

# Human Rights in the Seventy-Fifth Year of the UN

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The seventy-fifth anniversary of the founding of the United Nations finds the organization's human rights pillar, much like its other three pillars—peace, development, and justice—in the throes of crisis, change, and challenge. There is unfortunately little policy-oriented thinking to be seen in or out of the world body to help steer a course for the future. The crisis involves a pronounced lack of implementation of both economic, social, and cultural rights; and civil and political rights. In fact, gross violations of these rights are rampant around the world. In the face of these severe violations, governments have largely avoided principled denunciations and instead have argued for approaches favoring “dialogue and cooperation”—even when human beings are being subjected to wrenching atrocities. The ethic of accountability is, more often than not, absent.

At the same time, rapid change is occurring both at and around the UN and throughout the wider world, change of a kind never before seen in human history. Definitive developments in the contemporary world include climate change, artificial intelligence (AI), the rise of China, and aging populations in many parts of the world. AI, to take one example, is transforming the world of work, with grave consequences for human societies. One of these consequences is the proliferation of surveillance technology worldwide. Kai-Fu Lee, in his acclaimed book *AI Superpowers*, paints a sobering picture of this new reality.<sup>1</sup> What does all of this mean for the implementation of human rights as they have so far been defined by the United Nations?

This essay looks at the past seventy-five years of the UN's work to promote and protect human rights through the perspectives of five ethics: the ethics of human survival, normative ethics, the ethics of protection, institutional ethics, and the ethics of the human predicament.

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## THE ETHICS OF HUMAN SURVIVAL

The UN has made worthwhile contributions to humanity by enshrining the protection of human beings, the right to a clean and safe environment, and the right to development. It has acted for the survival and protection of minorities and indigenous populations around the world. And there are always individuals at the UN who champion important agendas. A special rapporteur of the UN Human Rights Council, for example, has for decades been doing useful work on the right to a clean and safe environment, and other UN human rights officials have acted to highlight the plight of populations at risk worldwide. The UN system of international organizations has consistently sought to protect the planet, to act against climate change, and to control weapons of mass destruction. It has made some notable contributions in these areas. With regard to the survival and protection of minorities and indigenous populations, the UN has adopted normative declarations and established monitoring bodies for both groups and has made historic contributions to their survival. The UN Convention for the Protection of All Persons from Enforced Disappearance and the monitoring committee it established are, at the core, about the ethic of survival.

In 1984, the Human Rights Committee, which operates under the International Covenant on Civil and Political Rights (ICCPR), adopted a historic general comment cautioning against the legality of the possession and threat of the use of nuclear weapons.<sup>2</sup> It was subsequently reinforced by an advisory opinion of the International Court of Justice.<sup>3</sup> By presenting such a comment, the Human Rights Committee acted as a trailblazer and in 2018 the committee reaffirmed its position on this topic.<sup>4</sup>

On balance, the major contribution of the human rights program to the ethics of human survival was to enshrine protection of human beings in the Universal Declaration of Human Rights (UDHR) and the ICCPR. Yet the protection of human beings has continued to come under attack through various atrocities, and the right to the means of a livelihood has been illusory for large sectors of humanity despite successive development strategies, development decades, the Millennium Development Goals, and currently, the Sustainable Development Goals (SDGs).

Gershom Carmichael (1672–1729), the first professor of moral philosophy at the University of Glasgow and a pioneering Scottish Enlightenment philosopher, offered a pathbreaking catalog of natural rights, commenting that the various

rights belong to individuals, to groups, and even to the human race as a whole.<sup>5</sup> He wrote that each person should promote the common good of the whole human race. Alas, despite the elaborate code of international human rights that the UN has developed, this ethic of human survival and justice remains unrealized for the great majority of humankind.

## NORMATIVE ETHICS

It is in the area of normative ethics that the UN has made its greatest contribution to the cause of human rights. The UN set course from the outset to develop an international bill of rights that would have three parts: a universal declaration, one or more covenants, and measures of implementation. It has adopted an elaborate code of human rights norms grounded in the UN Charter, the UDHR, and ten major treaties, some of which include the ICCPR; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention for the Protection of All Persons from Enforced Disappearance, as well as over a hundred declarations on issues such as the rights of minorities and indigenous populations.

In recent years, these norms have come under challenge from influential powers including China, Russia, the United States, and countries of the Global South. The international consensus on these norms is now a fragile one. China espouses the view that this body of norms is applicable to it only insofar as it is consistent with the pursuit of Chinese-style socialism.<sup>6</sup> Russia advocates sovereign rights—that is, the rights of governments—over individual rights. While the United States participates in the development of international human rights norms, it considers itself bound only by its own national norms. Some countries advocate the primacy of Islamic laws over international norms and, in India, a Hindu nationalist government chases after the dream of a glorious Hindu past instead of a cosmopolitan vision of justice for all that is enshrined both in the Indian constitution and in international human rights law.

