

THE UNITED NATIONS AND HUMAN RIGHTS IN THE NEW MILLENNIUM

David P. Forsythe

Abstract

The UN Secretary General has properly stressed the importance of human rights in his 1999 Annual Report.

At the outset it is important to recall that globalization is more than an economic process. It is a multifaceted process made up of economic, social, ecological, and military elements all undergirded by the global principles of science and technology. Human rights and ethics are part of social globalization. They were globalized before the last round of economic mega-mergers.

Some of the major challenges facing the UN concerning human rights are:

1. Better integrating economics and human rights, by: bringing the International Financial Institutions into the human rights movement, bringing Transnational Corporations into the human rights movement, paying more attention to socio-economic rights;
 2. Countering those aspects of United States foreign policy characterized by: American exceptionalism and defense of absolute self-sovereignty, unilateralism, and what passes for neo-isolationism;
 3. Correcting a tendency in the Security Council to try to protect human rights by adopting paper solutions rather than appropriately robust measures, which unfortunately must still be contracted out to willing states because of the continuing weakness of the UN in enforcement measures;
 4. Considering merging the human rights, humanitarian, and refugee regimes into one meta-regime, a human dignity regime, so as to improve protection and assistance sur place, thus coordinating the action of UNHCR, UNICEF, WFP, the ICRC and others, while not losing the ability to seek criminal prosecutions under existing treaties;
 5. Improving the treatment of civilians in political conflicts of various sorts by requiring states to report on measures taken to seriously teach human rights and humanitarian principles to military personnel, and by requiring states to pay for human rights and humanitarian implementation steps according to an equitable formula;
 6. Merging the two existing ad hoc criminal courts into the new standing international criminal court, which merits universal support, even while avoiding the trap of judicial romanticism that expects criminal courts to do more, and have a greater impact, than is reasonable;
 7. Continuing with conferences and other forms of education or socialization that can only transform international society into a human rights culture over time with regard to racism and xenophobia, gender equality, sexual preference among consenting adults, etc.
- Despite problems and perplexities, and with new challenges in the distance regarding electronic privacy and bio-medical developments, the human rights revolution holds out great promise.

**The United Nations and Human Rights
in the New Millennium**

“We enter the new millennium with an international code of human rights that is one of the great accomplishments of the twentieth century.” Secretary-General’s 1999 Annual Report, para. 257.

“Respect for human rights, as proclaimed in the international instruments, is central to our mandate. If we lose sight of this fundamental truth, all else will fail.” Secretary-General’s 1999 Annual Report, para. 276.

“[W]e insist on the responsibility of governments to uphold human rights regardless of their political, economic, social or cultural systems and notwithstanding their economic and social situation.” Secretary-General’s 1999 Annual Report, para. 275.

This essay address three subjects: what is the place of human rights in general in the United Nations’ activities at the start of the new millennium; what is the relationship between human rights and globalization; and what are the most important challenges confronting the UN in its human rights programs. Most of the paper deals with this third section.

The Secretary-General is correct that human rights is absolutely central to everything that the UN does, although many states do not act in keeping with this logic. I then argue that globalization has been broadly misunderstood as only an economic process, whereas it should be seen as a multi-dimensional process in which human rights play a central role. Finally I argue that the UN should build on the past fifty years, which represent a legal and diplomatic revolution in favor of human rights, by pushing for certain progressive changes.

In the last analysis the UN has the requisite experience and comparative advantages to continue to be an important catalyst in helping to achieve more of the promise offered for a better world by universal human rights.

I. The UN and Human Rights

It is easy to forget how the discourse on human rights has altered the culture of international relations since 1945. Secretary-General Kofi Annan, in his 1999 annual report to the United Nations General Assembly, remarked that the development of universal human rights was one of the great achievement of the Twentieth Century. That view is duplicated by other distinguished observers and is likely

to endure over time.¹ Remarkable changes have occurred in the theory and practice of personal rights in the last fifty years.²

Secretary-General Annan also noted that unless human rights was kept front and center in all United Nations programs, the UN would fail in a most fundamental sense. This also is a sound view. Everything that the UN undertakes is to be ultimately measured against the protection of personal rights defined in international law. The UN seeks not a value-free peace and security, much less a peaceful order imposed by the likes of Saddam Hussein, but peace and security based on human rights. This is evident in UN objectives in places like Bosnia, Kosovo, El Salvador, Mozambique, Cambodia, Namibia, etc. Moreover the Organization seeks not just any type of development, but sustainable development reflecting the centrality of the person. This is evident in recent changes at least in the theory of the UN Development Program, and certain development (and relief) agencies like UNICEF have become more rights oriented. Furthermore the UN pursues ecological protection compatible with the recognized rights of the person. One can see this change, for example, in the fact that the UN Refugee Office (UNHCR) now manifests an environmental unit. Protecting human rights is not a marginal tack-on, a sop to warm hearted and fuzzy headed political liberals, but a central purpose of the UN that relates to realistic security and economic (and other) basic concerns.

Given the extensive range of universal human rights already recognized by the international community, it is crucial that more be done to secure their implementation—to move the law on the books into the realm of living law. This does not preclude the development of new standards as threats to human dignity emerge. But without new and sustained efforts to apply what has already been established, the existing norms will become discredited. The most pressing general issue now for the UN and human rights is primarily that of implementation.

II. Globalization

The question is sometimes posed, what is the effect of globalization on the implementation of human rights, as if globalization were only an economic process and one that controlled the fate of other concerns. In this essentially post communist world, Marx would be pleased with this understanding of globalization.

