FOREWORD

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With the establishment of the United Nations in 1945, just after the end of World War II, the world body declared that "promoting and encouraging respect for human rights and for fundamental freedoms" would be one of its three core purposes.[1] The modern international human rights movement was launched shortly thereafter, as the General Assembly adopted the Universal Declaration of Human Rights in 1948.[2]

Grounded in the concept of the dignity and worth of all people, the Universal Declaration articulated the aspiration of all countries to respect, protect, promote, and fulfill what has been traditionally referred to as the "three generations of human rights": civil and political, socio-economic, and collective rights.[3] In 1966, the General Assembly codified and expanded upon these rights by adopting the International Covenant for Civil and Political Rights and also the International Covenant on Economic, Social, and Cultural Rights, both entered into force in 1976.[4] Over the years, states have signed on to a wide array of core human rights treaties, which have covered the rights of vulnerable groups including women, children, persons with disabilities, and migrant workers, as well as themes including genocide, torture, racial discrimination, and enforced disappearances.[5]

Today, human rights are viewed as interdependent and indivisible, imposing a broad variety of obligations upon states not only through treaties, but also customary international law. While certain sets of rights are a greater focus of concern in various regions of the world

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1. *See* U.N. Charter art. 1, ¶ 3.

2. Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 (1948).

3. Karel Vasak, *A 30-year struggle; the sustained efforts to give force of law to the Universal Declaration of Human Rights*, UNESCO COURIER, Nov. 1997, at 29.

4. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976; International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

5. *See generally The Core International Human Rights Instruments and their monitoring bodies*, OFF. OF THE HIGH COMM'R ON HUMAN RIGHTS, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx (last visited Feb. 27, 2018).

with different political systems, cultures, and religions, there is broad agreement about the universality and importance of international human rights, despite the vast gap in commitments and implementation among state.[6]

This volume of the *Georgetown Journal of International Law* includes a diverse set of nine articles that examine different aspects of international human rights in the twenty-first century. For purposes of best understanding how they relate to one other, they will be summarized in the following order. Two articles look into the aspects of how the African, Inter-American, and European regional human rights systems function. Three articles look at thematic rights, including the right to education, the right to health, and children's rights in transitional justice. Three articles focus more deeply on a narrow aspect of the enforcement of human rights in the countries of Argentina, Kenya, and Zambia. And one article looks at detained foreigners under the Vienna Convention on Consular Relations and their right to notification and subsequent provision of consular access.

Together these articles demonstrate the extraordinary reach of international human rights law today—both how far the world has come since the adoption of the Universal Declaration of Human Rights and how much further it has to go for the world's seven-billion-plus people to have these rights meaningfully fulfilled.

I. Regional Human Rights Systems

In *Collective Rights in the Inter-American and African Human Rights Systems,* Michael Talbot focuses on how these two regional systems have addressed collective indigenous land rights. At the outset, the author explains how the legacy of colonization in the Americas and Africa has led to a disconnect between governmental prioritization of property rights and traditional conceptualizations of property, which leads both systems to struggle to analyze collective rights. Through a comparative analysis of two cases of indigenous peoples bringing cases against Paraguay and Kenya in these respective systems, Talbot concludes that the African system has more effectively addressed collective rights. He explains that the explicit recognition of indigenous land rights in the African Charter on Human and Peoples' Rights enables the African Commission and Court to focus on the content of these rights rather than their existence. In addition, the African Charter explicitly authorizes the Commission and Court to look to the entirety of international

6. *Id.*

law, enabling a more robust interpretation of international law. By contrast, the Inter-American Court of Human Rights has had to position the collective rights of indigenous peoples within individual rights defined by the American Convention on Human Rights because key rights are presented as being of "every one" or "every person."

In his article *What is Law for the European Court of Human Rights?*, Kanstantsin Dzehtsiarou explains that the European Convention on Human Rights is the only binding authority on the Court, though, in reality, the Court draws on a wide variety of legal sources to support the reasoning of its judgments. He argues that reliance on external sources is less legitimate than internal ones. Dr. Dzehtsiarou explains that internal sources must come from the Council of Europe's legal order, including treaties and soft law developed by the Council and jurisprudence of the European Court itself. By contrast, external legal sources include domestic legal norms of states outside the Council of Europe, customary and treaty-based international legal norms, and decisions of regional organizations and tribunals. He explains that the Court itself has emphasized that the Convention must be interpreted in harmony with the general principles of international law, of which it is a part. He also explains that European Union law should be placed between internal and external sources in terms of its priority. Dr. Dzehtsiarou concludes his analysis by emphasizing that the Court should prioritize reliance on internal sources and that further reliance on external sources undermines the Court's legitimacy when those sources contradict or substantively deviate from internal ones.

