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Hurst Hannum

Fletcher School of Law and Diplomacy, Tufts University

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SETTING A NEW AGENDA FOR U.N. HUMAN RIGHTS ACTIVITIES

THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL (Philip Alston ed.) Oxford: Clarendon Press, 1992. xiii + 765 pp.

*Reviewed by Hurst Hannum**

The creation in January 1994 of the post of United Nations High Commissioner for Human Rights¹ may be the most important event in the past twenty years to affect the U.N.'s work in the area of human rights. The High Commissioner will have "principal responsibility for United Nations human rights activities."² His or her broad mandate includes providing technical assistance to governments, coordinating U.N. public information activities, supervising the U.N.'s human rights work, and improving the efficiency and effectiveness of the U.N. human rights machinery.³ Substantively, the High Commissioner is mandated to "promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights,"⁴ including the right to development.⁵

This rather vague mandate leaves a great deal of room for personal — and political — interpretation, and one should not overestimate the impact that any single individual is likely to have on the U.N.'s work in the field of human rights. If the High Commissioner takes seriously the mandate to improve efficiency and effectiveness, he or she should read *The United Nations and Human Rights*⁶ prior to taking office. Indeed, the new High Commissioner will need to address the fundamental problem that underlies all of the mechanisms and procedures discussed in the book under review: how to translate the increasing willingness of U.N. organs to criticize and even condemn human rights violations into an actual improvement in human rights around the world.

Evaluating the U.N.'s human rights activities should be a prerequisite to making them more efficient and effective; Philip Alston's introductory

* Associate Professor of International Law, The Fletcher School of Law and Diplomacy, Tufts University.

1. See G.A. Res. 48/141, U.N. GAOR, 48th Sess., 85th plen. mtg. (1994).

2. *Id.* ¶ 4.

3. *Id.*

4. *Id.* ¶ 4(a).

5. *Id.* ¶ 4(c).

6. THE UNITED NATIONS AND HUMAN RIGHTS, A CRITICAL APPRAISAL (Philip Alston ed., 1992) [hereinafter U.N. AND HUMAN RIGHTS].

chapter to this book accurately notes, however, the difficulties in undertaking such an evaluation.⁷ Examining performance or effectiveness is even more problematic if one attempts to review the U.N. system as a whole, including Charter-based organs, treaty bodies, and specialized agencies such as the International Labour Organisation (ILO). “[E]fforts to identify and describe steady and principled patterns in the evolution of the various procedures are generally misplaced,”⁸ and making sense out of the plethora of U.N.-based mechanisms can be frustrating to experts as well as to students of international human rights law.

The contributors to *The United Nations and Human Rights* are uniformly knowledgeable and have themselves participated in the organs being analyzed as independent experts, members of the U.N. secretariat, representatives of nongovernmental organizations (NGOs), or government delegates. This gives their observations a degree of personal understanding that cannot be gleaned from merely reading resolutions and reports.

Unfortunately, this understanding often leads to reinforcing the common judgment of outside observers that many U.N. procedures have, at best, very limited effectiveness. For example, neither the General Assembly nor the Economic and Social Council has been able to deal usefully with specific instances of even widespread human rights violations, although the Assembly has been active in adopting a number of basic normative instruments.⁹

At the same time, however, perhaps the major contribution of *The United Nations and Human Rights* is the attention that it devotes to the historical development of the bodies and procedures discussed, a factor too often ignored by those who see only the U.N.’s contemporary impotence in dramatically changing State behavior. Thus, while relatively recent initiatives by the U.N. Commission on Human Rights may be modest, the Commission’s accomplishments in even addressing specific human rights violations become more significant when they are viewed in an appropriate historical context. This context, it should be remembered, includes two decades of formal “abdication of responsibility”¹⁰ for dealing with specific human rights issues, reflecting the then-prevalent view that U.N. attention to human rights violations in specific countries violated

7. Philip Alston, *Appraising the United Nations Human Rights Regime*, in *id.* at 1.

8. *Id.* at 2.

9. See Antonio Cassese, *The General Assembly: Historical Perspective 1945–1989*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 25; Declan O’Donovan, *The Economic and Social Council*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 107, 115–21; John Quinn, *The General Assembly into the 1990s*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 55.