Despite the trend to think of globalization as if it were a strictly and narrowly economic process—a matter of buying and selling goods and services on a planetary, or at least massively international basis—this trend reflects misunderstanding. It is more accurate to think of globalization as a rope consisting of several intertwined threads: military, social (human rights and ethics), ecological, and economic. All four threads are produced by the global principles of science and technology affecting communication, transportation, weaponry, and production.

If economics is becoming more and more global, so is the matter of ethics and human rights. In fact, the globalization of human rights preceded the most recent round of globalization of economics—the latter being reflected in the meta mergers of business enterprises in the 1990s in an effort to maximize the economies of scale. But human rights were globalized in the first half-decade after World War Two, when the UN Charter, the Universal Declaration of Human Rights, and the Nuremberg Tribunal (and to a lesser extent its companion in Tokyo) begin to make an impact on international relations. Unlike the previous turn of the century, when an increase in international economic activity was NOT accompanied by an increase

in references to human rights in international context, the present turn of the century into the new millennium was quite different.³

The globalization of human rights was based on two concerns in 1945 neither of which was narrowly economic. World War Two produced the related beliefs that massive slaughter and bestiality could no longer be tolerated on ethical grounds (as if World War One has not made the point sufficiently), and that national authoritarianism and repression was too dangerous as a political or security matter to treat as a domestic matter of absolutely sovereign states. Hence we saw the birth of the global human rights movement, based on a combination of ethics and security concerns.⁴

In other words, a fundamental and indeed primary meaning of globalization is that human rights standards have been denationalized and transformed into an international, global, planetary subject. A similar argument can be made about ecology and security. Clearly globalization is not just about economics.

Even when globalization is considered as an economic process, one cannot realistically and intelligently ignore its inherent social and political implications. As a result of economic globalization, unemployment may be increased in some places. Democratic governments may lose control of the development process. Exploitation of workers may occur. Personal privacy and other aspects of human dignity may be adversely affected. This was one meaning to the debacle of the World Trade Organization meeting in Seattle during late 1999. Various parties, both inside and outside the formal meeting, registered their view that a narrow economic focus was inadequate for the construction of a just international society; one needed to pay more attention to such things as democratic decision making, labor rights, ecological protection.

One would have thought that a half century of experience with the World Bank would have been sufficient to show the pitfalls of pursuing human welfare on a narrowly economic basis, as if the World Bank could promote “development” and not be a social and political organization as well as an economic one.

Just as the World Bank has had to create an environmental unit and move, however haltingly, toward consideration of broad standards of good governance,⁵ so the WTO will have to broaden its focus and develop linkages with social, humanitarian, and human rights concerns. Humans are more than producers and consumers.

It may be, as often stated, that no person is an island, but economic globalization cannot be an island apart from social globalization—and also political globalization at least in rudimentary form. As far as the UN era is concerned, first came military globalization through opposition to war, then social globalization through the establishment of global human rights and humanitarian standards, then growing awareness of ecological oneness, and now economic globalization. Our daily discourse has the historical process exactly backwards. Economics, at least in contemporary form, is something of a “Johnny come lately” to this trend.

This is not to deny the importance of economic concerns, or that economic globalization may push—through both positive and negative aspects-- the process of material and moral integration of persons and nations to dizzying new speeds and developments.

As should become clear in the following section, the question is not so much how does international economics affect human rights, but how can global economic, security, and ecological concerns be integrated with a central and fundamental concern with global human rights as a means to human dignity.

III. Key Challenges in the Short and Middle Term

1. It follows from the above that one of the major challenges to the UN in the new millennium is to better integrate human rights and economic concerns. This first major challenge manifests several dimensions. (The order in which challenges are listed is neither entirely arbitrary nor exactly scientific.)

The International Financial Institutions (IFIs), above all the World Bank and the International Monetary Fund, need to be brought into the human rights movement. The Bank is moving erratically but inexorably toward use of “political conditionality” and broad standards of “good governance” in an effort to advance capitalistic development with a human face. Its self-critical comments about its performance in Indonesia, and its misguided efforts there to turn a blind eye toward corruption and repression, is one of the latest confirmations of this trend. The same trend is evident in the InterAmerican Development Bank. These and other IFIs need to follow the example of the European Development Bank and integrate systematically human rights considerations into their loan policies. The toughest nut to crack will be the IMF, which, much more than the World Bank, resists efforts to broaden its perspectives so as to include limited but explicit human rights concerns. (The IMF claims not to be a development agency in the first place, but rather a technical monetary agency.)

The alternative, that is to consider the IFIs as beyond the reach of human rights expectations, is to repeat the mistakes of the past. When the UN was trying to facilitate the consolidation of liberal democracy in El Salvador in the late 1980s and early 1990s, which required significant governmental spending for land reform and other measures to integrate the former rebel parties into mainstream Salvadoran society, the Bank and Fund (together known fondly as Bunk), were pressing austerity measures on the government. This was detrimental to the main thrust of the human rights and security efforts undertaken by the rest of the international community.⁶

It is said that the Bank and Fund have to be true to their original charters, which preclude consideration of political factors. But practice can lead to customary law that effectively amends treaties. Voting in various international organizations has been changed over time through practice. The Bank first argued against, but now accepts, an ecological dimension. Or, the Bank first said ecology was politics, and now the Bank says ecology is appropriately linked to sustainable economics. Likewise, the Bank is clearly, if inconsistently, instituting at least certain human rights considerations into its loan policies.

Given the importance of the resources at the disposal of the Bank and Fund, they should not be allowed to subsidize gross violators of internationally recognized human rights. This the Bank recognized when it held up a loan to Croatia, after Zagreb refused to turn over certain indicted suspects to the International Criminal Tribunal for the Former Yugoslavia.. Likewise encouraging is the addition of the Bank to the UN Inter Agency Standing Commission, headed by the UN Office for the Coordination of Humanitarian Assistance, designed to coordinate the UN humanitarian response on the ground in “man made” (and natural) disasters. It has been recognized on all sides that the Bank needs to be a part of post-conflict, democratic development efforts in coordination with humanitarian and human rights agencies. Humanitarian relief should be, and increasingly is, linked to democratic development, hence the role of the Bank.