There are, of course, conscientious human rights actors such as the UN secretary-general, the UN High Commissioner for Human Rights, international

courts, human rights treaty organs, regional human rights courts, and nongovernmental organizations that are valiantly trying to keep faith with universality. Despite such efforts, the seventy-fifth anniversary of the UN finds a tottering consensus on the universality of human rights.

And then there are areas of normative need that the world has hardly begun to tackle: humans' growing everyday reliance on artificial intelligence; the implications for the world of work and the harmony of human societies; the pervasiveness of surveillance technologies; the extinction of natural species; and the colonization of outer space for human survival. There is a new world coming, and the UN's human rights architecture will have to move fast to keep up.

## THE ETHICS OF PROTECTION

On the ethics of protection, the UN has been in crisis since its establishment. The third part of the International Bill of Human Rights was meant to include measures of implementation. However, during the Cold War these were kept to tentative reporting, advising, and optional petition procedures to which a majority of countries have never subscribed.

After the Cold War's end, the UN established more monitoring bodies for human rights treaties, appointed more human rights fact finders ("special procedures"), and established the post of high commissioner for human rights. But all of these actors have been under pressure from governments to not denounce gross violations of human rights but to instead prioritize "dialogue and cooperation," even in the face of egregious violations.

The UN Security Council has contributed to the protection of children, women, and civilians during armed conflicts by adopting successive resolutions and considering reports written by special representatives of the secretary-general or subsidiary groups that it has established. It is also now established practice that the mandates of peacemaking and peacekeeping missions established by the council have a human rights component. This said, it remains the case that the Security Council is primarily a political body and that its attentiveness to human rights concerns is invariably conditioned by the political calculations of its membership.

Ad hoc international criminal tribunals and the International Criminal Court have dispensed a limited amount of international justice and have developed a jurisprudence of protection. But they have come under political, financial, and logistical pressure, and the dispensation of human rights justice remains limited.

In fact, criminal violations of human rights, time after time, go unheeded and large groups of people remain without national, regional, or international protection. It is hard to support the proposition that there is an ethic of protection at the United Nations except insofar as the organization continues to strive for the implementation of the SDGs. And even here, Secretary-General António Guterres in November 2019 warned that implementation of the goals was slipping dangerously and was not likely to be met by the target date of 2030.<sup>7</sup>

Implementation of the SDGs is of great importance for the future promotion and protection of human rights. Many of the goals address core human rights issues, such as access to a means of livelihood and health protection. Goal 16 addresses the crucial nexus between development, peace, justice, and equitable and strong institutions. Implementing this goal requires governments to put in place adequate and effective national systems for the promotion and protection of human rights, constitutional and legislative provisions, and courts; institutions that protect, such as national human rights commissions and ombudspersons; and educational institutions that teach human rights.

Nearly two decades after it was first launched by the International Commission on Intervention and State Sovereignty, and despite political difficulties encountered in efforts to implement it, the responsibility to protect (RtoP) remains of central relevance in efforts to protect universal human rights in an age of dramatic transformations. The concept transcends the four areas of concern initially highlighted by the UN General Assembly—namely, genocide, ethnic cleansing, war crimes, and crimes against humanity—and it is also relevant to human rights protection in an age of climate change, AI, large-scale movements of people across borders, failing economic systems, and great power contestations. The responsibilities of governments and both regional and international organizations to uphold RtoP in a world of climate change have so far not been mapped out either in the world of scholarship or in the world of international relations.

## INSTITUTIONAL ETHICS

The UN General Assembly, UN Security Council, and UN Human Rights Council (HRC) are overtly political bodies. As a result, all three are characterized by a combination of political expediency and opportunism, and the principle of justice is distant, if ever seen at all. The supervisory bodies established under UN human rights treaties and independent investigators appointed by the HRC often do strive

to uphold the principle of justice but have come under increasing pressure from powerful governments.

Historically, the role of the General Assembly has been to adopt and proclaim international human rights norms. It has championed world-changing human rights causes such as decolonization, the elimination of South Africa's apartheid regime, the elimination of racism and racial discrimination, and the rights of women. It has been a selective actor, however, in its responses to many situations of gross violations of human rights, sometimes condemning governments, but seldom taking action. In 1948, for example, the General Assembly overruled South Africa's contention that the treatment of its black population under apartheid was a matter of internal jurisdiction. It was the General Assembly that initiated fact-finding in the allegations of gross violations of human rights following Augusto Pinochet's 1973 coup toppling a democratically elected government in Chile. The key in these instances was the willingness of a voting majority to take action. Unfortunately, in numerous other situations, the General Assembly has completely turned a blind eye.

