

Dusk or Dawn for the Human Rights Movement?

About a month before the 60th anniversary of the Universal Declaration of Human Rights (UDHR), the United States elected its first African-American president, Barack Obama. This historic event, a fitting milestone, brings to life that declaration, which human rights activists and legal scholars regard as the sacred text.¹ Obama's election fulfills a dream of the U.S. civil rights movement, a struggle that relied as much on the UDHR as on the courage of the men and women who for decades fought to make the United States a "more perfect union."² For human rights defenders around the world, its significance cannot be overstated.

Despite this singular achievement, the mood in the secular temple of human rights these days is generally somber and introspective. Obama's election comes after eight years of declining U.S. leadership in human rights and international law. In nearly two dozen interviews conducted from September to November 2008 with activists, scholars, and critics of the human rights movement, several contended that the UDHR in 2008 would never have been adopted by 48 states as it was in 1948. Many lamented its still-aspirational quality and the continued marginality of human rights. As one member of the movement put it, "[W]e are in a period of constriction."³ Another human rights leader stated simply, "[W]hat Martin Luther King Jr. called the human rights revolution has, like all revolutions, met its counterrevolution."⁴

In the late 1980s and through the 1990s, it seemed more than plausible that "the age of human rights [was] upon us."⁵ Activists could point to "the collapse

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Some suggest the human rights revolution has met its counter-revolution.

of military dictatorships in Latin American and East Asian societies . . . We had the end of apartheid in South Africa and, of course, the fall of the Berlin Wall and the collapse of communism . . . We thought we were winning.”⁶ In policy journals, pundits wrote about a “power shift,” where nongovernmental organizations (NGOs) increasingly set agendas and challenged

state action.⁷ In academia, scholarship touted the “power of human rights.”⁸

Today, terror, torture, and a backlash against human rights and democracy have replaced triumph. Rightly or wrongly, many of those interviewed define this recent bleak period by the relative ease with which the prohibition against torture was abandoned—not by dictators in the far corners of the earth, but by policymakers in the U.S. capital. Some human rights leaders are critical not only of the U.S. government but of the movement itself, arguing it was slow to react to the impact of the September 11, 2001 attacks and U.S. counterterrorism policies. They argue that their colleagues were skeptical or disbelieved that what had been built (the presumed consensus that torture was taboo) could be swept away with such stunning ease and rapidity. It was even suggested that some may have felt that the U.S. government’s measures, without knowing what exactly, were necessary for national security. Moreover, U.S. policies are by no means the only serious human rights challenge currently. The departures from international law seem to have been enabled by other states. Evidence suggests that some European states played a role in such U.S. abuses as facilitating the extraordinary rendition of terrorist suspects from justice.⁹ Meanwhile, the long-term prospects for human rights beyond Europe and the United States are dim as younger generations in China and Russia find authoritarian rule appealing.¹⁰

Now, human rights mandarins argue that “we need a new strategy.”¹¹ Drawing on interviews with several leaders in the movement as well as with critics and scholars, the sixtieth anniversary of the UDHR is an opportune time to reflect on the movement’s achievements, obstacles, and challenges. What would it take to move human rights from the margins to the mainstream? Although a comprehensive answer and strategy is beyond the scope of this article, below I assess the policy landscape, particularly in the Euro-Atlantic context, and suggest implications for the Obama administration and the nongovernmental community in an effort to provoke debate more widely.

Achievements

The setbacks of the last several years must be put in historical context. For centuries, no human rights process, body of human rights law, or norms existed. Certainly, there were precursors in the nineteenth and twentieth century, such as the abolition movement, the suffrage movement, and early developments in international humanitarian law. Yet, in the last 60 years, human rights have been institutionalized through the development of conventions and treaties, many of which are only 30 years old, unique in world history.¹² The first of those documents is the UDHR, composed by a group that famously included Eleanor Roosevelt as well as lawyers from around the globe. It is regarded as the most important document because it codified the application of human rights as universal. It applies to all human beings: good ones and bad ones, black ones and white ones, minors and adults, Muslims and Jews, Christians and pagans. Several scholars and activists noted that the most important word in the UDHR is universal, not human rights. Absent universality, we face “the possibility of arbitrary [application]. . . . [T]he state [would then] decide who has rights and who doesn’t.”¹³