Transnational Corporations (TNCs) also need to be brought into the human rights movement.

As important as the Bank and Fund are, not to mention regional development banks and bilateral official development assistance, transnational private investment draws public development assistance by a factor of almost ten. In the legal systems of national liberal democracies, private corporations are not allowed to discriminate against persons or groups, or to otherwise violate human rights. It should not be otherwise in international society also organized according to principles of liberalism.⁷

This matter is a legal thicket, primarily because traditionally public international law has regulated public, not private, authorities. Legal duties under the international law of human rights are borne primarily by states and intergovernmental organizations, not by private corporations. Legally speaking, matters may be changing through various court cases rather than by new treaty principles.

In the meantime, much can be done as a practical matter. The US government facilitated an agreement among private parties to deal with labor exploitation in the transnational but mostly American-based apparel industry. (Most of the most affluent TNCs are incorporated in only two states, the US and Japan.) That is to say that the US government mediated an agreement between various apparel companies on the one hand, and consumer groups on the other, designed to ameliorate abuse of workers rights around the globe. A principal feature of the agreement is inspection of production facilities and public reporting by a recognized private, independent human rights agency. Prominent companies, and even major American universities with lines of sports clothing, have signed on to the agreement. Likewise, the German government facilitated a private agreement to deal with child labor in the making of rugs in places like South Asia. The World Bank has a program to pay families to keep children in school, and thus out of sweat shops and other processes employing child labor. The UN, beyond the Bank, can play similar intermediary roles.

There are many ways in which TNCs can be persuaded that a reputation for responsible business, for pursuit of profit with attention to relevant human rights standards, can be an asset with the buying public. TNCs do not like to be faced with the prospect of consumer boycotts and other negative actions because of labor exploitation and other violations of human rights. It did not help the reputation of the Springfield Rifle Company to be convicted of illegally selling arms to South Africa under apartheid in violation of international and US law. And it would not help other weapons suppliers to be exposed for selling particularly light arms in contemporary trouble spots in the world. Not just the policies of the World Bank, but also those of UNICEF and the ILO show that the UN can and should be involved in these efforts of monitoring and reporting and mediating. Some TNCs have turned to UN agencies, such as the UNDP, for help in implementing socially beneficial projects in local communities where the TNCs do business. The notion of social responsibility, which includes attention to human rights, is not foreign to many business.

There needs to be an improved UN-TNC partnership for the advancement of certain human rights. Practice shows that international law is no barrier to many practical measures.

Socio-economic rights need to be given more serious attention. Socio-economic rights have always been the step child or relatively ignored part of the international bill of rights. Civil and political rights have received the lion's share of attention—mostly because of the emphases of western states and western-based private human rights organizations. But Mary Robinson, the second UN High Commissioner for Human Rights, is correct to try to make increased attention to socio-economic rights one of the hall marks of her tenure and of the UN's human rights work in the new millennium.

Since the point of human rights to produce a life with human dignity and/or social justice, it is perfectly clear that socio-economic subsistence rights are part of the very foundation of such a life.⁸ If persons are unable to purchase adequate food, clothing, shelter, or health care through productive labor in private markets, the just society will put policies in place that assist in achieving those goods and services—at least on a temporary or exceptional basis. Socio-economic human rights standards seek to advance such developments. Persons want not only to have their civil and political rights respected, but also to have their social security protected.⁹

It cannot be persuasively argued that starvation or malnutrition, or lack of access to available medical science, is just a risk of life that should be endured, any more than lack of opportunity to vote or access to legal counsel can be considered just a risk of life to be endured, depending on race, nationality, or economic class. The society that allows mass starvation is just as complicit as the society that allows mass murder. The society that allows adequate health care or basic education to be based on ability to pay cannot be considered a just society supportive of human rights. Sins of omission are just as damaging as sins of commission. If I watch you die from starvation or inadequate medical care, while having the ability to help you, I am just as morally responsible for your death as if I had actively strangled you.¹⁰

It is perfectly reasonable to be concerned about cultures of dependency, in which individuals do not assert themselves because of expecting public authorities to provide for them. It is also reasonable to be concerned about the negatives of bureaucratic regulation and control. Nevertheless, some nations such as the Netherlands that take socio-economic rights relatively seriously have compiled a quite remarkable record concerning national economic growth, not to mention individual assertiveness and responsibility. There is obviously nothing inherent in the social democracies of Western Europe that prevents them from being among the most wealthy and stable countries of the world. One can strike a reasonable balance between individual freedom, economic prosperity, and socio-economic subsistence rights. It happens every day of the year in numerous countries.

At the risk of being politically incorrect, I would also argue that the poorer countries of the global south should tone down their expectations about financial support for socio-economic rights from the wealthy countries of the global north, at least until they get their own houses in order on this question. Far too many poorer countries, unfortunately like Zimbabwe of late, spend far too much on dubious weapons acquisitions and military adventures, and far too little on the socio-economic rights of their own citizens. Some of the countries in Africa being ravaged by the AIDS epidemic are the very same countries that are spending vast amounts of time, energy, and money in transnational armed conflicts that detract from both economic growth and adequate health care.

Based on changes in both the global north and global south, UN agencies like the World Health Organization, the World Food Program, and UNICEF should be given more support for their rights-based approach to socio-economic programming. The UN Human Rights Commission should be more balanced in its approach to supervising the international bill of rights, giving more attention to socio-economic rights.

