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Human Rights for All

"The speed with which human rights has penetrated every corner of the globe is astounding. Compared to human rights, no other system of universal values has spread so far so fast" (8). This quote is from the introduction of the UNIHP volume, *Human Rights at the UN: The Political History of Universal Justice* (2008), where the authors, Roger Normand and Sarah Zaidi, bring out the negatives as well as the positives of this extraordinary story. In his foreword to the volume, Richard Falk underlines the point: "Among the most improbable developments of the previous hundred years or so is the spectacular rise of human rights to a position of prominence in world politics. This rise cuts across the grain of both the structure of world order and the 'realist' outlook of most political leaders acting on behalf of sovereign states" (xv).

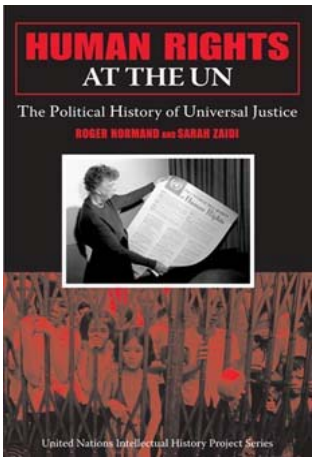
At the UN's founding conference in San Francisco in 1945, there was a widespread sentiment that the postwar order should be built on a foundation of human rights. Civil society organizations, such as the World Jewish Congress, the Christian ecumenical movement, the American Law Institute, and leading academics—the Third UN—lobbied government delegates and, in addition, developed blueprints for an international bill of human rights.

The pressure from these groups helped ensure that the UN Charter included several provisions with human rights implications of long-term significance: the principle of self-determination for states; the principle of nondiscrimination on the grounds of race, sex, language, or religion among nations or peoples; the pursuit of international cooperation to promote human rights for all people; and universal respect for and observance of human rights and fundamental freedoms accompanied by obligations of member states to support measures to achieve these goals.

The Universal Declaration

The Universal Declaration of Human Rights is the brightest jewel in the crown of UN contributions to human rights. But it is by no means the only precious stone in what is an illustrious and gem-studded diadem.

In fact, it would be better to consider the 1948 declaration as the central panel of a triptych. The other two panels are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, on the one hand, and implementation measures, on the other hand. It took eighteen years for the two covenants to be drafted and approved in 1966 and another decade for them to receive enough ratifications to come into force. The third panel of implementation remains unpainted even if numerous preliminary sketches have been made.



The record of human rights within the UN is a continual story of striving. Progress has been gradually made. The Convention on the Prevention and Punishment of the Crime of Genocide was approved one day before states adopted the Universal Declaration of Human Rights. Other conventions have followed—against racial discrimination in 1965, on the elimination of discrimination against women in 1979, against torture in 1984, on the rights of the child in 1989, and on the rights of migrant workers and their families in 1990. The covenants and the five conventions have now been widely ratified; the convention on the rights of the child is subscribed to by virtually all states. The convention on the rights of migrant workers and their families is the newest and thus the least ratified.

Dramatic progress took place in the 1970s and 1980s, as various "Third UN" groups unleashed their energies (see Briefing Note #3). The World Conference of the International Women's Year held in Mexico in 1975 was tumultuous and ground-breaking in bringing global attention to a multitude of issues concerning women and gender. The Mexico City gathering marked a turning point for women's rights. It set the stage for drafting a Convention

on the Elimination of all forms of Discrimination Against Women (CEDAW), which the UN adopted in 1981. At the time of writing, CEDAW has been ratified by 185 states. This story figures prominently in Devaki Jain's contribution to our series, *Women, Development, and the UN: A Sixty-Year Quest for Equality and Justice* (see Briefing Note #12).

A second major example of the Third UN giving life to human rights came soon after, when nongovernmental organizations mobilized over the 1980s for the rights of the child. In 1989, the General Assembly adopted the Convention on the Rights of the Child (CRC). In less than a year, the CRC received the forty endorsements necessary for the convention to come into force and soon it became the most ratified of all conventions. Today, only two countries (Somalia and the United States) have not ratified it. The speed and the scale of ratifications is a both a measure of support and an indication of the extent to which the Third UN, when mobilized, has achieved results for human rights.

