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Strengthening Human Rights Monitoring Mechanisms

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Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Preamble to The Universal Declaration of Human Rights

Introduction

How does the international community identify and act upon human rights problems and abuses? Traditionally the United Nations relied on the vigilance of its members. But a state raising human rights concerns inevitably faces criticism for politicization, taking sides, and violating the sovereignty of other states. This makes many governments hesitant to deal with such issues. Non-Governmental Organizations (NGOs) often are better equipped to spot and public problems, but they lack the legal authority to initiate action. How to insure that serious human rights abuses—of individuals and communities—will be addressed promptly and effectively? That is a riddle that plagued the international community for decades.

The United Nations was founded to foster peace, justice, and constructive dialogue within and among states. In addition to stripping individuals and groups of people of their personal security, human rights violations threaten the stability of states by discrediting their governments and inciting unrest in their populations. For this reason, human rights issues transcend borders. Although the authority to enforce human rights standards ultimately belongs to each sovereign state, the international community has a responsibility to set such standards and to highlight the successes and shortcomings it observes in their implementation.

The U.N. has several treaties and corresponding committees established for this purpose, and while they serve a very important function, there are questions about their efficiency. Many critics focus on the difficulty of enforcing International Humanitarian Law (IHL), but it is equally important to examine the monitoring mechanisms that guide implementation. The scope and the accuracy of the information the U.N. is able to obtain is crucial because human rights data determines what type of advice it will offer, what kind of action it will take and, often, the way other actors view the state in question.

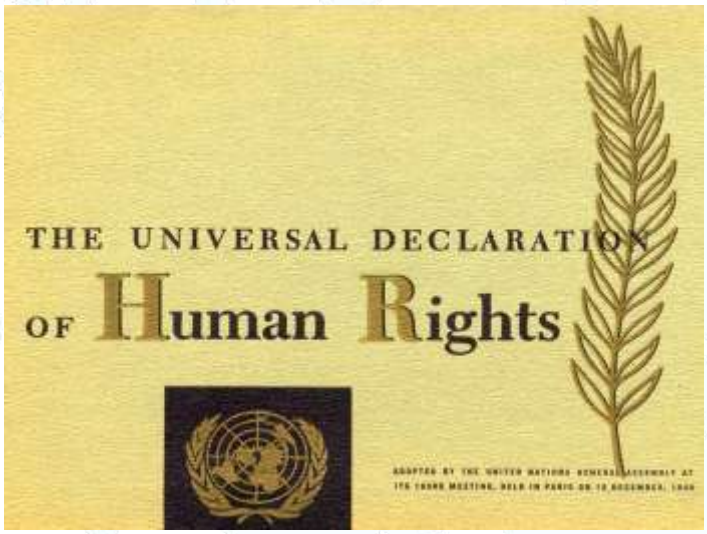
Some of the most promising proposals call for establishment of independent human rights monitoring mechanisms. Centers or observatories—possibly located in each country—would be responsible for spotting problems and abuses and informing international institutions of them. Insuring systematic and effective action is another problem.

Many governments are deeply committed to measures to make human rights abuses difficult or impossible. Others are suspicious of human rights monitoring, viewing it as little more than illicit

espionage, violating their sovereignty and promoting social chaos. Others are unwilling to link reporting to requirements for action. All these problems require resolution.

Background and structure of monitoring mechanisms

The Universal Declaration of Human Rights, published by the U.N. in 1948, is the fundamental document that established International Humanitarian Law; it articulates the standards toward which all states are called to strive. The main body handling IHL issues in the U.N. is the Human Rights Council (HRC), which replaced the Commission on Human Rights in 2006. Nine human rights treaties are also in effect to identify common areas of abuse in a more precise way, many with optional protocols that deal with methods of implementation more specifically. For each treaty there is a committee of experts assigned to review relevant complaints and to evaluate signatory states' progress. In general, the role of the treaty bodies is restricted to collecting information and offering advice. In extreme cases, issues may be brought to the attention of the Security Council so that sanctions or the use of force can be considered, but the treaty bodies cannot be punitive themselves.



In addition to the treaty bodies, the Special Procedures of the Human Rights Council allows for individual experts or groups of experts to act as either Country Mechanisms or Thematic Mechanisms. Country Mechanisms monitor rights development in states of particular interest while Thematic Mechanisms report on global phenomena affecting human rights. Treaty bodies also rely on non-governmental organizations (NGOs) for reports. Some NGOs are major international actors, such as Amnesty International, based in London, and Human Rights Watch, which operates out of New York. Smaller organizations are equally valuable to the HRC, though, as they tend have more specific focuses and may be able to provide more in-depth and firsthand information as a result.