II. Thematic Rights

Professor Klaus D. Beiter begins his article on education in Africa by recounting some of the criticisms of the West, which has been accused of abusing the concept of human rights to retain control over the developing world. While he does not subscribe to this view wholesale, he does note that human rights have underperformed all over the world. In *Is the Age of Human Rights Really Over? The Right to Education in Africa—Domesticization, Human Rights-Based Development, and Extraterritorial State Obligations*, he argues that human rights can regain their importance and value. In the context of the right to education, he says that human rights must become home-grown achievements with which local populations can identify. Global actors that have failed, in his view, to meet their obligations must be held accountable. He also argues that human rights, such as the right to education, must be recognized to give rise to extraterritorial state obligations, including a duty to structure bilateral and multilateral development assistance accordingly.

Professor Beiter provides substantial additional detail to explain how, in his view, these principles could be applied.

In their historical review of the evolution of the health and human rights field, *A Long and Winding Road: The Evolution of Applying Human Rights Frameworks to Health*, Alicia Ely Yamin and Andrés Constantin explain how, in the last thirty years, there has been an expansion of rights and equality relating to patterns of health and well-being and also an expansion of the spaces in which these rights have been exercised. Yet at the same time, the authors also observe that the expansion of economic, social, and cultural rights—including the right to health itself—are far from delivering robustly egalitarian policies. On the contrary, Yamin and Constantin argue that the development of indicators has reductively defined the meaning of these rights and displaced struggles over structural obstacles. In reviewing how the field has developed, they explain that there has been much global standard-setting, national policies and legal judgments, and successful social mobilization. But, they emphasize that the application of human rights to health cannot be divorced from social and historical context. They describe the situation today as a neoliberal world order that "assigns disproportionate and unquestionable qualities to the market as an allocator of goods and destinies" and argue that it is "incompatible with a robustly egalitarian and inclusive human rights perspective."

In *Challenges to the Protection of Children's Human Rights and the Perpetuated Marginalization of Children in Transitional Justice*, Aurélie Roche-Mair provides a critical reflection on how and why the rights of children have been jeopardized by their interactions with transitional justice mechanisms. Specifically, she observes that one of the primary aims of children's rights is addressing historical inequalities, but also that socioeconomic justice has been slow to be incorporated into transitional justice mechanisms. She also explains that the prevalent top-down approach of traditional justice often lacks perspectives of affected populations. Roche-Mair argues that the Convention on the Rights of the Child should be drawn upon to ensure that children's rights are respected in transitional justice mechanisms. She highlights that cornerstone principles, including non-discrimination, best interest of the child, right to life, and respect of the views of children, are embedded in the Convention. She explains there are three categories of rights: the survival and development rights, the protection rights, and the participation rights. And she emphasizes that other fields relate to children's needs in transitional justice situations, including victimology and forensic psychology. Roche-Mair explains that progress has been made in codification and criminalization of abuses against children in truth

commissions and criminal tribunals and that there have also been greater procedural rights provided for children. She asserts that more work needs to be done in facilitating the participation of children as witnesses and victims as well as considering the place of perpetrator children and instituting more effective reparation and outreach programs. She concludes by emphasizing that the integration and implementation of a holistic approach to children's rights would improve their engagement with transitional justice and better protect their rights.

