

## University of Miami Law School Institutional Repository

---

University of Miami Inter-American Law Review

---

7-1-1996

# The United Nations Role in the Future of Human Freedoms

Emilio J. Cárdenas

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

Emilio J. Cárdenas, *The United Nations Role in the Future of Human Freedoms*, 27 U. Miami Inter-Am. L. Rev. 441 (1996)

Available at: <http://repository.law.miami.edu/umialr/vol27/iss3/2>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## COMMENTARY

# THE UNITED NATIONS ROLE IN THE FUTURE OF HUMAN FREEDOMS

AMBASSADOR EMILIO J. CÁRDENAS\*

I. INTRODUCTION .....	441
II. THE SLOW-MOTION STRUGGLE FOR HUMAN RIGHTS .....	443
III. THE STRUCTURE OF INTERNATIONAL HUMAN RIGHTS PROTECTION .....	444
IV. TWO IMPORTANT ADDITIONAL STEPS .....	447
V. A RENEWED "SPIRIT" SEEMS TO SURFACE .....	448
VI. LOOKING INTO THE NEAR FUTURE .....	450
VII. CONCLUSION .....	451

### I. INTRODUCTION

The global affair we all baptized in 1945 as the United Nations has just reached fifty years of age. It has proven to be a unique adventure for the international community, encapsulated

---

\* Argentina's Permanent Representative to the United Nations.

in an organization of interdependent action. It has certainly had a wide variety of success and achievements, as well as some disappointments and failures; the latter very frequently mirror the imperfections of actions by the Member States themselves.

The rainbow of diverse tasks entrusted to the United Nations is expansive. It can be argued that, thus far, its primary focus has been maintenance of world peace and security via its contributions to the resolution of major worldwide crises and confrontations. In this connection, the role of the Security Council is and has been central. The United Nations' list of responsibilities, however, goes much further: protecting human rights, securing relief and humanitarian aid for millions of displaced persons and refugees, confronting the nuclear threat, promoting disarmament and controlling weapons of mass destruction, safeguarding the environment, managing a wide variety of population issues, promoting economic and social development, fighting the causes of poverty, nurturing the world's children, fostering the independence of former colonies, eliminating apartheid, promoting education, curbing drug traffic, stopping rural decline and correcting urban decay.

The United Nations is, therefore, required to attempt resolution of an extraordinarily wide array of conflicts while simultaneously keeping an eye on the main changes taking place in a contradictory world — a world which, on the one hand, becomes rapidly globalized in certain matters and, on the other, appears extremely fragmented and conscious of growing disparities in wealth and well-being.

Due to these considerations, the list of tasks of the United Nations can only grow. In fact, it is easy to argue that a whole new generation of "global" issues has already emerged. These include communications, deep sea mining, migration, law of the sea, health, terrorism, climate change, energy interdependence, and the environment. These issues must all be addressed by all of us.

Many of these subjects are already globalized and are generating anxiety and uncertainty, for which visionary but realistic common solutions are urgently required.

## II. THE SLOW-MOTION STRUGGLE FOR HUMAN RIGHTS

Not so long ago, democratic nations were little more than an embattled minority. That situation has dramatically changed. The current era is an age of universal democratic aspirations, which began with the dramatic collapse of the Communist totalitarian experiment in the Soviet Union. The defeat of dictatorship saw freedom suddenly won by many.

Developing countries certainly remain interested in preserving their sovereignty, but democratic assistance and all that it entails is viewed less and less as an intrusive activity. In fact, there are many instances where more seems to be expected and where — increasing demands notwithstanding — the “offer” of assistance appears to be clearly insufficient. This is the case, for example, of the urgent need of many countries around the world to modernize their respective electoral structures, or to restructure their judicial systems.