10. Philip Alston, *The Commission on Human Rights*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 126, 139.

the Charter's prohibition against intervention in matters "which are essentially within the domestic jurisdiction of any state."¹¹

The second part of the book addresses in detail the means of monitoring human rights treaties adopted under the auspices of the United Nations.¹² Each chapter offers a comprehensive overview of the workings of the respective committees, including a balanced discussion of the political difficulties which affect the committees' performance. Three constants appear: (1) the relative lack of financial and staff resources in the committees, particularly as the number of parties to the conventions has increased; (2) the reluctance of many committee members and governments to adopt an assertive role vis-à-vis treaty mandates; and (3) guarded optimism that the end of the East-West confrontation may make it easier for the committees to develop better monitoring techniques in the future.

The reader is also reminded of the need to avoid overestimating even the potential role of such monitoring bodies, no matter how expert their membership or widespread the formal support they may enjoy. The late Torkel Opsahl, a long-time and well-respected member of the Human Rights Committee and the European Commission on Human Rights, emphasizes the role of the Human Rights Committee as a guardian of rights through the general supervisory powers it possesses, noting that "the Committee will never be able to control violations in all parts of the world through complaints procedures."¹³ This observation underscores the fundamental and irreplaceable role of *national* governments in the implementation and enforcement of human rights norms¹⁴ and puts into perspective the legitimate expectations that human rights activists should have of international oversight bodies.

In discussing the role of the U.N. Secretariat, a former Director of the (then) Division of Human Rights mirrors many of the concerns expressed in earlier chapters, particularly with respect to political interference with the purportedly neutral international civil servants who serve in the U.N.

11. U.N. CHARTER art. 2, ¶ 7.

12. See Philip Alston, *The Committee on Economic, Social and Cultural Rights*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 473; Andrew Byrnes, *The Committee against Torture*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 509; Roberta Jacobson, *The Committee on the Elimination of Discrimination against Women*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 444; Torkel Opsahl, *The Human Rights Committee*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 369; Karl J. Partsch, *The Committee on the Elimination of Racial Discrimination*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 339.

13. Opsahl, *supra* note 12, at 440.

14. Opsahl also recommends the strengthening of regional human rights complaints systems. See *id.*

Center for Human Rights.¹⁵ Balancing neutrality and advocacy on behalf of human rights is not easy, and governments have long realized that it is much easier to resist meaningful progress on human rights issues through informal political pressures and budgetary constraints than it is to attack human rights bodies directly.¹⁶ A chapter on the International Labour Organisation offers a striking contrast between *ad hoc* U.N. procedures and an embattled Secretariat, on the one hand, and the much better developed supervisory procedures of the ILO on the other.¹⁷ Although the formal role given to NGOs under the ILO's tripartite structure cannot be duplicated within the United Nations, the ILO experience does illustrate the importance of substantially improving NGO access to the various U.N. bodies.

There have been many proposals for improving coordination among the various intergovernmental human rights bodies,¹⁸ and some steps — such as issuing a manual on reporting requirements for States under the various treaties¹⁹ and regular biennial meetings of the chairpersons of supervisory committees — have recently been taken. It is true that States which fulfill their reporting obligations conscientiously may well begin to feel overwhelmed by the multiplicity of treaties to which they are party; poorer States may find that comprehensive reporting is a significant drain on scarce administrative resources. However, the mandates and powers of the various procedures remain sufficiently different — and human rights violations sufficiently widespread — that it is premature to call for combining procedures under the rubric of greater efficiency.

Other proposals for improving the U.N.'s effectiveness in the field of human rights include the adoption of formal, legal mechanisms for human rights "trials" and creation of a "Human Rights Court" with optional jurisdiction.²⁰ However, such proposals are not only unlikely

15. Theo C. van Boven, *The Role of the United Nations Secretariat*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 549.

16. For a fascinating account of the efforts of the Argentine military junta to ward off U.N. investigations of human rights violations in Argentina in the 1970s, see IAIN GUEST, *BEHIND THE DISAPPEARANCES: ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS* (1990).

17. Virginia A. Leary, *Lessons from the Experience of the International Labour Organisation*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 580.

18. See, e.g., Klaus T. Samson, *Human Rights Co-ordination within the U.N. System*, in U.N. AND HUMAN RIGHTS, *supra* note 6, at 620.

19. UNITED NATIONS, *MANUAL ON HUMAN RIGHTS REPORTING*, U.N. Doc. HR/PUB/91/1 (1991).

20. See, e.g., the recommendations in U.S. COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS, *DEFINING PURPOSE: THE U.N. AND THE HEALTH OF NATIONS* 23-26 (1993).

but are also largely unnecessary. While legally binding regional mechanisms should certainly be encouraged, the United Nations is a political organization and its approach to human rights issues will remain primarily political. The goal of the human rights activist should be to support the growing expertise and independence of treaty-based monitoring bodies and U.N. experts so that their work gradually acquires greater respect; their conclusions and observations can then serve both to encourage government compliance and to goad the more overtly political U.N. organs into action.

