

97. Elizabeth Ferris, "Humanitarian Politics: Cross-Border Operations in the Horn of Africa," paper prepared for the International Studies Association annual meeting, Acapulco, Mexico, 1993, 3.

98. There is a vast literature on humanitarian intervention. Two scholarly treatments are Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000); and Robert Keohane and J. L. Holgrete, eds., *Humanitarian Intervention* (Cambridge: Cambridge University Press, 2003).

99. See Thomas G. Weiss, "Principles, Politics, and Humanitarian Action," *Ethics and International Affairs* 13 (1999): 1-22; as well as "Responses" by Cornelio Sommaruga, Jodie Tanguy, Fiona Terry, and David Rieff on 23-42.

100. Michael Barnett, "Humanitarianism Transformed," *Perspectives on Politics* 3, no. 4 (2005): 724.

101. For more extensive discussions of this landscape, see Michael Maren, *The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity* (New York: Free Press, 1997); and Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997). This debate was initiated by Alex de Waal and Rakaya Omar, *Humanitarian Unborn? Current Dilemmas Facing Multi-Mandate Relief Operations in Political Emergencies* (London: African Rights, 1994). Discussion Paper no. 5. For a discussion of the disarray among humanitarians, see for example, John Borton, "The State of the International Humanitarian System," *Overseas Development Institute Briefing Paper* no. 1 (March 1998); Myron Wiener, "The Clash of Norms: Dilemmas in Refugee Policies," *Journal of Refugee Studies* 11, no. 4 (1998): 1-21; and Mark Duffield, "NGO Relief in War Zones: Toward an Analysis of the New Aid Paradigm," in *Beyond UN Subcontracting: Task-Sharing with Regional Security Arrangements and Service-Providing NGOs*, ed. Thomas G. Weiss (London: Macmillan, 1998), 139-159. For a look at the political economy of conflict, see, for example, Mark Duffield, "The Political Economy of Internal War: Asset Transfer and the Internationalisation of Public Welfare in the Horn of Africa," in *War and Hunger: Rethinking International Responses to Complex Emergencies*, ed. Joanna Macrae and Anthony Zwi (London: Zed Books, 1994), 5-69; David Keen, *The Economic Functions of Violence in Civil Wars* (Oxford: Oxford University Press, 1998), Adelphi Paper 320; and François Jean and Christophe Rufin, eds., *Economies des guerres civiles* (Paris: Hachette, 1996).

102. See Adam Roberts, "Implementation of the Laws of War in Late 20th Century Conflicts," *Paris 1, 2, Security Dialogue* 29, nos. 2 and 3 (1998): 137-150 and 265-280; and a special issue on "Humanitarian Debate: Law, Policy, Action," *International Review of the Red Cross* 81, no. 833 (1999).

103. David Rieff, "The Death of a Good Idea," *Newsweek*, May 10, 1999, 65. However, Rieff seems to have changed his mind in several ways in *A Bad for the Night: Humanitarianism in Crisis* (New York: Simon and Schuster, 2002).

104. David Rieff, "Humanitarianism in Crisis," *Foreign Affairs* 81, no. 6 (2002): 111-121.

105. Roberts, "The Role of Humanitarian Issues in International Politics in the 1990s," 19.

106. Michael Ignatieff, "Human Rights: The Middle Crisis," *New York Review of Books* 46, no. 9 (1999): 58.

107. Thomas G. Weiss, "Collective Spinelessness: U.N. Actions in the Former Yugoslavia," in *The World and Yugoslavia's Wars*, ed. Richard H. Ullman (New York: Council on Foreign Relations, 1996), 59-96.

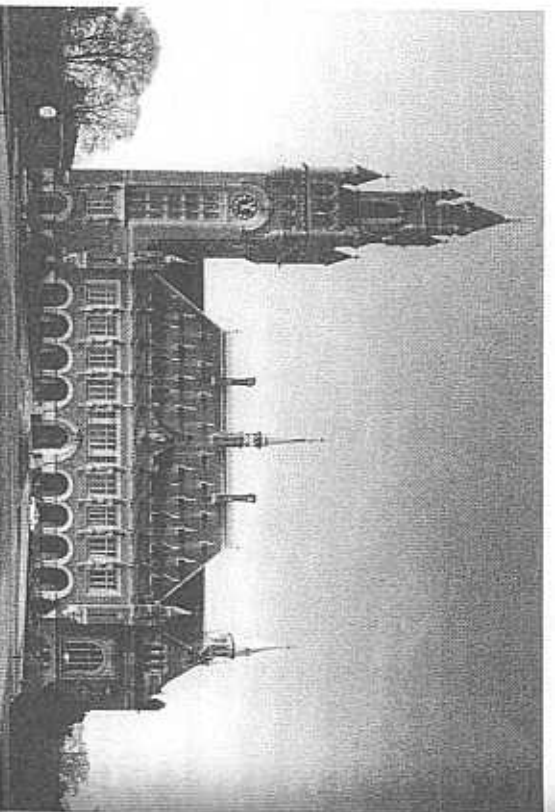
CHAPTER 7

Change, the United Nations, and Human Rights

AS SHOULD BE clear by now, the phrase "the United Nations" refers more to a framework, a stage, or an institutional setting than to an organization with the capacity for independent action. Although some people, such as those in the office of the Secretary-General, can take relatively independent action, "the UN" mostly refers to a process in which the most important policy decisions are made by governments representing territorial states. Fundamentally, "the UN" has become involved in changing policies toward human rights as states have changed their policies. But other actors have been important, too.¹

The promotion and protection of human rights has become one of the UN's more prominent activities. In the annual *United Nations Yearbook*, more pages are usually devoted to human rights, by far, than to any other subject matter. Those printed pages accurately reflect the attention given to UN diplomacy on human rights. However, problems continue relating to definition, implementation, and coordination. Below are several ideas to improve on the UN central role in promoting and protecting human rights through diplomacy:

- The Secretary-General or his representative should present an annual human rights report, similar to his annual report on the work of the organization, to the General Assembly each September in which he draws attention to the most important rights problems. The UN high commissioner for human rights already makes an annual report, but it does not receive the same attention as those from the Secretary-General.
- Treaty-monitoring bodies should be allowed to participate in the work of other UN bodies—for example, the Human Rights Council.
- UN programs of technical assistance and education for human rights should be greatly expanded in order to strengthen national institutions for rights protection and thus to head off major rights problems before they become international crises.