But the conquest of freedom did not necessarily mean the overnight triumph of democracy. It could not. This is because democracy cannot be enacted from above by decree. Neither can it be imposed easily from below by mass action. Democracy is both a life-style of culture and a faith. It is also a political order and a delicate form of coexistence and tolerance. It is, moreover, a deeply held commitment to respect personal liberty and accept individual responsibilities.

The cornerstone of democracy is the right to conduct free and fair elections; without this, there simply cannot be real democracy, rhetoric notwithstanding. But it also requires the presence of other essential institutions. By way of example, these may include a truly representative government; the rule of law; respect for basic human and political rights guaranteed by a Constitution; freedom of expression and movement; equality before the law; dispersion of power; deference to pluralism; experienced legislatures; independent judiciaries; a free press; a relatively stable social texture; even a reliable and basically free economy.

The achievement of democracy — understood as building lasting and effective institutions — is normally a long, slow, and often difficult process. This process must, necessarily, be built and maintained with untiring effort. From an international

perspective, democratic governments are preferable because they have proven more peaceful and less given to provoking war or inciting violence than other types of government. In addition, they tend not to abuse citizens' rights. This is why democratization is so attractive to the international community at large.

For democracies to have real impact, human rights and basic freedoms must be protected. The defense of human rights is clearly one of the pillars of the United Nations system. It is a goal in its own right. The international structure for the defense and promotion of human rights (as we will see) has in recent decades made real progress. Nevertheless, much remains to be done.

### III. THE STRUCTURE OF INTERNATIONAL HUMAN RIGHTS PROTECTION

Until the aftermath of World War II, international law was unable to hinder the right of a "sovereign" to be monstrous with its subjects. The violation of basic human rights was an issue nevertheless, but only if and when the respective victim was a citizen of another state. Only then could the so-called "humanitarian interventions" by states be expected. The individual — from a protection of human rights standpoint — was not "unpacked" from the state until the second post-war period, when the issue of the need to protect minorities surfaced as a priority.

The victorious allies, however, decided to prosecute Nazi leaders not only for atrocities committed in the occupied territories, but also for the slaughter of Germany's own citizens. The two types of cases fell unequivocally under the category of "crimes against humanity." From this decision onward a new frontier for the protection of individuals human rights was opened.

Human rights is an expression that needs no introduction. It conveys, in a nutshell, most of the aches and pains experienced by international society. The expression, however, only came into use between 1945 and 1948.

The *Charter of the United Nations*, it must be recalled, may well be considered the basic engine of human rights protection. It not only contains seven specific and different articles related to the protection of human rights, but also sets up a Human Rights Commission entrusted with the difficult task of having to

deal on a daily basis with the practical needs of such protection. In fact, it commits its Member States to take joint and separate action to promote respect for human rights and freedoms. That notwithstanding, reaching agreement on the *Universal Declaration of Human Rights* — a moral document of first importance — took no less than three years of work in an effort led by Eleanor Roosevelt in her capacity as chairperson. It was finally adopted in Paris, on December 10, 1948, after a persistent Soviet proposal to postpone its consideration was again rejected. December 10, 1948 was, coincidentally, the day after the General Assembly's adoption of the Genocide Convention. Only then did Eleanor Roosevelt dare to express her dream that the *Declaration* could, in fact, turn out to be "the Magna Carta of mankind."

The *Declaration* represented a milestone in human rights progress because it established norms of universal behavior. It can also be argued that it somehow became the "codified conscience" of the world, providing common standards against which the conduct of societies and governments could be easily measured. This was certainly a new frontier: the formulation of international law rules directly affecting individuals.

Over the years, the *Declaration* has achieved an undisputed "legal aura" of its own. It is incorporated into international agreements and national constitutions, and has inspired or become part of a great deal of national legislation. Moreover, it is frequently invoked in judicial decisions around the world. Immediately after World War II, however, most governments determined that the *Declaration's* standards were not legally binding. Other than in cases of genocide, slavery, or flagrant and gross abuses of human rights, most human rights matters were deemed, only and strictly, an "internal affair" of the respective state concerned.

