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Sixty Years On: The International Human Rights Movement Today

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During the last Heads of State meeting of the United Nations General Assembly in September, 2008, former President Bill Clinton was doing the rounds of media interviews about the Clinton Global Initiative—the annual meeting he hosts to coincide with the General Assembly meeting. It is a huge gathering of elites—global political elites, economic elites, and the elites of the international human rights movement. As President Clinton explains, this annual event serves mostly to connect well-heeled donors with leaders of the non-governmental movement who stand to benefit much from the largesse of these donors.¹

As I was preparing my comments for this panel, I thought about the interviews, and considered the dual and contradictory narrative about human rights. The first narrative is a very positive one, namely, the proliferation of human rights organizations at both the global and national levels—and what many international lawyers have termed the global growth in human rights consciousness.² The second is a rather gloomy one—a trope, for example, about widespread rapes in the Congo, xenophobic attacks on foreigners in South

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1. For more information about this event, see Clinton Global Initiative, About Us, <http://www.clintonglobalinitiative.org> (follow “About Us” hyperlink) (last visited Mar. 30, 2009).

2. See Penelope E. Andrews, *Some Middle-Age Spread, a Few Mood Swings, and Growing Exhaustion: The Human Rights Movement at Middle Age*, 41 TULSA L. REV. 693 (2006). For a thoughtful account of the possibilities generated by global human rights activists, see MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

Africa, Guantánamo, genocide in Darfur, and the like.³

In his introductory remarks, Professor Clinton Bamberger mentioned the Legal Resources Centre (LRC),⁴ South Africa's largest public interest law firm. The mission of the LRC was to challenge the laws and policies of apartheid and to provide legal services to South Africa's disenfranchised and poor. The LRC was modeled along the lines of the NAACP Legal Defense Fund (LDF) and the Legal Services Corporation (LSC). This was in part because the LRC, like the LDF and LSC, was using the legal system to fight inequality and racial discrimination, and in part because the LRC, again like the LDF and LSC, was trying to secure fundamental civil and political rights as well as to open up the political and legal system to those frozen out. But in those days, movements like these were termed civil rights programs, or legal services for the poor. The term "human rights movement" was not then a well-known phrase in political and legal discourse, and "human rights" was a term just beginning to be used in American society.

That was then. I want to talk now about the contemporary situation. What is most obvious today is that the human rights movement occupies a position comparable to what the civil rights and civil liberties movements occupied during their heyday.⁵ What I want to focus on in my speech is where things stand today, not so much on the particulars of violators or violations, but on the overall scheme of the human rights movement. In this regard, I want to talk about three broad areas of human rights.

I am providing a listing or cataloguing, as it were, and being rather descriptive. I am not engaging with the questions raised by my panel's moderator—but rather am setting the stage by which to engage these questions.

For the few minutes allocated to me, I want to think of the definition of what we refer to as the "human rights movement." What is the nature of this creature, so broadly defined? Here I want to consider the human rights movements in three somewhat distinct

3. See generally Human Rights Watch, <http://www.hrw.org> (last visited Mar. 30, 2009); Amnesty International, <http://www.amnesty.org> (last visited Mar. 30, 2009).

4. See Clinton Bamberger, *Introduction of Chief Justice Arthur Chaskalson*, 24 MD. J. INT'L L. 19, 21–22 (2009).

5. See Penelope E. Andrews, *Making Room for Critical Race Theory in International Law: Some Practical Pointers*, 45 VILL. L. REV. 855 (2000).

categories: first, the structure and proliferation of human rights organizations; second, the seemingly growing human rights culture; and third, human rights violations by nations and private actors.

Before I elaborate on these categories, allow me to note that context is central to our consideration of the human rights movement today; here particularly I am referring to the chronological context. What I mean by this is the idea that at a particular moment in time the goals, programs, and content of the human rights movement are altered, reassessed, and sometimes even abandoned. At the risk of simplifying and generalizing, I am going to highlight the human rights moments that, in my opinion, profoundly defined the shape and trajectory of the human rights movement.