Right to Development

In sharp contrast to CEDAW and the Convention on the Rights of the Child, the Declaration on the Right to Development, adopted by the UN General Assembly in 1986, continues to be mired in controversy. It was first conceived in the 1970s, when developing countries were pushing for a New International Economic Order. In 1985, the General Assembly adopted a draft declaration with a vote of 146 to one—the United States being the sole vote against. Eight countries abstained (seven developed countries and Israel).

The Declaration on the Right to Development introduced two new elements, each of which was highly controversial. First, in the eyes of supporters, it corrected the overly individualistic bias of the UN human rights tradition by introducing the idea of the collective rights of states to economic self-determination. These have become known as "third generation" rights to accompany the first (civil and political) and second (economic and social) generations of rights. The Universal Declaration had finessed this complex issue by stating in Article 28 that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This referred to the rights of individuals, not states. In contrast, the Declaration on the Right to Development referred explicitly to the duties of states in Article 3:

> States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Second, the declaration established the idea of the collective rights of a group—a people or nation or an ethnic, linguistic, or geographical group—as long as it was possible to define an obligation and possible for a duty holder to fulfil them. The controversies did not simply die with the adoption of the Declaration on the Right to Development. A number of developed countries expressed strong reservations at the time of adoption, and the U.S. representative declared bluntly that "the view that States had the right to development was unacceptable." Although opponents saw the right to development as a potentially revolutionary concept with many destructive implications, its defenders saw it as having done little more than synthesize strands of human rights with strands of development. In his article "Making Space for New Human Rights," distinguished expert Philip Alston described the debates as "little more than an exercise in shadow boxing" (1988: 21)

High Commissioner for Human Rights

In 1993, forty-five years after the approval of the Universal Declaration of Human Rights, the World Conference on Human Rights was held in Vienna. One hundred and seventy-one governments attended along with 2,000 NGO representatives, small in relation to the numbers attending earlier conferences on women's rights and the environment but important as a demonstration of growing public interest and commitment. Conference participants agreed upon some important follow-up mechanisms: the creation of a post for a high commissioner for human rights; the fusion of the Centre for

Human Rights and the Commission for Human Rights; and increased cooperation and the further integration of objectives and goals between the Commission on the Status of Women and other UN bodies.

The creation of the Office of the High Commissioner for Human Rights (OHCHR) was a remarkable achievement and a lesson on the importance of persistence. The post was to be filled by "a person of high moral standing and personal integrity" with "expertise in the field of human rights and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties." This idea had been on the drawing boards since 1947.

Equally important, the General Assembly reached agreement during its forty-eighth session on some key issues relating to the high commissioner's work: The right to development was reaffirmed as universal and inalienable, fundamental to the rights of the human person. All human rights should be given the same emphasis. The recommendations of Vienna should be implemented by governments and the UN in cooperation with nongovernmental organizations. And finally, "The promotion and protection of all human rights is a legitimate concern of the international community."

The establishment of the OHCHR as an institution within the UN with high-level and visible leadership has brought a more active approach to implementing human rights. It has been carried further by the personal leadership of some high commissioners, notably Mary Robinson (1997–2002), the second high commissioner and former president of Ireland, and the outspoken Canadian prosecutor, Louise Arbour (2004–2008). However, sharp differences between countries on basic human rights issues, especially between the major powers and some of the more radical developing countries, continue to limit the possibilities for action in many areas.

Implementation remains a difficult and controversial issue, with two schools of thought in the human rights arena still at loggerheads. One claims that the rights of the state always prevail over those of the individual, who has no rights beyond those granted by the state. The other school holds that every individual has certain inalienable rights that ought to be recognized as sacrosanct, even by the state. In addition, most states, even those with robust legal systems, indulge in double standards. For their own country, they recognize certain rights but not others—perhaps political and civil rights but not economic, social, or cultural ones. For other countries, states often use a rights argument but selectively, depending on the politics involved in the issue at hand. Many countries also argue—in the press if not in their courts—that their national system of rights is more robust and better founded than those of the UN, so international systems of inspection or reporting often have little relevance to them, only to others.

