

THE UN AND HUMAN RIGHTS ON THE EVE OF THE TWENTY-FIRST CENTURY

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Summary

The United Nations has made significant progress over the past fifty years in advancing the cause of Universal Human Rights, but there is still much work to be done. As the UN's 1993 World Conference on human rights in Vienna indicated, the issue of Human Rights has become one that occupies a prominent place on the international agenda. Progress to this point, however, has consisted primarily of the exchange of words, rather than substantive actions. Direct UN efforts, such as election monitoring, the establishment of War Crimes Tribunals, and the use of Military Force, have achieved decidedly mixed results. Additionally, significant normative cleavages exist at the Global level along cultural and economic lines. But despite inconsistent outcomes, it is

fair to say that the UN has achieved more significant advances in the area of International Human Rights than one would have likely expected at its inception fifty years ago.

1. Introduction

When the United Nations Charter was adopted in 1945, it would have been very difficult to foresee the prominent role which international human rights now plays in current world affairs. Looking at the UN over the past 50 years, one can easily see that there has been a revolutionary change in the theories of human rights, state sovereignty, and international authority. The UN has contributed in many important ways to the development and acceptance of human rights as an integral part of international law. UN bodies now routinely discuss once the cornerstone of state sovereignty, the relationship between a government and “its” citizens when circumstances call for it, UN agencies move beyond discussion to pass resolutions of condemnation, to create reporters and working groups in order to apply pressure to certain groups or situations, to supervise elections, and to deploy military and civilian personnel with human rights duties inside states. On occasion, the UN Security Council will even go so far as to levy binding sanctions, create criminal courts, or take other measures in an effort to enforce universal human rights.

It is important, however, that we do not allow these theoretical, diplomatic, and legal developments to prevent us from focusing on certain disturbing realities still present in the world today. The Post-Cold War era manifests not just continuing transgressions against the very human rights so recently codified in solemn treaties, but even “mini-holocausts” featuring genocide, crimes against humanity, and other gross violations of internationally recognized norms. There is a huge gap between ideology and reality; legal theory and diplomatic procedure are held in one hand while behavioral practice is held in the other. This dichotomy raises the question of the extent to which serious attention to human rights has been institutionalized in modern international relations. Two clear trends exist which point in exactly opposite directions: international organizations like the UN are increasingly likely to assert authority and even power on behalf of human rights victims when states fail to exercise sovereignty responsibly, but at the same time, massacres, oppression, and repression persist in many parts of the world on an almost incomprehensible scale.

The purpose of this essay is to explore this paradox. Human rights are now internationally recognized and the current global era shines a brighter light on each offense. International relations has undergone a dramatic change as states are now clearly obligated to respect a wide range of human rights and may even forfeit the normal perks of sovereignty if they fail to protect these rights adequately. Yet the twentieth century is the bloodiest ever recorded. During the 1990s, events in Iraq, Somalia, Bosnia, Rwanda, Algeria, and elsewhere remind us that abuses continue. China reminds us that repression can still exist on a massive scale. The plight of the lower classes in all of the developing countries, and to a lesser extent within developed nations as well, reminds us that oppression and exploitation are alive and well. If international relations are currently experiencing both the best of times (attention to human rights) and the worst of times (a large zone of disorder, repression, and

oppression), where does the UN fit into this confusing picture? Is the UN really helping to expand and institutionalize the protection of universal human rights?

2. Taking Stock at Vienna, 1993

2.1 The Conference and its Focus

It should be noted that, prior to the Vienna world conference, the UN had sponsored an international conference on human rights in 1968. This event, held in Tehran, marked the end of the first era of UN activity on human rights issues, when the core norms were established. It also set the stage for the second phase, when protection of human rights by the UN was attempted primarily by indirect means. Two legacies of the Tehran meeting were the recognition of normative institutionalization of human rights, and the gap between norms and behavior.

