

HUMAN RIGHTS IN NEW MILLENNIUM

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Before trying to address the current state of human rights, it is worth considering what is admitted into that sacred canon. The question constantly arises, quite concretely. For example, 10 days ago, on the International Day for the Eradication of Poverty, when Amnesty International declared that “Poverty is the world’s worst human rights crisis.” Or two days before that, on World Food Day, when the UN food agency reported that the number of people going hungry rose to over 1 billion, while rich countries sharply cut back food aid because of the priority of bailing out banks, and Oxfam reported that 16,000 children are dying a day from hunger-related causes – that is twice Rwanda-level killing just among children, not for 100 days, but every day, and increasing. And the issues regularly arise even in the richest country in the world, where the question of whether health care is a human right is being hotly debated while some 45,000 people die a year from lack of insurance, unknown numbers from utterly inadequate insurance, in the only industrial society I know of where health care is rationed by wealth, not need.

It is all too easy to add examples. In all these cases, the lives could be saved by a tiny fraction of the GDP of the rich countries, so the question is whether they recognize the right to life as among human rights.

There is a gold standard on human rights: the founding documents of the UN: the Charter and the Universal Declaration of Human rights. The charter guarantees the right to be protected from what was declared at Nuremberg to be the “supreme international crime,” differing from other war crimes in that encompasses all the evil that follows: the crime of aggression, which is reasonably well-defined. In practice, the Charter has long ago been revoked. Article 2(4) is in the wastebasket. There are sophisticated arguments in the international law literature to show that it doesn’t mean what it says – when we carry out aggression, that is: no such questions arise when Russia or Saddam Hussein do.

The US has been, in large measure, the global sovereign since World War II, and remains so despite the increasing diversity of the global economy in past decades. Hence its practices are of great significance in considering the prospects for human rights. It is, for example,, of great significance that the US is self-exempted from international law: John F. Kennedy’s armed attack against South Vietnam in 1962, to mention one case of no slight import that took place in

¹ Audio/video recordings available at <http://www.lse.ac.uk/collections/humanRights/events/Chomsky.htm>

the real world, but not in official history, opening the most severe crimes of aggression since World War II.

Sometimes there have been candid explanations of the reasons for the US exemption from international law. One instructive case was during the US war against Nicaragua in the '80s – which, incidentally, falls quite precisely under “aggression” as defined at Nuremberg. As you know, Nicaragua brought a case against the US to the ICJ. The case was presented by Abram Chayes, a distinguished Harvard University law professor and former legal adviser to the State Department. Most of his case was rejected by the Court on the grounds that in accepting ICJ jurisdiction in 1946, the US had entered a reservation excluding itself from prosecution under multilateral treaties, among them the UN and OAS Charters. The Court therefore restricted its deliberations to customary international law and a bilateral US-Nicaragua treaty. Even on these very narrow grounds, the Court charged Washington with “unlawful use of force” – in informal usage, international terrorism – and ordered it to terminate the crimes and pay substantial reparations, which would have gone far beyond paying off the huge debt that was strangling Nicaragua. The US dismissed the judgment, then vetoed two Security Council resolutions supporting it and calling on states to observe international law. It was helped by Britain, which abstained.

Congress at once passed bipartisan legislation to escalate the war. The Court was dismissed as a “hostile forum” (NY Times editors), much as the US and Israel now dismiss the UN generally as biased and hostile, because it does not always follow orders.

The Court decision went further. It prohibited any form of intervention that interferes with the right of “choice of a political, economic, social and cultural system, and the formulation of policy.” The judgment applies to many other crimes, among them the US assault against Cuba for 50 years, including extensive and acknowledged international terrorism and savage economic warfare.

US rejection of the Court decision in the Nicaraguan case was explained by State Department legal advisor Abram Sofaer, now George Shultz Senior Fellow in Foreign Policy and National Security Affairs at the Hoover Institute, whose publications tell us that “Reagan’s spirit seems to stride over the country, watching us like a warm and friendly ghost,” the kind of words rarely heard outside of Pyongyang, and in this case Stanford University (though they are not alone in worship of the deity).

