was that the international community has failed to adequately identify and respond to systemic causes of human rights violations. Ironically, the dramatic rise in human rights consciousness among governments has not been accompanied by similarly

24. See Cody, *supra* note 13; Williams, *supra* note 13; Berry, *supra* note 13; Associated Press, *supra* note 13; Prusher, *supra* note 13.

dramatic improvements in the lives of most people. The World Bank estimates that four billion people live on less than two dollars per day.²⁵ United Nations Children's Fund (UNICEF) estimates that three billion people live in abject poverty without basic sanitation, health care, shelter, potable water, education, or adequate food, including two million children who die each year from diarrhea.²⁶ According to the United Nations High Commissioner for Refugees, there are currently over twenty-two million displaced persons and refugees around the world, living in desperate conditions.²⁷ Recognizing this painful reality, the Goodwin visitors challenged us to think broadly and critically about the primary causes of human suffering when considering the future of human rights.

These leaders encouraged us to look beyond our Western preoccupation with individual liberties and take into account the physical and material conditions that fundamentally inhibit the realization of human dignity for most of the world's population. Our visitors' experiences in the struggle for human rights and peace convincingly demonstrate that economics and development must play a fundamental role in the achievement of human dignity for all. Extreme poverty, economic disparity and lack of basic development are undisputedly the most fundamental sources of suffering on the planet. They are also, perhaps, the greatest existing obstacles to the ultimate realization of fundamental human rights for all.

As witnessed by President Aristide's struggles in Haiti, economic disparity and deprivation undermine the foundations for genuine democracy and inhibit the social conditions that make respect and enjoyment of basic civil liberties possible. It seems equally clear that the material conditions within societies frequently serve as the catalyst for abusive exercises of authoritarian power and misguided governmental priorities that commit poor nations' scarce resources to ever increasing militarization. Armed conflict and internal civil strife, rooted in social and political power struggles over the material aspects of life, are undeniably powerful catalysts for human rights violations.

Thus, while human rights are linked to peace and democracy, attaining meaningful peace and democracy depends, in turn, on addressing economic disparity and lack of development. President Aristide's entire life, from priest to politician, has been premised on this conception of the role of economic justice in the realization of human rights and dignity. His experiences in Haiti

25. WORLD BANK POVERTY NET, *supra* note 10.

26. See United Nations Children's Fund, *Change the World with Children*, available at <http://www.unicef.org/> (last visited Mar. 21, 2001). See also Peadar Kirby, *Poverty is the Ultimate Threat to Global Security*, THE IRISH TIMES, Dec. 28, 2000, at 61 (describing the worsening income gap between rich and poor).

27. See U.N. HIGH COMMISSIONER FOR REFUGEES, *UNHCR Statistics*, at <http://www.unhcr.ch/statist/main.htm> (last visited Mar. 21, 2001).

demonstrate the complex and stubborn nature of the problem. President Arias has similarly taken these insights seriously, campaigning for a fundamental shift in governmental priorities in developed and underdeveloped countries alike. Recognizing the significance of economic development to human rights, he has championed the idea that demilitarization and serious debt relief are necessary for critical economic development and ultimately the realization of fundamental human rights.²⁸

Despite noble beginnings and recent advances,²⁹ the profound connection between economic deprivation and human rights has not figured prominently in Western human rights agendas.³⁰ Rather, Western governments and nongovernmental organizations have focused their resources on protection of civil liberties, largely ignoring or discounting the underlying material causes of human rights deprivations. It is tragically ironic that the Western human rights movement has seemingly failed to recognize persistent and widespread poverty, which denies vast segments of the world's population the material needs essential to human dignity, thus making the meaningful enjoyment of our treasured civil liberties virtually impossible.