The UN's 1993 World Conference on human rights in Vienna was a huge event. It was attended by some 5000 delegates from 171 states, as well as some 2000 individuals representing 841 accredited NGOs. The latter held a parallel meeting that included numerous individuals from NGOs that were not officially accredited to the conference. By July 1993, the UN Covenant on Civil and Political Rights had been formally accepted by 120 states, while 115 had accepted the companion Covenant on Economic, Social, and Cultural Rights. The UN approved some two-dozen additional human rights treaties and declarations. However, the conference was largely a symbolic gesture, more a celebration of the Universal Declaration than an effort to achieve specific goals. It had been scheduled since 1990, but without clear purpose. The Vienna event in many ways seemed an exercise in *deja vu*, recalling Tehran in 1968, with its agenda to review the UN record and make recommendations for the future.

Partly because of events in Tehran, the Vienna Conference attempted to focus on general principles rather than specific rights issues. This obviously allowed governments with less-than-perfect rights records to avoid uncomfortable scrutiny. However, the NGOs in Vienna showed no such restraint. The official Inter-Governmental meeting discussed only a few of the more severe situations, such as Bosnia, Kashmir, and the Middle East, but the NGOs publicized as many specific abuses as they could within the allotted time. While the official meeting refused to discuss Tibet, the NGOs invited the Dalai Lama to speak on UN property.

2.2 Cultural Relativism

A small group of mostly, but not entirely, Asian countries threatened to oppose the reaffirmation of universal human rights in general. The Asian preparatory meeting, held in Bangkok in 1993, provided hints that a number of Asian states were likely to raise the issue of cultural relativism. They argued that Western definitions of international human rights should not be applied to them at that critical historical juncture. China, Indonesia, and Malaysia were the leaders of this movement, and they received active support from states such as Syria, Iran, and Cuba. Even Japan and Australia expressed concern, outside of the Vienna Conference, about the wisdom of pressing Asian states on rights issues at that point in time.

While the US had been on the defensive at the time of the Tehran Conference, a number of factors contributed to a much more aggressive attitude in Vienna. Buoyed by Western victories in both Desert Storm and the Cold War, and emboldened by a hegemonic position in UN proceedings, the Clinton administration was determined to emphasize universal human rights, and was speaking of “assertive multilateralism” as a facet of its foreign policy. Also strengthening the US position were the facts that, by 1993, most states in the Western hemisphere were democratic, some African states had moved toward democracy, and most of the former East-bloc countries had endorsed democracy and human rights, however difficult they found their practice.

The US therefore implemented a strategy at Vienna of “identify and isolate”, whereby it publicized the names of states that were advocating the “cultural relativism” argument. Washington co-operated with like-minded states and NGOs in denouncing those states, and was successful in getting the conference to adopt a program of action that recommended the consideration of the establishment of a UN high commissioner for human rights. Said US secretary of state Warren Christopher, “We cannot let cultural relativism become the last refuge of repression.”

Unlike the session in Tehran in 1968, the dominant hand at Vienna in 1993 was held by the United States and other states that were comfortable in reaffirming an idea of human rights for all. They were prepared to articulate this view without detrimental reservation, but on a theoretical level, may have been willing to allow exceptions to universal human rights with regard to indigenous peoples. This could be viewed as a kind of international affirmative action program whereby tribal people might be allowed to continue traditional practices, even if they deviated from recognized norms, for an unspecified length of time. 1993 was designated by the UN as the Year of Indigenous Peoples.

Dissenting states like China, Indonesia, and Malaysia decided to accept the US-backed conference language when they realized they were up against superior numbers. According to a Western journalist at the conference, “Diplomats here say many developing nations appear reluctant to see their names on the ‘human rights enemies list’ of a new American administration that says the protection of democratic values is a major part of its foreign policy.”