The Peace Palace, seat of the International Court of Justice. (UN/DPI Photo/A. Brizzi)

- The office of the Secretary-General, in conjunction with OHCHR and OCHA, should improve the UN's early-warning system to predict gross violations of internationally recognized human rights that are likely to lead to mass migration.
- A concerted effort should be made to integrate more extensively human rights considerations into development programs through the UNDP, World Bank, International Monetary Fund (IMF), and UN specialized agencies. Just as there is a new UN body on sustainable development, there should be a coordinating body on human rights in development. These efforts have been grouped under the rubric of "mainstreaming human rights," although change has been more rhetorical than real.
- Greater use should be made of preventive diplomacy, such as the systematic dispatch of UN human rights observers in situations of tension, both to deter rights violations and to provide timely reporting to New York.

These "doable" steps could be taken without waiting for a radical alteration in state attitudes. Nevertheless, a full revolution in UN action for human rights depends on further change in state foreign policies. But especially younger developing countries are very protective about any codification of norms encroaching on conventional notions of state sovereignty. And when it comes to its own sovereignty, the United States is as protective as states in the global South like India or Mexico. The modest reforms approved at the 2005 World Summit reflected this reality.



Press briefing by Louise Arbour, United Nations high commissioner for human rights. (UN Photo/Iskander Debebe)

MORE ON RAISONS D'ÉTAT

The meaning of national interest is not fixed.² "National interest," like "state sovereignty," is a social construct. Ideas about national interest are devised by humans in a process of change over time. For schools of thought like realism that emphasize the concept of national interest as a core component of international relations, the concept lacks precise and transcendent meaning. Whether human rights should be, or can be, linked to national interests is a matter of debate. Some say that ideas about human rights constitute intangible national interests. Many states increasingly have included human rights within the domain of state interests. This can be done for different reasons.

The delegations of some states have pursued human rights at the United Nations as a weapon in power struggles. The objective has been to delegitimize a certain government; the means has been to emphasize human rights violations. In the previous chapter we mentioned U.S. policy toward Cuba in the Commission on Human Rights.³

Some states have adopted a broad definition of their own self-interests. They seek not just territorial integrity, political independence, and other goals directly related to the narrow and expedient interests of the state. They also define their interests in terms of an international society in which human dignity is advanced by serious attention to human rights. Just as governments have defined their domestic interests beyond physical security and economic welfare, so have they used their foreign policies to advance human rights and humanitarian goals.

Some states have adopted a variation on this theme by arguing that the practice of human rights not only advances human dignity but also advances national security and peace. They cite, for example, the lack of major international wars between liberal democracies. Or they cite the need to deal with human rights violations to bring peace to countries like El Salvador or Bosnia. Some



The rubble of United Nations headquarters in Baghdad following a suicide bomber attack on August 19, 2003, that killed twenty-two, including the Secretary-General's special representative for Iraq, Sérgio Vieira de Mello. (UN/DPI Photo)

states may even lend support to international action on human rights not because they believe any of the arguments above but simply because they feel pressed or obligated to support such action.

For all of these reasons, states have brought about a legal and diplomatic revolution with regard to the treatment of human rights at the United Nations. The same process has occurred in such multilateral forums as the Council of Europe, the EU, the CSCE and OSCE, OAS, and to a lesser extent, the AU and the Arab League. Clearly the powerful liberal democracies have a human rights component to their foreign policies, inconsistent and with other defects, to be sure, and this affects the UN.

The link between human rights and *raison d'état* is at least sometimes a reflection of increasing moral solidarity in international society. That is, governmental authorities may speak in terms of their interests, but the deeper process may involve a moral stance on the dignity of persons without regard to nationality or borders. John Ruggie has shown that a concern to better the world is deeply ingrained in American culture and history and that this concern has often taken a multilateral form, including great attention to the United Nations, in the twentieth century.⁴ Edward Luck, however, has emphasized a fundamental ambivalence in American attitudes toward multilateralism.⁵ U.S. officials may speak of American strategic interests in a stable, democratic, and prosperous Europe, but the deeper driving force behind Washington's policy may be moral outrage at atrocities in the

Balkans. In Bosnia and other parts of the former Yugoslavia, U.S. policy was intertwined with various multilateral efforts, including those of the United Nations.

Moral and practical components of state foreign policy may also be sufficiently entangled as to be inseparable. The United States may be morally outraged at atrocities in the Balkans and at the same time may believe that self-interest dictates temporarily ignoring Serbian atrocities of ethnic cleansing. Not to oppose those human rights violations would be to encourage more atrocities. Not to act against atrocities might be to encourage refugee flight that could destabilize friendly states. Not to so act might entail loss of reputation, and thus some loss of soft power.

Whether state foreign policies are driven by practical or moral well-springs, or whether it is even possible to say what is expedience as compared to morality, the cumulative effect of the shifting and complex redefinition of national interests has been to internationalize human rights. State authorities in general consider human rights, even if within a state's territorial boundaries, to be a proper subject for international discussion. They often are willing to engage in a wide range of diplomatic activity to promote and also indirectly to protect those rights. At times states are even willing to engage in economic coercion in the name of rights, and more rarely they at least agree to some type of military action to guarantee such fundamental rights as the access by suffering civilians to international help.

States have not abandoned the principle of state sovereignty and the derivative notion of national interest. Any thought that we are moving toward a world community with easy consensus about the protection of human rights in complicated and difficult situations is exceedingly optimistic. Sovereignty is often used as a defense against UN action on human rights by different states on different issues at different times. The principle is especially favored by the authorities of weaker and younger developing countries that fear losing status and influence at the hands of more powerful states. Older, more powerful states like the United States are also not hesitant to trot out the tired slogans of state sovereignty when the international community of states, through some UN agency or the EU, questions American policy toward the treatment of terrorist suspects or the death penalty. Yet over time, the appeal to restrictive notions of state sovereignty and their use have weakened. As a result, UN organizations have expanded their diplomatic activity for human rights across and even within states; they also have occasionally resorted to economic and military sanctions in this area. The UN is now deeply involved on human rights issues to an extent completely unforeseen in 1945.