Sofaer explained that the majority of the world “often opposes the United States on important international questions,” so that we must “reserve to ourselves the power to determine” which matters fall “essentially within the domestic jurisdiction of the United States, as determined by the United States” -- in this case, international terrorism that practically destroyed the targeted country. Honest, and accurate. His explanation, and much else like it, merits more attention than it receives – that is, more than virtually zero.

There is not much point going on about the self-exemption of the powerful from international law, because it is too obvious to those who are willing to look. Let us turn then to the second of the founding UN documents, the UD.

The rights I referred to earlier fall under socioeconomic rights, Article 25. But that Article too is in the wastebasket. One leading academic specialist on these matters, Philip Alston, writes that after a brief detour caused by popular pressure in the 1970s, US human rights policy returned under Reagan to “the unqualified rejection of economic, social, and cultural ‘rights’ as rights” – that means unqualified rejection of two-thirds of the UD. It should be stressed that these provisions have exactly the same status as others. That has not been in question, at least in the international arena, since the UD was approved in 1948. It was emphasized again at the 2005 UN World Summit. Washington formally agreed, while rejecting the principle, under the usual veil of silence.

There have been some open expressions of utter contempt for the guarantees of socioeconomic rights. A case in point is Soviet UN Ambassador Andrei Vyshinsky, who dismissed them as just a “collection of pious phrases.” He was joined by US Ambassador Jeane Kirkpatrick, recently honored by Condoleezza Rice as one of the stellar figures of American diplomacy. For Kirkpatrick, the socioeconomic provisions of the UD are “a letter to Santa Claus... Neither nature, experience, nor probability informs these lists of ‘entitlements,’ which are subject to no constraints except those of the mind and appetite of their authors.”

The same stand was elaborated by Paula Dobriansky, Undersecretary of State for Global Affairs under Bush II, Assistant Secretary of State for Human Rights and Human Affairs in the Reagan and Bush I administrations. In the latter capacity, she took pains to dispel what she called “myths” about human rights, the most salient being the myth that so-called “‘economic and social rights’ constitute human rights.” She denounced the efforts to obfuscate human rights discourse by introducing these spurious rights -- which are entrenched in the UD, formulated at US initiative, but explicitly rejected by Washington, not alone of course.

Essentially the same view was expressed in 1990 by the US Representative to the UN Commission on Human Rights, Ambassador Morris Abram, explaining Washington’s solitary veto of the UN resolution on the Right to Development, which virtually repeated the socioeconomic provisions of the UD. These are not rights, Abram instructed the Commission. They yield conclusions that “seem preposterous.” Such ideas are “little more than an empty vessel into which vague hopes and inchoate expectations can be poured,” and even a “dangerous incitement.” The fundamental error of the proposed “right to development” is that it takes Article 25 of the UD to mean what it clearly states, not as a mere “letter to Santa Claus.”

US practice conforms to these principles. The US scarcely ever even ratifies enabling conventions that put some teeth into the letter from Santa Claus. One example is the Convention on the Rights of the Child. It has been ratified by all countries other than the US and Somalia – which has no functioning government. Or the International Covenant on Civil and Political Rights, “the leading treaty for the protection” of the subcategory of rights that the

West claims to uphold, to quote Human Rights Watch and the American Civil Liberties Union, in a joint report on US noncompliance with its provisions. Incidentally, that was in the halcyon days before George W. Bush poisoned the pure well. The Covenant was ratified, after a long delay, but only with provisions to render it inapplicable to the US. Ratification was “an empty act for Americans,” the report concludes.

That is a considerable understatement. The few conventions that Washington ratifies are accompanied by reservations rendering them inapplicable to the US. That includes, among others, the Genocide Convention. A few years ago the US appealed to that reservation in exempting itself from Yugoslavia’s case against NATO. The Court agreed, correctly: the US reserves the right to commit genocide, as was reported, but with no comment.

