

International Human Rights¹

JAMES E. DORSEY

I. War Crimes Tribunals for Yugoslavia and Rwanda

One of the biggest stories in the human rights field in 1996 has been the workings of the war crimes tribunals for the former Yugoslavia and Rwanda.² The Yugoslavia tribunal has captured most of the attention with the handing down of over seventy indictments, the guilty plea and sentencing of Drazen Erdemovic (the 25-year-old ethnic Croat who as a low-ranking soldier in the Bosnian Serb army had personally killed scores of unarmed Muslim men at Srebrenica on July 16, 1995, turned himself in, pled, and received a ten-year sentence), and the actual trial of Dusan Tadic (a forty-year-old former cafe owner, karate instructor, and policeman from Kozarac, Bosnia, who has been charged with thirteen killings and the beating and torture of many others in May, June, and July 1992).³

The Tribunal has four goals: (1) stopping the commission of war crimes; (2) bringing perpetrators to justice; (3) ending the cycle of crime and recrimination between the contending parties; and (4) documenting the crimes for history before the guilty can attempt to rewrite the historical record. Notwithstanding these admirable goals, the creation of a war crimes tribunal is controversial. Those in favor argue that such a tribunal deters war crimes in the future. On the other side, those opposed to tribunals note that the possibility of retribution for war crimes frequently makes peaceful resolution of ongoing conflicts more difficult.

There is no jury. The three members of the judicial panel—Gabrielle Kirk McDonald (presiding judge) from the United States, Lal Vohrah from Malaysia, and Sir Ninian Stephen from Australia—will determine the facts and decide whether the defendant is guilty beyond a reasonable doubt.

James E. Dorsey is a member of the firm Fredrickson & Byron in Minneapolis, Minnesota. He is chair of the International Human Rights Committee.

1. The wire services and the Internet were the primary sources, including the Tribunals website at <<http://www.his.org/~cij/TribunalsHomePage.html>>.

2. William Horne and Hillary Kessler, *Tadic Trial Primer*, THE AMERICAN LAWYER, at 59 (1995), and Michael P. Scharf, *The International Criminal Tribunals for Yugoslavia and Rwanda*, WORLD ORDER UNDER LAW REPORTER (Spring/Summer 1995).

3. *Id.*

As the tribunal works through its first case (Tadic), it has confronted a number of issues that had not been addressed by the United Nations in creating a tribunal. For instance, the whole question of what sort of representation the defendants are entitled to has now been addressed by the tribunal. As a result, the tribunal is now paying for what amounts to public defenders as well as investigators and staff to assist Tadic with his defense.⁴

II. A Permanent International Criminal Court⁵

The International Law Commission (ILC) has put together a draft statute for a permanent international criminal court to take the place of the *ad hoc* tribunals for the Yugoslav and Rwanda tribunals. The U.S. Government however has a number of reservations about the creation of such a permanent court. While the United States seems to have no problem with a permanent court having jurisdiction over war crimes, crimes against humanity, and genocide, it will still insist that any such cases before the court are referred to the court by the United Nations Security Council. Beyond that, the United States has not been enthusiastic about the creation of broader jurisdiction for such crimes as drug trafficking, apartheid, aggression, and crimes under international law generally. The United States may also have reservations about whether crimes under the international conventions dealing with terrorism should fall in the new court's jurisdiction as well.

The reasons for the United States' reluctance to support fully the contemplated permanent court appear to be twofold: (1) the United States is leery that the court might be used for political purposes adverse to the interests of the United States; and (2) the United States does not want the court to get in the way of its own efforts, at both the national and international level, to combat international crime. The first concern is seen in the United States' requirement that the Security Council must refer a charge of war crimes, crimes against humanity, or genocide to the court before it can exercise jurisdiction. The second concern is reflected in the United States' desire to exclude drug trafficking from the court's jurisdiction—the United States already has its own international anti-drug operations.