States have created UN standards and supervisory procedures that later restricted their operational sovereignty in the field of human rights. In legal theory, states are no longer free to treat even "their own" citizens as they wish. Internationally recognized human rights impose standards that are binding on governments. In political practice, governments may be pressured or coerced because of human rights violations. The process is far from consistent, systematic, reliable, and effective, but it is irreversible.

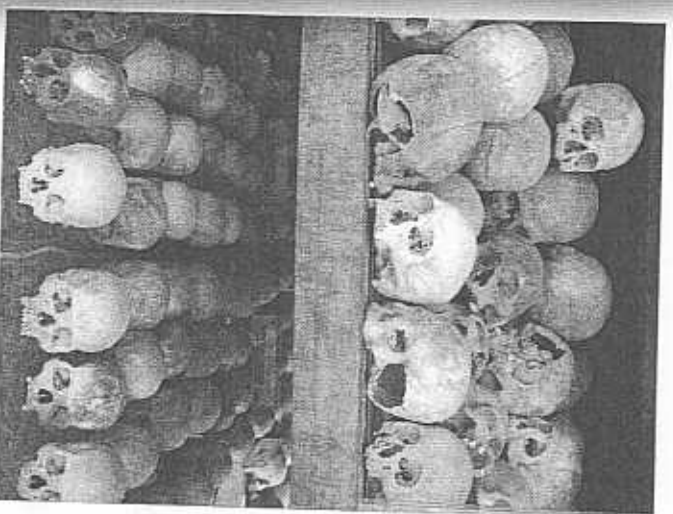
STATE COALITIONS

In multilateral organizations like the United Nations, many key decisions are taken by voting, so coalitions among states become important. During the early years of the UN, the Western coalition controlled proceedings in the General Assembly and the CHR. The International Bill of Rights was effectively negotiated between 1948 and 1956, and this was an important step in the promotion of internationally recognized human rights. Western states pushed for the Universal Declaration of Human Rights and at least the negotiation of the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights. The communist coalition played the game of negotiating the treaties and accepting human rights in theory while opposing the implementation of many internationally recognized rights in practice. Yet beyond setting standards, few breakthroughs in UN diplomatic action for protecting human rights followed.

Perhaps most important, Washington exercised little constructive leadership on human rights at the United Nations for several decades after about 1948.⁵ The United States was a dominant power and, to some states, a hegemonic power on security and economic issues. But it was neither dominant nor hegemonic on human rights. Human rights issues were a sensitive topic in the United States both because of legally sanctioned racial discrimination and because some members of Congress feared a more powerful executive through the treaty process. So from Dwight D. Eisenhower to Jimmy Carter, no president asked the Senate for advice and consent on the two core UN human rights covenants.

Beyond the United States and the Western coalition of states, the admission of newly independent developing countries from 1955 and the acceleration of this pattern from 1960 drastically changed the voting on human rights at the United Nations. The dynamics were fueled by a dialectical process resulting in a new synthesis. Developing countries sought to use the language of human rights to pressure Israel and South Africa, and the West countered with efforts to broaden those rights-oriented maneuvers. Human rights NGOs helped fashion this North-South compromise. The result was a new diplomatic dynamism in UN attempts to protect certain human rights in certain countries. The Soviet coalition added its own emphases, particularly focusing on rights violations in Augusto Pinochet's Chile after the overthrow of Marxist president Salvador Allende.

This North-South interchange on human rights, with European communist states usually aligned with the South, accounted for many human rights developments at the United Nations from 1970 to 1985. For example, rhetorical interest was taken in a collective right to development after the newly independent states from the South gained membership to the UN General Assembly. This new alignment of states can also explain why efforts to protect human rights did not happen at the UN. The UN was unable to put diplomatic pressure on Idi Amin's brutal government in Uganda because of the shield provided by the solidarity of many states in the global South. A double standard emerged whereby



At the "Killing Fields" memorial near Phnom Penh, shelves filled with skulls testify to Cambodia's tragic past. (UN Photo 159733/J. Isaac)

discrimination by a black government against Asians and white Europeans was not of major concern in the General Assembly.

After the transition period of 1985–1991, during which European communism collapsed, the coalitions shifted. More democratic governments both in the General Assembly and on the CHR meant more attention to human rights and overall collaboration in the Security Council. Yet even democratic governments in the South like India and Mexico were not always enthusiastic about UN activities regarding protection of human rights. Several developing countries sought to block certain protective attempts by the CHR. We have already noted that established liberal democracies in the CHR had their own record of double standards and blind spots. Ambivalence on the part of developing countries about international action for human rights and humanitarian affairs was evident. They knew that their sovereignty was at issue. Most developing countries in the General Assembly refused to elevate a right to humanitarian assistance above the right of state sovereignty. Resolutions on this subject in the late 1980s and early 1990s were ambiguous and complex. Although reaffirming the principle of state sovereignty, resolution 46/182 indicated that parties in a "country" but not necessarily only the government of a state, might request international assistance. It also suggested that the consent of a state to international humanitarian action might be tacit. In practice, developing countries went along with the Security

Council's assertiveness in defeated Iraq after 1991 and in Somalia on behalf of outside action for human rights.

Beyond developing countries, some permanent members of the Security Council also were ambivalent or reluctant about international action for human rights and humanitarian affairs. Russia expressed open reservations about some of the policies being pursued against rights violations by governments in Iraq and Serbia. China did not support international action to protect human rights, but it abstained on most council resolutions rather than vetoing them. The United States usually protected Israel from any condemnation or sanction by the council with regard to its policies in the territories occupied after the 1967 war. The North-South conflict continues to limit UN efforts to protect human rights, and Russia and China regularly join developing countries in obstructing protective efforts.⁷ But we should recall that it was Western states like France and the United States that blocked UN intervention to stop the genocide in Rwanda in 1994. At the 1993 Vienna World Conference on Human Rights, most developing and formerly communist countries reaffirmed the idea of universal human rights. But since 1948 the central problem has not been the abstract codification of norms, but rather marshaling sufficient political will to deal with concrete violations of internationally recognized human rights.