Another example is UN Convention Against Torture, the topic of considerable recent discussion. The rulings of Bush’s Justice department were bitterly condemned, with laments that under Bush “we have lost our way.” But few asked what way we had lost. Torture has been routine practice from the early days of the conquest of the national territory, and then beyond, as imperial ventures extended to the Philippines, Haiti, and elsewhere. And of course torture was among the least of the many crimes that have darkened US history, much as in the case of other great powers. Accordingly, it was surprising to see the reactions even by some of the most eloquent and forthright critics of Bush malfeasance: for example, that we used to be “a nation of moral ideals” and never before Bush “have our leaders so utterly betrayed everything our nation stands for” (Paul Krugman). To say the least, that common view reflects a rather slanted version of history.

Furthermore, it is far from clear that the Bush Justice Dept violated US law. That was pointed out by legal scholar Sanford Levinson, who observed that there is a legal basis for rulings authorizing torture. Washington did ratify the anti-torture Convention, but only after the Senate provided what Levinson calls a more “interrogator-friendly” definition of torture than in the Convention, a version used by the President’s legal advisers in justifying the practices in Guantánamo, Iraq, and Afghanistan, and who knows where else, not to speak of unknown numbers sent by “rendition” to countries where torture is virtually guaranteed – practices extended under Obama, along with other severe Bush administration violations of elementary human rights, like denial of habeas corpus. In this case, the matter is still in the courts, where Obama is appealing a decision by a hardline Bush appointee, who held that the Supreme Court ruling on Guantánamo applies also to the US prison at Bagram airbase in Afghanistan. Obama’s Justice Dept maintains that the US Government must be authorized to kidnap people anywhere in the world and send them into its secret prison systems without charges or rights, perhaps an indication of the prospects for human rights in the new millennium.

Fuller significant facts about torture are discussed by historian Alfred McCoy, the author of some of the most important works on the history of torture. McCoy points out that the highly sophisticated CIA torture paradigm developed in the 1950s keeps primarily to mental torture, not crude physical torture, which is considered less effective in turning people into pliant vegetables. The CIA was basing itself on the “KGB’s most devastating torture technique” and recent experimental work,

McCoy writes. He reviews how the Reagan administration revised the UN Torture Convention “with four detailed diplomatic ‘reservations’ focused on just one word in the convention’s 26-printed pages,” the word “mental.” These reservations re-defined torture to exclude the techniques refined by the CIA and applied worldwide. When Clinton sent the UN Convention to Congress for ratification in 1994, he included the Reagan reservations. The President and Congress therefore exempted the core of the CIA torture paradigm from the US interpretation of the Torture Convention; and those reservations, McCoy observes, were “reproduced verbatim in domestic legislation enacted to give legal force to the UN Convention.” That, he says, is the “political land mine” that “detonated with such phenomenal force” in the Abu Ghraib scandal and in the shameful Military Commissions act that was passed with bipartisan support in 2006 – and has been renewed by Obama, in slightly different form.

So protection from torture goes the way of socioeconomic and cultural rights: it does not enter into the human rights canon.

There are other revealing examples. To select one instructive case, for 60 years the US has failed to ratify the core principle of international labor law, which guarantees freedom of association. Legal analysts call it “the untouchable treaty in American politics,” and observe that there has never even been any debate about the matter. This is particularly striking alongside of the intense dedication to enforcement of rights of corporations, as in safeguarding monopoly pricing rights of unprecedented scale, a core element of the highly protectionist World Trade Organization system.

Such contrasts lead to situations that are highly revealing about the prospects for human rights. Right now, the two American political parties are competing to see which can uphold more fervently its dedication to the sadistic doctrine that undocumented immigrants must be denied health care. Their stand is consistent with the legal principle, established by the Supreme Court, that these creatures are not “persons” under the law, hence are not entitled to the rights granted to persons. And at the very same moment, the Court is considering the question of whether corporations should be permitted to purchase elections openly instead of doing so only in more indirect ways – a complex constitutional matter, because the courts have determined that unlike undocumented immigrants, corporations are real persons under the law, and in fact have rights far beyond those of persons of flesh and blood, including rights granted by the mislabelled “free trade agreements.” These revealing coincidences elicit no comment. The law is indeed a solemn and majestic affair.