C. The Effective Protection of Human Rights Requires the Development of Stable, Independent Domestic Civic Institutions, and a Culture of Democracy

Born from personal, sometimes painful and bitter, experience our Goodwin visitors repeatedly emphasized the significance of a strong civic infrastructure to the creation of lasting democracy and respect for human rights. As a member

28. See Oscar Arias, *What is Needed to Protect International Human Rights in the 21st Century*, 7 ILSA J. INT'L & COMP. L. 721 (2001), 25 NOVA L. REV. 487 (2001); see also Eric A. Friedman, *Debt Relief in 1999: Only One Step on a Long Journey*, 3 YALE HUM. RTS. & DEV. L.J. 191 (2000); Oxfam International, *Debt Relief*, at <http://www.oxfam.org/advocacy/debt> (last visited Mar. 21, 2001) (describing some of the effects of a \$2000 Billion debt burden has on developing countries); JUBILEE 2000 COALITION, *A Debt Free Start for a Billion People*, at <http://www.jubilee2000uk.org/index> (last visited Mar. 21, 2001) (asserting that seven million children die each year as a result of the debt crisis).

29. See, e.g., Frank E.L. Deale, *The Unhappy History of Economic Rights in the United States and Prospects for Their Creation and Renewal*, 43 HOW. L.J. 281, 305-306 (2000) (describing how economic rights were a central theme in the policies and public pronouncements of President Franklin D. Roosevelt).

30. The United States government, for example, has traditionally taken the position that economic, social, and cultural rights are not really rights at all, or at least are not enforceable as such. Most human rights nongovernmental organizations have also been reluctant to place economic rights on their agendas. See, e.g., STEINER & ALSTON, *supra* note 1, at 267-70. International institutions such as the United Nations Development Program and the World Bank have, however, taken the problem of poverty seriously. See Cody, *supra* note 13; Williams, *supra* note 13; Berry, *supra* note 13; Associated Press, *supra* note 13; Prusher, *supra* note 13; see also Chris Jochnick & Javier Mujica Petit, *Preface to the Quito Declaration on the Enforcement and Realization of Economic, Social, and Cultural Rights in Latin America and the Caribbean*, 12 YALE HUM. RTS. & DEV. L.J. 209 (1999); see generally Isabella D. Bunn, *The Right to Development: Implications for International Economic Law*, 15 AM. U. INT'L L. REV. 1425 (2000).

of Salvadore Allende's administration in Chile, Dean Grossman watched as Pinochet's bloody regime systematically dismantled the Chilean judicial system and other institutions of democracy. Dr. Ashrawi spoke of the dilemmas of institution building in the context of oppression, under which Palestinians face both internal and external threats to their basic dignity. Perhaps most dramatically, President Aristide has witnessed firsthand, from coup to current turmoil, how fragile democracy is in the absence of strong civic institutions and the material conditions that nurture their growth.

The importance of institution building has not been lost on the United Nations or in academic literature.³¹ The personal experiences of our Goodwin visitors, however, brought the complexity of this mission into clear focus. If strong civic institutions provide a bulwark against human rights violations, then economic progress, a culture of democracy, respect for the rule of law, and the development of "rights consciousness," provide the foundation upon which such institutions are built. The effectiveness of such institutions is effectively tied to the dynamics of economic and power relations within society.

The bitter experiences of our distinguished guests dramatically demonstrate that civic institutions and frameworks for rights protections are the first to be sacrificed under the yoke of oppression. In Haiti, for example, recent events show that much more effort and work is necessary for the establishment of meaningful democracy and respect for human rights than United States sponsored elections. The struggle for basic human dignity continues in Haiti with little improvement, because the primary economic and power dynamics of oppression have remained largely unaltered. Economic development and justice have proven no more than empty promises, and a fundamental absence of adequate civic institutions remains unremedied. How to create and maintain effective institutions in the face of oppressive conditions and lingering internal conflict remains a mystery despite its importance. Moreover, it seems clear that institution building, while a necessary ingredient for the effective protection of human rights, is wholly inadequate in the absence of critical economic and political reforms addressing the underlying sources of conflict.