NONSTATE ACTORS

States may be the official building blocks of the United Nations, but nonstate actors have been active and influential in human rights and humanitarian matters. Three types of nonstate actors are discussed here: NGOs, individual experts, and secretariat personnel. Precision is difficult when gauging the influence generated by NGOs on human rights matters. The most general problem is that their impact becomes intertwined with governmental and other influences, often making it impossible to say with precision where NGO influence leaves off and governmental influence begins. If Amnesty International lobbies for new standards and monitoring mechanisms concerning torture, and if states in the General Assembly finally approve these ideas in treaty form, it is difficult to pinpoint what has occurred because of Amnesty International's efforts and what has occurred because of governmental policy.⁸ The same analytical problem has been recognized in trying to chart the influence of interest groups in domestic politics by comparison to governmental officials. When one finds a transnational network active for human rights and containing both state and nonstate actors, as occurred in movements for the International Criminal Court and for a treaty banning anti-personnel land mines, it is difficult to specify the exact influence of the various actors.

Only a few genuine human rights NGOs are active on a transnational or international basis with a mandate linked to the International Bill of Rights: Amnesty International, the International Commission of Jurists, the International League for Human Rights, Human Rights Watch, Physicians for Human

Rights, Doctors Without Borders, and a few others. The ICRC comes close to meeting this definitional test, although its historical mandate is linked more to the treaties on the laws of war than to the International Bill of Rights. Other broadly oriented NGOs are active on human rights from time to time, but they are linked more to religion or some other normative standard than to the International Bill of Rights. An example is the World Council of Churches.

Moreover, some NGOs with narrower mandates take up particular human rights questions. They have more to do with a particular problem or nationality than with internationally recognized rights *per se*. Cultural Survival, for example, concentrates on indigenous peoples. Anti-Slavery International focuses on slavery, slave-like practices, and the slave trade. All sorts of nationally based or oriented groups take up particular causes while frequently ignoring the human rights situation in other nations.

All of these NGOs have been active on human rights issues at the United Nations. And they certainly have generated influence for the promotion and protection of human rights in the abstract. Their cumulative impact has been such that various states have opposed UN consultative status for some of the more assertive NGOs. In 1991 Cuba and some Arab states prevented Human Rights Watch, based in New York, from obtaining consultative status via ECOSOC. NGOs want to achieve that status because they gain the right to circulate documents and speak in UN meetings. During the Cold War several human rights NGOs were excluded from consultative status by communist and developing governments, a practice that continues. In 1995 Freedom House, based in New York, was temporarily denied consultative status by a coalition of states including democracies such as India and the Philippines. These states disliked the rating system and other reports authored by Freedom House. Had NGOs generated no influence, certain governments would unlikely try so hard to keep them out of UN proceedings.

Toward the end of 2005, it was evident that the government of Vladimir Putin in Russia was trying to obstruct the activities of a number of Western-based NGOs active on human rights in that country. Putin had adopted a variety of policies that reduced individual freedom, and his crackdown on human rights NGOs, both domestic and international, was part of that orientation. Had human rights NGOs generated no influence in Russia on behalf of the UN's International Bill of Human Rights, it is unlikely that Putin would have devoted so much effort to harassing them.

At the 1993 Vienna World Conference on Human Rights, the tensions between governments and human rights NGOs were evident. Some governments feared the influence that might be generated by NGOs, perhaps by releasing damaging information to the world press. At a UN International Conference on Human Rights in Teheran in 1968, NGOs had participated in the intergovernmental sessions. In Vienna in 1993, governments denied NGO participation in the official meetings but agreed to a separate NGO parallel conference. This formula was followed at the 1995 Beijing Fourth UN World Conference on Women,

and at the 2002 World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa. On human rights as on many other subjects, states feel they cannot completely suppress NGOs, but many states try to limit NGO influence.

As a separate matter, the ICRC is the only nonstate actor working for human rights and humanitarian affairs that has been granted observer status in the General Assembly; it also meets monthly with the president of the Security Council. This came about because of its close work with governments especially in situations of armed conflict and because of its reputation. The ICRC is a quasi-public actor, being explicitly recognized in international public law, such as the 1949 Geneva Conventions for armed conflict. But the ICRC follows a general policy of discretion and therefore does not normally reveal the details of what its delegates have observed inside states. Unlike Human Rights Watch and Amnesty International, for example, the ICRC does not normally rely on detailed public pressure to achieve its objectives. For all these reasons states were prepared to accord to the ICRC a status at the UN "higher" than other private or quasi-private agencies. The International Federation of Red Cross and Red Crescent Societies is also accorded observer status. It normally works in situations of natural and industrial/technological disasters, but it also works with refugees.

Large numbers of NGOs had consultative status and participated in meetings of the Commission on Human Rights. They submitted private complaints about a pattern of gross violations of human rights to the UN system. Their information is officially used in most of the monitoring agencies of the UN system such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, CERD, CEDAW, CAT, CRC, and others. Some NGOs have played influential roles behind the scenes in the adoption of General Assembly resolutions concerning human rights.

Just as private human rights groups have had an impact on national policies concerning human rights, so have NGOs had influence on UN proceedings. A formal UN vote or document, reflecting the policy of a majority of governments, may have started or been advanced by one or more NGOs. Clearly NGOs advanced the UN Declaration on Minorities and also the Declaration on Indigenous Peoples, although states voted for it. Some 1,000 NGOs attended the World Conference on Human Rights, conducting their own proceedings and engaging in the specific criticisms that state delegations at the conference agreed to avoid. Without doubt, certain NGOs were influential in the negotiation and adoption of the treaties banning antipersonnel land mines and creating the International Criminal Court.