I do not want to suggest that nothing has improved with regard to concern for human rights. A significant HR culture has developed among the general population, and that has had consequences that governments and other power systems have been unable to ignore completely, a very important matter.

Let's turn to the interesting question of how official doctrines have evolved since the collapse of the USSR. Prior to that, there was a reflexive justification for any act of violence: forceful intervention, subversion, sabotage, terror and other prima facie violations of international law and human rights. The Russians are coming, period. But with the fall of the Berlin wall, now being commemorated, that option was gone. The Bush I administration responded immediately with a National Security Strategy and a military ("defense") budget, which announced that nothing was about to change. Therefore, a new pretext would be needed – and as if by magic, one was provided by the intellectual community. The 1990s were declared to be the opening of a new era in the West, dedicated to the "emerging norm of humanitarian intervention." The new era was accompanied by an impressive chorus of self-glorification, which may have no counterpart in intellectual history. It peaked as the US-UK prepared to bomb Serbia, an attack featured in Western discourse as the jewel in the crown of the "emerging norm," when the US was at the "height of its glory," in a "noble phase" of its foreign policy with a "saintly glow," acting from "altruism alone" in leading the "enlightened states" on their missions of mercy, led by the "idealistic New World bent on ending inhumanity," opening a new page of history by acting on "principles and values" alone for the first time -- to cite just a few of the accolades by eminent Western intellectuals.

There were a few difficulties confronting the flattering self-image that was constructed with such enthusiasm. One problem was that the traditional victims of Western intervention vigorously objected. The meeting of the South Summit of 133 states, convened in April 2000, issued a declaration, surely with the bombing of Serbia in mind, rejecting "the so-called 'right' of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law." The wording reaffirms the UN Declaration on Friendly Relations of 1970. The wording was repeated in later years, among other occasions at the Ministerial Meeting of the Non-aligned Movement in Malaysia in 2006, again representing the traditional victims in Asia, Africa, Latin America, and the Arab world. The same conclusion was drawn in 2004 by the high-level UN Panel on Threats, Challenges and Change, with prominent Western figures participating. The Panel adopted the view of the ICJ and the Non-aligned Movement, concluding that "Article 51 [of the Charter] needs neither extension nor restriction of its long-understood scope." The Panel added that "For those impatient with such a response," which of course bars the jewel in the crown and many other current acts of Western violence, "the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of nonintervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all" – which is, of course, unthinkable. The same position was adopted by the UN World Summit a year later, again affirming the unchanging position of the Global South, the traditional victims.

Evidently, "humanitarian intervention" wouldn't quite do, though it lingers. Something else was needed, and Lo and Behold, a new doctrine emerged, just in time: "Responsibility to Protect," familiarly known as R2P, now the topic of a substantial literature, many

conferences, new organizations and journals, and much praise. The praise is justified, at least in one respect. We may recall Gandhi's response to the question of what he thought about Western Civilization. He's alleged to have said "It would be a good idea." And the same holds of R2P. It would be a good idea.

On that much everyone should agree. But then the usual problems arise. Just what is R2P, and when does it apply?

On the first question – what is R2P? -- there are two versions, commonly conflated, though they differ radically. One is the position of the Global South, formulated in the 2005 UN World Summit. A very different position is articulated in the founding document of R2P, the Report of the International Commission on Intervention and State Sovereignty on Responsibility to Protect, of which the leading figure and spokesperson is Australia's Gareth Evans.

It is important to distinguish these two radically different conceptions. The World Summit basically reiterated positions already adopted by the UN, at most focusing more sharply on certain components of them. The Summit reiterates the stand of the South and the High Level Panel that forceful action can only be carried out under Security Council authorization, though it allowed an exception for states of the African Union, granted a qualified right of intervention within the AU itself. If that exception were generalized, the consequences would be interesting. For example, Latin American countries would be authorized to carry out large scale terror in the US to protect victims of US violence in the hemisphere. The conclusion that is immediate, but never drawn, oddly. We can therefore put the AU exception aside, though it is commonly adduced by proponents of R2P to show that it is not an instrument of imperialism, but rather is rooted in the South – as it is, in the World Summit version of R2P.