Recognizing the political nature of the United Nations does not mean conceding that the United Nations should let geostrategic or regional bloc interests dictate which human rights situations will be seriously considered and which ignored. One essential requirement for more effective U.N. action is less selectivity in the expression of human rights concerns, although a desire to achieve geopolitical balance must not prevent attention being paid to egregious human rights violations wherever they occur.

Among the specific areas in which the effectiveness of the United Nations can be improved are (1) fact-finding, (2) response capabilities, and (3) publicity:

(1) Creation of the position of High Commissioner for Human Rights should be viewed as an opportunity to expand significantly the capacity of the U.N. Center for Human Rights to perform its assigned human rights functions. Although more money will not in itself lead to more effective protection of human rights, it is an essential prerequisite. Members of the Secretariat who service the treaty-based bodies must be better able to prepare the committees to consider States' periodic reports, as well as to investigate individual complaints. In addition, they must be primarily responsible to the committees, not to the ultimately political dictates of the U.N. Secretary-General.

The United Nations can become much more efficient in terms of collecting and utilizing information already available to it. Separate country files should be created in which all information related to human rights in every U.N. Member State can be collected and made available to oversight committees, special rapporteurs, members of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and others. The Secretariat should be encouraged to provide relevant information to all U.N. organs which deal with human rights, so that resolutions and investigations can be based, insofar as possible, on facts rather than on political rhetoric.

(2) The High Commissioner for Human Rights and appropriate officials within the Center for Human Rights must have the authority to respond immediately and as they deem most appropriate to well-founded reports of serious human rights violations. The High Commissioner's mandate "to promote *and protect*" human rights²¹ should be interpreted to grant at least as much authority as that of the so-called "thematic" rapporteurs and working groups of the Commission on Human Rights, who are directed to "respond effectively"²² to information they receive. The High Commissioner's authority should include not only direct contacts with governments but also the ability to request meetings of relevant U.N. bodies, such as the Commission and Sub-Commission and their subsidiary bodies, as well as the office of the Secretary-General and the Security Council in the case of massive violations.

Treaty bodies should have the authority and the financial capacity to convene special sessions to consider urgent situations of gross violations of human rights. Where necessary, this authority should be confirmed by appropriate amendments to existing treaties.

(3) Information provided by governments and NGOs to the United Nations must be made much more accessible to the public. Periodic reports by governments, comments and findings by treaty bodies, and reports by special rapporteurs should not be hidden under obscure U.N. document numbers; they should be produced in sufficient quantity so that national human rights groups and others have easy access to them. A separate section of the U.N. Center should devote itself to ensuring that individuals in every country have effective access to information about human rights norms and procedures.

In addition, NGOs remain the key to the effective functioning of all U.N. bodies concerned with human rights, and their access to these bodies must be ensured. Only if information provided by NGOs is readily available will oversight bodies be able to do their jobs and governments be held accountable.

Increased fact-finding and response capabilities will only be meaningful if the United Nations — which means its Member States — is willing to use its political and moral power to affect State behavior. While the limits of the Security Council's effectiveness have been shown only too clearly in Somalia and Haiti, the Council appears to be willing to act in some instances of massive human rights violations. However, the Council is not the only source of U.N. pressure. General

21. G.A. Res. 48/141, *supra* note 1, ¶ 4(a) (emphasis added).

22. E.S.C. Res. 1985/33, U.N. ESCOR, 41st Sess., Supp. No. 2, at 71-72, U.N. Doc. E/CN.4/1985/66 (1985).

Assembly resolutions and special rapporteurs have had at least some impact on situations as diverse as those in South Africa, Chile, Central America, and Poland, if only in supporting democratic alternatives to repressive regimes. The Commission on Human Rights has become a major diplomatic battleground in which governments feel forced to defend themselves publicly.

Only if the United Nations is willing to address human rights violations in a consistent and persistent manner will governments be encouraged to change and democratic opposition movements be given support to continue their struggles. The appraisals in *The United Nations and Human Rights* provide an invaluable benchmark against which future U.N. actions may be judged. Its cautious optimism must now be matched by a sustained, realistic commitment by governments to ensuring that the rights proclaimed nearly fifty years ago by the General Assembly in the Universal Declaration of Human Rights are realized in practice.