The Security Council has been, throughout its history, a political actor swayed by the views of its permanent and rotating members. It has made useful contributions to human rights and justice to the extent that it has integrated human rights into the processes of peacemaking, peacekeeping, and peacebuilding missions and established the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda in the 1990s.

The UN High Commissioner for Human Rights leads an office that contributes much to the promotion of human rights and to peacebuilding and provides a measure of protection. The high commissioner, however, is under sustained political pressure to engage more in dialogue and cooperation than in "confrontational approaches"—namely the principled denunciation of gross violations of human rights.

During my own period as acting UN high commissioner for human rights from 2003 to 2004, I formed the view that the leadership of the UN human rights program needs to be guided by three concepts: leadership, troubleshooting, and diplomacy. Intellectual leadership is the key to supporting the UN concept of human rights as elaborated in the Charter, the UDHR, and human rights treaties. This is particularly crucial in view of the efforts, actively underway in influential countries, to revise the content of international human rights as defined by the United Nations. Troubleshooting means responding to situations of gross violations of

human rights in a principled manner. As acting high commissioner, I undertook five troubleshooting initiatives. The first was in 2004—after the United States and its allies invaded Iraq in 2003—to address the devastating consequences of the invasion for economic, social, and cultural rights. The people of Iraq were without international protection and I felt that as the high commissioner, I must be their voice. I maintained the authority of the high commissioner to scrutinize human rights concerns even in the context of an armed conflict and subsequent occupation. I undertook similar initiatives regarding the situations then prevailing in Liberia, the Ivory Coast, and Darfur. I also launched a thematic initiative on the problem of human trafficking.

The third concept that must guide United Nations human rights programs is diplomacy. There are situations where one can help human beings in distress or at risk by approaching governments discreetly and seeking their assistance. I did this on several occasions. On one occasion, the U.S. State Department put out a statement denouncing the alleged house arrest of Aung San Suu Kyi. U.S. diplomats pressed me to issue a similar statement. Before doing so, I invited the ambassador of Myanmar for a meeting and advised him that I was about to issue a statement. With his personal assurance that Ms. Suu Kyi was not under house arrest, I did not issue a statement. Two days later, an International Red Cross delegation established that she had not been under house arrest. The diplomacy I engaged in had thus been worthwhile.

Turning to the HRC, this organ continues most of the features of its predecessor, the former Commission on Human Rights. It is fundamentally a political body engaging in horse-trading among its members, many of whom come from corrupt, dictatorial, and oppressive governments. The council has a mandate to promote as well as to protect human rights, but emphasizes the former and rarely acts to prevent gross violations of human rights. Its special sessions on gross violations during the Syrian conflict illustrate how it provides a forum for the international community to express concern and can also establish fact-finding missions that are of great value in documenting the violations of human rights taking place.

The HRC's "special procedures"—essentially consisting of investigators—do make a useful contribution to prevention and protection following situations of concern, issuing discreet and public urgent appeals and issuing recommendations to the council and sometimes also to the General Assembly. But it is currently under both political and financial pressure from member governments to change

its approaches, so that it takes part in softer methods of dialogue and cooperation. On balance, the HRC is a selective and opportunistic protection actor.

Perhaps the most principled human rights actors in the UN human rights system are the ten monitoring organs established under the human rights treaties. They consider national reports, make country-specific and general comments, and in a few instances consider petitions and engage in fact-finding. Their “jurisprudence” represents the best that exists in universal human rights law—even if their membership is in many instances not universal. At the present time, however, they are under intense political and financial pressure to be less critical of governments, to give preference to cooperation and dialogue, to cut documentation and costs, and to “rationalize” their work. The costs of operating these treaty organs amount to a tiny fraction of the UN budget and yet the treaties and their organs are among the foremost actors in the UN, contributing to peacebuilding through the development of national systems for the promotion and protection of human rights.

