

THE FUTURE OF THE UN HUMAN RIGHTS SYSTEM

Jared Genser

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

Grounded in the concept of the dignity and worth of all people, the Universal Declaration articulated the aspiration of all countries to respect, protect, promote, and fulfill what has been traditionally referred to as the “three generations of human rights”—civil and political, socio-economic, and collective rights.

Today, human rights are viewed as interdependent and indivisible, imposing a broad variety of obligations upon

states. The Universal Declaration has withstood the test of time, having been translated into more than 370 languages and dialects, making it the most translated document in the world.

SUBOPTIMAL PRESENT

Nevertheless, more than 70 years after the founding of the United Nations, its human rights system—anchored by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein—remains underfunded. In 2015, the Office’s annual budget was some \$225 million, receiving only 3 percent of the regular UN budget. The UN human rights system has been stretched to its breaking point, and is in need of serious overhaul and further investment. To appreciate the depth of the serious changes required, it is important to understand how this system has developed over time, both through what is referred to as the Charter-based and the treaty-based system.

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CHARTER-BASED SYSTEM

The Charter-based system developed initially from the Economic and Social Council (ECOSOC)—a principal organ of the United Nations. ECOSOC created the UN Commission on Human Rights in 1946. The Commission’s early accomplishments included the development of the Universal Declaration and the first two treaties viewed as essential to the international human rights system: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Both treaties were adopted in 1966.

By the mid-2000s, the Commission had come under intense criticism for being both unaccountable and ineffective, as states with poor human rights records were able to use their membership to deflect criticism onto other states. Responding to these concerns, the General Assembly replaced the Commission with the Human Rights Council in 2006, which today is a standing body of 47 states.

The new Council was viewed as having an upgraded status because it became a subsidiary body of the General Assembly, with meetings taking place year-round. In 2008 the

Council established the Universal Periodic Review (UPR) process for all states to have their human rights reviewed regularly. At present, the Council also has 41 thematic and 14 country rapporteurs, independent experts, and working groups—some of which were inherited from the old Commission. These mandates are filled by volunteer experts appointed to address a broad range of human rights concerns all over the world.

Despite the generally strong work of these experts, the credibility gaps of the old Commission have remained. The General Assembly has repeatedly elected countries known for major human rights violations to its membership, whilst selectivity and bias are still endemic in how the Council conducts business.

TREATY-BASED SYSTEM

In parallel with the growth of the Charter-based system, the treaty-based system developed from multilateral agreements designed to protect human rights. Although states are sovereign and the Charter protects members from external interference in matters that are essentially within their own borders, each sovereign state also has the ability to join treaties, agreeing to be

bound by their provisions and having their conduct reviewed by fellow state parties to those specific treaties. The first one, adopted in 1948, was the Convention on the Punishment and Prevention of the Crime of Genocide.

Since then, a wide array of human rights treaties have been adopted—10 of which have treaty-monitoring bodies comprised of

volunteer experts elected by the states which are a party to that specific treaty. These treaties cover civil and political rights; socio-economic rights; the rights of women; the rights of children; racial discrimination; the right to be free from torture; the rights of migrant workers; the rights of persons with disabilities; and the rights of people to be free from enforced disappearances.

The universality and importance of the human rights treaties is much broader than is commonly understood. For example, the International Covenant on Civil and Political Rights has been signed or ratified by 175 out of the 193 UN Member States, covering more than 92 percent of the world’s population. This treaty provides a single definition and interpretation for the rights to freedom of opinion and expression, freedom of religion, freedom of political participation, and due process of law.

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Of course, just because states sign on to these treaties does not mean that they abide by them in practice. North Korea is a party to four of the key human rights treaties and a signatory to another one, yet it is among the most rights-repressing governments in the world.

One can reasonably conclude that the treaty bodies require important reforms—notwithstanding the fact that the treaty-based system provides binding legal commitments by which states can be held accountable for violating the human rights of its population, and that the number of states that have joined treaties continues to grow.