III. World Food Summit in Rome Considers Right to Food⁶

Representatives of 194 nations gathered in Rome in the fall of 1996 to attend the World Food Summit organized by the U.N. Food and Agriculture Organization. The conference concluded with the adoption of a seven-point plan that aims to halve the estimated 840 million people without access to sufficient food by 2015. The plan also urged fewer trade barriers for food and opposed using food aid as a political tool. Activists and researchers challenged the U.N.'s predictions that improved growing techniques and food distribution can keep pace with world hunger. For its part, the United States received criticism over its goal of promoting biotechnology as a means of seeking heartier and healthier crops. The European Union is considering blocking imports of genetically altered corn from the United States, and Fidel Castro took the opportunity to use the plan as an argument for the cessation of the United States' 34-year embargo of Cuba.

4. See International Criminal Law Report in this issue at page 611.

5. This section is largely an editorial on the current prospects for such a court.

6. The wire services and the Internet were the primary sources, including the website for the Food Summit at <http://ffas.usda.gov/ffas/food__summit/summit.html>.

IV. Human Rights in Hong Kong as It Returns to China

At the stroke of midnight on June 30, 1997, Britain will deliver Hong Kong, with a population of 6.2 million people, back to China, making it the Hong Kong Special Administrative Region of the People's Republic of China.

Press reports note that the signs are mounting that when China regains control of Hong Kong, the territory's citizens will lose many of their freedoms. The latest indications came when a committee of 400 Hong Kong citizens chosen by Beijing took a preliminary vote to choose the new chief executive of Hong Kong. Apparently they elected C.H. Tung, a shipping magnate and the former chairman of Orient Overseas International Ltd. Until earlier this year, Tung sat in the cabinet of the British governor of Hong Kong, Chris Patten. *The Economist* reports that Mr. Tung has attacked Mr. Patten's reforms, and accused the Democratic Party of being against China. He allegedly supports China's intention to scrap Hong Kong's elected legislature in favor of one that the same 400 who chose him will pick later in December.

As the handover date closes in, the British administration has proposed changes to Hong Kong's criminal law. This intended bill would amend existing laws on treason, subversion, and secession. China has condemned this move. In China, these crimes are subject to lengthy prison terms and the death penalty.

Some analysts, especially those in the corporate and investment community, are optimistic about the role of Hong Kong, and yet they acknowledge that there may be a loss, at least initially, of some level of political and civil liberties. According to *The Economist*, the signs are that China's leaders are going to mishandle the takeover badly. In particular, *The Economist* states that the Chinese Government is going to quash free speech, even though they have pledged to keep Hong Kong's system intact for the next fifty years, and that the Chinese leadership will likely crack down on "unpatriotic" elements in Hong Kong. According to a 1984 pact that sealed Hong Kong's transfer to Chinese sovereignty, its capitalist way of life and common law legal system are to continue unchanged for fifty years after 1997.

However, reports by human rights groups, including the Democratic Party of Hong Kong, argue that the situation is far more serious, especially in light of recent incidents of heavy-handedness by the Chinese Government. These organizations have been outspoken critics of China and argue that Hong Kong will face repression under Chinese rule. Recent press articles show that tension is mounting in Hong Kong and the prospects of a peaceful transfer of power looks less promising with Beijing already tightening its grip over the island. In October 1996, press reports quoted Vice Premier of China and Foreign Minister, Qian Qichen, as stating that Hong Kong may have to curtail some of its political freedoms and warned that there would be limits to free speech in Hong Kong. In 1996, China declared unconstitutional Hong Kong's Bill of Rights that was passed after the Chinese government suppressed the 1989 pro-democracy movement in Tiananmen Square. China argues that the Bill of Rights violates Hong Kong's future constitution that China has already drafted.

China also said that it would replace the existing Legislative Council of Hong Kong (Legco) with a China-appointed body (provisional Legco). China has already begun the process of setting up a new legislature to replace the existing body elected under new democratic procedures. It appears likely that China will push through some legislative changes, including modifications to the Bill of Rights. China may also modify other laws designed to restrict civil rights, such as public order and right of assembly.

This month, President Bill Clinton and China's President Jian Zemin agreed to exchange state visits following a trip to China by Vice President Al Gore in the first half of 1997. Critics

of China say that such high-level visits should wait until the Beijing Government improves its record on human rights. The future of Hong Kong remains uncertain and there is a general agreement in the press that there will most likely be some level of erosion of human rights.