III. Enforcement of Human Rights in Argentina, Kenya, and Zambia

In early 2017, the Supreme Court of Justice of Argentina ruled that the Inter-American Court of Human Rights did not have authority to invalidate its rulings. In his note *The "Ministry of Foreign Affairs" Case: A Ruling with Unforeseen Consequences in the Enforcement of Human Rights in Argentina*, Isaías Losada Revol explains that this decision overturned fifteen years of practice of the Court that had reinforced the supremacy of human rights treaties over domestic law and the acceptance of the mandatory character of judgments of the Inter-American Court. This decision was made despite Argentina's 1994 constitutional amendment establishing that eleven human rights instruments have constitutional hierarchy and that all other validly ratified treaties have a higher standing than domestic law. The Court in *Ministry of Foreign Affairs* claimed that the Inter-American Court exceeded its authority in the American Convention and that it was not a tribunal of fourth instance able to review or annul domestic judicial decisions. Mr. Revol presents his response to the Court's arguments and contends they are contradicted by the Court's own precedent. He concludes by observing that this decision confronts the system of integration between the international and domestic legal systems that should have been addressed by the 1994 constitutional amendment. Victims now lack certainty that a protective or remedial decision from the Inter-American Court will be executed domestically in Argentina.

In *Girls' Education Under Attack: The Detrimental Impact of Sexual Abuse by Teachers on School Girls' Human Rights in Kenya*, Georgetown Law students Sara Adhami, Nicole Chenelle, Meika Freeman, and Michelle Gulino—the four authors, who participated in the Spring 2017 International Women's Human Rights Clinic—provide a detailed report based on their fact-finding trip to Kenya in March 2017. They investigated ongoing and pervasive sexual abuse of schoolgirls, which they found permeated every aspect of the lives of schoolgirls in Kenya. The authors begin by examining the scale and scope of the problem and, from their fieldwork, identify how Kenya's failure to protect

schoolgirls results from its non-compliance with the country's obligations under domestic and international law. They especially focus on the Teachers Service Commission rules and regulations, which the authors explain do not have sufficient enforcement provisions from laws that were supposed to facilitate the disciplining of teachers abusing children. The authors propose that the Commission issue an updated set of Learner Protection Guidelines and amendments to its Code of Regulations and authorizing law, which would mandate reporting to the Commission and in certain instances to police; mandate dismissal of teachers found guilty of sexual abuse of a learner; provide for greater confidentiality and non-retaliation provisions; expand the definition of sexual abuse to include inappropriate sexual conduct; and require teaching training, among other measures. The authors conclude by emphasizing that there are serious gaps between the rights and protections enshrined in law and their implementation, a problem that must be addressed urgently if the Government of Kenya is to fulfill its obligations to protect its schoolgirls from abuse.

In *Encouraging Entrepreneurship Supports Human Rights: An Evaluation of Issues and Responses in Zambia*, Karl M.F. Lockhart argues that supporting entrepreneurship implicitly supports the rights and freedoms that underpin international human rights law. As a lens into viewing this issue, the author discusses the situation of the subsistence farmers of Chickankata, a district a few hours from Lusaka. These farmers only ever received title registered in the name of the community to their lands, and several years ago, construction and development began on land being used to graze animals, with the local view being that their land would likely be consolidated and sold to large agribusinesses. The author explains that there are different perspectives about such a situation: those who see agribusiness as creating jobs with regular wages for those who might be displaced versus those who see the farmer's way of life as a sacred expression of the human experience that should be preserved. Lockhart believes encouraging entrepreneurship in situations such as this should lead to a flourishing of human rights. Specifically, the author argues that nurturing personal autonomy encourages free movement and the right to property; supporting creativity and innovation enhances freedom of thought, opinion, and speech; and personal autonomy and creativity lead to education.

IV. Rights of Detained Foreigners

In *The Right to Consular Notification: The Cultural Bridge to a Foreign National's Due Process Rights*, Sabina Veneziano examines the requirement of the Vienna Convention on Consular Relations, which states

that detained foreign nationals have a right to consular notification to their Embassy. She explains that this is a contested issue in the United States, where the Supreme Court has held that, even if there is an individual right and it is violated, the suppression of evidence in a given case is not an appropriate remedy. Veneziano analogizes this provision of the Vienna Convention to the U.S. constitutional rights to due process, fair trial, against self-incrimination, and access to counsel. She proposes that the United States adopt a law declaring this provision of the Vienna Convention to create an individual right under U.S. law, provide for measures that would reduce violations of this provision, and also provide specific remedies if violations of this right occur.

V. Final Remarks

The diverse set of articles in this volume of the *Georgetown Journal of International Law* demonstrate the extraordinary reach of international human rights law today. While there are many examples of the failure of states to adhere to their obligations under international human rights law, it is indisputable that this body of law will only become more important as the international community works to advance the quality of life for all people around the world.