Just as private groups have teamed with the U.S. Congress to improve human rights reporting by the Department of State,⁹ NGOs have teamed with interested governments to improve rights activity through the United Nations. Just as a group of secular and faith-based private groups pressured Congress to do more about the violation of religious freedom in the world, so these and other groups constantly pressure states at the UN to take action for human rights. If human rights NGOs

had been absent at the UN during its first half-century, it is unlikely that the world organization's record would be as good as it is. The record is not good enough in the view of these same NGOs, but some positive steps have been taken.¹⁰

Had those NGOs been absent, something would have been done on human rights nevertheless—not only because of states but because of secretariat personnel. John P. Humphrey of Canada, the first UN director-general of human rights, appears to have had some influence on the content of the Universal Declaration of Human Rights. Other secretariat personnel have advanced ideas or proposals that eventually were accepted by governments voting in UN bodies. Executive heads of UN agencies like UNICEF, WHO, and ILO have clearly taken action on their own for children's health care and for labor rights. All of this is apart from the human rights activity of the office of the Secretary-General itself. Moreover, the individual experts who have sat on the UN Sub-Commission on Protection of Minorities or who have been rapporteurs or other experts for the Commission on Human Rights have often nudged the process along. Most of the monitoring agencies created by treaty have been staffed by individuals acting in their personal capacity. Many have been truly independent from their governments as well as serious about and dedicated to human rights.

It is worth recalling Samantha Power's argument about how the genocide convention came into being.¹¹ She greatly credits the tireless effort of one private person, Ralph Lemkin. So in her view, widely shared, individuals can make a difference with regard to human rights over time. She also credits the individual efforts of U.S. senator William Proxmire for helping get the United States to accept that treaty.

THEORIES OF CHANGE

Can we develop a summary statement that clarifies the dynamics of activity on human rights at the UN? Can we theorize why this activity has been what it has been? And can we project what directions this activity will take in the future?

Two related views are relevant. The first focuses on the notion of knowledge. Ernst Haas argues that if private communities of knowledge come to an agreement on human rights, this agreement eventually will produce a policy consensus in the public sector.¹² When this public consensus emerges, the United Nations and other IGOs become empowered to take important action for human rights. This means complete change in the UN, not just partial change. For example, if most human rights groups could prove that civil and political rights were necessary for economic growth or that socioeconomic rights were necessary for stable democracy, that private agreement would eventually affect public policy through the UN and would lead to dramatic change.

The second and related view emphasizes learning. George Modelski returns to the ideas of Immanuel Kant to suggest that those who speak for states are in the process of learning a commitment to human rights, especially to the civil and political rights making up democracy.¹³ In this view, historical evolution shows

expanded learning of the benefits of democracy—whether in terms of human dignity or in terms of international peace.

If Haas's view is correct about the state of knowledge in epistemic communities, several generalizations emerge. First, if all or most private groups active on human rights agreed on particulars, this consensus of knowledge should eventually inform public policy in such a way that the United Nations would be mandated by governments to take more authoritative and effective action for human rights. We may be seeing a paradigm shift. Even the World Bank, which long sought to avoid the "political" matter of human rights, now says that economic growth should be pursued with attention to "good governance." The Bank and its supporters have concluded—at least for now—that at least some authoritarian models of economic growth do not work very well. In fact, good governance—rule of law, transparency, market-oriented policies—has essentially been defined as the opposite of what authoritarian Third World and Soviet bloc countries did in the 1960s, 1970s, and 1980s. Clearly, the new approaches have positive human rights dimensions.

Knowledge about human rights is not so much scientific knowledge, however, as moral judgment. Achieving widespread agreement on morality is far more difficult than on scientific knowledge. Even within one nation with a dominant culture, private groups differ over such human rights issues as abortion, the death penalty, health care, and adequate nutrition.

Getting private groups to agree that children are better off if vaccinated is not so difficult, as many do not disagree with a vaccination program. Opinion is based on irrefutable scientific knowledge. Getting private circles of opinion to agree that internationally recognized human rights should be applied in all cultures and situations is far more difficult. Not all medical experts agree that health care should be treated as a human right. Not all medical personnel agree that abortion should be legal. They may agree on the technical process of how to perform an abortion, for that is based on science. But they disagree on whether abortion should be legal, for that is based on moral judgment. Moral judgment is greatly affected by varieties of opinion because moral argument cannot be proved or disproved.

Not everyone will always, everywhere be better off if rights are applied. If repressive governments allow the practice of civil and political rights, many of them, if not most, will lose power. This may usher in a period of disorder and economic decline. The former Soviet Union is a clear example, at least in the short run. In repressive China, many persons have been advancing economically, since macroeconomic growth as stimulated by an expanding private sector was around 10 percent per year in the early 1990s. In private circles of opinion, many do not believe that rights, especially political rights, would do anything but interrupt this beneficial process in China. Spectacular economic growth has been achieved in Singapore since the 1970s, but without full civil and political rights. Important religious circles in Islamic nations believe freedom of religion and gender equality would hurt society.

Even actors that generally seek to protect rights do not insist on the application of rights in every situation. Many Western private groups do not press the issue of

the practice of human rights in Saudi Arabia. They also defer to a military coup in Algeria that prevented the election of a fundamentalist Islamic party. Some of these groups believe on moral grounds that Western access to oil or blocking fundamentalist Islam justifies repressive governments. We know for sure that elections in places such as Sri Lanka have led to illiberal governments that discriminate against minorities and commit other rights violations. So a commitment to human rights such as democratic political participation is less a matter of scientific proof of inherent progress and more a matter of moral and political choice in context.

Beyond the important distinction between scientific and moral knowledge in private networks, the public policy consensus across all governments at the UN concerning human rights is incomplete. The formal consensus is broad, but the real consensus is weak. In other words, human rights treaties are widely accepted in law and widely violated in practice. Learning of "correct" policies has been more formal than substantive.

As long as actual consensus remains weak, human rights activity will not lead to systematic and authoritative protection by the United Nations. New and potentially important steps may happen spasmodically, but these steps will fall short of full change leading to systematic and effective protection. Inconsistency is the hallmark of international organization. The Security Council may authorize humanitarian intervention in Somalia, but at roughly the same time it will fail to sponsor decisive action in similar situations in Liberia or Sudan, much less Rwanda and Burundi. The council may set the stage for the use of force in Iraq, at least partially in the name of persecuted civilians, but it will be lethargic about similarly appalling conditions in the Democratic Republic of the Congo. Greater legal authority and financial resources were not provided to the CHR and have not been transferred to the OHCHR. It is unlikely that the new Human Rights Council will be any different.