The crucial paragraphs of the Summit declaration, all agree, are 138 and 139. Their provisions had not been seriously contested, and in fact had been affirmed and implemented, specifically with regard to apartheid South Africa. Furthermore, the Security Council had already determined that it can even use force under Chapter VII to end massive human rights abuses, civil war, and violation of civil liberties: Resolutions 925, 929, 940, mid-1994. And as analysts have rightly observed, "most states are signatories to conventions that legally oblige them to respect the human rights of their citizens," as resolved again by the Summit declaration. It is therefore not at all surprising that the General Assembly adopted the Summit declaration, while the sharp North-South split on "the so-called 'right' of humanitarian intervention" persisted without change.

The second version of R2P, in the Evans Report, differs fundamentally from the Summit declaration. In its crucial paragraph, the Commission considers the situation in which "the Security Council rejects a proposal or fails to deal with it in a reasonable time." In that case, the Report authorizes "action within area of jurisdiction by regional or sub-regional

organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.”

This paragraph is plainly intended to apply retrospectively to the bombing of Serbia, just what was forcefully rejected by the global South and the World Summit version of R2P. This provision of the Evans commission effectively authorizes the powerful to use force at will. The reason is clear: the powerful unilaterally determine their own “area of jurisdiction.” The OAS and AU cannot do so, but NATO can, and does. NATO unilaterally determined that its “area of jurisdiction” includes the Balkans – but, interestingly, not NATO itself, where shocking crimes were committed against Kurds in southeastern Turkey through the 1990s, all off the agenda because of the decisive military support for them by the leader of the Free World, peaking in the very year when it was praised for the “noble phase” of its foreign policy with “a saintly glow”; and of course with the aid of other NATO powers. NATO later determined that its “area of jurisdiction” extends to Afghanistan. And well beyond. Secretary-General Jaap de Hoop Scheffer informed a NATO meeting in 2007 that “NATO troops have to guard pipelines that transport oil and gas that is directed for the West,” and more generally have to protect sea routes used by tankers and other “crucial infrastructure” of the energy system. The expansive rights accorded by the Evans Commission are in practice restricted to NATO alone, radically violating the principles adopted by the World Summit. They explicitly open the door wide for resort to R2P as a weapon of imperial intervention at will.

Let’s turn to the second question: how is R2P applied in practice? The answer will surprise no one who has the slightest familiarity with history, or elementary understanding of the structure of power. I will not run through the highly selective application, but consider just a few examples. There is no thought of devoting pennies to protect the huge numbers dying from hunger and lack of health care, or deprivation of other “rights” that are dismissed as “myths” and “dangerous incitement” by Washington. Protected populations are also barred from protection, among them the victims of US-Israeli attack in Gaza, who are protected persons under the Geneva conventions. Those who are the direct responsibility of the Security Council also are unable to appeal to R2P, for example, Iraqis subjected to murderous sanctions under the saintly glow of Clinton’s policies, and Blair’s, sanctions that were condemned as genocidal by the administrators of the UN programs, the respected international diplomats Denis Halliday and Hans von Sponeck, both of whom resigned in protest for that reason. Or the victims of the worst massacres of recent years, in the Eastern Congo, where only the ultra-cynical might suspect that the neglect has something to do with the fact that the worst offender is US ally Rwanda, and that multinationals are making a mint from robbing the region’s rich mineral resources with the crucial aid of the militias tearing the place to shreds. And on, and on, just as the rational would expect.

There is also a lot to say about the jewel in the crown, Kosovo, but in England that (and the Balkans generally) is a matter of fanatic religious doctrine, much more extreme than evoked by Israel in the US, so one cannot talk about it without a lot of time and a full apparatus of

footnotes, and even that only evokes impressive tantrums, an interesting story that I'll put aside.

R2P is rather like "democracy promotion." The leading scholar/advocate of this cause, neo-Reaganite Thomas Carothers, ruefully concludes from his careful inquiries that the US promotes democracy if and only if that stance conforms to strategic and economic interests, a pattern that runs through all administrations. Leaders are "schizophrenic," he concludes with puzzlement. Critics sometimes speak of "double standards."