Most claim that the greatest achievements of the human rights movement are the legal instruments that have evolved from the UDHR in a relatively short period of time. Fionnuala Ní Aoláin, an expert on transitional justice, finds “extraordinary . . . the massive shift in norms structures and who is the subject of international law.”¹⁴ Another European human rights lawyer points to the development of a “standard that you have to justify violating. It is the thing that should be.”¹⁵ Others point to the “architecture and grammar of human rights now . . . firmly embedded in international relations” where even the most notorious state deems it necessary to polish their human rights record.¹⁶ Larry Cox, executive director of Amnesty International USA, thinks that “governments in fact clearly had no idea what they were unleashing when they issued the declaration. . . . [T]he major achievement [has been] to make human rights something that no government can simply ignore [and] has to address.”¹⁷

The sixtieth anniversary went largely unnoticed by most policymakers and the general public, but human rights lawyers make a convincing case that the UDHR is a living document. They point to the “establishment of an increasing number of international judicial bodies that enforce human rights.”¹⁸ These include regional courts for Europe (the European Court of Human Rights and the European Union’s European Court of Justice) as well as the Inter-American Court of Human Rights, the African Court on Human and Peoples’ Rights, and regional African bodies, as well as the International Criminal Court (ICC) and various international and regional tribunals.¹⁹ Others point to the

Transitional justice is one of the most important branches of the movement.

institutionalization of an international justice system. Human Rights Watch (HRW) executive director Ken Roth notes that it is “still limited and rudimentary, but you can bring to justice those who committed crimes. If you killed judges before, you had impunity. But today, dictators have a hard time targeting judges in the Hague.” Roth and others claim this system is a deterrent: “Warlords of Eastern Congo are nervous. [Secretary of Defense Donald] Rumsfeld doesn’t travel. [Vice President Dick] Cheney won’t.”²⁰

The UDHR has become, according to Ní Aoláin, the “standard reference point for courts [in many parts of the world] in understanding rights.”²¹ A human rights lawyer notes that, “in the best case, it is a guide to action; in a middle case, it is a foreign policy tool; and in the worst case, it is empty rhetoric.”²² Institutionalization exists to the extent that states must at least make a show of complying. One activist argues that

the fact that the [European] court is listened to; that governments engage with it seriously, and for the most part, with a few exceptions, seek to implement its judgments; that individual members of the public from across the Council of Europe can petition the court after they have exhausted domestic remedies and have some meaningful chance if it’s a well-rounded case of having the court find in their favor and their government acting upon that judgment . . . that’s an extremely important practical manifestation of the extent to which human rights culture is firmly embedded in Europe.²³

Over time, the need to be compliant with human rights standards has affected how U.S. law and U.S. democracy has evolved, despite resistance to the notion that international law has domestic bearing.²⁴ The Truman administration, in filing its amicus brief concerning *Brown v. Board of Education*, made the then-extraordinary appeal to the Supreme Court that racial segregation was undermining U.S. foreign policy: “During the past six years, the damage to our foreign relations attributable to this source has become progressively greater.” The brief notes that “Soviet spokesmen regularly exploit this situation in propaganda against the United States, both within the United Nations and through radio broadcasts and the press, which reaches all corners of the world.”²⁵ We hear echoes of that dynamic today in the statements of eminent Americans concerning the negative impact of events surrounding Abu Ghraib and Guantánamo and the decline of U.S. soft power.²⁶

A movement to pressure states to be compliant has also famously emerged out of the thicket of laws and conventions. “The best news,” argues Aryeh Neier,

former head of HRW and the current president of the Open Society Institute, “is the formation of a global nongovernmental human rights movement. And . . . the [UDHR] is ultimately the international agreement that legitimizes the formation of such a movement.”²⁷ HRW’s history is illustrative of the movement.²⁸ Formed as Helsinki Watch, several years after the Helsinki accords were signed in 1975, it initially had a narrow focus: whether or not the Soviet Union and other signatories were complying with new international human rights obligations.²⁹ Thirty years later, HRW addresses nearly all aspects of human rights abuse and has offices all over the world including Brussels, Johannesburg, Moscow, New York, and Tokyo.