D. A Meaningful Commitment to Leadership Accountability is Essential to Elimination of Human Rights Atrocities

A fourth recurring theme raised by the Goodwin visitors involved the significance of leadership accountability for human rights violations. Perhaps

31. Helfer and Slaughter, for example, cite the existence of strong, independent domestic institutions, committed to the rule of law and responsive to individual claimants, as a "strongly favorable precondition for effective supranational adjudication." Helfer & Slaughter, *supra* note 2, at 333-34; see also Linda Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 1 (2000).

one of the most significant human rights developments at the close of this century has been the increasing willingness of governments to abandon outdated notions of immunity that have for too long served as the refuge of oppression. When discussing the vital issue of human rights enforcement, our guests inevitably referenced three recent developments: the creation of ad hoc war crimes tribunals in Yugoslavia and Rwanda, the movement to create a permanent international criminal court, and the extradition case against General Pinochet. These three developments arguably signal a profound shift in the traditional paradigm of anemic international human rights enforcement limited to toothless monitoring and supervision. More importantly, they may also signal a change in the attitudes of states regarding the personal accountability of political leadership for egregious violations of human rights.

The United Nations Security Council's creation of ad hoc war crimes tribunals in Yugoslavia and Rwanda under Chapter VII, and its endorsement of their wide mandate, may represent the first wave in this shifting paradigm of human rights enforcement.³² Indeed, the creation of the tribunal for the former Yugoslavia, presided over in its infancy by Judge McDonald, and the subsequent creation of the tribunal for Rwanda, are perhaps the most profound developments in human rights enforcement since Nuremberg. The very existence of these tribunals is premised upon the importance of imposing criminal accountability on impugned leadership. Each tribunal has sought to indict and bring to justice, not only rogue actors in the field, but more importantly, the leadership that directed and nurtured human terror in those tortured lands. Thanks to pioneers like Judge McDonald, the tribunals have broken new ground in the development of international criminal law, not only generating a sophisticated jurisprudence regarding criminal liability for human rights violations, but also establishing rational rules of procedure and important substantive expansions of basic humanitarian norms.³³ Most importantly, the

32. See, e.g., Ivan Simonovic, *The Role of the ICTY in the Development of International Criminal Adjudication*, 23 FORD. INT'L L.J. 440 (1999); Scharf, *supra* note 8. The Tribunal has described its own work in exactly these terms, stating that "[a] whole body of lofty, if remote, United Nations ideals will be brought to bear upon human beings Through the Tribunal, those imperatives will be turned from abstract tenets into inescapable commands." *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, U.N. GAOR, 49th Sess., Agenda Item 152, at 49, U.N. Doc. A/49/342 (1994).

33. See S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/872 (1993) [hereinafter ICTY Statute]; S.C. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg., U.N. Doc. S/RES/808 (1993); Gabrielle Kirk McDonald, *The International Criminal Tribunals: Crime & Punishment in the International Arena*, 7 ILSA J. INT'L & COMP. L. 699 (2001), 25 NOVA L. REV. 465 (2001); see also Justice Louise Arbour, *Access to Justice: The Social Responsibility of Lawyers: The Prosecution of International Crimes: Prospects and Pitfalls*, 1 WASH. U. J.L. & POL'Y 13 (1999); Barbara Crossette, *Crimes Against Humanity: A New Legal Weapon to Deter Rape*, N.Y. TIMES, Mar. 4, 2001, sec. 4, at 5 (rape held to constitute crime against humanity by ICTY).

tribunals' work has enormously increased public awareness and established a new vision of what is possible in human rights enforcement. The international community did not, for once, simply sit by and watch with horror as thousands were murdered, enslaved, tortured, and systematically raped. Whatever their flaws,³⁴ the work of these tribunals has begun to dismantle outdated attitudes regarding the accountability of leadership and set important new limits on what will be tolerated.

The ultimate significance of the tribunals in Yugoslavia and Rwanda is, however, somewhat constrained by their ad hoc nature and limited geographic and temporal jurisdiction.³⁵ As eloquently argued by Judge McDonald, the momentum gained through the tribunals' work must be carried to full fruition by the implementation of the permanent International Criminal Court proposed in the Treaty of Rome.³⁶ The creation of this court may signal that the international community, some fifty years after Nuremberg and the birth of the modern human rights system, has finally developed the resolve necessary to make human rights enforcement meaningful.