Knowledge, Learning, and Courts

The issue of the UN and international courts provides a good test of the Haas theory of change, linked to knowledge, and the Modelski theory of change, linked to learning.¹⁴ Under the Modelski theory the question is raised whether states, acting through the UN, have shown a propensity to learn that international relations must be governed by a humane rule of law. Are states learning that they will be more secure, and their citizens better off, if there is either a permanent UN criminal court or a series of ad hoc criminal courts to deal with particular situations? To use semantics from the Haas theory, have private groups used their knowledge to push states into agreement on the demonstrable truth that just as all national societies have institutionalized procedures for criminal cases, so international relations should, too? Or are states just muddling through on this issue with incomplete agreement leading to the piling up of actions at the UN without any clear and firm overall position on authoritative and effective criminal courts?

Such learning—to the extent that it did occur—was clearly not universal. Some states, especially those that contemplate use of their militaries in armed

conflict, are reluctant to create a judicial organ to which they might, as a last step under the principle of complementarity, have to turn over their citizens to face the ICC—for example, for charges of violations of the laws of war. Neither George W. Bush nor the Congress was generally supportive of the ICC. The United States has not "learned" the advantages of having a permanent mechanism for international criminal prosecution; nor is it clear that "knowledge" compels movement in this direction. Emotive or romantic nationalism may trump expert knowledge about the benefits of international criminal justice.

In general, state learning pertaining to international criminal law showed differences and inconsistencies. States approved ad hoc criminal courts now and then, but at the end of 2005 only some 100 countries were parties to the Rome Statute of the International Criminal Court—twenty-seven from Africa, twelve from Asia, fifteen from Eastern Europe, twenty-one from Latin America and the Caribbean, and twenty-five from Western Europe and elsewhere. Optimists were buoyed while pessimists pointed out that about half of the UN membership was not at all sure it wanted to be under the jurisdiction of a UN standing criminal court. States might feel the need to show a response to atrocities by creating ad hoc courts, but some of the same states might still eschew the costs of a decisive involvement that would curtail the atrocities and punish those responsible. States might agree in theory that individual punishment for atrocities is a good idea, but in particular situations they might like the freedom to negotiate and strike deals with war criminals and the like. In 2003, in the context of an impending war in Iraq, there was much discussion of the wisdom of offering Saddam Hussein amnesty and impunity for past atrocities, because such a process would avoid much destruction and bloodshed involved in his forceful removal and possible trial.

Peace and justice can be sought through both diplomacy and criminal proceedings. In places like Yugoslavia in 1995 and immediately thereafter, it was not clear that one could follow both avenues at once. If various political leaders had not been defeated and had retained power, and if one then had to include them in negotiations aimed at stopping the fighting and curtailing human rights violations, pursuing them as international criminals might not be the wisest course of action.

This type of analysis pertained to criminal leaders like Slobodan Milošević in 1995 and Charles Taylor in Liberia in 2003, as well as Mohammed Farah Aided in Somalia in 1993. In the Balkans, trying to prosecute Milošević in 1995–1996 was neither wise nor possible, but by 2002 he was on trial. After four years on trial, he may have cheated justice by dying before a judgment was made, but at least he died in a cell rather than enjoying a comfortable exile or exercising power in Serbia. Charles Taylor agreed finally in August 2003 to go into exile in Nigeria after having wreaked havoc in West Africa, which resulted in his being indicted by the special court in Sierra Leone for war crimes and crimes against humanity. He was apprehended trying to flee Nigeria after the new Liberian president, Ellen Johnson-Sirleaf, requested his extradition. In order to avoid further disorder by his followers in both Liberia and Sierra Leone, Taylor is being tried in The Hague.

In writing the rules for the operation of international courts, humane progress through political choice and diplomacy needs to be allowed. "Learning" on these matters is a precise and complicated matter.¹⁵ Scientific evidence about the correct way to proceed is hard to come by. Many "experts" support different policies in different situations.

Equally complex is the question of whether criminal proceedings contribute to or impede national reconciliation after armed conflict.¹⁶ The theory behind criminal courts, national or international, is that license to commit atrocities has to end in order to "clear the air," provide catharsis to the victims and their families, and deter future violations of rights. But one could certainly question whether criminal trials of Hutus in Rwanda while a Tutsi-dominated government controlled the country would achieve the desired objectives. And in many places from South Africa to El Salvador, national and international officials concluded that the way to advance national reconciliation after brutal internal war was to avoid criminal proceedings as much as possible. A country might utilize truth commissions to establish facts, but only in a few places, such as South Korea, Ethiopia, and Germany, did trials proceed against former repressive rulers. Whether such national trials were, on balance, a good thing is difficult to determine. After dictatorship ended, Spain and Portugal moved toward stable liberal democracy by avoiding both trials and truth commissions. Acquiring human rights knowledge is a complicated affair about which reasonable persons can differ, and the UN's forays into international criminal justice have been carried out in the context of a lack of clear consensus and firm commitment about the "legalization" of the response to gross violations of human rights.¹⁷

Summary, with Reference to Democracy

The relation between knowledge, learning, and UN human rights activity can be summarized by acknowledging the difficulty in achieving a broad consensus about human rights among private networks because the issue deals more with morality than with science. Without this NGO and "expert" agreement about human rights specifics, the consensus among governments on human rights and public policy will remain incomplete. The situation is one of varied learning and incomplete change. There is more UN action for human rights now than before, but it still falls short of being fully systematic and institutionalized as well as authoritative and effective.