The United Nations activities in this area were at that time considered confined to promulgating rights and defining duties, and enforcement was understood to be a matter of purely domestic concern. The familiar polarities between human rights and national sovereignty or individual liberties and societal needs, discouraged for quite some time any possible consensus.

As envisaged by the *Charter*, a Commission on Human Rights was created in 1946, based in Geneva, Switzerland. The Commission prepares recommendations and reports on all issues

connected with the international bill of rights, draft declarations and conventions on civil liberties; the status of women, freedom of information and similar matters; the protection of minorities, and the prevention of discrimination based on race, sex, language, or religion. Its twenty-one members are elected for three year terms by the Economic and Social Council.

The Commission subsequently established a Sub-Commission on the Prevention of Discrimination and Protection of Minorities which, in turn, controls several working groups: Slavery, Indigenous Populations, and Detention and Communications. The Commission itself controls other working groups: Enforced or Involuntary Disappearances; Right to Development; Promotion of Rights and Freedoms; and on the Human Rights Situation. The work of the commission has up to now been clearly dominated by member states and its responsibilities were basically geared towards drafting treaties and legal documents.

As early as 1947, governments pointed out that the Commission had no power whatsoever to deal with or act against specific human rights violations. An attitude of self-restraint prevailed at that time. It was certainly the very opposite of the type of "activism" on the subject which seems to be required by today's needs. Even the United States, in 1953, informed the international community that it did not want to be covered by any treaty on human rights the United Nations would adopt.

Under General Assembly resolutions 1235 (1967) and 1503 (1970), the Commission was authorized to examine reports of flagrant violations of human rights and situations revealing their systematic and constant disrespect. This is actually done through a process of public sessions and meetings during which, in an open manner, the situation prevailing in individual states is thoroughly examined. Resolution 1503 gave, for the first time, the power of initiative to private individuals and nongovernmental organizations. It thus broke the defensive citadel of mutual protection built by some Member States which simultaneously made every effort to avoid public debate of their own individual situations. Its procedures, however, have not yet allowed for the prompt and public action required to clearly expose those who are, in fact, guilty of offending human rights.

In addition, numerous other Working Groups, Rapporteurs, and Special Representatives of the Secretary General on human rights issues, merge into a complex international system devoted

to the difficult task of protecting human rights around the globe. In 1994 alone, well over 100 human rights technical cooperation projects were implemented. Human rights field presence was established in Burundi, Cambodia, Malawi, and Rwanda. Monitors work in various places in the former Yugoslavia and their very presence has unequivocally proved to act as a confidence-building measure for the local society.

The Commission, in turn, is serviced by the United Nations Center for Human Rights, which provides both much needed administrative support and ideological impetus. Unfortunately, it operates with insufficient resources — at a level of less than one per cent of the aggregate United Nations regular budget.

#### IV. TWO IMPORTANT ADDITIONAL STEPS

Because of the impact of the Cold War, the two international human rights covenants were not adopted until 1966. This was an unexpectedly long and painful gestation for all of those who had their human rights values and priorities clear from the outset. I refer both to the International Covenant on Economic, Social and Cultural Rights, which became effective in 1976, and to the International Covenant on Civil and Political Rights, including its two Operational Protocols, which came into force in 1991. Together, these Covenants contain the widest range of recognized human rights ever defined.

Through these two important instruments, the United Nations has played and will continue to play a major role in promoting respect for human dignity. It has also encouraged social progress, while defining — for the people of the world — a much greater freedom than that enjoyed prior to the international community's acceptance and enactment of such commitments.