2. Given that the new millennium is characterized by a one Superpower world, one has to face the fact that a number of policy makers in the United States believe either in absolute state sovereignty, unilateral foreign policy, or neo-isolationism. This situation mandates for the UN a difficult and no doubt long term effort to make US foreign policy more cosmopolitan. Human rights issues are at the center of this

tension between the US and the UN.

As explained elsewhere, American elite and mass consider themselves an exceptionally good people that stand above all else for personal freedom, with a mission to teach the rest of the world about the American way of life.¹¹ The US Constitution and its Bill of Rights symbolize this national self-image. Moral lessons hence flow from the US to others, not the other way around. The US has great difficulty in accepting that international law and organization should take precedence over strictly American standards and procedures.

Thus the US refuses to accept that its adherence to the International Covenant on Civil and Political Rights should require any changes in US laws, or be the legal basis for any judicial action in US courts. Thus it refuses to ratify the International Covenant on Economic, Social, and Cultural Rights, or the InterAmerican Convention on Human Rights. Likewise, the US refuses to accept the projected International Criminal Court, given the possibility that it might assert jurisdiction over US personnel as linked to the subjects of genocide, war crimes, and crimes against humanity (and perhaps crimes against peace).

The US will assert a broad competence for international law and organization when the US is in the majority, or part of dominant opinion, or possesses a veto, and thus is not likely to become a target of authoritative international action. Hence it was in favor of the creation of ad hoc criminal courts for Former Yugoslavia and also Rwanda, but not of the standing criminal court that might wind up with jurisdiction over US personnel.¹² From 1945 on, the US has consistently rejected a supranational international law of human rights, whether regional or global, that would lead to supranational review of the US relevant record. This is in striking contrast to its democratic allies in Western Europe, all of whom have accepted the supranational authority of the European Court on Human rights, and 15 of whom have accepted the supranational authority of the European Court of Justice, connected to the European Union, which can also make human rights judgments—as it did early in the year 2000 about gender equality in the German army.

When it comes to evaluation of the US record on human rights, dominant American opinion is supportive of an absolutist conception of state sovereignty for itself, however much it might be prepared to make significant in-roads on the claims to sovereignty by others. This policy orientation is very much bound up in the American self-image or self-proclaimed identity. For a balanced, progressive, and cosmopolitan approach to international human rights, this American self-image and absolutist defense of self-sovereignty needs to be challenged. After all, its European allies in NATO are liberal democracies, but the European Court of Human Rights is hardly withering away because of lack of cases involving these (and other) states. Indeed, exactly the reverse is happening, as the Court has had to revise its procedures to accommodate its heavy case load. It is clear that American society could likewise profit from authoritative international review, regardless of the positive contributions to human rights from US law and its court system.¹³

It also follows from the above that the US should be frequently fond of unilateral rather than multilateral diplomacy. In fact, part of the US political spectrum is clinically paranoid about much action through the UN, seeing in the UN—quite irrationally given the US veto in the Security Council and prominent position elsewhere—a threat to US security, freedoms, and independence. Simply put, there is a bias against the UN in a number of policy making circles in Washington.

All states reserve the right to take unilateral action in matters of the highest importance, a view

reflected in Article 51 of the Charter and the recognition of an inherent and unilateral right of action for self-defense. Moreover, it can be fairly stated that the US prefers to act with the approval of the UN Security Council or other source of collective approval and cooperation, as demonstrated by its search for multilateral and indeed UN approval for its policies in the Persian Gulf in 1990-91, Bosnia 1992-95, Haiti 1994, Somalia 1992, and so on. Still further, some of its actions outside the UN Security Council, as in Kosovo and Serbia in 1999, can be reasonably defended, even if reasonable people still disagree on the wisdom of that course of action. In any event US action in Kosovo and Serbia in 1999 remained multilateral in the context of NATO.¹⁴

Still, the US as the most powerful state in world affairs in the 1990s has consistently opposed strengthening the UN's capacity for decisive multilateral action. This is not just a question of international peace and security, but also of the capacity for humanitarian intervention and direct international enforcement of human rights. Washington has opposed a standing rapid reaction military force under the control of either the Secretary General or Security Council. It has opposed any drastic upgrading of the UN's independent capacity for intelligence gathering and analysis. And in other ways it has opposed any creation of UN coercive power apart from US control or veto. Worse still, the US even blocked UN deployment of multilateral forces in the Great Lakes region of Africa in the mid-1990s when other states were prepared to play the role on the ground that the US was not. The unfortunate truth is that after ten years of a one Superpower world, we still find the UN woefully weak in a reliable capacity to really enforce human rights protection. The main reason for this lies in US fear about truly effective multilateral action on the part of the UN. The US does not want to see the rise of any countervailing power. President Clinton was disingenuous in going to the UN and saying the Organization should do more to stop genocides, because the US had made it impossible for the UN to act in places like Rwanda and Democratic Congo.

US assertions of a right to reduce its legally obligatory payments to the UN, regardless of what the UN Charter or General Assembly might say, is indicative of a dangerous and irresponsible unilateralism in US policy making, not made any more palatable by its origins in the lunatic fringe of congressional Republicans rather than in the White House or State Department. The much praised agreement between the Executive and Legislative branches that allowed the release of US funds to the UN in late 1999 contained numerous diktats in which Washington unilaterally imposed conditions on the UN, in clear violation of Charter provisions. Also indicative of a continuing strong strain of unilateralism is the widespread view in Washington that US military personnel should not serve under UN command. Such service is normal for all others but not for the US. When the totally independent US command in Somalia took decisions leading to a debacle in central Mogadishu in October, 1993, the highest levels of the US government tried to shift the blame to UN officials.

The US penchant for periodic unilateralism and bias against the UN remains a problem for global human rights protection, as it does for other dimensions of UN activity.