Just as HRW and Amnesty International have emerged as distinct brands, this movement has evolved from having a general focus to enumerating the rights of specific communities including women, children, the disabled, and minorities of all types. In other legal realms, it has gone from “prying open the prison doors” and looking at the violation of rights one at a time, with a focus on reporting, naming, and shaming, to a focus on rights’ violations by states during armed conflict.³⁰ The emergent field of transitional justice is one of the most recent and potentially important branches of the movement.³¹ How states and societies account for, reconcile with, ignore, or rewrite violent episodes of their nation’s history, such as slavery in the United States, Stalinist terror in Russia, or the Pinochet years in Chile, is not only a critical human rights issue but a powerful yet often overlooked driver of political and social development. When those histories and episodes are contested by different communities or countries, it can lead to war, as it did for example in the Balkans in the 1990s.

Setbacks

Despite the achievements, the UDHR’s 60th anniversary was overshadowed by considerable setbacks. These included perhaps most famously the erosion by the United States of torture norms, but also the subsequent enabling of authoritarian regimes, including a hypersovereign approach to state power, and a growing ambivalence in many parts of the world concerning the concept of universality, the bedrock of the UDHR.

The Role of the United States

The emergence in the United States of what some critics have termed a “torture culture” came relatively rapidly after the terrorist attacks of September 11. Journalists and scholars have detailed the immediate causes of U.S. policies relating to extraordinary rendition, detention without charge, and unlawful interrogation.³² What these policies are symptomatic of, however, is disputed: Was this deviation mainly about interpretations of executive power, particularly during war, or something broader? From a policy and public opinion perspective,

were the norms against torture soft to begin with?³³ What happens next is also unclear: will the Obama or some future administration conduct a nonpartisan general accounting of the policies through an investigative commission or, perhaps least likely, seek prosecution of officials?³⁴ What happens to the policies if there is another terrorist attack?

If one views the latest period as mainly the consequence of power unbridled—those subscribing to “the unitary executive” theory of presidential power coming in to office—it then follows that less repair and less introspection is needed.³⁵ The change in administration will address this problem. Several activists, however, believe that the last eight years revealed something else, namely “how incredibly fragile the consensus [on human rights] was, even around the most basic things like torture.”³⁶ Cox believes “the human rights movement . . . overestimated the degree to which people understood and were committed to human rights.” He also blames a failure in strategy: “Part of the way the human rights community dealt with the terrorist issue was to reinforce the idea that all human rights [amounted to] was protecting people who carried out acts of terror, and that didn’t help us either.” For Cox, the fact that the American public did not demonstrate shock and horror and demand change in the 2004 general election was a failure. “We’ve been engaged in serious self-criticism, not of others but of ourselves, and we are trying to figure out what it is about human rights that caused it to not be rooted enough in people that they weren’t outraged.”³⁷

Perhaps the U.S. legal culture also played a role. For much of the twentieth century, the United States was a generator of human rights law. Yet, legal culture has also evolved in a strikingly parochial direction, in great contrast with the role the United States plays globally and the extensively networked world in which we live. U.S. policymakers and the public increasingly embrace “legal isolationism,” characterized by a lack of understanding of international law and little demand for compliance. U.S. law schools have tended not to give international law pride of place. References to international law are rare and even “controversial” when used in oral arguments before the Supreme Court.³⁸

Equally problematic, policymakers in the United States and in many parts of Europe often fail to recognize or are unconvinced that human rights abuses have serious security implications.³⁹ Human rights compliance has often been viewed as a luxury. In much of the Euro-Atlantic community, the debate about proper policies in the aftermath of terrorist attacks has been framed as an alleged trade-off between freedom and security. To challenge this debate, one activist argues that “we need . . . to confront in the human rights movement this notion of human rights and security as a sort of zero-sum game, in which one can have one or the other and more of one necessarily means less of the other.”⁴⁰

Authoritarian Resurgence

Activists in many parts of the world claim that whatever happens in the United States has disproportionate, negative or positive, consequences for human rights defenders around the world. Former chief justice of South Africa Arthur Chaskalson, reporting as part of the Eminent Jurists Panel conducting hearings in recent years on the legal and human rights implications of counterterrorist

policies in 39 countries for the Geneva-based International Commission of Jurists, states that the world is “losing respect for human rights” and links this decline directly to the actions of the Bush administration.⁴¹ The erosion of human rights norms and laws seems to have enabled the negative political trajectory of several Eurasian states. U.S. authorities lost much, if not all, leverage concerning, for example, civilian disappearances and dysfunctional counterterrorism policies in Russia’s North Caucasus and Uzbekistan’s Fergana Valley or changing internationally recognized borders by force in Georgia. Others point to the impact on China and Zimbabwe drawing negative lessons from U.S. behavior.⁴²

As a consequence, human rights defenders have become increasingly isolated while authoritarians have become empowered. Human rights expert Dorothy Thomas laments that “when you have the most powerful country in the world communicating to other countries that it’s okay to abuse one of the most fundamental human rights norms known to humankind [freedom from torture] and, at the same time, sending a message to the supporters of human rights that that country no longer will provide them with support, you are creating a situation of potential grave abuse, where the people best able to fight that abuse are in a state of extreme despair and discouragement.”⁴³ In other words, human rights abuse by major powers has had a destabilizing effect more generally in the international system.