But there is no puzzle, and there is a single standard. The standard was described accurately enough by Adam Smith, speaking of England in his day, where the "merchants and manufacturers" were the "principal architects" of policy and made sure that their own interests "have been most peculiarly attended to," however "grievous" the effect on others, including the people of England, but much more so the victims of "the savage injustice of the Europeans," particularly the victims of England in India, his prime concern. Much has changed since his day, but the principle remains.

There was great indignation last summer when General Assembly President Miguel D'Escoto called a session devoted to R2P. The London *Economist* warned of the danger that "An angry, inconclusive General Assembly debate" might undermine this "idealistic effort to establish a new humanitarian principle," now "coming under attack at the United Nations" – an attack that the journal conjured up: as I mentioned, virtually no one opposes R2P in the form adopted at the World Summit, though there is very good reason to oppose the Evans Commission version and the selective application of the Summit declaration. The *Economist* editors were encouraged, however, that the angry opponents they invented (of whom I was one, incidentally) would at least be countered by one panel member, "Gareth Evans, a former Australian foreign minister and roving global troubleshooter, [who] makes a bold but passionate claim on behalf of a three-word expression which (in quite large part thanks to his efforts) now belongs to the language of diplomacy: the 'responsibility to protect'." Their ode to Evans is accompanied by a picture showing him with his hand on his face, grieving that his bold and passionate claim is coming under threat: the subtitle reads: "a lifelong passion to protect."

The journal chose not to run a different picture, from about the same time, which sheds some light on this lifelong passion. It shows Evans with his Indonesian counterpart Ali Alatas, joyously celebrating the Treaty they had just signed granting Australia the right to rob the oil resources of what the Treaty calls "the Indonesian Province of East Timor." The Treaty offered nothing to the remnants who survived the Western-backed onslaught on East Timor. It is furthermore "the only legal agreement anywhere in the world that effectively recognizes Indonesia's right to rule East Timor," the Australian press reported.

The Evans-Alatas picture is familiar among those who happen to see a problem when their own countries provide the decisive support for aggression that led to one of the worst slaughters of the modern period, continuing right through the chorus of self-congratulation

in 1999 at a level beyond Kosovo before the NATO bombing, and of course the past record far exceeded the atrocities of the Balkans. It is an uncomfortable topic, so the factual record is best avoided, or denied, as is regularly done, sometimes in remarkable ways that I will not review.

The journal's choice of a photograph should come as no surprise. 20 years earlier, when the basic facts of the near-genocidal slaughter carried out with US-UK support were well-known, the editors described the great mass murderer and torturer Suharto as "at heart benign" -- towards foreign investors, at least -- while denouncing the "propagandists for the guerrillas" in East Timor and Irian Jaya with their "talk of the army's savagery and use of torture," including the Church in East Timor, thousands of refugees in Australia and Portugal, Western diplomats and journalists who had chosen to see, the most respected international human rights monitors, and more recently a UN-backed truth commission, all "propagandists" rather than intrepid champions of human rights -- because they had quite the wrong story to tell. And who could be a more noble and passionate supporter of R2P than the person who celebrated his achievement of granting Australia the rights to the sole resources of the territory brutalized with Australian support, while explaining that it matters little, because "the world is a pretty unfair place, littered with examples of acquisition by force." True enough, a matter that appears to be of slight concern to the advocates of selective R2P, and also to the Western intellectuals who feign great indignation at the other fellow's crimes, while easily condoning or denying their own, updating a leading theme of the inglorious history of intellectuals from the earliest records.

What then are the hopes for human rights in the new millennium? I think the answer is the one that reverberates through history, including recent years. It is not a law of nature that we have to subordinate ourselves to the violence and deceit of the "principal architects" of policy and the doctrinal manipulation of the servants of power. As in the past, an aroused and organized public can carve out space for authentic concern for human rights, including R2P -- today, more easily than ever, because we can benefit from the legacy of past struggles and their achievements.