Much has been written about isolationism in American diplomatic history, and there has been considerable talk about neo-isolationism in contemporary American society. The situation is complex. Presidential candidates in both major parties are clearly internationalists of either liberal or conservative persuasion, or more likely some mixture of the two. And most of the public is clearly not supportive of more radical forms of isolationism such as withdrawal from the UN or construction of a fortress American

built on the blatant nativism and protectionism as recommended by marginal public figures like Patrick Buchanan.

But American society is clearly not in active messianic mode, as in the 1898 Spanish-American war, forced on a reluctant Spain so that the US could “liberate”—at least eventually—the Philippines and Cuba, and incidentally acquire some dependencies in the process. If attention to human rights abroad entails considerable cost, especially in terms of military action costing American lives, American society is ultra cautious. US interventions in Lebanon under Reagan and in Somalia under Clinton, and congressional wariness about interventions in Haiti and Bosnia under Clinton, all suggest definite reservations about loss of American lives in pursuit of other than traditional conceptions of US vital national interests. This is not altogether a bad thing. Prudence in expending human lives is normally a virtue. Moreover, some evidence suggests that the American public was prepared to pay a relatively high cost to expel Iraqi forces from Kuwait in 1991, and might, given effective presidential leadership, have supported the dispatch of US ground troops to fight in Kosovo in the spring of 1999.

The fundamental point is that American society is most of the time disengaged from the daily management of international affairs. Thus if Washington policy makers try to have foreign policy on the cheap, and slash most forms of spending for foreign affairs, the military budget excepted, the American public will defer.¹⁵ The US remains a large, powerful, self-centered nation. In the 1990s it replaced an internationally oriented President with one whose interest in international affairs was sporadic at best, until the waning days of his administration and his belated concern about his place in world history. American society also coughed up a Republican controlled Congress whose leadership sometimes boasted of not owning passports and not seeing the merits of international travel. Of course this was the same polity that fashioned NAFTA and joined the WTO and agreed to expand NATO membership. The issue was not a simple isolationism but the persistent and responsible management of international affairs—because those affairs were not just international but transnational or intermestic, impinging deeply on supposedly local concerns. That everyone’s backyard had been increasingly internationalized was more obvious in the smaller and weaker countries of the world than in the US.

The leadership of the UN, made up of both the international secretariat and key member states, needed to face the challenge of dealing with a single Superpower that was still parochial in many ways. The US frequently defended its turf with claims to absolute sovereignty, was periodically suspicious of the compromises entailed in true multilateral diplomacy, and as a society was detached from daily aspects of international relations. US foreign policy was deeply problematic for the UN from time to time, and the Organization would require diplomatic skill and patience in trying to moderate some of these policies over time. UN human rights programs were negatively affected by these US characteristics, like other parts of the Organization.

3. The UN Security Council, having been creative in expanding the concept of international peace and security so as to compensate for the absence of an accepted doctrine of humanitarian intervention to try to protect human rights in places like Bosnia, Somalia, and Haiti, should take care that a blizzard of paper solutions in New York does not exceed the realistic capacity to protect sur place. Given that the US and certain other states on the Council are reluctant to incur costs for the rights of others, care must be

taken that the Council adopts appropriate policies when faced with egregious violations of human rights. Unfortunately the Council seems to be making the same mistakes again in places like Sierra Leone in the year 2000.

##Starting with the subject of Iraqi Kurds in the spring of 1991, and building on the complex cases of Rhodesia in the 1960s and South Africa in the 1970s, the UNSC began to invoke Chapter VII of the Charter to deal with matters that were traditionally considered to be internal or domestic, by focusing on the international repercussions of repression and malfeasance essentially inside states. This same logic was applied to Haiti and Somalia. Areas of the Former Yugoslavia presented more complex issues. Whatever the judgments about the nature of conflicts in the former Yugoslavia, progressively in the 1990s the UNSC adopted many legally binding decisions, many of them pertaining to the human rights of persons caught up in some type of armed conflict, disorder, or “complex emergency.”

##At times the members of the UNSC refused to authorize the amount of force recommended by the Secretary General as need for the attainment of objectives. At other times the Council authorized some objective, such as the creation of safe havens for non-combatants, without adequate provision for their defense. At still other times UN field commanders, special representatives, or even the Secretary-General himself refused to authorize the use of force even though such authorization was available in principle. The result, as sometimes admitted by UN reports themselves ex post facto, was a discrediting of the UN when attempting to protect human rights, not to mention a failure to protect the rights, including the right to life, of persons in the affected areas.¹⁶

The UNSC seemed to believe that tough talk in New York would intimidate some quite ruthless political and military leaders in places like Serbia, the Serb Republic in Bosnia, Somalia, and other places. As could have been expected, these warriors without honor¹⁷ continued their systematic murder, rape, and torture--and lesser abuses of mostly civilians. The UN never realized at the time the extent of evil on the other side, and thus never chose the appropriately robust actions to counteract it. Journalistic usage notwithstanding, peacekeeping is not enforcement or direct protection. One cannot keep the peace which reflects human rights, when peace has not yet been made and when the parties continue mayhem without respect for the most elementary standards of human decency.

##This record mandates caution in the future regarding UNSC recourse to the language of Chapter VII and subsequent language demanding some important change in the behavior of fighting parties. The unfortunate reality is that if the UNSC really believes that physical coercion might be necessary to stop violations of human rights, or at least the credible threat of coercion, it is going to have to contract out this task to states willing and able, but with proper oversight from some UN unit--whether the Council, a sub-committee of the Council, or an office in the Secretariat. Paper threats will not suffice. The UN is still not prepared for genuinely supranational enforcement action. Once again, this is as much a human rights and humanitarian issue as a security issue.