Human Rights Council

At the urging of Secretary-General Kofi Annan, member states agreed to set up a Human Rights Council (HRC) at the 2005 World Summit to replace the much criticized Commission on Human Rights. Although world leaders were unable to agree on the details of a replacement, they did resolve to create a Human Rights Council as a subsidiary of the General Assembly, which would not only create it but also decide its "mandate, modalities, functions, size, composition, membership, working methods and procedures." Protracted negotiations continued until March 2006, when the General Assembly finally abolished the old commission and determined the mandate and composition of the new council. The first members were elected by the General Assembly in May 2006, and the 47-member council convened in Geneva for the first time in mid-June.

Some were disgruntled because the HRC's mandate was mainly to promote human rights and it had no clear protection role. Others were displeased because the number of members of the new council had decreased, while others thought the body was still too large. There was criticism that membership was subject to only a simple majority vote instead of the more stringent two-thirds requirement.

Although it probably is premature to evaluate the council, the preeminence of sovereignty over human rights is already clear. The fact that the United States initially chose not to be a candidate—a stance later reversed in 2009 by the Obama administration—was seen as

an ominous sign, as was the election of such human rights "champions" as China, Russia, Egypt, Saudi Arabia, Pakistan, and Cuba. For the first session in June 2006, hopes were high but results proved disappointing. Although the HRC condemned Israel nine times, it condemned no other country. Both Kofi Annan and Ban Ki-moon questioned why the HRC could single out Israel but ignore Sudan, North Korea, and Myanmar. According to Nico Schrijver, in his article "The UN Human Rights Council: A 'New Society of the Committed' or Just Old Wine in New Bottles?," "during its first year the Council faced more confrontations and polarization than even its discredited predecessor was used to experiencing during hot seasons" (2007: 809).

The universal periodic review—a thorough scrutiny of all member states of the Human Rights Council during their three-year terms—was designed to be a key feature of the new institution. In April 2008, the procedure for conducting such reviews was decided: each country will be reviewed only once every four years. As terms are for three years and states are ineligible for reelection after two consecutive terms, a government facing an embarrassing review could simply choose not to run for office. Furthermore, the involvement of government-appointed experts on review teams is still being discussed—probably the last way to ensure an independent and objective evaluation.

This discussion of human rights demonstrates how firmly the sovereign equality of states and respect for domestic jurisdiction is entrenched. How else can we explain across-the-board foot-dragging even in the midst of mass murder and forced displacement in Darfur? Russia and China's lack of enthusiasm to have outsiders consider problems in Chechnya or Xinjiang is no less in evidence than the reluctance of the United States to have the death penalty or Guantánamo reviewed. As former U.S. ambassador Morton Abramowitz and Pulitzer prizewinner Samantha Power quip in their September 2004 article in *The Washington Post*, "A Broken System," "Major and minor powers alike are committed only to stop killing that harms their national interests."

Nonetheless, on the positive side, governments agreed in September 2005 to strengthen the Office of the High Commissioner for Human Rights. It is staffed by professionals who have, among other tasks, been establishing human rights centers in troubled countries such as Cambodia, Guatemala, and Nepal and assisting special rapporteurs working on such thematic issues as torture. The summit document called for doubling the budget of the high commissioner's office to permit recruitment of "highly competent staff." The expansion of independent professionals to improve UN monitoring efforts seems likely to be a reality by 2010.

Making more room for independent voices—whether from nongovernmental organizations or the secretariat—challenging outmoded sovereigns would fundamentally alter the way that states view their prerogatives within the United Nations. Another challenge is to build an international consensus behind policies that address the underlying cause of human rights deprivations and that defend basic rights whenever they are threatened—a substantial redefinition of the meaning of sovereignty. In terms of preventing future disasters, the redefinition of sovereignty should also include addressing many of the root causes of deprivation, a development task.

The Responsibility to Protect

No human rights idea has moved faster in the international normative arena than what is now commonly referred to as R2P, the "responsibility to protect." This was the title of the 2001 report from the International Commission on Intervention and State Sovereignty. The basic idea of this doctrine is that human beings count for more than the sacrosanct sovereignty enshrined in UN Charter Article 2 (7) with its emphasis on noninterference in domestic affairs. As Kofi Annan graphically stated in 1998 in a speech at Ditchley Park, "State frontiers should no longer be seen as a watertight protection for war criminals or mass murderers."

