

Washington University Journal of Law & Policy

Volume 5 *The Institute for Global Legal Studies Inaugural Colloquium: The UN and the Protection of Human Rights*

2001

Introduction: The UN and the Protection of Human Rights

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Recommended Citation

Stephen H. Legomsky, *Introduction: The UN and the Protection of Human Rights*, 5 WASH. U. J. L. & POL'Y 007 (2001),
https://openscholarship.wustl.edu/law_journal_law_policy/vol5/iss1/3

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Introduction

Stephen H. Legomsky*

THE UNITED NATIONS AND THE PROTECTION OF HUMAN RIGHTS

To launch Washington University's new Institute for Global Legal Studies, one would be hard pressed to find a topic more fitting than the United Nations and the Protection of Human Rights. More than any other organization, the United Nations simultaneously embodies the dreams and the failures of the world's collective efforts in pursuit of peace, prosperity, and justice. And perhaps more than any other subject, human rights law raises fundamental questions about the respective roles of the individual, the state, and the international community in shaping a rule-ordered world that protects and advances the dignity of the human spirit.

In 1945, representatives of the world's nations convened in San Francisco to adopt a charter for a new association of nations.¹ Sometimes I try to imagine the atmosphere in the room where they assembled. These delegates had lived through World War I, the war to end all wars. Then they had lived through the Great Depression. Now they had seen World War II come to an end. Tens of millions of people—presumably including the wives, husbands, sisters, brothers, mothers, fathers, daughters, sons, and friends of many of the delegates themselves—lay dead. Whole civilian populations were decimated. The world lay in rubble. Entire cities and towns were obliterated, as were the factories, the farms, and other means of production. By this time, too, the full horror of the Holocaust was widely known. Millions of refugees—men, women, and children—

* Charles F. Nagel Professor of International and Comparative Law and Director, Institute for Global Legal Studies, Washington University. The colloquium that gave rise to this volume of the *Journal* was webcast. To view all or part of it, visit <http://law.wustl.edu/igls/webcast.html>.

1. See, e.g., FREDERIC L. KIRGIS, JR., INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING: SELECTED DOCUMENTS 1 (1993).

were stranded in Europe. They had nowhere to go.

For one remarkable, idealistic moment in history, the representatives of the world's nations, led by Eleanor Roosevelt and other heroes, pledged to end the madness. They set out to do nothing less than create a new world order. There would be no more war. Disputes would be resolved through peaceful, civilized means. There would be no more genocide, no more racism, no more ethnic hatred. There would be respect for the essential dignity of all persons and the human rights of all individuals and all peoples. There would be no more poverty, no more malnutrition, no more disease. The nations of the world would band together to raise the standard of living for all.

What a vivid blend of sadness, communion, fear, frustration, poignancy, cynicism, and hope must have permeated that room! People who had witnessed and personally experienced unspeakable cruelties and bewildering destruction glimpsed an opportunity to harness the basic goodness and the basic resourcefulness of humankind. They sought to usher in a just, safe, and peaceful world for themselves, their children, and generations to come.

They put their dreams in writing. The preamble to the Charter of the United Nations² emphasizes the drafters' desire "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . ." Article 1(3) states that one of the purposes of the United Nations is "to achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms . . ." Under article 55(c), "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all . . ."

This was law at its noblest. It was law that frankly recognized the capacities of human beings for both great good and great evil. The delegates understood well that the world's people had a choice. They could continue to fight one another, or they could work harmoniously in a climate of shared goals and mutual respect. They founded the United Nations.

More than half a century has passed since that unique moment. Most of the people who assembled in San Francisco in 1945 have

2. 59 Stat. 1031, T.S. No. 993, Preamble, cl.2 (signed June 26, 1945; entered into force October 24, 1945).

now passed on. Those who are still living no doubt feel a penetrating sadness that their vision has not yet materialized. Some of them probably wonder whether this failure is simply part and parcel of the human condition—a state of affairs that no law and no organization can repair. Others among them might feel differently. They might believe that, if only we work at this project long enough and hard enough, and not allow even major setbacks to divert us, we can at least approach the dreams and the aspirations of 1945.

The essential premise of modern international human rights law is that there is still hope. Human rights activists today ask practical questions, not just philosophical ones. What specific, concrete actions can the world community, states, NGOs, and individuals take, and what mechanisms can they establish, to put an end to the madness?

In various ways, the contributors to the present colloquium address themselves to these fundamental questions. They come from different regions of the world, different professional experiences, and different personal backgrounds, but they have in common an unmistakable longing to solidify respect for human rights and the rule of law.

The first two papers take us, respectively, through the history and the decisionmaking structure of the United Nations. These two papers lay the foundation for the next eight, which focus more specifically on the human rights mission of the United Nations.