4. The UN needs to consider effectively merging human rights, humanitarian action, and refugee affairs into one meta-regime, as far as action on the ground is concerned. Existing legal and diplomatic

“boxes” for categorizing events and victims do not work very well, although they could be resurrected in the event of criminal judicial proceedings.

##Given the decentralized way in which decisions are normally reached concerning what is peace and war, what is international and internal armed conflict, it has been clear for some time that it is only with great difficulty that the international community can reach a consensus as to the legal status of a particular situation involving serious conflict or unrest. That being so, it is frequently not clear whether some part of international humanitarian law applies, or whether the international law of human rights in peace should be legally controlling.

Likewise it is clear that many persons can find themselves in dire straits and without benefit of a normal relationship with the government of the state in which they normally reside, without meeting the legal qualifications of a conventional refugee. One might be an internally displaced person, a returnee, a person fleeing war or instability. One might not therefore be a person with a well founded fear of individual and provable persecution and having crossed an international border because of not being able to rely on the “normal” relationship with his or her government.

##In the scrum of international relations, various actors try to protect and assist persons in dire straits because of “man made” events without much attention to legal categories about situations and victims. The UNHCR or UNICEF may become the lead UN agency on the ground for provision of relief to needy civilians, without much attention to who is technically a refugee and who is not, or whether relief goes to civilians other than needy mothers and young children. The International Committee of the Red Cross, which is not a UN or public agency, may share roles with UN actors without much attention to whether one is dealing with national unrest, an internal armed conflict of a Protocol II type or a Common Article 3 type, a traditional international war situation or a Protocol I situation, or a so-called complex emergency.¹⁸ Thus these and other agencies dealing with international humanitarian protection and relief, which is to say the protection of certain human rights in armed conflict and human displacement, have drawn up codes of conduct that transcend legal argument about situations and victims. They are working on quantifying what is required to meet international standards for adequate relief across situations, including natural disasters.

##This trend should be encouraged through the facilitation of the UN Office for the Coordination of Humanitarian Affairs. It might not be totally naive to think that OCHA under capable leadership might eventually assume the relief functions now spread across the UNHCR, UNICEF, and the WFP, leaving those agencies with efforts in behalf of diplomatic-legal protection for various types of displaced persons, needy mothers and children, etc. The Red Cross agencies could continue as independent partners in relief, with the ICRC having specialized roles concerning prisoners of war, etc. The great alphabet soup of NGOs would also continue as vital partners of UN humanitarian schemes.

##It does not matter much whether the revised UN scheme is called the human dignity regime or something else. The central point would be to enhance the protection of and assistance to persons in need because of political events. This would be done through improved coordination and a clear sharing of tasks,

on the basis of agreed upon standards. An essential part of the change would be a careful study of the comparative advantage that each major relief agency brings to the table. There would need to be a careful consideration of improved funding; these activities should not be run on unpredictable shoe strings. In the event of criminal justice proceedings at either the international or national level, suspects could still be prosecuted under international humanitarian law or the international law for human rights in peace, according to the precedents of various tribunals. Existing treaties would not have to be revised or erased, and nothing would be lost from the criminal justice tradition that has already emerged. But currently there is a disconnect between all the legal categories devised for situations and victims of political unrest and human displacement, and the reality of international protection and assistance efforts sur place. That disconnect needs to be remedied.

5. Relatedly, one of the great problems in the new millennium is the fate of civilians in armed conflict and related or similar situations. It is not easy for the UN to take long term action to improve their situation, for basic standards are set in treaties of international humanitarian law negotiated outside the UN. And the ICRC, a private agency whose governance body is made up of only Swiss citizens, has played an important role in the development and supervision of this law since the middle of the 19th century.

##The UN, perhaps through the Secretary General or the General Assembly or the Human Rights Commission, could at least call on states to file reports with the Swiss government, the depository of the IHL, or the ICRC, or the Red Cross and Red Crescent Conference concerning the teaching of humanitarian law to their military personnel. As weak as reporting requirements are under the international law of human rights in peace, at least they exist and require some national agency to compile the material and send it to the UN. There is no such reporting requirement under the Geneva Conventions and Protocols. There should be. Until that defect is remedied, the UN could encourage the practice of voluntary reporting. That would at least allow some states to see what others are doing, while putting subtle pressure on states to take seriously the existing standards on protecting and assisting civilians. The Red Cross and Red Crescent Conference, which meets in principle every four years, collects some information on this subject, but the process generates little pressure on states to take the dissemination of IHL seriously.

##Similarly, the UN should call on states to discuss the funding of activities that take place under the 1949 Geneva Conventions and 1977 Protocols. Currently states are able to profess their commitment to the humanitarian standards found within one or more of these instruments, but pay not one centime for the protection and assistance activities that transpire. The same situation obtains, for the most part, regarding forced displacement, since the UNHCR operates mostly on voluntary contributions from states. States should be asked to place their money where their diplomatic mouth is. If they get the public relations benefit that comes from accepting the law, they should make a payment for its application, perhaps according to an equitable formula. The meager funding of humanitarian activities (and human rights ones too) should be remedied. Funding patterns for the regular UN budget indicate that human rights and humanitarian affairs are still considered by states to be marginal rather than central activities of the UN. The Organization can at least encourage a dialogue on this subject, while continuing with its new coordinated appeals by OCHA for voluntary contributions to UN relief actions.

6. The UN, having stumbled into the creation of ad hoc criminal courts as a short term public relations maneuver, and then having pushed for the creation of a standing international criminal court, has no option now but to see the latter matter through to a successful conclusion; but the Organization should beware of judicial romanticism and falling into the trap of expecting courts to be more effective and have greater impact than the facts warrant.