Ironically enough, while criticizing other nations favoring the cultural relativism argument, the United States may have been guilty of culturally relativistic behavior of its own. The US had, in the past, been reluctant to accept economic, social, and cultural rights as genuine human rights. Additionally, it refused to accept international norms banning the death penalty. When it joined the Covenant on Civil and Political Rights in 1992, the US submitted reservations to the point where the Netherlands formally objected. In essence, Washington made it clear that they would accept the treaty as long as it would not require important changes in US law. Such evidence implies that the United States felt that many international rights standards did not apply to it. Given US power in the world, however, many governments at the Vienna Conference decided to bend to US rhetoric rather than contest it, at least in UN proceedings.

2.3 The Final Document

As happened in Tehran, all states ultimately agreed to a final document reaffirming “the solemn commitment of all states to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.” The Vienna Conference went on record that “the promotion and protection of all human rights is a legitimate concern of the international community.”

In return for terminology advocated by the US and other like-minded states, the Vienna Conference made allusions that could be interpreted as a weak acceptance of cultural relativism. References such as “the significance of national and regional particularities. Various historical, cultural, and religious backgrounds must be borne in mind,” allowed universal principles to be adjusted to varying specifics. Vienna also unanimously reaffirmed “the right to development, as established in the [1986 General Assembly] Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.” The Clinton contingent was the first U.S. team to accept this provision since it had been contested by previous Republican administrations. The practical consequences of this remain unclear, however, since the meaning of the right to development is, in political science terms, a contested concept.

2.4 Conference Impact

Many INGOs expressed dissatisfaction with the lack of progress made by the conference. They were unhappy that it did not systematically address specific violations, create a permanent international court, or push hard for increased personnel and money for human rights in the UN system. (UN human rights programs accounted for only about one percent of the regular budget, or about US\$9 million to US\$12 million, depending on whose definitions and accounting were employed.) Also, while INGOs had participated in the formal proceedings in 1968, they did not enjoy the same access in Vienna. When all was said and done, however, the UN Conference on human rights at Vienna could be credited with four noteworthy achievements, despite widespread governmental ambivalence about the conference and some outright opposition to it (three of the four pertained to normative institutionalization):

1. Vienna added one more step in the ongoing and irreversible process of normatively institutionalizing international human rights. The argument that any states are exempt from these global principles was clearly rejected. Also, the conference drew more media coverage than any previously-held rights meeting. Both formally and informally, the conference succeeded at normatively institutionalizing human rights to a greater extent than before. Existing norms were reaffirmed while the movement to expand them continued. Attention was also given to new ideas about indigenous peoples and minorities, among others.
2. NGOs and INGOs took advantage of the opportunity offered by the conference to focus attention on specific issues, despite the discomfort of offending governments. These organizations showed marked increases in assertiveness, as well as in sheer numbers, as compared to the Tehran event 25 years earlier. Many operate across

- national boundaries to pool strategies and resources and, though they were only included informally, their influence appears to be growing.
3. The Vienna Conference illustrated the increased attention being paid to women's rights. Many of the most active and best organized NGOs were oriented to and/or staffed by women, and the topic of women's rights had never before enjoyed such a high profile at a general UN meeting.
 4. This 1993 conference took a large step forward, not only in endorsing human rights ideas, but also in supporting diplomatic practices that try to protect human rights. The call of the conference for consideration of a UN high commissioner for human rights was met with an affirmative response at the following meeting of the General Assembly at UN headquarters. The position was approved by consensus despite continual stalling tactics by some members. The position was created, funded, and staffed in early 1994, after nearly fifty years of discussion. Though the mandate was vague, though the first high commissioner, Ambassador Jose Ayala Lasso of Ecuador, was more of a careful conciliator than a bulldog rights activist, and though a similar UN position for humanitarian affairs had been largely ineffective, the creation of the position was an important step. Over time it may evolve into something substantial.