The Commission on Human Rights was dissolved because it had been rendered ineffective by the membership of states whose gross IHL abuses were stagnant and well known. The clean slate

of the HRC was meant to reinforce high standards of IHL prioritization and to strengthen its image as an objective body dedicated to the equal evaluation of all signatory states. However, questions of partiality remain a major issue. Under the George W. Bush administration, for example, the United States withdrew its membership from the HRC entirely following complaints that the committee was too focused on Israeli-Palestinian relations. United States Ambassador to the U.N. John Bolton accused the HRC of gathering ammunition for the chastisement of Israel rather than seeking balanced information[1]. The United States would not return to the council until 2009 at President Obama's request. While it is imperative for the HRC to constantly scrutinize itself to eliminate bias, with a sensitive subject like human rights, there will always be accusations of unfairness and discrimination.

Strengthening structure

In recent years, the resources of the U.N.'s human rights monitoring mechanisms have been stretched thin. Four of the nine treaty bodies were created within the last decade, and in addition to the establishment of new committees, the roles of existing ones have expanded. More states have also ratified the treaties, which is positive but demanding of the U.N. workers whose review each state requires. This poses a particular challenge for those treaty bodies that deal with individual complaints. Because of meeting time restrictions, inadequate personnel and the complexity of the issues they consider, it is difficult for them to respond quickly. The Committee on the Rights of Persons with Disabilities illustrates the problem of response time; in July 2011, only 16 of the 90 states' initial reports that were due in 2010 had been submitted[2]. For the year 2011, the treaty bodies collectively received reports almost double the number of meeting days allocated for their analysis[3].

While they may need additional time and money to accomplish their tasks, the treaty bodies are also implementing measures to increase efficiency within their current framework. One important aspect of this effort is standardizing reporting procedures, both for the progress updates submitted by signatory states and for the additional complaints issued by non-governmental organizations and individuals. The more streamlined this process becomes, the more likely actors are to submit reports on time, allowing the treaty bodies to plan review time accordingly. As an inexpensive and low-maintenance means of outreach, the U.N. has expanded

and updated the Universal Human Rights Index, which details online the issues raised and recommendations issued in a format searchable by country. To cut costs and focus time further, some treaty bodies are conducting meetings and issuing certain documents in English

[1] Klein, Aaron, "Israel Boots Human Rights Investigator," *WorldNetDaily*, 16 December 2008.
[2] United Nations General Assembly, "Measures to improve further effectiveness, harmonization and reform of the treaty body system," Secretary General Ban Ki-moon, 7 September 2011.
[3] Ibid.

exclusively; this measure is somewhat controversial as English is not the first language of many members of the treaty bodies or of the committees reviewing their reports.

The independence of the treaty bodies and the Special Procedures of the HRC is essential to their credibility and objectivity. However, it inevitably decentralizes the system. Each group is free to develop its own rules for the nomination of experts and the conduct of reviews. It has been suggested many times, most recently by the High Commissioner in 2006, that the treaty bodies combine to form one organ, but the idea has never gained much traction. While complete unification could compromise their autonomy and further mire them in bureaucracy, the treaty bodies certainly need to communicate better among themselves. With the expansion of duties, many committees have begun to overlap, causing signatory states to raise the same issue with multiple bodies. This is inefficient for the U.N. and frustrating for states that are already working with complex procedures.

Some have argued that spinning such an intricate web of legislation where IHL is concerned is destructive. Human rights are often grouped into three categories: first generation rights, such as freedom of speech and religion, are basic liberties guaranteed to the individual. Second generation rights are more societal, such as the right to free health care or to unemployment benefits. Third generations rights are where IHL comes in. They are broad and universal, including states' rights to self-determination. Many believe that the U.N. should focus on concrete first and second-generation rights rather than the sweeping abstractions of third-generation rights. Others believe that they should return to the broader principles of IHL, which, while extremely difficult to enforce, are easy to grasp. These people see the volume and detail of treaties, monitoring mechanisms and laws as limiting the accessibility of rights implementation. They are also concerned that dictators and repressive governments may flaunt their progress in very specific areas of human rights as cover for the atrocities they commit in others.