As U.S. leadership has declined, evidence suggests that China and Russia have been increasingly able to set the table concerning the rule of law, advancing a conception of hypersovereignty that challenges decades of international law. The trend in the UN Security Council is for China and Russia to block international responses to evidence of gross human rights violations, as in Burma, Darfur, and Zimbabwe.⁴⁴ Moreover, human rights organizations claim these governments have supplied Sudan with arms and dual-use technologies that were diverted to Darfur despite the arms embargo in place since 2004.⁴⁵ There are additional spillover effects: the European Council on Foreign Relations recently reported that 10 years ago “EU

There is a growing ambivalence in many parts of the world to the concept of universality.

positions on human rights in the [UN] General Assembly got over 70 percent support—the figure now hovers near 50 percent. China and Russia get 75 percent backing.”⁴⁶

If UN voting patterns reflect ambivalence concerning human rights, this sentiment manifests in other ways. Many point to weak or nonexistent leadership from key member states. In the words of one activist in Geneva, “[N]o one is occupying the playground.”⁴⁷ Several found the new UN Human Rights Council, formed without U.S. input and meant to replace the dysfunctional Commission on Human Rights, not yet living up to its promise.⁴⁸ Many activists favor the system of Special Rapporteurs, issuing appeals or conducting fact-finding missions on issues such as the use of torture by states or human trafficking; but with a chronic lack of funding, these men and women are essentially a corps of volunteers without any power base.

Meanwhile, groups of states band together and reject human rights for cultural, religious, or political reasons.⁴⁹ A senior EU diplomat describes how diplomats frequently invoke “‘our level of development . . . our historical background . . . cultural, religious, [or] ethnic background.’ . . . Any excuse to say, ‘This doesn’t apply to us because we’re a little bit different.’ Universality—we’re losing it . . . step by step . . . and you see it all across the board, across the mechanisms, all the fora. We see it in our human rights dialogues every day.”⁵⁰ This same diplomat argues that underlying the problem is the fact that “you do not see a lot of countries or a lot of politicians, and fewer statesmen and women . . . willing to bring up the one topic that no country wants to talk about, and that’s their own human rights record.”⁵¹ Off the record, one human rights activist confessed that he worries “that we may be moving toward a situation where people start to argue that we can have human rights without universality, that we can still preserve the essential elements of human rights while denying them to some, which undermines the whole basis” of the UDHR. He points to the pressures that states and societies come under from terrorist attacks that make this situation acute. The need for greater security is articulated at the expense of the rights of others.⁵²

The Obama Human Rights Agenda?

Almost immediately after Obama’s election, the administrations of Abraham Lincoln and Franklin D. Roosevelt were held up as models by the then-president-elect himself and others. Without overstating the case, the role that the Obama administration can play in once again adhering to the international human rights regime may be more important to progress in institutionalizing human rights than those two previous presidencies. In short, the expectations could not be higher. At a minimum, observers are looking for the placement of

key individuals who will champion human rights or, alternatively, those in key positions to uphold human rights. A leading U.S. legal scholar argues that the United States “has been the balance wheel of the system for 60 years, but has not been for the last seven years. If the U.S. is not the balance wheel, there is no balance wheel.” In order to regain that role, he says a “cadre” of senior leaders must be appointed by Obama.⁵³

Human rights abuses often have serious security implications.

Were such a dream team created, it would need to coordinate policies across several agencies to implement the Obama human rights agenda, beginning with closing Guantánamo and prohibiting detention without charge and torture.⁵⁴ It should also produce an action plan that articulates how the focus on human rights advances U.S. national interests “for key bilateral relationships.”⁵⁵ The president might task and empower senior decisionmakers to focus on human rights in a way not yet seen in U.S. foreign policy, not merely or mainly relying on the use of force to end abuse but, more comprehensively, rejoining the relevant conventions and advancing the United States as the necessary partner for providing justice in new areas.