V. Women's Rights in the Aftermath of the Fourth World Conference in Beijing

In the year following the Fourth World Conference on Women, efforts are underway all over the world to implement the Beijing Platform for Action's promises of equality and protection of women's human rights. Many countries have formed commissions or councils specifically to monitor progress made toward the commitments made in the Platform. In the United States, the Clinton administration established the president's Interagency Council on Women as a follow-up to Beijing. The Council is chaired by Secretary of Health and Human Services Donna Shalala and Honorary Chair First Lady Hillary Rodham Clinton. On September 28, 1996, the Council sponsored a national conference by satellite for reporting on progress made since Beijing and to develop a national action agenda. The Clinton administration has also expressed its commitment to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), calling it a top priority among human rights treaties presently awaiting advice and consent by the U.S. Senate.

In September 1996, the nonprofit group WEDO (Women's Environment and Development Organization) published *Beyond Promises, Governments in Motion*, a report outlining specific steps governments around the world are taking to implement the Platform for Action.⁷ The report states that many Latin American countries have formed commissions to follow up on the Platform. In South Africa, a new office on the status of women has been formed within the presidency. In Asia and Latin America nongovernmental groups report new efforts by governments to involve NGOs in committees formed to monitor women's progress. The WEDO report notes that Nordic countries are adopting serious agendas for the advancement of women as a follow up to Beijing.

Though there is still much to be done at the governmental level, NGO activism to promote women's rights has reached unprecedented levels. In the aftermath of Beijing, women's advocates are communicating and joining efforts across national borders to make the commitments articulated in the Platform for Action a reality.

VI. Corporate Responsibility—Codes of Conduct and Supplier Issues

I am from El Salvador. I am 18 years old. For over a year, I worked in the Taiwanese-owned Mandarin International maquiladora factory in the San Marcos Free Trade Zone, where we made shirts for The Gap, Eddie Bauer, and J.C. Penney. From Monday to Thursday, our work shift went from seven in the morning until nine at night. On Fridays, we would work straight through the night, starting at 7:00 a.m. and working until 4:00 a.m. We would sleep overnight at [sic] the factory floor. The following day, we would work from 7:00 a.m. until 5:00 p.m. Despite these very long hours, the most I ever earned was 750 colones [about \$43] per month. . . . The supervisors often screamed at the women. They would hit us with the shirts and tell us to work faster. Even though we worked a 14-hour day, we were only permitted to go to the bathroom twice. . . . There are many minors—girls aged 14, 15 and 16—who work at Mandarin. (Excerpt from Judith Viera's testimony, gathered by members of the National Labor Committee.)

7. WOMEN'S ENVIRONMENT AND DEVELOPMENT ORGANIZATION, *BEYOND PROMISES, GOVERNMENTS IN MOTION* (September 1996).

This story is unfortunately not uncommon. As businesses are increasingly moving their manufacturing and production overseas and sourcing from developing countries, there is great concern regarding the exploitation and harassment of workers. There is also increasing recognition of corporate responsibility and human rights. In the past year alone, there has been a marked increase in mainstream press reports and media coverage about the plight of those working in subcontracting factories to produce goods for multinationals. These issues became headline news when Kathie Lee Gifford's labels were found to have been sewn by children at a factory in Honduras.

Recent reports note that U.S. and western European multinationals produce products in countries or regions where the working and living conditions are substandard, wages are low, working hours are long, trade union membership is generally discouraged, harassment of workers is common (especially women and child workers), child labor or prison labor may be used, and environmental laws and health and safety standards are not enforced. Human rights advocates contend that the same retail system that gives North Americans attractive bargains perpetuates Third World poverty and powerlessness.

Boycott calls and campaigns continue to be organized against companies that are seen as serious violators of human rights.

The issue of applying human rights standards to corporate behavior continues to cause heated debates. Critics state that this is disguised protectionism and an imposition of Western notions of human rights.⁸ This was evident during the child labor debates and press coverage of very young children working in Asia sewing soccer balls and weaving carpets. They argued that children in poor countries needed to work to survive. Nonetheless, supporters of human rights and corporate responsibility, while acknowledging the effects of poverty and social and political contexts, recognize that corporations have the power to protect or abuse human rights. Human rights violations may not only be caused by governments, but also by corporations.