Strengthening content

The main problem of both monitoring and implementing IHL is that compliance is voluntary. States are free to be selective about which treaties they sign and how closely they adhere to the standards therein. No nation has perfect human rights practices; the United States, a developed country classified as free by Freedom House's index, has been accused of abuses including

excessively harsh sentencing practices domestically as well as unlawful detentions, torture and the unapproved use of lethal force abroad. The U.S. has altogether refused to sign the *Second*

Optional Protocol to the International Covenant on Civil and Political Rights, which commits states to the abolition of the death penalty except in times of war. Monitoring mechanisms also face challenges in obtaining sufficient and accurate information about the states in question. They rely on government officials to compile thorough reports, but they have to view these with a critical eye; when reviewing a state accused of censorship, it is unwise to assume full disclosure. Sometimes, the best recommendation the committees can issue is a request for further information. This was the case with the HRC's 2011 concluding observations on the Islamic Republic of Iran. They voiced concern about alleged killings, torture and fraud surrounding the 2009 presidential elections, but due to limited information, the committee could only advise the government to investigate the situation.

The decision to restrict access can also be an upfront one; in 2008, Israel denied entrance to the country to Richard Falk, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, accusing him of anti-Semitic sentiment. His continued status as a controversial figure has restricted his access to useful information and weakened his capacity to work cooperatively with Israel. Falk is an extreme instance of polemical diplomacy, but the problem is systemic. The U.N. monitoring mechanisms exist to give straightforward and honest opinions about the circumstances they observe, and yet they perform this task knowing that harsh criticism can be taken as prejudicial and hinder the entire process. Experts must therefore be not only impartial, thorough and direct, but also skillful diplomats. Furthermore, it is critical that the HRC not elect as experts representatives of states known to be gross human rights violators, as they have recently been accused of doing, thus repeating the fatal mistake of their predecessor.

Beyond the treaty bodies and Special Procedures of the HRC, the main human rights monitoring mechanisms are NGOs. Their collaboration is crucial to constructing a complete picture of thematic or country-specific situations. NGOs would benefit from additional committee meetings held outside of Geneva as well as more streamlined reporting procedures, giving them a better

platform to call attention to the issues they champion. For those treaty bodies that accept outside complaints, citizens are an important source of information, too. To preserve the symbiotic relationship between individuals and the treaty bodies/Special Procedures, it is important that the U.N. maintain the anonymity of those who file complaints, thereby keeping the people their work is fundamentally intended to protect safe.

List of U.N. human rights treaty bodies

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights

- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination against Women
- Committee against Torture
- Subcommittee on Prevention of Torture
- Committee on the Rights of the Child
- Committee on Migrant Workers
- Committee on the Rights of Persons with Disabilities
- Committee on Enforced Disappearances

For further information on these committees and descriptions of their work, see:
http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx

For a list of all current Country Mechanisms and information on their work, see:
http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx

For a list of all current Thematic Mechanisms and information on their work, see:
http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx

Issues to be resolved

- Authority for monitoring (international or national; who is in control?)
- Relationship to existing treaties, institutions and NGOs
- The location of centers or observatories
- The mechanics of centers or observatories
- Staffing
- Financing
- The manner of reporting of findings, alarm systems
- Responsibility to react, if any

Country positions

The greatest support for systematic global human rights monitory comes from *Europe*, *Latin America and some African states*. These regions, with past experience of human rights abuse, are sensitive to the protection of human rights. Most European and Latin American government advocate creation of aggressive monitoring systems, possibly linked to the International Criminal Court (ICC) in The Hague.
Another group of countries supports the principle of monitoring, but would apply it only against selected states, typically their political adversaries. The United States advocates mandatory observation and reporting against leftist government such as Cuba, China and Venezuela. Such governments do not want reporting used against them, in the America case, shielding the detention center at Guantanamo and capital punishment.

Many countries are deeply suspicious of human rights monitoring, which they regard as a national responsibility alone. International mandates, they insist, violate their national sovereignty. China, Russia, much of the Middle East, and South Asia. Human rights monitoring, they argue, is a pretext for foreign meddling in their affairs, often used to support rebellion and foreign intervention.

Conclusion

While Human Rights monitoring has come a long way in recent years—especially through the work of Non-Governmental Organizations—there is much to be done. To those who favor international action, the failure to detect and act on serious human rights abuses shows the extent of the need. Funding, states' compliance, and communication are keys to strengthening the mechanisms in place to protect human rights. Others see a much less visible role for the international community; they would leave any problems to the authority of sovereign states. There is much overlap in the various treaties and bodies created, as they strive to build on each other to form a more comprehensive approach to protecting human rights. Along with the issues to be resolved is the question of: how can the international community most effectively monitor and enforce the treaties before it? Is there a role from the UN, should the UN empower member states to act themselves, or are there other institutions that should be involved?

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