

Review

Remedying the retreat in the protection of citizens' international human rights

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The article argues that in the light of the many continuing gross abuses of international human rights perpetrated in many parts of the world and the growing disillusionment with the international human rights regime as a whole, the regime needs comprehensive reassessment. It is argued that the underlying cause of this situation is the disunity of the present global system and its competing systems of governance. The author suggests that incremental improvements over time are no longer sufficient and that if real change is desired for the better, and then a significant global change towards a more united and just world order is required. Otherwise, we can expect to see many more gross abuses of international human rights of the worst kind, among other things. The author argues that such a significant change is supportable on the grounds of reason and conscience, as well as of morality and spirituality.

Key words: International human rights regime, effectiveness, globalisation, supranational, global governance, unity, federation.

INTRODUCTION

Recently the author posted on the electronic media the following:

"Is the era of international human rights over?"

One of the great post War international developments was the prescription of basic international human rights and the beginning of mechanisms for their impartial enforcement. But I wonder if this development is now in retreat, desirable as it may be. It seems that even the worst actions, crimes against humanity, war crimes, torture, genocide, etc., can now be committed with little risk of penal consequences.

One may now say that the power of arms and the use of force are now gazumping international basic rights. It is

making a joke of the international rule of law.

Is there no hope for the future? Many may now ask.

I believe that there is, but only if humanity can come to its senses and create a new, united and peaceful global order in which there are enforceable basic international human rights. I believe this is possible. It is common sense as well as being prophesied by the great religions. It requires a new perspective, a change of minds and hearts from the old outdated ideas we are still being fed with. Please give this a serious thought as every person can contribute."

The author was invited to submit a paper expressing his views. This paper proceeds to describe in brief the

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development of the international human rights regime, its deficiencies and ongoing breaches, particularly with respect to gross human rights abuses. It gives some current examples. It then describes the main underlying cause of the problem, based on the divided nature of the global order with its emphasis on national sovereignty. It suggests the need for significant global change of a supranational nature, and incorporating effective and enforceable basic human rights guarantees. It argues that without such a change we can expect to see many more gross abuses of international human rights of the worst kind.

The Post World War II era was notable for the international prescription, for the first time in human history, of broad statements of basic human rights purporting to have legal force for all humanity. This has been an amazing development. It began with the Universal Declaration of Human Rights (1948) in the UN General Assembly, which included a number of provisions dealing with the worst kinds of human rights abuses, followed by a considerable number of international human rights Covenants and Agreements to which most countries have acceded.

The regime includes international agreements not only on more traditional forms of human rights such as freedom of religion and freedom of speech, but also on a range of gross abuses of human rights in the form of international crimes such as crimes against humanity, war crimes, torture, genocide, ethnic cleansing, etc. The author includes these international crimes within the term "international law rights" even though they are sometimes separately categorised as part of international humanitarian or criminal law. In the author's own view they can be properly seen as being of a human rights nature and are really among the worst types of breaches of human rights.

It was thought by many that with this development, a new era had begun to protect the basic rights of individual humans at international law. This was followed by action in a number of countries to implement these new provisions in their domestic law, as well as the erection of a number of regional and international mechanisms to try to monitor and enforce them. The expectations were high that these developments would progress further.

Following these events, we had the collapse of the Cold War and the fall of the Berlin Wall, the collapse of apartheid and other promising international events that seemed to suggest a new era of cooperation in international affairs and in human rights. The commencement of the International Criminal Court was thought to be a major advance. Its Statute defined the most serious international crimes, as:

- (1) The crime of genocide
- (2) Crimes against humanity
- (3) War crimes

- (4) The crime of aggression (Rome Statute, 1998).

In addition, there were some promising national judicial developments. Even some sceptics lauded these developments. Thus, Geoffrey Robertson QC, a severe critic of the international regime, still saw many promising aspects in his text "Crimes against Humanity" (Robertson, 1999). For example, writing in the emergence of international criminal law, he stated that this was why it has been the great achievement of international law, at the close of the twentieth century, to lift the veil of sovereign statehood far enough to make individuals responsible for the crimes against humanity committed by the states they formerly commanded, while at the same time developing a rule that those states have a continuing duty to prosecute and punish them, failing which the international community may bring them to justice.