In light of these concerns, there have been some efforts to address these concerns. Here are some examples of these efforts:

Child Labor and Sweatshops. In June 1996, the U.S. Department of Labor held a hearing on child labor and sweatshops. It has recently published a report entitled "The Apparel Industry and Codes of Conduct." In July 1996, the Department of Labor sponsored the Fashion Industry Forum where designers, manufacturers, contractors, consumers, unions, and other social responsibility groups gathered to discuss the issue of sweatshops in the United States, as well as the abuse of worker rights overseas. The Department of Labor keeps a "Fair Labor Fashion Trendsetter" list that recognizes national retailers and manufacturers who are making efforts to prevent the exploitation of workers.

The Clinton administration has formed a presidential advisory committee to explore strategies to eradicate sweatshops and to improve human rights. President Clinton stated on August 2, 1996, that this coalition would develop options to inform consumers that the products they buy are not produced under those exploitative conditions and that they agreed that the committee will report back to the president. The Apparel Industry Partnership (AIP), as it is called, includes businesses and nongovernmental organizations, and is proposing a plan to set voluntary, humane labor standards and develop a labeling and advertising plan to inform consumers which companies abide by them. The Justice Department's Antitrust division recently found that the AIP plan does not reduce competition.

8. Mark Clifford, *Social Engineers*, FAR EASTERN ECON. REV., April 14, 1994, at 56.

In March 1995, the White House revealed the long-awaited corporate code of conduct for international business practices entitled "Model Business Principles."⁹ This one-page voluntary code, which is not intended for legislation, includes provisions on a safe workplace, fair employment practices, respect for the right of association and the right to bargain collectively, responsible environmental protection, promotion of good business practices, respect for free expression, prohibition of political coercion, and recognition of ethical conduct. The code has come under much criticism from certain human rights groups and members of Congress who state that the principles are loosely worded, lack reporting and enforcement mechanisms, and are unlikely to have any influence on behavior in China, the country at which the code was originally directed. Other groups state that despite these issues, the Clinton administration's code is a first step toward responsible global corporate practices and encourage companies to sign on to these principles.

Corporate Codes of Conduct. Companies like Reebok, Levi Strauss & Co., Liz Claiborne, J.C. Penney, and The Gap have one thing in common: These companies have developed a global human rights policy that applies not only to their own operations, but also to their buyers, suppliers, and contractors. These voluntary standards are generally referred to as "codes of conduct" or "supplier standards" and typically cover employment conditions, forced labor, equal opportunities, and the environment. They are based on the principle that businesses have a responsibility towards the people who produce their products, for the consumers that buy them, and for the people who are affected by them.

According to a recent U.S. Department of Labor child labor report:

The recent proliferation of codes can be attributed to several factors. With media reports and exposes on child labor becoming more frequent, consumers—and therefore companies—are becoming increasingly concerned about the conditions under which garments they purchase are made. Companies' adoptions of codes of conduct serve to ease consumer concerns—and their own—that they may be contributing to the exploitation of child labor. Often companies adopt codes to project a positive image and protect their brand name or quality reputation. Some are motivated by good intentions; some by bottom-line considerations; many by both.

While developing a code of conduct is an important first step, the second, more challenging aspect is the enforcement of the codes of conduct. Companies find that monitoring their suppliers (often numbering in the hundreds or thousands) is a daunting task, often time-consuming, and financially burdensome. Some U.S. companies, however, are looking into working with nongovernmental or independent organizations to assist in this task. For example, The Gap, a San Francisco-based clothing chain, is working with the National Labor Committee (NLC). After the NLC found human rights violations, including child labor, forced overtime, and unsafe working conditions at a factory in El Salvador, and after religious and community groups protested the conditions, the company agreed to allow respected Salvadoran organizations, such as the Human Right's Institute of the University of Central America, to monitor the San Salvador factory for human rights abuses. A few companies have involved nongovernmental organizations for advice and consultation, while other companies conduct audits through in-house personnel or have hired accounting firms to conduct audits.

While these are just a few examples of the efforts towards linking corporate responsibility and human rights, there is a general agreement that this is only the beginning. Much more work is needed to make corporate codes of conduct and their effective enforcement a priority in the human rights community.

9. *Model Business Principles*, White House Document (March 1995).