UN ORGANS & HUMAN RIGHTS

In 1993, the General Assembly established the position of the UN High Commissioner for Human Rights, who reports to the Secretary-General and leads UN system-wide efforts to advance human rights. The Office of the UN High Commissioner also supports both the Charter-based and treaty-based human rights systems. The influence and importance of the position has grown substantially over time.

Other organs of the UN system—including the Security Council, the General Assembly, ECOSOC, and the International Court of Justice—also address human

rights concerns in a variety of ways, but are not traditionally viewed as part of the UN human rights system.

Similarly, since the establishment of the International Criminal Court, which began its operations in 2002, the United Nations has pulled back substantially from securing justice and accountability for those that have committed mass atrocity crimes.

Moreover, the rights of refugees and displaced persons are addressed primarily through the Office of the UN High Commissioner for Refugees.

CLOSING THE IMPLEMENTATION GAP

The twentieth century will be remembered as the time when the international human rights system was built and extraordinary commitments to universal human rights norms and standards were embraced by states through the Charter- and treaty-based systems. At the same time, the gaps between the legal commitments of states and their implementation in practice have often remained very large.

The challenge of the twenty-first century will be for the United Nations to take substantial action to close this implementation gap—particularly in

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countries where governments have shown little interest in abiding by their commitments under international law.

A BOLD PROGRAM OF ACTION

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challenge. While progress will always be slow-going—in light of fierce and ongoing resistance from the many states that prefer a weaker and ineffectual system—the UN’s ability to fulfill its commitment in the Charter to advance human rights is at the heart of its credibility as an institution. As a start, there are at least five important actions that should be taken.

BUDGETARY REFORM

First, increase the annual budget for the Office of the High Commissioner for Human Rights by at least 50 percent. In October 2014, just six weeks after taking on his position, the current UN High Commissioner for Human Rights held his first press conference. He

described himself as being “shocked”—not only at the lack of resources allocated for his Office, but also for having to introduce serious budget cuts. He noted

that contributions from the regular UN budget for 2014 and 2015 for human rights amounted to merely \$87 million a year, which was only a tenth of the amount that people living in Switzerland spent annually on chocolate (the rest of the budget came from extra-budgetary support by Member States and other donors). Yet even the total budget of the High Commissioner’s Office

(some \$225 million annually) does not even come close to meeting the range of global human rights challenges.

With more than 1,000 staff, the High Commissioner’s Office must support the Human Rights Council, human rights treaty bodies, the UPR process, and several UN commissions of inquiry into mass atrocity situations. In addition, the Office maintains 12 regional offices and 15 country offices, provides advisors to 29 different UN country teams, and regularly deploys a rapid-response unit.

In just the last year, the Office trained more than 8,500 representatives of civil

society on international human rights norms, helped 13 countries develop national human rights action plans, and undertook more than 900 monitoring missions in Colombia, Sudan, South Sudan, Mali, and Yemen. The Office also paid some 3,500 visits to prisons worldwide, and trained close to 1,000 judges and 3,000 police officers on human rights standards. Yet these efforts are dramatically below the demand for assistance.

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In addition, the Office lacks dedicated staff to assist states in implementing the human-rights-oriented Sustainable Development Goals (SDGs) or, for instance, address the growing impact of climate change.

There is always resistance—especially from major human rights abusing states—to fund the UN human rights system, let alone provide it with additional resources. This reality is made even more challenging by the fact that states claiming to support human rights have not substantially backed their rhetoric with resources.

The failure to ensure that the system receives adequate funding overshadows repeated claims by the United Nations that human rights is a serious priority.

HRC REFORM

The second action the UN should undertake is tackling Human Rights Council reform. A decade after its creation, the Council has had a decidedly mixed record. Its high-profile shortcomings threaten to eclipse some of its most valuable contributions unless a serious reform effort is undertaken.

The UN resolution that established the Council envisioned competitive elections in which states

with the best human rights records would be elected. Despite this fact, the UN’s five geographic groups have mostly put forward full slates, where the number of candidates matches the number of seats available. In addition, countries with poor records have had little trouble being elected, and then using their seats to undermine various aspects of the Council’s agenda.