The topic of "humanitarian intervention" was controversial throughout the 1990s as fragile or failed states became the common bill-of-fare for UN operations. R2P is relevant here because if the Human Rights Council was doing its job and forestalling crises, there would be less need to intervene militarily to protect human beings whose governments are unwilling or unable to protect them.

International Judicial Pursuit

The 1998 Rome Statute establishing the International Criminal Court (ICC) entered into force on 1 July 2002 with the requisite sixty ratifications. At present, the ICC has 108 member states allied in efforts to prosecute individuals for genocide, crimes against humanity, war crimes, and crimes of aggression. Over forty other countries have signed but not ratified the statute, but a number of important states (including China and India) have done neither. Moreover, the United States and Israel have both done what previously had been an unthinkable legal step—in 2002, they revoked their signatures.

How did this precedent-setting organization get off the ground? Answering this question is especially important given the deep hostility from the globe's most powerful country. One must remember that the United States originally led the charge in the 1948 General Assembly to establish a permanent court following large-scale atrocities against civilians in World War II and the war crimes trials in Nuremberg and Tokyo. It was also an active participant in negotiations leading up to the drafting of the Rome Statute in 1998.

In the wake of the end of the Cold War, the idea was again championed and received an additional push after the establishment of the ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda. The scale of atrocities—in Europe and in Africa—demonstrated the need for international justice in the 1990s, just as they had earlier. And the shortcomings in the ad hoc tribunals suggested additional reasons to create a permanent court that could also act as a deterrent for future thugs.

By the middle of the 1990s, governments across the North and the South as well as NGOs had formed coalitions to lobby for the creation of what would become the ICC. This "like-minded group"—unusually of the First and Third UNs—began with a modest hope, namely to bring together a kind of consensus at a preliminary diplomatic conference in Rome in July 1997. When the official UN Conference of Plenipotentiaries on the Establishment of an International Criminal Court—known informally as the Rome conference—convened a year later, the 60-country like-minded group was a formidable and persuasive coalition that joined forces with the 700 members of the NGO Coalition for an International Criminal Court. The momentum was such that in 1998 the Rome conference itself—which was negotiated under the auspices of the United Nations—moved toward a decision in spite of strong opposition from several members of the permanent five (P-5). Afterward, the signature and ratification process moved on a fast track.

The need to set aside cookie-cutter country groupings as a way of understanding the First UN becomes clear when examining efforts to create the ICC—a tough case regarding the high politics of international security. Progress on a long-standing idea—namely, the rule of law instead of the rule of the jungle in international affairs—resulted specifically from ignoring the theatrical and automatic ideological divisions of North and South within the First UN and taking maximum advantage of the Third UN's mobilization powers. The ICC campaign used two tactical advances: the agreement to move ahead without universal support; and a broad-based working coalition of NGOs and states from both the North and the South. Rather than digging the chasm deeper and wider, like-minded partners found a way to build bridges.

Conclusion

Contradictions and imbalances in the areas of human rights still abound: between public expectations of justice and the determination of states to protect their sovereignty; between powerful states seeking geopolitical hegemony and others seeking the protection of international law; and between rhetorical promotion and lack of effective protection. Dramatic advance in commitments on paper have undoubtedly taken place, but they have been matched by little more than marginal improvements in human rights conditions.

Serious questions must be asked. For example, is the West's almost exclusive emphasis on political freedom an accurate reflection of the core values of most people on the planet? Has the failure to seek the social and economic justice that was promised in the Universal Declaration and other instruments been a substantial shortcoming? And what about American "exceptionalism"—the U.S. practice of

standing outside the global legal consensus on issues such as the ICC, climate change, and other important problems, not to mention the questionable onslaught on international humanitarian law as part of the war on terror?

All these remain painful examples of the long struggle to establish an international system of human rights. Nonetheless, looking back, it is extraordinary how far the UN system has come since 1945. Looking forward, it is only too clear from many egregious failures of rights in the world today how far there is to go.

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