VII. Human Rights Treaties¹⁰

The United States has yet to ratify a number of human rights treaties, thus maintaining its custom of generally leading multilateral efforts to draft international human rights instruments, and then allowing them to languish on the U.S. political agenda.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the particular focus of much attention since its ratification, is an integral part of the action agenda following Beijing. While it has been reported favorably by the Senate Foreign Relations Committee in the last Congress, it remains a nonaction item under that Committee's current chairman. The American Convention on Human Rights is near the bottom of the agenda of many groups who otherwise support it because it is only regional and not global, thus potentially and implicitly condoning the relativity of human rights norms based on regional, ethnic, national, religious, or racial traditions. Nevertheless, it has been in effect without U.S. participation (although leading U.S. human rights experts Tom Buergenthal and Claudio Grossman have served on the court established by the treaty as appointees of other governments) and has had some successes over the years. Language suggesting an impact on U.S. abortion policies needs to be better understood as not having an effect on our law. The administration has not requested action on this treaty which remains dormant in the Senate. The Covenant on Economic, Social and Political Rights likewise appears on very few action agendas, and most certainly not that of the Foreign Relations Committee whose leadership views this treaty as little more than refuse of the Cold War, or of the administration. Unfortunately, the role of this treaty as an integral part of the International Bill of Rights is not widely understood.

The U.N. Children's Convention finally has been signed by the United States although no further, formal action has been taken. The treaty, the most widely ratified human rights treaty in the world, contains some of the most difficult legal issues and, far and away, the most explosive political issues. The Gathering for Children in Washington in early June mirrored the conflict posed by the treaty, where right-wing radicals view government programs (such as the treaty) to assist children at high risk as little more than efforts to "undermine traditional family values." The pending treaty also focuses attention on the meaning of international treaty obligations, which in any context continue to be not understood in Congress or by the public. This treaty has perhaps the largest and most active group of supporters nationwide, whose job in moving the treaty forward is also the most difficult of any of the instruments.

Work on any of the above also is informed by progress of the United States in complying with the Race and Torture Conventions, in following up the U.S. report some two years ago on compliance with the Convention on Civil and Political Rights, and in using the provisions of the Genocide Convention to which the Senate gave its advice and consent ten years ago last February.

VIII. World Congress Against Commercial Sexual Exploitation of Children, Stockholm¹¹

At a meeting in Stockholm on October 27-31, the Congress focused on combating child pornography, child prostitution, and child sex tourism. Hosted by the Swedish Government

10. This section is largely an editorial on the status of ratification.

11. The wire services and the Internet were the primary sources, including the website on Sexual Exploitation of Children at <<http://www.usis.usemb.se/children/index.html>>.

and Sweden's Queen Sylvia, the conference was attended by 126 government delegations, approximately 500 NGO representatives, plus a number of international and intergovernmental organizations including cosponsors UNICEF, the NGO "End Child Prostitution in Asian Tourism" (ECPAT), and the NGO Group for the Convention on the Rights of the Child. The U.S. delegation was headed by Assistant Attorney General Laurie Robinson and included key officials of the State, Defense, and Labor departments as well as the president's Interagency Council on Women, the INS, and the FBI.

Congress adopted a nonbinding "declaration and agenda for action" which calls for giving higher priority to stopping commercial sexual exploitation of children, promoting stronger cooperation among the states to that end, and criminalizing commercial sexual exploitation of children. A key legal concept often discussed at the conference was enforcement of U.S. and other national legislation that provides extraterritorial jurisdiction over citizens traveling internationally with intent to commit sexual crimes against children in foreign countries. The ABA's Center on Children and the Law is planning to work with the U.S. Justice Department to develop a standard framework that would cover a broad scope of what national legislation should look like when addressing all aspects of child sexual exploitation including offenses, penalties, child victims services, judicial response improvement, etc.

IX. The U.N. Conference on Human Settlements (Habitat II)¹²

The U.N. Conference on Human Settlements (Habitat II) met during June in Istanbul. The conference was one in a series of major agenda-setting meetings beginning with the U.N. Conference on the Environment and Development (UNCED) in Rio de Janeiro and continuing through the U.N. Conference on Human Rights in Vienna, the Cairo Conference on Population, the Copenhagen Conference on Social Development, and the Beijing Conference on Women.