##The UNSC, not wanting to authorize decisive intervention into the Bosnian affair in 1993 because of anticipated costs, fell back to creation of an ad hoc criminal court in order to give the impression of doing something about atrocities. Having done so once, the Council did so again, for essentially the same reasons, in Rwanda about a year later. From this ignominious beginning evolved a widespread push for criminal justice and an end to impunity for egregious violations of human rights and humanitarian law. In 1998 a diplomatic conference approved overwhelmingly a statute for a new international criminal court to be loosely associated with the UN.

##The fact that by early 2000 only a handful of states had ratified the ICC statute indicates careful review of the Rome diplomatic conference. Broad evidence strongly suggests that there is no one, preferred, best approach to responding to past gross violations of human rights and humanitarian law.¹⁹ South Africa and El Salvador, among others, have moved toward an end to bloodshed and the stabilization of liberal democracy by avoiding criminal prosecution which focuses on the past, in favor of qualified amnesty and national reconciliation that looks toward the future. Other parties had tried a variety of measures, including doing nothing, holding national trials, supporting national or international truth commissions, barring violators from public office, etc.

##In some situations there is a clear conflict between peace and justice, between making political compromises to end violence and trying to punish gross violators. The new ICC was created on the basis of complementarity, which means that the Court—once the necessary ratifications have been obtained—will become active only if the relevant national authority fails to carry out a proper investigation and, if warranted, prosecute. Various safeguards are built into the statute to restrain the independent prosecutor from bringing specious charges against a state. Still, the prosecutor, and the special panel of judges to whom the prosecutor must report, will be faced with the exercise of essentially a political judgment in some situations. Would a future prosecutor and judicial panel seek to overturn national decisions in favor of amnesty, national reconciliation, and/or a truth commission in lieu of criminal justice? Would a future prosecutor second guess a future Nelson Mandela on the wisdom of avoiding criminal justice relating to past political struggle?

##Moreover, in future situations similar to the Great Lakes region of Africa in the 1990s, it is clear enough that the regional hostility is so great that a few court cases, whether national or international, are not going to stem the tide of calculated brutality. The extent of hatred is beyond judicial resolution.

##Nevertheless, having come this far toward international criminal justice, the UN should urge that the two ad hoc courts be folded into the new ICC, and that all states sign and ratify the statute. Existing

international courts have certainly made some specific contributions to enhanced protection of human rights and humanitarian standards. The new Court should be given a chance to prove its worth, including proving that it knows when to defer to national decisions that bypass punishment for the sake of a relatively just if imperfect peace. Given that most liberal democratic states support the new Court, including those like Canada, Italy, Britain, and France they have practical experience in putting their soldiers in harm's way in complicated foreign situations, US opposition to the Court should be seen for what it is—an exercise in romantic nationalism that bears little relation to the adequate safeguards against abuse built into the statute.

7. Finally in this brief list of major challenges in the short and medium term, the UN should recognize that for many human rights and humanitarian problems, there is no substitute for patient diplomacy over the long haul, diplomacy that educates across generations.²⁰ There is plenty of evidence that progressive ideas do make a difference over time.²¹ In the past we have seen the end of foot binding, colonialism, slavery (mostly), European Stalinism, South African apartheid, and so on. In recent years we have seen greatly increased attention to women's rights, the rights of the child, racial discrimination, liberal democracy, and so forth.

##The UN, being an intergovernmental organization, can only do in the last analysis what its members, especially the most powerful members, allow to be done. Thus there is no avoiding the need to educate states into the desirability of more protection of human rights and humanitarian standards.

##Whatever the politics of the moment allow by way of immediate protective action, whether by humanitarian intervention or creation of criminal courts, for example, there will always be a need for conferences on racism and xenophobia, on women's equality, on freedom for sexual preference among consenting adults, and on any number of other human rights subjects that generate controversy in various parts of the world.

III. Conclusion

Despite its weaknesses, the UN system will remain heavily engaged in human rights developments in the coming years. This is not only because of the current Secretary-General's obvious interest in the subject, or the fact that he is now supplemented by a highly committed UN High Commissioner for Human Rights.²² The UN has universal membership, established human rights commissions and agencies, specialized bodies with considerable experience and quite frequently a good reputation for serious work. Moreover, human rights is now increasingly accepted as a legitimate and regular part of international relations. There are now more liberal democracies in the world, and states aspiring to be liberal democracies, than at any other time in world history. All of this bodes well for the UN and human rights.

It is true that some regional arrangements, mostly in Europe, provide more reliable international protection of civil and political rights than does the UN. It is true that some human rights NGOs have more dynamic reputations than some UN agencies. It is true that state foreign policies can sometimes give UN human rights proceedings the unmistakable odor of national ideology or self-interest.

Some of these weaknesses and distortions can be at least somewhat counter balanced by: giving

fuller UN participation to human rights NGOs, creating a forum where business responsibility can be discussed and advanced, interjecting human rights more deeply into the relatively new Council on Sustainable Development, endorsing the new international criminal court, improving the coordination among human rights and humanitarian actors so as to maximize impact.²³

We will never run out of human rights issues and problems. And while we cannot be asked to predict the unpredictable, it is clear that the future will bring additionally complex problems of individual privacy (eg., the Internet) and bio-medical science (eg., cloning). It is likely these developments will necessitate still more global human rights standards. Yet more standards without more effective implementation measures leaves the glass less than half full.

Despite the persistent problems and perplexities, on the basis of progress during the past fifty years it does seem that global human rights holds out the promise of proving “as important as the great revolutions of the preceding centuries.”²⁴ The UN is likely to continue to be in the center of all this, as it has since 1945.