Much like the Commission before it, the Council maintains Israel’s human rights record in Palestine as one of 10 items on its permanent agenda. While Israel’s treatment of the Palestinians certainly deserves scrutiny, the disproportionate focus of the Council on Israel is extraordinary. For example, in its February-March 2016 session, the Council adopted five resolutions on

Israel; only one each on Syria, North Korea, and Iran; and none on countries like China, Russia, and Saudi Arabia.

While every country's record should be examined for the Human Rights Council to have credibility, its work should focus on situations with both the greatest scale and severity of abuses. While the UPR process was welcomed as a major innovation in the work of the Council, in practical terms states with the worst records have used the process for securing public statements from like-minded states in order to legitimize their abuses.

The most valuable contribution of the Council remains its appointment of the volunteer experts who comprise the 55 appointed thematic and country special procedures. In 2015, these experts carried out 76 country visits, issued 532 communications covering 846 people to 123 states, published 134 reports that were submitted to the Council, and issued over 450 news releases. While the quality of appointments has varied, these essential mechanisms throw a cloak of UN protection over the shoulders of victims—and in many cases, actually save lives. In addition, the Council's establishment of commissions of inquiry,

such as the one on Sri Lanka, have made enormous contributions in broadening the understanding of extraordinarily complex and challenging mass atrocity situations.

As the Human Rights Council approaches a 10-year review of its work, it requires serious reform. The Council should prioritize work on situations with the broadest and most egregious abuses, refocus the UPR process on providing states with suggestions for improvement, and work to build the capacity of the special procedures to produce the highest-quality reporting.

Beyond the work of the Council in Geneva, the General Assembly also needs to revisit how best to ensure competitive elections for the Council—ones that prioritize electing members with strong human rights records. At the same time, states that seek to advance human rights must also persuade like-minded countries from all regions of the world to run for election to the Council, even if doing so requires a competitive slate.

REFORM APPROACH TO MASS ATROCITIES

The third action the UN needs to undertake is enhancing the profile and impact of its atrocity prevention work.

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The UN has failed to prevent the commission of mass atrocities in such high-profile situations as Rwanda, Srebrenica, Sri Lanka, and most recently, Syria.

Some of these failures have emanated from the United Nations' institutional architecture, such as the veto power of the permanent members of the Security Council. At the same time, there has also been a lack of focus from the top on ensuring consistent coordination, the development of a system-wide response to emerging situations, and the implementation of collective recommendations engaging rapid reaction.

The adoption of the "Responsibility to Protect"—a mutual commitment of the states assembled at the 2005 World Summit to prevent and respond to mass atrocities—including genocide, war crimes, crimes against humanity, and ethnic cleansing—marked an important evolution of the normative framework.

Specifically, it emphasized that states hold primary responsibility in protecting their own populations. Yet it also noted that the international community has a responsibility to help states. Importantly, it emphasized that if a state manifestly fails to protect its populations from mass atrocities, col-

lective action must be taken within the framework of the Charter to respond to the threat.

More than a mere hortatory commitment, the Responsibility to Protect is grounded in the existing legal obligations of states stemming from the Genocide Convention, Geneva Conventions, and other treaties.

In late 2013, Secretary-General Ban Ki-moon launched the Human Rights Up Front initiative to help ensure that the UN system took meaningful action to prevent or respond to mass atrocities. The initiative aims to promote system-wide analysis, early warning, and early action.

As one example of this new initiative in practice, the Office of the High Commissioner for Human Rights and the UN Department for Political Affairs developed a new mechanism to place capacity on the ground rapidly in emerging or pre-existing crisis situations. Referred to as "light team" deployment, it aims to get the required human rights and political expertise on the ground quickly. The first teams were deployed in 2015 to Burkina Faso, Lesotho, and Nigeria.

Yet, despite the aspirations embodied in Human Rights Up Front, there are numerous ongoing challenges. Not

only do different UN entities have very different cultures and priorities, but imposing human rights protection as a system-wide objective requires upgrading the skill sets of parts of the system for which this has not been a historic priority.

The single most important way to drive the required change into and throughout the UN system is for the Secretary-General to make atrocity prevention and response a top public priority.