The second U.N. Conference on Human Settlements (Habitat II) convened in Istanbul, Turkey, between June 3 and 14, 1996.¹³ The conference was intended to review trends in national and international policies and programs in implementing the recommendations of the first U.N. Conference on Human Settlements (Vancouver, 1976) and to review the implementation of the Global Strategy for Shelter to the Year 2000, adopted by the U.N. General Assembly in 1988. The conference's two main themes were "Adequate shelter for all" and "Sustainable human settlements development in an urbanizing world."

The June 1996 conference adopted the Istanbul Declaration on Human Settlements. From a human rights perspective, the most important paragraph in the declaration stated:

8. We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families.¹⁴

The Habitat II Conference also adopted a more detailed Habitat Agenda, which said, *inter alia*, that

12. The wire services and the Internet were the primary sources.

13. *Istanbul Declaration on Human Settlements*, Habitat II (June 1996).

14. *Habitat Agenda*, EARTH NEGOTIATIONS BULL., Vol. 11, No. 14 (1996) (on-line webpage).

Democracy, respect for human rights, transparent, representative and accountable government and administration in all sectors of society, as well as effective participation by civil society, are indispensable foundations for the realization of sustainable development. The lack of development and the existence of widespread absolute poverty can inhibit the full and effective enjoyment of human rights and undermine fragile democracy and popular participation. Neither of them, however, can be invoked to justify violations of human rights and fundamental freedoms.

X. Ban on Use and Manufacture of Land Mines¹⁵

According to the United Nations Association—U.S.A., over 110 million land mines are currently scattered among sixty-four countries throughout the world. Mine-clearance operations recover about 100,000 mines per year, which is less than the rate of growth of mine proliferation.¹⁶ While a mine costs an average of \$3.00 to produce, detection and clearance cost between \$300 and \$1,000 per mine.¹⁷ Currently, mines kill about 10,000 people a year and wound twice that number, with costs of surgery and prosthetic care per survivor of \$3,000.¹⁸ Major land mine producers are China, Russia, and the United States. Accordingly, the UNA-USA hosted a series of meetings starting in July 1996 aimed at securing the support of the U.S. Government for immediate negotiation of a complete ban on the production, use, export, and storage of antipersonnel land mines. At the meetings, a number of corporate executives and policy analysts argued that the Pentagon can be rallied to a ban if a policy alternative is formulated to replace the loss of antipersonnel land mines as tactical weapons.

XI. Status of Rule of Law: High Points and Low Points

Early in the day on December 10, 1996, the forty-eighth anniversary of the Universal Declaration of Human Rights—International Human Rights Day—South African President Nelson Mandela signed into operation a new constitution for the new South Africa. He did so on the spot in Sharpstown where not so many years earlier dozens of black South Africans had been massacred by the then-apartheid government. His signature ironically highlighted all the hard work and very substantial obstacles which lay ahead. For while a new legal basis may be an essential ingredient to fashioning a rule of law society, such law can also highlight just how far South Africa—or any country—must go to bring the meaning of the “law” to the everyday life of the people.

Both the fact and the symbolism of Mandela’s act well reflect the health of the rule of law in 1996. For virtually any development which gives even a hint of promise carries the seed of its demise.

No development of 1996 is viewed with such hope and despair as the work of the War Crimes Tribunals for the former Yugoslavia and for Rwanda. The international effort to bring alleged perpetrators of genocide and other war crimes before an impartial tribunal fell prey to the very sentiment which prompted the tribunals’ creation—the reluctance of major world

15. The wire services and the Internet were the primary sources, including the website for the United Nations at <<http://www.un.org/Depts/Landmine/>>.

16. Ken Rutherford, *Humanitarian Consequences of Land Mines*, UPDATE ON LAW-RELATED EDUCATION, Vol. 21, No. 1, at 30, 31 (ABA 1997).

17. *Id.*

18. *Id.*

powers to stop the crimes and find those responsible for their commission. Only a few of those indicated have been arrested and questions grow about how the ultimate disposition of the cases will impact on such future efforts. In this vein, the beginning of preparatory work at the U.N. leading to the formulation of a treaty creating an International Criminal Court marked new interest in an idea as old as the United Nations. Yet lack of a clear consensus on the jurisdiction of such a court, coupled with the potential impact of the current War Crimes Tribunals, raises significant questions of the possibility of such a court becoming a reality any time soon.