Under the first Covenant, States' reports on economic, social, and cultural rights are reviewed by a Committee of experts appointed by the Economic and Social Council. Under the second, a "Human Rights Committee," made up of experts (distinguished by a high caliber of professional standing) was set up to consider periodic reports from States that have ratified the respective Covenant. Such reports deal with measures of a legislative, judicial and administrative nature that States have taken to guarantee the enjoyment of the rights enumerated in the Covenants. The Committee, it must be pointed out, has already



produced a rich body of substantial and carefully reasoned decisions on a wide variety of human rights complaints. The Committee may also hear complaints by States arguing that other States have failed in complying with their Covenant obligations.

It must also be pointed out that individuals can, under the first Optional Protocol of the Covenant, make complaints against States about possible human rights violations. In these particular cases, the Committee first determines the viability of the complaints, and later deals with the substance of the individual problems, determining further whether the alleged violations of human rights have in fact occurred.

In 1976, only a decade after their adoption, the necessary ratifications of the Covenants were deposited, thus allowing them to become operative. This delay somehow evidences the rather difficult situation appertaining to this matter which prevailed only two decades ago.

#### V. A RENEWED "SPIRIT" SEEMS TO SURFACE

From the ratifications onward, in what amounted to a new and dynamic trend, everything concerned with human rights began to steadily change. Significant and rapid progress was made on all fronts in the struggle for respect of human rights and fundamental freedoms. A great deal must still be accomplished, but the rhetorical view that human rights violations are shielded from international action — since they were considered internal or domestic matters — has faded away.

Other ad-hoc conventions in effect deal with racial discrimination, discrimination against women, children's rights, and torture. Under their respective umbrellas, a wide array of expert monitoring bodies and mechanisms have been created.

Generally speaking, the task of implementing human rights treaties is left to sovereign states. International agencies rely on the power of persuasion, backed by the growing power of international publicity, generating the possibility of obtaining positive effects while formally maintaining a non-interventionist attitude.

In the last two decades, an increasing number of international and domestic nongovernmental organizations have contributed to the monitoring of human rights compliance all over the globe. In this regard, these organizations have made major

contributions by sending "early warning" messages to the international community and by developing a much greater awareness of human rights among the public at large. More and more, these modern social movements are contributing — frequently with great courage and generosity — by responding to humanitarian needs and emergencies. Their efforts cut across national boundaries and their messages appeal to international audiences. This is because they are working toward a civil society; an entity no longer defined by the boundaries of sovereign states nor necessarily governed only by actions of a national nature.

The United Nations has increasingly incorporated human rights issues and components into its peace-keeping operations, providing assistance in that connection, organizing and supervising all kinds of electoral processes, restructuring police forces, reshaping judiciaries, and investigating past violations.

In 1994, following a decision of the General Assembly enacted the previous year, the first "United Nations High Commissioner for Human Rights" was appointed.<sup>1</sup> The important duties of this office require the High Commissioner to promote and protect the effective enjoyment of all civil, cultural, economic, political, and social rights, including the right to development. Appointed by the Secretary General and approved by the General Assembly, the High Commissioner acts under the direct authority of the former. The High Commissioner is, in fact, the United Nations official with principal responsibility for the multitude of United Nations human rights activities.

A debate which began in the 1980s concerning whether human rights are of a "universal" nature or are, instead, individual and relative to each specific society, is rapidly winding down into a consensus that recognizes universality. This has allowed the effective protection of human rights to move forward. The common challenge of universality recognition has made clear progress, while at the same time it has respected the need to always take cultural diversity into account.

The intransigence of yesterday has, therefore (particularly since the 1993 Vienna Conference) begun to be replaced rapidly by a much higher degree of ideological flexibility on the subject.

---

1. Since its creation, the position has been held by Jose Ayala Lasso, Former Permanent Representative of Ecuador to the United Nations.

## VI. LOOKING INTO THE NEAR FUTURE

Now that the first fifty years of work is done, it is clear that the United Nations has accomplished much for the defense of individual rights. While many goals have been attained, there are (in this particular and important human rights field) still many unanswered challenges. We thus seem to have in place, complete and available, the basic legal framework for the protection of human rights. Clear standards have been set. The protective system is also in place.