Specifically, the Secretary-General should create and chair an inter-agency working group to meet monthly. It could be tasked both to coordinate responses on emerging and pre-existing crisis situations, and work across the United Nations to develop early warning systems and shared capacity. It would be essential for such a new body to work proactively and have expert views from outside the UN system incorporated into the dialogue.

Not only should the UN Advisors on the Prevention of Genocide and the Responsibility to Protect be a part of these working group discussions, but they should also be encouraged to create

their own outside advisor groups. Their perspectives could be brought into the discussions by the Special Advisors as a reality check for how the United Nations is coordinating its work.

TREATY BODIES REFORM

The fourth action the UN must undertake is improving the work of treaty bodies overseeing state compliance with international human rights treaties. The human rights treaty

bodies are committees of independent experts that monitor implementation of the 10 core international human rights treaties. Even though the work of these committees—which are staffed by the Office of the High Commissioner for Human Rights—does not receive much public attention, it is difficult to overstate their importance.

When a state signs on to a treaty, it agrees to be legally bound to a single interpretation of a set of international human rights commitments in the given topic area, ensure all people within its borders have those rights protected and respected, and enables other state parties to review their compliance with the treaty. These 10 committees constitute a fundamental pillar of the UN human rights protection system.

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The regular review process that states undergo requires them to undertake a number of concrete measures. These include, most notably: providing information to the relevant committee about their adherence to the treaty in question; giving opportunities for input from civil society and states; enabling the treaty body the opportunity to ask written questions of the state; engaging the state in a public discussion in Geneva with the treaty body; and then ultimately adopting a written report and recommendations by the treaty body regarding the state's compliance with the treaty. In 2015 alone, the treaty bodies reviewed 173 state reports across the 10 treaties and the High Commissioner's Office reached out to 40 states to assist them with treaty-body reporting.

Yet, despite the legal obligations of states, the treaty bodies have no means of forcing states to submit required reports nor comply with the provisions of the treaties themselves. As a result, many states fail to report on time, if ever—and only some states undertake the kind of domestic consultation process that produces higher-quality reporting.

With the growing number of treaty bodies and ratifications of human rights treaties by states, the strain on treaty body committee members and the staff of the Office of the High Commissioner is palpable.

In the past 30 years, there have been four efforts undertaken to reform the treaty bodies. The most recent process, undertaken by the General Assembly between 2009 and 2014, resulted in an increase in the number of times the treaty bodies met in a given period, the imposition of cost-cutting measures, and a harmonization of procedures and approaches taken by the different treaty bodies.

But achieving better outcomes from the treaty bodies requires more robust action. First, treaty bodies should all have simple, objective, and standardized mechanisms for tracking and following up on state implementation of their recommendations. Second, UN country teams should hold public discussions in countries coming up for review before treaty bodies, so as to better facilitate local engagement in these processes. And third, the public meetings of treaty bodies in Geneva should all be broadcast live.

Given that real progress requires multilateral cooperation, it will remain an ongoing struggle to achieve meaningful reform. But improving the performance of the treaty bodies—which exist to hold all state parties to the respective treaties to account for their binding legal obligations—is an area where intense effort offers huge potential for improving human rights worldwide.

GENDER PARITY REFORM

The fifth action the UN needs to champion is the advancement of women’s rights. Ever since the United Nations was founded, the Organization has sought to advance women’s rights worldwide. Yet these efforts have usually been relegated to the sidelines of central discussions in the United Nations. They have also been woefully underfunded, and have fallen far short of what is required.

Today, the Commission on the Status of Women, which is a functional commission of ECOSOC, is the principal multilateral body focused on gender equality and women’s empowerment. UN Women is the lead entity within the United Nations system focused on addressing these issues. The Secretary-General has a volunteer Special Advisor on Sexual Violence in Conflict. And the Human Rights Council has a Working Group on the Issue of Discrimination Against Women in Law and in Practice, as well as a Special Rapporteur on Violence Against Women, Its Causes, and Consequences, who are also volunteers. But in 2016 only 23 percent of some 90 Under-Secretaries-General (or their equivalent) are women, despite calls for gender parity in top UN positions going back decades. If the Secretary-General of the United Nations cannot end discrimi-

nation against women within the highest-level appointments processes (which is entirely under his authority), then the

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Organization stands little chance of ensuring that its broader work mainstreams women’s rights into its daily work.