Historically, secretaries-general have been wary about dealing with human rights issues, not wanting to become embroiled in political controversies. Even the great secretary-general Dag Hammarskjöld was extremely cautious about the subject. More recently, Secretary-General Kofi Annan did try to integrate human rights across the board of UN activities. António Guterres, the current secretary-general, does call for global respect for human rights, but he has deemed it wise to do so largely in general terms and has mostly remained mute in the face of egregious violations. He has emphasized and steered the UN High Commission for Human Rights in the direction of three human rights themes: implementation of the SDGs; implementation of economic, social, and cultural rights; and preventive human rights strategies.<sup>8</sup>

## THE HUMAN RIGHTS ETHIC IN RELATION TO THE HUMAN PREDICAMENT

On the human predicament of widespread global poverty and inequality, the UN has articulated a right to development that has so far had negligible impact.<sup>9</sup> As noted earlier, governments are not favorably disposed to integrating human rights in the implementation of the SDGs, especially in Goal 16. The 2019 high-level review had no human rights content whatsoever and the element of justice continues to be neglected.



As we move forward, two visions present themselves: the vision of a world of human rights inspiring policies and strategies of governance anchored in the dignity, worth, and rights of the individual, and the vision of “win-win cooperation” offered by Chinese president Xi Jinping. The challenge will be to find ways of anchoring win-win cooperation in universal norms of human rights championed by the United Nations.

What should be the future responsibilities of governments, international organizations, businesses, and civil society to uphold human rights? How will the body of human rights norms developed in the past seventy-five years of the United Nations need to be augmented? Should the UN request its International Law Commission to undertake an urgent study of this matter and provide its recommendations or establish a high-level panel of experts to help think through these challenges? What is the responsibility of the secretary-general or the high commissioner for human rights to help the international community think through these unprecedented issues? One thing is clear: when it comes to the future promotion and protection of human rights, business as usual will not be enough.

## CONCLUSION

On two occasions in the past—in 1968 and 1993—when the world found itself at a cross-roads, the UN convened world conferences on human rights to assess the needs of the times and to steer the course of human rights toward the future. Now is the moment for the UN to organize a third world conference on human rights to give people around the world the opportunity to claim and shape their human rights for the future. If this task is assigned to governmental representatives, however, it could have destructive results. On the other hand, if it is assigned to experts participating in their personal capacity, there is a chance that they might be able to rally a consensus on the way forward for the international protection of human rights based on the UN Charter, the UDHR, and the international human rights norms of the United Nations. The UN’s seventy-fifth anniversary would be a fitting occasion for the secretary-general to launch such a worthwhile exercise.

## NOTES

<sup>1</sup> Kai-Fu Lee, *AI Superpowers: China, Silicon Valley, and the New World Order* (New York: Houghton Mifflin Harcourt, 2018).

<sup>2</sup> UN Human Rights Committee, “CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life,” adopted at the twenty-third session of the Human Rights

- Committee, November 9, 1984. See also the HRC's General Comment No. 36 on the same topic: HRC, "General Comment No. 36: Article 6 (Right to Life)," CCPR/C/GC/36, October 30, 2018.
- <sup>3</sup> International Court of Justice, advisory opinion on Legality of the Threat or Use of Nuclear Weapons, July 8, 1996.
- <sup>4</sup> HRC, "General Comment No. 36."
- <sup>5</sup> See Gershom Carmichael, *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael*, ed. James Moore and Michael Silverthorne (Indianapolis: Liberty Fund, 2002).
- <sup>6</sup> On this, see Xue Hanqin, *Chinese Contemporary Perspectives on International Law: History, Culture and International Law* (Hague: Hague Academy of International Law, 2012).
- <sup>7</sup> António Guterres, "Progress toward Sustainable Development Is Seriously Off-Track," Opinion, *Financial Times*, November 4, 2019.
- <sup>8</sup> This is based on interviews this author has had with senior UN human rights officials.
- <sup>9</sup> See UN General Assembly, "Declaration on the Right to Development," A/RES/41/128, December 4, 1986, [undocs.org/en/A/RES/41/128](https://undocs.org/en/A/RES/41/128).

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Abstract: As part of the special issue on "The United Nations at Seventy-Five: Looking Back to Look Forward," this essay looks at the UN's human rights efforts through the lens of the ethics of survival, normative ethics, the ethics of protection, institutional ethics, and the ethics of the human predicament in the face of the Sustainable Development Goals (SDGs). The essay finds that while the consecration of the right to life has made a contribution to the ethics of human survival, the overall impact of the human rights program has been marginal. Normative ethics shows the UN performing magisterially in drafting and adopting a body of international norms for the universal protection of human rights. However, when it comes to the ethics of protection, the UN performs poorly because of the numerous oppressive governments that control the world body. On the ethics of the human predicament, this essay finds that SDG 16, which is devoted to development, peace, justice, and strong institutions, has so far had little practical impact. Gross violations of human rights continue to take place in numerous parts of the world.

Keywords: human rights, United Nations, human rights ethic, universality of human rights, challenges of protection