For example, take the question of whether states are learning, on the basis of cumulative knowledge, a commitment to liberal democracy (meaning elected governments that are rights-protective). "The UN" certainly now advocates democratic development, as will become clear in Part Three of this book. Some evidence seems encouraging. Immanuel Kant suggested that over time liberal democracies would become more numerous. A wave of democratization from about the mid-1970s to the early 1990s seemed to verify that Kantian view from the eighteenth century. Francis Fukuyama argued in the early 1990s that right-thinking persons had to necessarily conclude that liberal democracy was the best

way to respect individuals and limit governmental power. Thus, the development of the norms of liberal democracy represented the "end of history," at least in political theory, and a liberal democrat became the last "political man."¹⁸ Within the empirical democratic trend, however, there are illiberal democracies that are genuinely supported by majority opinion but are nevertheless not rights-protective. Yugoslavia under Slobodan Milošević and Croatia under Frajo Tuđman were clear examples. If it holds, a historical trend toward liberal democracy would suggest a growing acceptance not only of civil and political rights but of economic and social ones as well. Almost all democracies, except the United States, endorse the latter rights as well as the former. Thus most liberal democracies are also social democracies that recognize a human right to basic health care and other socioeconomic public goods as provided by the state.¹⁹

But we should be wary. No more than about one-third of the states in the world have been truly stable or consolidated liberal democracies at any given time. Moreover, earlier waves of democracy suffered setbacks or reverse waves, and this could happen again. Many states with elected governments still have strong militaries not fully controlled by elected leaders. And the results of elections in some former Soviet republics, as in other parts of the world, might even suggest nostalgia for enlightened authoritarian government.

Over a rather long time, the advantages of liberal democratic government have received increased recognition. Respect for civil and political rights has grown, albeit in a zigzag rather than a linear progression. This learning had been enhanced, at least temporarily, by the various failures of authoritarian communism in Europe and authoritarian models among developing countries.

But in many countries ruled by newly democratic governments, major obstacles to the consolidation—meaning stabilization and maturation—of democracy remain. Perhaps most important, economic growth was slow or nonexistent, and the benefits of the economic system were widely perceived as inequitable. New democratic governments, confronted with particularly daunting economic problems, continue to struggle to create the socioeconomic context that would sustain a new and fragile democracy. Particularly in Latin America, but elsewhere as well, democracy has been created but not necessarily consolidated. Indeed, as Thomas Carothers argues, "Of the nearly 100 countries considered as 'transitional' in recent years, only a relatively small number—probably fewer than 20—are clearly en route to becoming successful, well-functioning democracies or at least have made some democratic progress and still enjoy a positive dynamic of democratization."²⁰ In a number of countries, something of a "hybrid" regime—combining democratic practices with enduring authoritarian institutions—has emerged and often appears as quite stable.²¹ Were civil and political rights being learned systematically, or was democratic learning frequently followed by a relearning of the advantages of authoritarianism?

Moreover, not all democratic governments at the UN have fully supported its human rights program. U.S. authorities have at times tried to suppress diplo-

matic pressure on authoritarian friends. British officials have opposed all sorts of human rights initiatives.²² The Indian government has at times elevated the principle of state sovereignty above UN pressure for human rights concerning itself and other developing countries.

A Web of Norms Resulting in Change?

Most situations in which human rights are respected are produced by national conditions—with only secondary influence from international factors.²³ This axiom contains considerable truth but can be overstated. The relaxation of the Soviet grip on Eastern Europe in the late 1980s was the key factor in unleashing local human rights forces. By 1996, more IGO, NGO, and state policies operated in support of international human rights than ever before. In some cases, as in Haiti in 1994, international factors were decisive—at least in the short run. The international normative context for human rights had definitely changed for the better.

A theory of transnational change and human rights is relevant to our discussion here. According to the book, *The Power of Human Rights*, a transnational advocacy network, made up of both private and public actors, can definitely bring about progressive change with regard to rights of personal integrity.²⁴ A merger of international and national actors can, over time, institutionalize human rights norms pertaining to summary execution, torture and mistreatment, and other fundamental civil rights referred to collectively as rights of personal integrity. Hence in this view, domestic private groups, acting in tandem with foreign actors of various sorts, can bring effective pressure for rights-protective change on repressive governments. In this theory, UN norms and UN actors play important roles. In fact, this theory allows for considerable variation in which actors in the transnational coalition exert the most influence on behalf of human rights—international NGOs, domestic private groups, officials of international organizations, officials of states. The sum total of the efforts of these various and shifting actors accounts for progressive change.

Furthermore, this hopeful theory of change in the domain of human rights pertains not only to rights of personal integrity in repressive non-Western countries. Some research suggests that the same analytical perspective, originally developed to explain change regarding rights of personal integrity in repressive non-Western states, might also be helpful in understanding change on minority rights in emerging liberal democratic states in Eastern Europe.²⁵ In this view, the Czech Republic has come to better protect the rights of the Roma, and Romania has come to better protect the rights of its ethnic Hungarian minority, because of a transnational advocacy process that has grown steadily. In these two cases, it may have been the Council of Europe and the European Union, more than the United Nations, that largely accounted for pulling these governments into practicing what they had promised on minority rights. But in other cases, as in El Salvador in the late 1980s and early 1990s, UN officials like the Secretary-General play central roles.

This theory about the importance of human rights norms and discourse over time, as linked to transnational pressure, which eventually traps states in their own stated commitments to human rights, can incorporate much incidental knowledge that we already knew about human rights and change. For example, UN sanctions against both Rhodesia and South Africa in the 1960s and 1970s did not create the resistance to white-minority rule. But these international actions helped to empower local citizens to confront the policies of governments based on racial discrimination. The Guatemalan ambassador to the United States had it exactly right when describing the democratic resistance to an authoritarian coup in 1993: It was the Guatemalan people, local human rights groups, national business elements, and even sectors of the military that demanded a return to democracy as a human right; the role of the international community was important but secondary.²⁶ The United Nations then accelerated its efforts in Guatemala, negotiating human rights agreements and mediating conflicts. The role of the world organization was to facilitate local trends toward liberal democracy, which by definition encompasses the protection of many human rights. A transnational focus remains necessary to encompass the totality of change pertaining to human rights.