The Obama administration has the potential to create a decisive human rights legacy through a number of policy initiatives, such as developing an international witness protection regime. Currently, the role of prosecution as a deterrent to human rights abuse is critical, but no robust witness protection regime exists. The team might work toward a new U.S.–EU joint statement or protocol on human rights as it relates to counterterrorism, as well as articulate a shared view of what human rights means as a practical matter in the twenty-first century, from a state’s responsibility to protect against genocide to provisions against poverty.⁵⁶ Perhaps the agenda might also address the growing phenomenon of “contractor impunity” especially as it relates to the killing of civilians overseas or the involvement in the trafficking of human beings.⁵⁷ The cadre might lead the United States to shape the growing transitional justice movement by addressing how states and societies reconcile with violent episodes of the past. In the United States, this would mean more and better memorialization to those who struggled against slavery in the eighteenth and nineteenth centuries and the linkage of their struggle to the continued campaign in the twentieth and twenty-first centuries against the sale of human beings for the purpose of enslavement. It would likely also involve some accounting for the abuses of the recent era.⁵⁸ It would consider seriously the idea of addressing human rights inside the United States as well as outside.

Moving human rights to the mainstream will require broadening its constituency.

Unusual coalitions inside the government might form to advance this human rights agenda. Intelligence officers may welcome the shift from reliance on detention without charge and abusive interrogation techniques because many argue these approaches produce little actionable intelligence.⁵⁹ Uniformed service members will likely applaud increased compliance with human rights and an end to private security contractors' impunity, which would track closely with the counterinsurgency

approach advanced by the U.S. military.⁶⁰ To the extent the Obama energy team emphasizes energy independence, they will find partners in the human rights corner; most major oil and gas producing countries have poor human rights records that often go overlooked or have few consequences because of international energy demand. Alternative energy sources might correlate with greater willingness on the part of governments to speak out about such abuses

New structures, such as a directorate on human rights and international law inside the National Security Council or, more likely, existing offices such as the Bureau of Democracy, Human Rights and Labor or the Policy Planning Staff, both at the Department of State, might serve as "repair shops" that would concentrate on repairing the damage to U.S. moral and strategic authority sustained from recent policies, coordinating new initiatives such as closing Guantánamo, and developing new policies well beyond those mentioned above.⁶¹

The prioritization of human rights may seem unnecessary or overly ambitious in an era of unprecedented economic crisis and two wars, but the United States' ability to leverage power has been so damaged that the Obama administration may find it a critical salve. One legal scholar contends that if the United States leads, "there are a lot of other people to help. If the U.S. doesn't lead or opposes, nothing's going to happen. . . . NGOs have to be really realistic about that. This is a moment to get five to ten people in [key positions] who are really committed and experienced and can drive the agenda, make this their key priority. And if they miss this opportunity, then it's not going to happen."⁶² Pressures not to make human rights a central focus may also be great. As in other eras of transitional justice, the Obama administration may make accommodations or cut deals, ending torture but institutionalizing detention without charge, for example. In the coming months and years, scholars, activists, and governments around the world will be watching intently to see if there is a dream team in place, what they do, and how they lead on these critical issues that span human rights, international law, and national security.

The Innovation Dilemma and Green Envy

Beyond new personnel, policies, and government structures, moving human rights from the margins to the mainstream will require broadening the human rights constituency. The burden for that will be mainly carried by activists. A decade ago, Cox argued that “the human rights movement has not been successful in capturing the imagination of a broad group of people.”⁶³ Today, he argues that it has still not done a good job “winning over public opinion on human rights. . . . [W]e don’t . . . really listen to what people [care] about, what they think about, and then building our strategies around that rather than thinking our strategies are fine.”⁶⁴ One U.S. legal scholar believes the constituency for human rights and international law is “pretty thin.”⁶⁵ A European activist concedes that “one of the things that we haven’t done as well as we might is to engage in the kind of public debate about why, without universality, human rights are meaningless.”⁶⁶ Massimino notes that “people who work in the human rights field tend to talk to each other, and not surprisingly, they conclude that there’s a really strong consensus.” She argues that “job number one” is not taking for granted the consensus on human rights. “We have to demonstrate . . . that failing to respect human rights . . . is what causes a lot of the chaos in the world, and respect for human rights and insistence on that as a pillar of U.S. foreign policy is essential to help solve a lot of these problems. There’s no shortcut. . . . [We’ve] got to be more empirical in making the argument that respect for human rights helps us achieve the world that we want.”⁶⁷