But as time has gone on, the many loopholes in the international regime have become more obvious, allowing the abuses to continue. The incremental improvements that have been made to the regime over time are no longer sufficient to bring real change for the better. If such change is desired then a significant global change towards a more united and just world order is required. Otherwise we can expect to see many more gross abuses of international human rights of the worst kind, among other things. It is possible to quote many current examples of gross abuses in many places.

Take the war in Syria. It is fairly clear that there has been a flouting of the rules as to not deliberately attacking non-combatant individuals, resulting in much death and injury, a war crime. Coupled with this, there also appears to be significant evidence that chemical weapons have been used in some of these attacks, and if so, again a war crime in breach of international law.

The full extent of these alleged breaches has yet to be made clear, but there is great cause for concern, particularly among those who do not take sides. The fact that it seems that these actions can largely be committed with impunity, other than running the risk of national punitive strikes through great power involvement, adds to the concern. This is not the place to examine in detail the veracity of the relevant claims, but it does give rise to serious questions about the value of the international human rights regime.

Take again the recent plight of the fleeing Rohingya minority from Myanmar to Bangladesh. There is evidence that actions amounting to genocide have been committed, and the Burmese military has been accused of wide-scale human rights violations, claims which the Burmese government dismisses as "*exaggerations*". The prospects of bringing those responsible to account seem remote, at least for the foreseeable future.

Take the example of North Korea. A group of independent experts on accountability, appointed by the UN High Commissioner for Human Rights, and led by Justice Kirby, at the request of the Human Rights Council

with a specific mandate to explore approaches to accountability, asserted that “*investigation and prosecution of serious crimes is critical*” (Human Rights Council, 2017). It found that the North Korean security chiefs and possibly even Supreme Leader Kim Jong Un himself should face international justice for ordering systematic torture, starvation and killings. But again the prospects of bringing those responsible to account seem remote, at least for the foreseeable future.

There are many other examples that could be given. States may plead for action to be taken concerning the alleged wrong actions of other states but observe great reluctance to act and become very defensive when accusations are directed at them. And the doctrines on national sovereignty and the non-interference in the domestic affairs of states provide plenty of defensive potential. The fact is that the international human rights regime is not a great deterrent when states and other powerful entities are intent upon committing the most egregious crimes. Increasingly, commentators on human rights are reaching depressingly similar conclusions – that human rights treaties and their resulting institutions have little or no impact on the observance of human rights (Meernik, 2015; Hafner-Burton and Tsutsui, 2007).

Adam Jones, in his book also entitled “Crimes Against Humanity” (Jones, 2008), paints a bleak picture where he states that the human landscape sometimes seems so bleak as to hardly justify efforts to brighten it. We confront crises, looming or pervasive, on a dizzying number of fronts. These weaknesses may be rooted in the fact that at present, the primary responsibility in dealing with breaches lies with the states themselves. Ensuring justice for serious violations is, in the first instance, the responsibility of the states whose citizens are implicated in the breaches.

States have an international obligation to investigate such breaches that implicate members of their military, police and other persons under their jurisdiction. The state must ensure that military or domestic courts or other institutions impartially investigate whether serious breaches occurred, identifying and prosecuting the individuals responsible for those violations in accordance with international fair-trial standards, and imposing punishments on individuals found guilty that are commensurate with their deeds. But states are in many ways the weak link in the regime. They may have adopted many international human rights instruments, but that does not mean in practice they will implement them. Often they do not.