It must now, first, be revisited with the purpose of being streamlined, its procedures rationalized and its structures simplified. We require an active and effective free-standing organization, able to adeptly use its tools to intervene whenever necessary. Present arrangements are too complex and the various entities often have overlapping mandates.

On the other hand, there is still a degree of excessive politicization within the Commission on Human Rights. Too frequently those suspected as major human rights violators successfully compete for a presence in the very same bodies that are supposed to audit their excess. This, in my view, is a very uncomfortable reality which demands change.

A better monitoring and supervision of the multiple treaty obligations assumed and commitments made by Member States is essential. The real challenge, however, is to keep the present system in motion, both in its promotional and productive capacities, while improving effectiveness.

For this purpose, self-restraint is certainly not enough. Affirmative action is frequently required to assist those in need of protection when the basic rights of individuals are at stake. The United Nations has (in this area) an efficient and peaceful weapon: public exposure of human rights violations by a credible fact-finder. It must continue using it. The old shibboleths of the inviolability of sovereignty and non-interference in the domestic affairs of a sovereign government have, for all practical purposes, given way — at least at the Security Council level. They have yielded to allowing, in some limited cases, “intervention” based on humanitarian grounds.

In this connection, it is true that no legal word has contemporaneously become more misused than sovereignty. The corrup-

tion of the concept of sovereignty, when used to shield violence or punishment of human beings — particularly each time there is a threat of widespread loss of human lives — has again and again been rejected. In fact, one can certainly argue that what is involved in this particular discussion is not necessarily the right of intervention, but instead, the collective obligation of the international community to bring to specific people some minimum relief and redress when confronted with serious human rights emergencies.

## VII. CONCLUSION

Today's world can no longer permit unspeakable atrocities against human beings to continue unhindered. In a functionally linked global community there should be no room for genocide, no margin for apartheid, and no patience for atrocity or terrorism. As the former Secretary General for the United Nations, Javier Perez de Cuellar, once stated: "Each government is open to scrutiny by the United Nations and is internationally accountable for its efforts to live up to the principles of the Charter. An international responsibility to the United Nations is, thus, an inherent adjunct to the sovereignty of every Member State."<sup>2</sup> The principle of non-intervention should not be cast aside lightly, but it seems to have found limits it simply did not have only a few years ago.

Finally, allow me to remind in closing that the United Nations General Assembly has here a very clear role. It remains the central actor in the human rights drama. It must determine the priorities of the moment, decide what to do next, define which issues must be addressed at this particular juncture, and last, but not least, agree on which budgetary resources are to be allocated to the work of reshaping the organization's human rights machinery. Subject to the ultimate authority of the General Assembly, the Economic and Social Council must also be in the picture, making recommendations on matters under its competence.

---

2. See Terry L. Diebel, *International Affairs and International Relations in the Post-Cold War World*, WASH. Q., Summer 1993, at 20 (quoting Javier Perez de Cuellar).

It is then time to eliminate all historical ambivalence in this connection. The distance already traveled should provide the stamina required for continued progress. At stake is the protection of the human rights of millions who are still waiting, because, unfortunately, they cannot rely on the actions of their own governments for such purposes. The communications revolution has blurred national borders. As a consequence, governments cannot hide (as they did up to yesterday) cruelty, horror, and abuses against mankind.

No country can remain immune to some degree of outside scrutiny on this issue. This is extremely important for the future of the precious rewards which derive from individual freedom. To renounce liberty is to surrender the rights of humanity. It should never happen again.

For the United Nations, after serving the world for fifty years, this is an ongoing effort. For this purpose, effective machinery for monitoring compliance with the protection of human rights must always be available. Protective efforts at both national and international levels are intimately connected. In fact, international mechanisms should operate to reinforce domestic protection and provide redress when national systems fail. This joint action is essential. After all, human rights are a dynamic phenomenon and liberty is always an unfinished business.