The rule of law as represented by the United Nations, or at least the perception by the rest of the world of how the rule of law fares in practice in the world's leading democracy, did not shine. Wholly apart from important changes needed at the United Nations, the continued refusal of the United States to adhere to its treaty and domestic law obligations under the U.N. Charter, and its brash actions concerning the Secretary General, sent the wrong message at the wrong time to many countries making a transition out of lawlessness.

In terms of countries and regions, the year is difficult to categorize. To acknowledge that the rule of law requires much time to fashion and take root, and that the countries of the former Soviet Union and its central and eastern European satellites have been in this period of transition barely five years, is to accept that 1996 was a year of some steps forward and some back, but more were taken with ballots and a free press even if the result might be viewed as a regression. Nineteen ninety-six also will be remembered as the last year of Hong Kong's full independence, and a time when the actions of China—and many other countries in concert with China—raised serious questions of the impact of a jurisdiction returning to the control of an oppressive regime at the very time most of the rest of the world is seeking freedom from oppression.

Nineteen ninety-six also saw much of the promise of the Dayton Peace Accords' effort to peacefully resolve an awful tragedy fade in the light of the reality of the true difficulty of ethnic conflict. So, too, continuing efforts in the Middle East and Northern Ireland were based on guidance by and respect for the rule of law, but such a basis allowed only bare progress to a lasting solution. In this regard, perhaps the real legacy of efforts on behalf of the rule of law in 1996 will be found in 1997.

XII. 48th Session of the U.N. Sub-Commission¹⁹

The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities convened its 48th Session from August 5 through August 30, 1996, in Geneva, Switzerland. Since its origin in 1947, the subcommission has had many accomplishments in drafting standards, recommending implementation procedures, focusing attention on country situations, and doing path-breaking studies on new issues. Nonetheless, its parent body—the Commission on Human Rights—has been insisting that the subcommission reform its work. There already exist numerous existing standards and the United Nations is suffering from insufficient resources; hence, the subcommission should avoid duplicating the work of the commission. Indeed, establishing further standards and new procedures may even do harm to an already overwhelmed system.

19. David Weissbrodt and Sosamma Samuel, *Review of Developments at the 48th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, NETHERLANDS Q. HUMAN RIGHTS (1996).

At its 1996 session the subcommission began to recognize those new realities by deciding to avoid duplication of effort; it would refer only new country situations to the commission and would not deal with countries already on the commission agenda. The subcommission also decided to limit new studies, and as a first step, would initiate studies recommended by its existing working groups, for example, the Working Group on Indigenous Populations and the Working Group on Minorities. Hence, in 1996 the subcommission proposed only one new study on indigenous land rights.

The subcommission also considered a proposal for a new thematic working group of the commission relating to transnational corporations and human rights, but realizing the difficulties inherent in such a proposal and the need for more careful study of the issue, substantially weakened its recommendation. The subcommission reviewed several of its present studies, for example, a long-standing study on indigenous treaties and a new preliminary report on the situation of systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict, including internal conflict. The preliminary report discussed the applicable legal standards and focused particular attention on the conduct of the Japanese army during World War II. The subcommission also received the final report of a ten-year study on traditional practices affecting the health of women and children, including female genital mutilation. In addition, the subcommission received the final report on a study of extreme poverty, a provisional report on income distribution, and a second interim report on impunity of perpetrators of violations of economic, social, and cultural rights.

The subcommission discussed a nearly final report on impunity of perpetrators of violations of civil and political rights. The subcommission also authorized the compilation, updating, and prompt publication of its previous study entitled "The right to a fair trial: current recognition and measures necessary for its strengthening." It called for the publication of the study's comprehensive review of the fair trial jurisprudence of the Human Rights Committee, other treaty bodies, the Inter-American Court of and Commission on Human Rights, the European Court and Commission of Human Rights, the African Commission on Human and Peoples' Rights, and other international bodies. The published study should be useful to lawyers, judges, and others concerned about the right to a fair trial throughout the world.

The subcommission will meet again in August 1997 and is expected to focus its energies on (1) existing implementation procedures—particularly through the subcommission's Working Groups, (2) helping the human rights treaty bodies with studies they cannot themselves do, and (3) suggesting countries with urgent human rights problems which have not previously been the subject of adequate attention from the Commission on Human Rights.