The literature is extensive on the weaknesses of the international human rights regime, but is not so convincing or extensive when it comes to proposing or implementing real solutions. Most people and entities engaged in the regime are defensive about their role and activities. States are more concerned about justifying their role and policies and are resistant to criticism. Non-state actors may be more intent upon seeking their own

advantage and interests rather than working to respect the human rights of others. Academics write many articles and books on the regime, but are either more involved in descriptive tomes or ascribe little optimism to the prospects for significant global improvement. Many assume that the dominance of national sovereignty, and the divisive politics that goes with it, are a permanent feature of the global scene and take a sceptic view, if at all, of the prospects for a major change in the global order that might facilitate dramatic improvements in that human rights regime. This condition of near paralysis is alarming, given that many of the contemporary breaches of the regime are of the worst kind. Are we simply to assume that this position will continue indefinitely, with a continuance of band aid approaches around the fringes and perhaps some incremental improvements over time? There is something profoundly inhuman and immoral in such a conclusion.

Jones does suggest that there may be a glimmer of hope in the growing momentum of social movements and international “*principled-issue networks*” challenging uncontested national sovereignty and their alleged right of states to do whatever they like. But he adds that when this norm of the supremacy of state sovereignty was challenged, it was usually by religious believers protesting or otherwise opposing the violent repression of coreligionists. This may be true as far as it goes, but perhaps overlooks the works of many others who in the course of quite some years have advocated supranational solutions to many global issues.

The Universal House of Justice states that there are some hopeful signs. With the increasing attention being focused on some of the most deep-rooted problems of the planet it considers that these bring the hopeful signs. Despite the obvious shortcomings of the United Nations, the more than two score declarations and conventions adopted by that organization, even where governments have not been enthusiastic in their commitment, have given ordinary people a sense of a new lease on life. The House refers to the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, and the similar measures concerned with eliminating all forms of discrimination based on race, sex or religious belief; upholding the rights of the child; protecting all persons against being subjected to torture; eradicating hunger and malnutrition; using scientific and technological progress in the interest of peace and the benefit of mankind -- all such measures, the House states, if courageously enforced and expanded, will advance the day when the spectre of war will have lost its power to dominate international relations (Universal House of Justice, 1985).

So what is the nature of supranational solutions that might bring improvements to the effectiveness of the international human rights regime and are they feasible? Well, there are already examples of supranational

mechanisms that are having some effect. Take for example the European Court of Human Rights. But there is no international human rights court and the International Criminal Court is hedged about with many limitations, as Robertson points out (Robertson, 1999). And of course for any judicial system to be effective, it must have supporting enforcement mechanisms. These are largely absent or are not adequately utilised in the international arena at present.

But it seems that it is not just a matter for new international judicial mechanisms and penalties. Domestic national jurisdictions have similar mechanisms already in most cases, each operating within a single jurisdiction, and it does not stop crime and abuse. In a very divided, aggressively confrontational and competitive world, a more holistic supranational solution is in my opinion called for.

One can point to the increasing trend towards globalisation, particularly in the economic field (Dahl, 2007). In the establishment of a new international economic order, full respect for human rights can be seen both as an end in itself and as an essential means. But the NIEO has proved to be very controversial, and there has been somewhat of a rejection of supra-national arrangements and solutions except in cases where this is perceived to promote the national interests of the participants. And in any event, the elimination of the worst human rights abuses on the planet seems a much too important a task to be tied to economic considerations. It seems we must look further again.

In the author's view, the existing international human rights regime needs comprehensive reassessment to ascertain whether the sad results presently being experienced in many parts of the globe are as a result of the disunity of the present global system and its competing systems of governance. This inevitably leads to the question of supranational solutions designed to bring a unity of approach in terms of the securing the observance of minimum standards across the planet.

The idea of some kind of supranational organisation of the planet, or of parts thereof, has a long history. In this respect it was written of Immanuel Kant that he was concerned about apparent holes or gaps between domestic and international law. In his 1795 essay entitled "*Towards Perpetual Peace*", Kant asserted that relations within 'the community of nations of the earth' are so close that 'a violation of right on one place on the earth is felt on all', with the result that 'the idea of cosmopolitan law is no fantastic and exaggerated idea of representing right'; on the contrary cosmopolitan law must form a 'supplement' to the 'unwritten code' of both state law and international law if the 'public rights' of human beings are to be secured (Walters, 2004).