The first defining moment was obviously the birth of the modern human rights movement in the aftermath of the Second World War. That moment, now so amply described and analyzed,⁶ provided the corpus of the major texts of the contemporary human rights movement, including the United Nations Charter and the International Bill of Rights.⁷ That moment was infused with idealism and optimism, even though such idealism and optimism would soon become a casualty of the vicissitudes and political whims of the Cold War as, incrementally during that period, the pursuit of human rights became subject to ideological and political considerations.⁸

The second defining moment in the history of the human rights movement was the destruction of the Berlin Wall and the end of the Cold War. For a brief moment it appeared that the global human rights project might once again gather some steam as previously totalitarian societies prepared themselves for democratic futures represented by human rights and fundamental freedoms. Here again the international community greeted the political developments with some optimism and, at least at the formal or theoretical level, there seemed to be the opening up of public spaces for citizens to engage,

6. See, e.g., THE OXFORD HANDBOOK ON THE UNITED NATIONS (Thomas G. Weiss & Sam Daws eds., 2007); see also STEWART ROSS, THE UNITED NATIONS (2002); KIRSTEN NAKJAVANI BOOKMILLER, THE UNITED NATIONS (Peggy Kahn ed., 2008).

7. In other words, the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948), the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, and the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

8. See Wiktor Osiatyński, *Human Rights for the 21st Century*, 2000 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 29.

in a renewed and vigorous manner, with the possibilities of human rights discourse and advocacy.

The third defining chronological event of the human rights movement was the drafting of the 1993 Vienna Declaration of Human Rights that defined women's rights as human rights.⁹ This Declaration was the culmination of nearly two decades of struggle, beginning with the United Nations decade for women (1975–1985), and unprecedented global activism by women's advocates to ensure that women's rights move from the margins to the center of human rights discourse.¹⁰ The Vienna Declaration was followed by the notable United Nations Conference on Women in 1995 and the Beijing Platform for Action.¹¹

The fourth defining moment in the chronology of the human rights movement was the terrorist attacks in New York City and Washington D.C. in September 2001. The post-9/11 world spawned two contradictory responses to human rights. The first was an impulse on the part of certain governments to narrow the range of human rights protections in the name of national security.¹² Describing these as emergency measures, the United States symbolized this approach, for example, by enacting legislation such as the Patriot Act,¹³ and by imprisoning large numbers of foreign individuals at Guantánamo Bay.¹⁴ Parallel to these developments, and in some ways in contradiction to them, there emerged a growing consensus within governmental and non-governmental circles in Western democracies of the need to redress the conditions of extreme poverty that so typified the realities of severely underdeveloped and

9. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993).

10. See Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991); see also WOMEN'S RIGHTS AND HUMAN RIGHTS: INTERNATIONAL HISTORICAL PERSPECTIVES (Patricia Grimshaw et al. eds., 2001).

11. World Conference on Women, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20/Rev.1 (Jan. 1, 1996).

12. See PHILIP B. HEYMANN & JULIETTE N. KAYYEM, *PROTECTING LIBERTY IN AN AGE OF TERROR* (2005).

13. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of U.S.C.).

14. See generally JOSEPH MARGULIES, *GUANTÁNAMO AND THE ABUSE OF PRESIDENTIAL POWER* (2006); NATSU TAYLOR SAITO, *FROM CHINESE EXCLUSION TO GUANTÁNAMO BAY: PLENARY POWER AND THE PREROGATIVE STATE* (2006); PHILIPPE SANDS, *LAWLESS WORLD: AMERICA AND THE MAKING AND BREAKING OF GLOBAL RULES* (2005).

failed states. These states, such as Afghanistan and Somalia, were seen as actual and potential breeding grounds for terrorists—in particular young men who were economically marginalized or alienated in their own societies. Another consensus that emerged was a recognition that religious and cultural rights ought to be respected, both within countries and between countries, and that a dialogue should be established between individuals and groups in both the Western democracies and the Islamic world.¹⁵

The most recent defining moment has been the global economic crisis and the ravages that such crisis has unleashed across all nations of the globe. It is as yet unclear how the human rights movement will be shaped by these catastrophic economic events, but one consequence may be a fundamental rethinking of the substance and implementation of social and economic rights, in the same way that civil and political rights gained primacy in the wake of the Second World War.