The extradition case against General Pinochet, the significance of which has yet to be fully realized, reflects a potential third wave in this shifting paradigm.³⁷ Although ultimately frustrating, the British court's courageous decision denying Pinochet traditional immunity potentially represents an enormously positive development. Among other things, this decision may reflect an increasing willingness by states to recognize the applicability of domestic criminal processes and universal jurisdiction to human rights violators.³⁸ Although potentially a vital development, the ultimate significance

34. The proceedings were clearly hampered by the apparent lack of political will on the part of NATO to undertake the politically sensitive and dangerous work of arresting those accused of war crimes and a host of practical problems in implementation of their mandates. See, e.g., Arbour, *supra* note 33. They were also hampered by an initial lack of financial support that has subsequently been remedied. Lengthy trials and alleged inefficiencies have caused a recent review of the Tribunal's practices by a panel of United Nations appointed experts. See Daryl A. Mundis, *Improving the Operation and Functioning of the International Criminal Tribunals*, 94 AM. J. INT'L L. 759 (2000).

35. ICTY Statute, *supra* note 33, at art. 1.

36. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), available at <http://www.un.org/law/icc/statute/contents.htm>; see Michael A. Newton, *The International Criminal Court Preparatory Commission: The Way It Is & the Way Ahead*, 41 VA. J. INT'L L. 204 (2000); Arbour, *supra* note 33.

37. See generally William J. Aceves, *Liberalism and International Legal Scholarship: The Pinochet Case and the Move Toward a Universal System of Transnational Law Litigation*, 41 HARV. INT'L L.J. 129 (2000).

38. A distinct but important parallel development has been ongoing in the United States on the civil side since the landmark case of *Filartiga v. Pena-Irala*. 630 F.2d 876 (2d Cir. 1980). An important recent example of this approach, which focuses on civil compensation for "external" human rights violations in domestic courts, is the case of *Kadic v. Karadzic*, involving human rights claims against Bosnian Serb leader Radovan Karadzic. 70 F.3d 232 (2d Cir. 1995). See generally Beth Stephens, *Human Rights & Civil Wrongs*

of the Pinochet case depends on the political will of individual governments to employ their domestic processes.³⁹ One can only hope it signals the repudiation of an era of impunity and gives fresh life to the admonition that barbaric violators of human rights are “hostis humani generis,” enemies of all human kind.

Taken together, these developments hopefully reflect a wise shift away from immunity toward individual accountability for human rights violations. Carried to their full implications, they may signal a final assault on the citadel of immunity and, eliminating safe havens for the oppressor, send a clear message that justice will be served.⁴⁰

III. CONCLUSION

The 2000 Goodwin visitors brought to the Law Center profound insights regarding the future of human rights in the twenty-first century. Their willingness to explore these complex and fundamental issues, and to share their collective wisdom borne of experience, brightened all of our horizons and helped rekindle our commitment to effective realization of human rights for all people everywhere.

at Home and Abroad: Old Problems and New Paradigms: Do Tort Remedies Fit the Crime?, 60 ALB. L. REV. 579 (1997) (discussing parallels and differences between civil and criminal remedies for international human rights violations).

39. After Pinochet's release and return to Chile for health reasons, a Chilean magistrate issued an indictment against the former dictator alleging human rights crimes. This indictment was later overturned on procedural grounds but the effort to bring Pinochet to justice under Chilean law has continued. See Sebastian Rotella, *Court Throws Out Pinochet Indictment*, L.A. TIMES, Dec. 21, 2000, at A15. In February 2000, human rights advocates celebrated as Senegal appeared to follow the Pinochet paradigm by indicting Hissene Habre, former dictator from Chad, and placing him under house arrest on charges of torture and “barbarity.” See Karl Vick, *African Eyes Opened By Ex-Leader's Indictment: Where Impunity Prevails, Chadian's Case Is a First*, WASH. POST, Feb. 5, 2000, at A13. Unfortunately, the case was subsequently dismissed through the apparent intervention of the new Senegalese President. The initial success in Senegal, however, has apparently prompted the filing of more than 50 cases against Habre and his henchmen in Chad. See Douglas Farah, *Chad's Torture Victims Pursue Habre in Court: Pinochet Leaves Ex-Dictator Vulnerable*, WASH. POST, Nov. 27, 2000, at A12; see also *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995); Stevens, *supra* note 38.

40. See Reed Brody, *One Year Later, The 'Pinochet Precedent' Puts Tyrants On Notice*, BOSTON GLOBE, Oct. 14, 1999, at A19.