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1. Michael Ignatieff, The Warrior's Honor: Ethnic War and the Modern Conscience, (New York: Metropolitan, 1997).
 2. From a vast literature see Jack Donnelly, Universal Human Rights in Theory and Practice, (Ithaca: Cornell University Press, 1989); and David P. Forsythe, “The United Nations and Human Rights at 50,” Global Governance 1, 3 (September 1995), 297-318.
 3. Jan Herman Burgers traces the evolution of the human rights discourse in international relations in “The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century,” Human Rights Quarterly, 14, 4 (November 1992), 447-477. He shows that the international moralism from the middle of the 19th century on did not translate into international human rights claims until 1945. It has been often noted that the world was relatively connected economically speaking before the first World War, and that the world did not regain that same degree of economic connectedness until recently. The earlier phase of economic connectedness was not accompanied by an increase in references to international human rights.
 4. See further, David P. Forsythe, Human Rights in International Relations, (Cambridge: Cambridge University Press, 2000). It is important to recall that human rights language was written into drafts of the UN Charter long before the Nazi death camps were liberated and publicized in the spring of 1945.
 5. David Gillies, “Human Rights, Governance, and Democracy: The World Bank's Problem Frontiers,” Netherlands Quarterly of Human Rights, 1,1 (March 1993), 3-24. And David P. Forsythe, “The United Nations, Human Rights, and Development,” Human Rights Quarterly, 19, 2 (May 1997), 334-349.
 6. See further David P. Forsythe, “The United Nations, Democracy, and the Americas,” in Tom J. Farer, ed., Beyond Sovereignty: Collectively Defending Democracy in the Americas, (Baltimore: Johns Hopkins University Press, 1996), 107-131.

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7. See further Forsythe, Human Rights in International Relations, op.cit., chapter 8.
 8. The best theoretical argument along these lines is to be found in Henry Shue, Basic Rights: Subsistence, Affluence, and US Foreign Policy, (Princeton: Princeton University Press, 1996, 2nd ed.)
 9. Francis Fukuyama, in The End of History and the Last Man, (New York: The Free Press, 1992) does not give sufficient attention to this point when arguing, in his influential book, that the liberal argument in favor of civil and political rights is the ultimate argument for justifying the exercise of political power.
 10. See further Peter Siner, Practical Ethics (Cambridge: Cambridge University Press, 1993).
 11. For a classic but more positive slant on American ideology, see Samuel P. Huntington, "American Ideals versus American Institutions," Political Science Quarterly, 97, 1 (Spring 1982). For a highly negative view of American ideology see Michael Hunt, Ideology and U.S. Foreign Policy, (New Haven: Yale University Press, 1987). See also David P. Forsythe, American Exceptionalism and Global Human Rights, (Lincoln: University of Nebraska Distinguished Lecture Series, 1998.)
 12. Ironically, when the US took military action in 1999 in territory of the Former Yugoslavia, it placed itself under the jurisdiction of the International Criminal Tribunal for Former Yugoslavia, whose staff made a study of possible US and NATO war crimes. The Chief Prosecutor of the ICTFY, however, a Swiss national, tried to distance herself from that study.
 13. See further Forsythe, Human Rights in International Relations, chapters 5 and 6. See also David P. Forsythe, ed., Human Rights and Comparative Foreign Policy, (Tokyo: United Nations University Press, 2000). What is needed is more of the meetings like the one that occurred in the Security Council in early 2000, in which Jesse Helms articulated his view of U.S. legal supremacy, which was then challenged by certain other members of the Council.
 14. The Secretary-General was right that US and NATO action in modern Yugoslavia in 1999 undermined the authority of the Security Council. The US was faced with a difficult choice. If it took the Kosovo question to the Council and met a Russian and/or Chinese veto, it would have been less able to take action to stop Serbian persecution of Albanian Kosovars. It would have made its foreign policy a prisoner of Russian and Chinese views, something that would not go down well in American domestic politics. Its decision to engage in de facto humanitarian intervention via NATO picked up support from parts of the UN, such as through comments by Mrs. Sagada Ogata, head of the UNHCR. See further the postscript in Forsythe, ed., Human Rights and Comparative Foreign Policy, *ibid*.
 15. For a brief review of the decline in US spending for foreign affairs, see Joshua Muravchik, "Affording Foreign Policy," Foreign Affairs, 75, 2 (March/April 1996), 8-13. See also Edward Luttwak, "Where Are the Great Powers?," Foreign Affairs, 73, 4 (July/August 1994), 23-29.
 16. UN reports about its roles at Srebrenica and in Rwanda were available from the UN homepage on the Internet.
 17. The phrase is Ignatieff's, op.cit.
 18. I am making reference here to types of armed conflict as foreseen in contemporary international humanitarian law based on the 1949 Geneva Conventions and Additional Protocols I and II of 1977.
 19. Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence, (Boston: Beacon Press, 1998).
 20. For an analysis of traditional UN human rights diplomacy as essentially exercises in political education over time, see

David P. Forsythe, "The United Nations and Human Rights 1945-1985," Political Science Quarterly, 100, 3 (Summer 1989), 249-269.

21. In general see Paul Gordon Lauren, The Evolution of Universal Human Rights: Visions Seen, (Philadelphia: University of Pennsylvania Press, 1998).

22. See further Andrew Clapham, "Mainstreaming Human Rights at the United Nations—The Challenge for the First High Commissioner for Human Rights, in Academy of European Law, ed., (Kluwer, 1999). A revised version taking into account developments during the tenure of the Second High commissioner is forthcoming.

23. See further Chadwick F. Alger, ed., The Future of the United Nations System: Potential for the Twenty-first Century, (Tokyo: United Nations University Press, 1998), especially chapters 6, 8, and 9.

24. Editorial, International Herald Tribune, December 9, 1999, p. 8.