The Structure and Proliferation of Human Rights Organizations

To return to my earlier comments, regarding the structure of human rights organizations, one may perhaps consider four aspects. First, we witness today the existence of international human rights organizations (INGOs) with a central office in urban centers like New York or London, and regional offices in, for example, Southern Africa or South East Asia. These organizations sometimes have committees in countries around the globe with an extensive and vast network of academic and other supporters, as well as very sophisticated technologies to pursue their various aims. These organizations enlist the nationals of the regions and nations in which they operate in pursuing their goals. Human Rights Watch and the International Rescue Committee come to mind as representative of these INGOs.

Second are the existence of national human rights organizations that have no international affiliates or extensions but which exist in developed countries (for example, the American Civil Liberties Union) and, more and more, in developing countries, especially those where many notorious human rights violations occur and receive

15. See generally B. JILL CARROLL, *A DIALOGUE OF CIVILIZATIONS: GÜLEN'S ISLAMIC IDEALS AND HUMANISTIC DISCOURSE* (2007); ISLAM AND HUMAN RIGHTS: *ADVANCING A U.S.-MUSLIM DIALOGUE* (SHIREEN T. HUNTER & HUMA MALIK eds., 2006).

international attention. An example here would be the Treatment Action Campaign in South Africa and the Mothers of the Disappeared in Argentina.

Third, we may observe the existence of established human rights agencies or departments in international organizations and national states such as the European Union, and the U.S. State Department.

The final aspect regarding the structure of human rights organizations refers to the evolving or embryonic forms of human rights organizations without yet a fixed shape or structure, such as those emerging in the African Union, the Arab League, and the Association of East Asian Nations. These then briefly are the structures of human rights organizations.

A Growing Human Rights Culture

Regarding the growth of international human rights culture, there are at least three aspects to this issue. These include first, the rapid spread of human rights courses in American colleges and law schools, and a somewhat parallel development in Europe, Australia, and Canada. One also witnesses this trend in developing nations such as South Africa, Chile, and Kenya. Very often these human rights courses are transnational in nature, with American and European law schools partnering with law schools in the developing world. Greater research is being conducted, for example, in all aspects of human rights, and students are provided extensive opportunities to pursue human rights internships and other experiential forms of learning.

Accompanying this trend, there is secondly a growing tendency by news media such as the BBC, WorldFocus, and other media outlets, to publicize reports and press releases by human rights organizations of human rights violations. Some of these media outlets occasionally produce feature-length programs on human rights issues, such as the recent CNN series on genocide hosted by their chief international correspondent, Christiane Amanpour.¹⁶ These programs provide a valuable forum within which these human rights issues are explored and analyzed in detail, and which are made available to an audience beyond universities and the established human rights community. In

16. *CNN Presents: Scream Bloody Murder* (CNN television broadcast Dec. 4, 2007). For detailed information about this documentary and related articles, see CNN.com, *CNN Presents: Scream Bloody Murder*, <http://edition.cnn.com/SPECIALS/2008/scream.bloody.murder> (last visited Mar. 29, 2009).

short, they serve a valuable educational purpose for the general public about human rights issues.

And thirdly, in the last few years there has emerged the increasing tendency of celebrities to advance and publicize human rights issues, an important occurrence in the U.S. and in a number of developing nations. Examples are George Clooney on Darfur, Richard Gere on Tibet, and Angelina Jolie—on several issues. In South Africa, an example was the involvement some years ago of Charlize Theron, the South African-born actress, in a national advertising campaign to publicize the widespread incidence of violence against women. The overall effect of these “celebrity” human rights campaigns seems to be the embedding of human rights culture more and more into mass culture.

Human Rights Violations by Nations and Private Actors

On the question of major human rights violations by state actors and private individuals, a few major issues continue to surface. First, there are the campaigns to prevent, deter, or reduce the incidence of human rights violations. Secondly, there are growing programs that aim to stop human rights violations through appeals, negotiations, sanctions, or force. Thirdly, there have been highly organized and very successful campaigns to establish and employ human rights tribunals to identify, prosecute, and punish human rights violations in accordance with acceptable legal and just norms for prosecution. Examples include the establishment of the International Criminal Tribunals for Yugoslavia and Rwanda, the special courts for Sierra Leone and Cambodia, and the International Criminal Court.