Richard C. Hottelet, the great CBS foreign correspondent, has firsthand knowledge of the World War II atrocities and the events that followed them. As a young journalist, he covered Germany from 1938 until well into the war, eventually finding himself imprisoned by the Gestapo for four months. Beginning in 1944 he served in Edward R. Murrow's London Bureau. Mr. Hottelet began covering the United Nations in 1960 and continues to write editorials on the United Nations for the *Christian Science Monitor*. His present article traces the political history of the United Nations from its origins to the present day. In it, Mr. Hottelet graphically walks us directly into, and then through, the great crises in the life of the United Nations.

From the history of the United Nations, John B. Anderson turns to issues of governance. The former Congressman, 1980 independent candidate for President of the United States, and now the President and CEO of the World Federalist Association advocates both

strengthening and democratizing the United Nations. He urges the creation of a police and security force under the control of the Security Council. At the same time, he argues for an expanded Security Council and the replacement of the one-state-one-vote system with a more democratic model that reflects the member states' populations and budget shares.

After exploring the general history and structure of the United Nations, this collection of papers considers several specific human rights strategies. They span a wide spectrum, which includes factfinding missions, military force, and international criminal adjudication.

Professor M. Cherif Bassiouni, currently the President of the International Human Rights Law Institute at DePaul University, is perhaps best known in recent years for his decades-long crusade on behalf of an international criminal court. He is a lifelong political activist whose courage and sense of truth led him to lengthy house arrest under Egyptian President Nasser in the 1950s. He is a scholar and a diplomat whose life work culminated in his chairing of the drafting committee for, and ultimately the adoption of, the 1998 Rome Statute for an International Criminal Court. But Professor Bassiouni also chaired the United Nations fact-finding committee for the former Yugoslavia in 1993-94, and in his present paper he turns to the subject of United Nations fact-finding. Here he highlights the political realities that frequently compromise the integrity of UN factfinding missions. His depictions of the report and procedures of the Rwanda Commission are particularly scathing.

The next two papers consider a second United Nations strategy for responding to aggression or other violations of international law—the use of military force. Thomas M. Franck, currently the Murry and Ida Becker Professor of Law and the Director of the Center for International Studies at New York University, is one of the past century's legendary figures in international law. A prolific and influential scholar and the recently retired president of the American Society of International Law, Professor Franck has advised numerous governments and commissions and has represented non-government organizations at conferences for international agreements. His paper here notes that the structure of the United Nations Charter posits the substitution of collective United Nations security measures for

unilateral or multilateral actions by member states, but explains why that model has failed to take hold. He details some of the ad hoc responses that coalitions of willing states have fashioned, often with the tacit approval of the United Nations. With the Security Council and the General Assembly as (admittedly biased) global juries, he argues the United Nations system has been resilient enough to adapt to developments that should probably have been foreseen as natural and inevitable.

Ruth Wedgwood is another distinguished international law scholar, investigator, and negotiator. She is a Professor of International Law at Yale Law School, a Senior Fellow for International Organizations and Law at the Council on Foreign Relations, and the Director of Research for the American Society of International Law. Professor Wedgwood's paper considers the question of United Nations peacekeeping forces. She identifies a fundamental ambivalence, both within the United Nations as an institution and among its member states, about the proper role of such peacekeepers. She traces the attitudinal shifts from the robust optimism at the inception of the United Nations, to the stalemates of the Cold War, and into the post-Cold War era. In the process, Professor Wedgwood laments the failed opportunities to prevent or at least diminish the bloodshed in Bosnia, Somalia, Rwanda, and elsewhere. She articulates several political and institutional explanations for the failures and identifies the problems that require attention if the United Nations is ever to attain its full potential as a contributor to global security.

A third United Nations human rights strategy is the establishment of international criminal tribunals to try perpetrators of major international crimes. The two papers in this section are by authors who have played starring roles in precisely such tribunals—one as a judge and one as a prosecutor.

Judge Patricia Wald of the United Nations International Criminal Tribunal for the former Yugoslavia has spent a lifetime fighting for social justice on a multiplicity of fronts. The former chief judge of the United States Court of Appeals for the D.C. Circuit has been a prolific and respected scholar in such diverse fields as criminal justice, juvenile law, mental disability law, poverty and public interest law, administrative law, constitutional law, judicial process,

and women and the law. She has played key roles in countless professional associations and legal reform efforts in the United States and overseas. Her contribution to this colloquium draws on all her prior and present experiences to paint a picture of life inside the United Nations International Criminal Tribunal for the Former Yugoslavia. Judge Wald identifies the special challenges the tribunal faces and describes the means it has adopted to overcome them.