Final Thoughts

None of the above denies the point that when UN efforts to protect human rights are tried, they must be pursued with determination. The lip service to human rights at the UN is not always backed by serious commitment. For example, early innovations to meet the human rights challenges in the former Yugoslavia in the early 1990s received so little financial and political support that they were mere tokens. Innovative steps included the first emergency session convened by the Commission on Human Rights; the first deployment of field monitors by the UN Centre for Human Rights (now OHCHR); the appointment of a special rapporteur to report to the Security Council on human rights abuses and of a Commission of Experts to report on breaches of the Geneva Conventions; the assignment of human rights responsibilities to UNHCR protection officers in the field; and, most significant, the establishment of international war-crimes tribunals and the ICC. But the credibility of these initiatives was undermined to the extent that they were not matched by the resources and leadership to make them work—indeed, many were hurt by foot-dragging, or worse, from one or more of the great powers. Ineffectiveness is distressing enough for the victims in the former Yugoslavia and Rwanda. But perhaps even more important is the potential negative impact that weakness and failure will have for future violators of human rights, where effective international action will obviously be necessary.

At the UN, disagreements about human rights protection abound. We are dealing with moral and political matters as much or more than with scientific knowledge, and particularly states have "learned" a variety of things from past experience. Given the legal starting point of state sovereignty, the international community has come a long way in generating respect for the idea of human rights. If we compare international action on human rights at the League of Na-

tions and at the United Nations, the latter changes seem revolutionary. But all three UNs—states, staff, and relevant nonstate actors—still have a long way to go before achieving the systematic observance of human rights as called for in the Charter "without distinction as to race or nationality, sex, language or religion."²⁷ Three analysts have recently put forward one image that may help readers understand the disconnect between rhetoric and reality in the human rights arena. There is a disparity between the normative and "operating" system.²⁸ The UN's operating system is not the basic equivalent of a computer operating system (for example, Microsoft Windows) that functions to allow the use of spreadsheets or word processing. Even when functioning well, the international human rights operating system requires consensus effort, intense diplomacy, and much luck to produce what are, at best, modest results.

NOTES

1. Martina Orlaway and Thomas Carothers, eds., *Funding Virtue: Civil Society Aid and Democracy Promotion* (Washington, D.C.: Carnegie Endowment, 2000).
2. See further David P. Forsythe, ed., *Human Rights and Comparative Foreign Policy* (Tokyo: United Nations University Press, 2000).
3. On the use of human rights by governments that primarily has to do with their strategic or other expedient interests, see Kirsten Sellers, *The Rise and Rise of Human Rights* (Phoenix Mill, UK: Sutton Publishing, 2002).
4. John Gerard Ruggie, *Winning the Peace: America and World Order in the New Era* (New York: Columbia University Press, 1996).
5. Edward C. Jack, *Mixed Messages: American Politics and International Organization 1979–1999* (Washington, D.C.: Brookings Institution, 1999).
6. Tony Evans, *U.S. Hegemony and the Project of Universal Human Rights* (London: Macmillan, 1996).
7. On voting at the UN and the North-South conflict in particular, see Soo Yeon Kim and Bruce Russell, "New UN Voting Alignments," *International Organization* 50, no. 4 (1996): 629–652.
8. For a detailed case study of the role of Amnesty International in developing the UN treaty against torture, see Peter R. Baehr, "The General Assembly: Negotiating the Convention on Torture," in *The United Nations in the World Political Economy*, ed. David P. Forsythe (London: Macmillan, 1989), 36–53.
9. David P. Forsythe, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville: University Press of Florida, 1988).
10. Rodney Bruce Hall and Thomas J. Biersteker, *The Emergence of Private Authority in Global Governance* (Cambridge: Cambridge University Press, 2002).
11. Samantha Power, "A Problem from Hell," *America and the Age of Genocide* (New York: Basic Books, 2002).
12. Ernst B. Haas, *When Knowledge Is Power: Three Models of Change in International Organizations* (Berkeley: University of California Press, 1990).
13. George Modelski, "Is World Politics Evolutionary Learning?" *International Organization* 44 (Winter 1990): 1–24.

14. On international courts and international criminal justice see Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford: Clarendon Press, 1997); Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Times Books, 1998); and Sarah B. Sewall and Carl Kaysen, eds., *The United States and the International Criminal Court: National Security and International Law* (Lanham, Md.: Rowman and Littlefield, 2000).
15. Martha Minow makes clear that there is no one response to atrocities that is always right in every situation; see *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998). There is now a very large literature on "transitional justice." See, for example, Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).
16. See Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity, 2002).
17. For an overview of the "legalization" of international relations, see the special issue of *International Organization* (Summer 2000). This issue traces the growing demand for specific international law that is adjudicated.
18. Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).
19. For arguments in favor of a broad conception of freedom and human rights, including especially rights to education, health care, and minimum wage and social security, see Amartya Sen, *Development as Freedom* (New York: Knopf, 1999), and Cass R. Sunstein, *The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need It More Than Ever* (New York: Basic Books, 2004).
20. Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no. 1 (2002): 9.
21. *Ibid.* See also Terry Lynn Karl, "The Hybrid Regimes of Central America," *Journal of Democracy* 6, no. 3 (1995): 73–86; David Collier and Steven Levitsky, "Democracy with Adjectives: Conceptual Innovation in Comparative Research," *World Politics* 49, no. 3 (1997): 434–435; and Larry Diamond, "Thinking about Hybrid Regimes," *Journal of Democracy* 13, no. 2 (2002): 21–35.
22. Tom J. Farer, "The UN and Human Rights: More Than a Whimper, Less Than a Howl," in *Human Rights and the World Community: Issues and Action*, 2nd ed., ed. Richard Pierre Claude and Burns H. Weston (Philadelphia: University of Pennsylvania Press, 1992).
23. See, for example, Jack Donnelly, "Human Rights in the New World Order: Implications for Europe," in *Human Rights in the New Europe*, ed. David P. Forsythe (Lincoln: University of Nebraska Press, 1994).
24. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).
25. Sefa Swemmelar, "The Making of Minority Rights and the Return to Europe: International Norms and Transnational Actors in the Czech Republic and Romania," dissertation, University of Nebraska–Lincoln, 2003.
26. Edmond Mulet, "The Palace Coup That Failed," *The New York Times*, June 22, 1993.
27. See further David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), chap. 3.
28. See Paul E. Diehl, Charlotte Ku, and Daniel Zamora, "The Dynamics of International Law: The Intervention of Normative and Operating Systems," *International Organization* 57, no. 3 (2003): 43–75.

PART THREE

SUSTAINABLE HUMAN DEVELOPMENT