Thus Kant envisaged a supranational form of binding law transcending national law. Many other writers have expressed views supporting a supranational approach (Kant, 2007). It is submitted that in order to successfully establish such a supranational form of governance, we

would have to work towards a supranational or planetary community of all peoples transcending that communities of the several states without replacing them, and based on global order, the international rule of law and justice. Given the great diversity of peoples on the planet, it has been stated that such a community would need to be established on the principle of unity in diversity as the basis for a new age where war would be outlawed and peace prevail; where the earth's total resources would be equitably used for human welfare; and where basic human rights and responsibilities would be shared by all without discrimination (World Federalists, 2010).

We are in effect talking of some kind of global federation, as advocated by a number of organisations. For example, the World Federalist Movement (WFM), a global citizens' movement, has advocated the establishment of a global federal system of strengthened and democratic global institutions subjected to the principles of subsidiarity, solidarity and democracy. The Movement was created in 1947 by those concerned that the structure of the new United Nations was too similar to the League of Nations which had failed to prevent World War II, both being loosely structured associations of sovereign nation-states, with few autonomous powers. Famous advocates of world federalism have included Albert Einstein, Mahatma Gandhi, Martin Luther King Jr., Rosika Schwimmer, Albert Camus, Winston Churchill, Garry Davis, Emery Reves, Wendell Willkie, Jawaharlal Nehru, E. B. White and Lola Maverick Lloyd. Arguably, an effective, universal and enforceable international human rights regime would be an integral part of such a federation, such as is proposed in the Statute of the World Federalist Movement (World Federalists, 2010).

In order to establish such a federation, it must receive wide community support in order to secure its legitimacy and permanency. To do this, arguably there must be a consciousness and an acceptance of the principle of the oneness of all humanity. No form of prejudice favouring one section of the global community over another can be workable or acceptable in such a federation. Thus it is written:

"The most urgent requisite of mankind is the declaration of the oneness of the world of humanity - this is the great principle of Baha'u'llah" (Terry, 2008)

Arguably there is already a growing acceptance of such a concept. Forms of education may be required to accelerate its acceptance by the masses of peoples. Such a transformation in human affairs would need to be viewed as sacred and inviolable by all peoples and countries otherwise it risks being subverted by one section against others. It would carry, as a necessary corollary, the incorporation of an equal standard of human rights for all.

Abdu'l-Baha (1918) writing with a vision for the future, wrote that true civilization would raise its banner when

some noble kings of big ambitions, the bright suns of the world of humanitarian enthusiasm, shall, for the good and happiness of all the human race, step forth with firm resolution and keen mind and hold a conference on the question of universal peace; when keeping fast hold of the means of enforcing their views they shall establish a union of the states of the world, and conclude a definite treaty and strict alliance between them upon conditions not to be evaded. When the whole human race has been consulted through their representatives and invited to corroborate this treaty which verily will be accounted sacred by all the peoples of the earth, he said it would be the duty of the united powers of the world to see that this great treaty endures. Many may feel that this is an altruistic concept that has no chance of ever succeeding in the face of the great powers and the sceptics. It is however an idea that has a long lineage and is still shared by many who are concerned about the future of humanity (Thant, 1993).

There is a further view that humanity may eventually have no choice but to adopt such a major change in the face of the many developing serious problems affecting this divided planet, human rights and otherwise. This necessity may become more obvious with an exponential increase in the seriousness of many of the present threats to the planetary home now on the horizon.

The present world order has been described as being "*lamentably defective*" for this reason.

Unless there is significant global change for a better and more a united and just world order evolves, the author is of the view that humanity must expect to see many more gross abuses of international human rights of the worst kind, among other undesirable and unacceptable outcomes. The task is to balance that prospect against the difficulties and turmoil of creating a new global order that fairly meets the needs of all humanity. It is clear to the author, given reason and good conscience, as well as of morality and spirituality, on which side of this balance the answer falls.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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