Of course, the 1993 human rights Conference did not occur in a vacuum. The UN's overall human rights record after almost fifty years showed two primary developments beyond the institutionalization of norms. First, the UN had helped institutionalize the protection of human rights, though indirect protection in the long run was primarily verbal. Second, the UN was still struggling with the institutionalization of direct rights protection, meaning short-term UN responsibility to guarantee the exercise of rights.

3. Diplomacy for Rights

It is widely taken for granted in the post-Cold War era that diplomatic attention to human rights violations is a routine part of international relations rather than interference in a state's domestic affairs. States may use sovereignty and domestic jurisdiction as defenses against international pressure, but in the final analysis they still have to address the issue of human rights in international forums and bilateral relations, and they eventually join the debate in some fashion. The Vienna Declaration on human rights makes the sovereignty and domestic jurisdiction claims even less persuasive. A variety of UN agencies have addressed a variety of rights-based issues in a variety of states since approximately the late 1960s.

3.1 Education via Embarrassment

Indirect UN protection has consisted primarily of routine diplomacy and used to be, to a large extent, a long-term educational process. A major part of the process was the use of words to bring diplomatic attention to specific rights abuses in the hope that the offending government would be embarrassed into complying with established standards. Many UN organizations (the General Assembly, its Third Committee, ECOSOC, and most notably the Commission on human rights), all made up of states, are central to this process, and as a result, this "Negative" diplomacy has been plagued by double-standards and other politically-inspired deficiencies. Additionally, the commission often

chose to concern itself with small-scale abuses, such as political detention, rather than large-scale “Humanitarian” crises, such as those in Ethiopia or the Sudan, which affected far more people and in more serious ways.

Other UN Bodies (the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as the monitoring groups established by specific treaties) in the domain of Human Rights are made up of individual experts who are less likely to be swayed by political calculations. However, these UN agencies also use words to persuade states to correct abuses, and must report to bodies, such as the General Assembly or human rights Commission, which consist of State Representatives.

3.1.1 Use of Small Working Groups

By 1994, the human rights Commission, made up of fifty-three states, had attempted to move away from State majority voting and give maximum leeway to small working groups or special reporters by adopting ten special thematic procedures. Virtually all of these procedures pertained to Civil Rights, despite rhetoric in the General Assembly about economic rights.

Additionally, as of 1993 the commission had adopted twelve special country procedures, again in an effort to use small working groups and special reporters. This list of countries was reasonably balanced, in terms of political and civil violations, despite the East–West and North–South splits.

State majority voting created these “Procedures”, but was then suspended during their operation until it became time for a condemnatory resolution. Those in charge of the special procedures mostly attempted to maximize influence for Rights, but were often unsuccessful in correcting the targeted violations due to thin staffing and poor funding. These special procedures also had to be renewed every one or two years, leading to “Political” votes by States. They constituted progress in terms of legal theory and UN processes, but they were mostly marginal in terms of facts on the ground. Or, there was an inverse correlation between words expended and the results achieved.

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities similarly attempted to address Rights violations through the use of working groups, studies, and special reporters. Despite its name, this was an all-purpose body of twenty-six individual experts (who were acceptable to states) reporting to the human rights Commission, but this body showed a somewhat broader focus than its parent commission, which paid relatively more attention to economic, cultural, and social rights. The resulting impact on people within states, however, was still marginal. Some efforts were directed towards improving new norms, but most steps were still oriented toward embarrassment.

The Secretariat of the UN Development Programme (UNDP) attempted to correct an important deficiency and integrate Rights-based language into UNDP activities. It compiled a variety of statistics to show which states were paying serious attention to human rights issues and which were not. However, the statistics tended to show that Southern or developing states did not rank so high in meeting various standards, and

since the methodology employed was subject to debate, a number of Southern states complained that the UNDP Secretariat was exceeding its bounds by engaging in activities that had not been formally approved by UN bodies made up of states. Under this barrage of criticism, The UNDP was forced to drop its “Human Freedom Index”, though other publications continued.

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Biographical Sketches

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