After years of discussions, the United Nations adopted a System-wide Action

Plan for Gender Equality and Empowerment in 2012. It contained 15 performance indicators relating to gender quality and women’s empowerment that are supposed to be met by all parts of the UN system by 2017.

But these are generic indicators, one of which is an assessment of whether the entity has met the UN Evaluation Group’s gender-related norms and standards in assessing impact. And on just that one indicator, the most recent assessment is that all United Nation entities will not achieve full gender equality compliance until 2033.

In the narrower area of protecting and promoting women’s rights, there remains a very wide gap between the commitments of states and their implementation in practice. For example, the Convention on the Elimination of All Forms of Discrimination Against Women has 189 state parties to the treaty. Yet

legal and societal discrimination against women in areas such as education, employment, health, social benefits, and family life, are rampant.

Women face sexual and gender-based violence all over the world; and they are nowhere close to parity in leadership positions in the United Nations bureaucracy, governments, or in the private sector.

There are numerous ways in which these issues can be addressed—not only through institutions, but also through major new global initiatives, like the implementation of the SDGs. Yet given the extraordinary gaps and slow pace of change, the United Nations should take a critical global leadership role advancing women’s rights worldwide.

This is an exceptionally broad area of endeavor that requires intense effort. But for the United Nations to have meaningful impact, it must not only prioritize advancing women’s rights; it must also develop outcome metrics that drive meaningful impacts in the field.

The challenge here is enormous. Consider, for example, how the United Nations has measured the “success” of its Women, Peace, and Security Agenda initiated by the adoption of Security Council Resolution 1325 in the year 2000.

This historic resolution focused on the need for women to play a crucial role in peacemaking and peacebuilding, as well as the need to end sexual violence in conflict.

Yet the Secretary-General’s annual reports to the Security Council have focused on reporting success as processes, not outcomes. It was reported as

consequential that, last year, all the dozen United Nations mediation support teams included at least one woman (regardless of whether the person was leading the team or was the lowest-level note taker), and that among 63 resolutions adopted by the Security Council, 38 (60 percent) contained references to women.

The kinds of things that should matter here are whether the engagement of the United Nations has led to tangible outcomes. These could most obviously include having more highly-qualified women at the negotiating table representing warring parties who have integrated these issues into peace agreements; reducing the numbers of rapes in armed conflict; sanctioning individuals and groups for using rape as a weapon of war; and increasing the number of perpetrators successfully prosecuted for such violations.

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rights, claims of success are illusory. There are numerous areas in which the United Nations could build in its strong rhetoric to undertake more meaningful action. These include focusing more resources to advance girls' education, training emerging women political leaders in conflict zones, or implementing a global campaign to end child marriage.

But for all the churn of discussions within the UN around women's rights—and despite various entities effectively providing women and girls with essential services—the impact of the Organization's work in promoting and protecting the human rights of women is highly limited.

THE WAY FORWARD

The challenges facing the world today are unprecedented in human history, and require extraordinary multilateral cooperation. Just as the United Nations must be renewed and realigned to address the toughest problems of the twenty-first century, so too must it return to the purposes for which it was founded as it elects its ninth Secretary-General this fall.

When thinking about issues like sustainable development, climate change,

and questions of peace and security, it is easy to become lost in the complexity. Yet the UN Charter begins with an affirmative statement, that the peoples of the

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world were not merely assembling to save succeeding generations from the “scourge of war,” but were equally there to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

While the United Nations seeks to advance grand purposes

at a global level, both the Organization itself and its Member States can make everyday choices to promote and protect human rights, or choose to ignore individual and collective cries for help.

Although extraordinary laws, mechanisms, and tools are now available, too often inaction has been the easiest response to human suffering. It is time for the United Nations to build out a human rights protection system that comes substantially closer to meeting the extraordinary global need for assistance. There is no doubt it will be difficult, and will require enormous perseverance. But as Nelson Mandela said, “it always seems impossible until it is done.” ●