There have also been concerted efforts to take coercive actions against nations or persons guilty of human rights violations without unduly harming the nationals of the nations, and without unduly erecting systems of subordination of poor and developing nations by rich and developed nations. Finally, there has developed a growing commitment on the part of global human rights actors to ensure that the administration of human rights justice at the international level has the requisite input by all nations, developed or developing, large or small, and guilty or innocent of other human rights violations.

But what exactly are human rights organizations doing, and what types of contributions do they make or have they made? I have discussed the contributions of the human rights movement in another

context, in which I have assessed the status of the human rights movement at “middle-age.”¹⁷ There is some literature to suggest that although the human rights movement has been indispensable in ensuring that the rights embodied in international and local legal and rights documents are implemented and enforced, their tactics have been more “of a problem than a solution.”¹⁸ Some have, for example, intimated that the global human rights movement might be part of the “imperial project,”¹⁹ silencing other “ethical discourses.”²⁰ These are interesting perspectives worthy of greater consideration than this note allows for, but at the impressionistic level, it is hard to imagine that the rights struggled for, and won, in the various locations around the world would not have been possible without a vocal, determined, and committed group of human rights advocates adopting a range of strategies to achieve their desired results. The global anti-apartheid campaign comes to mind. Although not the penultimate factor that unseated the apartheid government, there is no doubt that the efforts and engagement of human rights activists, both internationally and in South Africa, played no small part in ending apartheid there.²¹ Similarly, it is hard to imagine that the parade of war criminals before the international criminal tribunals would have been possible without the determination of human rights advocates to end the impunity with which these individuals committed war crimes and crimes against humanity. In their zeal, however, some human rights advocates and organizations may have adopted inappropriate strategies.²² In addition, some in their ranks also appear to be embarking on what a prominent human rights scholar has termed a contemporary “civilizing mission.”²³

Certain questions have been left out of my comments. In particular, I have omitted a listing of the kinds of human rights violations that are occurring, what kinds are getting attention, what kinds are occurring less, and what kinds are most amenable to redress

17. See Andrews, *supra* note 2.

18. David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 101 (2002).

19. See Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 125, 147 (1998).

20. See *id.*

21. See generally HÅKAN THÖRN, *ANTI-APARTHEID AND THE EMERGENCE OF A GLOBAL CIVIL SOCIETY* (2006).

22. See DAVID RIEFF, *A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS* (2003).

23. See MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* (2008).

or action. Another question not covered is the dominance of human rights in contemporary progressive or liberatory discourse—a language largely about rights, and not about redistribution. What does this mean for situations that demand transformative possibilities?²⁴

Every year as I start my international law class, I engage the students in a very basic exercise. I ask them to imagine that there is no United Nations, and that they are the members of a committee mandated to establish an international organ of global governance. In thinking about the shape of the organization, I ask them to consider the priorities of the organization, its membership, the nature of rights to be implemented and enforced, modes of enforcement, and other related issues.

It is always an interesting exercise—and there are a few persistent strands that run through the discussion. One is the idea that the issue of human rights is “foreign.” In other words, the violations occur out there in another society—and we here in the U.S.A. or in the West are mostly involved in redressing the situation in some way or other, mostly through various forms of assistance. We are rescuers, not victims or even potential victims. As we work our way through the exercise, we, the students and I, find ourselves encountering definitions. And we eventually arrive at a place where human rights has a local and global context—and in both we have a role as international human rights advocates. But we are also mindful of the fact that we have to protect human rights within our own borders.

It is clear that as we consider the global human rights movement today, and as we look to the future, the defining feature of the movement has to be flexibility and resilience. As the processes of law, politics, and economics evolve to accommodate changing realities, so too the human rights movement will change and evolve. It is this idea of definitions I want to leave with you. I have provided the bones for our panel, and my fellow panelists will now add the flesh.

24. Some scholars have argued that a focus on human rights, at the expense of political or economic transformation, prioritizes limited political change that is dominated by legal professionals. See, e.g., Baxi, *supra* note 19; BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION (1995).