Justice Richard Goldstone of the Constitutional Court of South Africa is another legendary figure in international criminal justice. In the 1990s alone, Justice Goldstone chaired the Commission of Inquiry regarding Public Violence and Intimidation (the Goldstone Commission), served as the first functioning³ Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda, chaired the international experts task force that drafted the Declaration of Human Duties and Responsibilities for the Director General of UNESCO (the Valencia Declaration), and chaired the International Independent Inquiry on Kosovo. During a portion of this same time period, he wrote the book *For Humanity* and began serving as a Justice on South Africa's Constitutional Court and as the Chancellor of the University of the Witwatersrand in Johannesburg. His paper thoughtfully traces the evolution of the major United Nations international criminal tribunals in the 1990s—from the International Criminal Tribunal for the former Yugoslavia, to the analogous tribunal for Rwanda, to the convention and subsequent ratification effort for a new, generic international criminal court. Justice Goldstone identifies the extraordinary financial constraints and other handicaps under which the two existing international criminal tribunals have been forced to operate and the notable successes they have achieved nonetheless. He links these experiences to the importance of creating the new International Criminal Court and urges the United States to lend its support.

Unlike the preceding papers, which examine generic strategies for preventing and redressing violations of human rights, the final group

3. Technically, the first Chief Prosecutor was Ramon Escovar-Salom. He resigned three days after his appointment, however, in order to become Venezuela's Minister of the Interior. See Richard J. Goldstone, *The Role of the United Nations in the Prosecution of International War Criminals*, *infra* at 119.

of papers highlights some of the United Nations initiatives that aim to protect specific vulnerable groups. The three groups that are the subject of attention here are refugees, internally displaced persons, and women.

Erika Feller is the Director of International Protection of the Office of the United Nations High Commissioner for Refugees (UNHCR), based in Geneva. Her distinguished career has included numerous postings all over the world, first in the Australian Foreign Service and then with UNHCR. Her present paper synthesizes the history of the international refugee movement generally and the evolution of the Office of the UNHCR in particular. Importantly, she also offers a three-pronged vision of where international refugee law ought now to be headed—the reaffirmation of the 1951 United Nations Convention Relating to the Status of Refugees;⁴ a revisiting of some of the more restrictive interpretations that states have placed on it; and affirmative efforts to fill critical gaps that the Convention, even when liberally interpreted, leaves for the protection of highly endangered individuals and groups.

Dr. Francis Mading Deng is the Representative of the United Nations Secretary-General for Internally Displaced Persons. Dr. Deng has served his country, the Sudan, as Minister of State for Foreign Affairs, ambassador to the Scandinavian countries, ambassador to Canada, ambassador to the United States, and permanent representative to the United Nations. Equally distinguished as a diplomat and a scholar, he has written numerous influential books, has held visiting academic appointments at Yale and New York University, and has been a senior fellow at the Brookings Institution. His paper is the perfect complement to that of Erika Feller. Where she discusses refugees—generally defined to encompass those who have been forced to flee their countries' territories—Dr. Deng discusses “internally displaced persons,” or “IDP’s,” defined to cover otherwise similarly situated individuals who have fled their homes but remain within their countries' borders. He first conveys the magnitude of the worldwide IDP problem, both in statistical terms and in human terms, highlighting the particularly

4. 19 U.S.T. 6259, 6278, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

grave problems on the African continent. With the implications for national sovereignty sensitively in mind, Dr. Deng then proceeds to conceptualize his mandate, describe the specific activities he has carried out under his mandate, and urge the world community not only to respond to IDP crises after the fact but also to address the root causes of IDP crises proactively.

The final paper in this sequence is by Eminent Ambassador Aída González Martínez of Mexico, Chairperson of the United Nations Committee for the Elimination of Discrimination Against Women (CEDAW) and the Coordinator of International Women's Affairs in Mexico's Ministry of Foreign Affairs. Her impressive diplomatic lineage includes service as her country's Assistant Undersecretary for Migration and Human Rights, Inspector General of Mexican Foreign Missions, Adviser to the Secretary of Foreign Affairs, and Mexican Representative to numerous international organizations and conferences. The paper prepared by Ambassador González Martínez begins with general conceptions of international human rights and then proceeds to a more specific discussion of women's human rights issues—especially in the areas of maternity, nationality, minimum marriage age, employment, prostitution, and education. From there the paper becomes more specific still, discussing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (the Convention), which she helped to draft,⁵ and finally targeting one specific mechanism established by the Convention—the Committee for the Elimination of Discrimination Against Women (CEDAW).⁶ In that last section, she offers valuable insights concerning the structure, composition, and activities of CEDAW as it seeks to breathe life into the text of the Convention that created it.

In different capacities, each of the contributors to this volume has played an historic role in the human rights saga of the past several decades. They have pursued differing strategies, ranging from scholarly discourse to diplomacy, investigative journalism, advocacy, prosecution, adjudication, and leadership of intergovernmental

5. G.A. Res. 34/180, U.N. G.A.O.R., 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980) (adopted Dec. 18, 1979; entered into force Dec. 3, 1981).

6. *Id.* at arts. 17-22.

associations and non-governmental organizations. They are among the leaders to whom the baton has been passed—the worthy successors to the heroes of 1945. I am honored by their participation in this inaugural colloquium and invite you to partake in the intellectual and spiritual feast that they have prepared.