Human rights activists increasingly recognize that, to argue against counterterrorism policies, such as detention without charge, a more effective approach is to frame it in terms of security, in addition to human rights. For example, a recent attempt in the United Kingdom to extend detention without charge of terrorist suspects to 42 days was shaped in terms of the negative impact it would have on the communities on which the police rely to share information critical for counterterrorism, as well as the violations of an individual’s rights.⁶⁸ In short, scholars and activists need to know how the general public and elites think about these issues if human rights advocates are going to make persuasive arguments. Without larger demand by society, human rights is likely fated to remain marginal.⁶⁹

Broadening the constituency will mean engaging foreign policy elites, and for this, institutional structures will need to be developed. The security implications of human rights abuses by states have become better understood in recent years. For example, the constituency for closing Guantánamo grew enormously from 2002, when a handful of NGOs protested detention without charge, to 2008, when five former secretaries of state advocated its shutdown including Henry

Kissinger.⁷⁰ Now is the time, in the early Obama years and hopefully absent any terrorist attack, to build on that new understanding but also to probe more deeply how elites view human rights and international law. As yet, human rights are rarely if ever addressed at annual gatherings such as the World Economic Forum at Davos, the Clinton Global Initiative, or the German Marshall Fund's Brussels Forum. A meeting to be held later in 2009 by the Ditchley Foundation is an important exception. At these and other similar international fora, policymakers and experts regularly come together to think about needed changes to, for example, U.S. nuclear policy or policy toward Pakistan or Russia and then issue recommendations. Few, if any, studies on human rights policy have been conducted. Not unrelated, few think tanks house human rights programs.⁷¹

Meanwhile, the marketplace of issues and ideas has gotten increasingly crowded, and some contend that other movements have adapted and are thriving more than the field of human rights. Global health and environmental issues especially have grabbed the public's attention. David Rieff suggests that "the environmental movement is trading places with the human rights movement" in terms of importance, relevance, and triumphalism because of the perceived immediacy of environmental degradation, but also an increase in philanthropy, media attention, and good use of technical research.⁷² Roth acknowledges that "environmentalism touches closer to home, [such as] pollution in [your] stream. That immediacy has helped build it. Where you have that kind of personal interest [in human rights, such as if you live in a dictatorship], it is dangerous to be part of the movement. Safety means you need a leap of imagination to identify with victims, so structural constraints [exist]."⁷³ Cox notes that "the climate change people have managed to convince a lot of people who aren't particularly interested in the environment. . . . I think the same thing can happen in human rights. I have no doubt about it."⁷⁴ At a minimum, examining specific lessons from other movements might yield some new and helpful approaches

In adapting and innovating, the human rights movement might increasingly rely on strategic communications and social marketing, for example, using survey research to shape messages. Greater collaboration with media outlets might also make a difference. If the *New Yorker* and the *New York Times Magazine* produce "green" issues and if cable television can support a Planet Green channel, would special issues or channels (or a radio show) devoted to human rights be possible? Could the "green" inaugural ball, in January 2009 in Washington D.C., be followed by a "rights" inaugural ball in 2013?⁷⁵ Movies, videos, and podcasts are increasingly supplementing, if not replacing, traditional human rights monitoring reports. Amnesty International and HRW, as well as prosecutors at the ICC, are increasingly relying on satellite photography to track abuses in real time. Could "Google Rights" or a rapid response information network involving

media and prosecutors to be deployed and document abuse for use in court, be the next big idea? Such innovation will likely only occur if supported by the leadership of the human rights community, combined with resources and the necessary creative and strategic partnerships.

A moment of opportunity may arise from the extreme damage to the U.S. reputation.

“Yes We Can” . . . ?

If the UDHR was a gift from the twentieth century, the burden in the twenty-first century is to make it more than just an aspirational text. Even if the Obama administration fully embraces human rights and international law and the human rights movement succeeds in broadening its constituency, there are other outstanding challenges. For example, how do we get improved systems of accountability and policy implementation internationally? The human rights machinery was created for states in general compliance but not for persistent offenders. “The picture [on implementation] is very patchy. We have a sacred book on the values, and we have rules on the books. But how [does] that affect daily lives, including through arbitration mechanisms? It is not really working well to make human rights an everyday reality.”⁷⁶

Although the human rights movement has greatly expanded, many countries still do not have strong indigenous movements. Without that local link, arguments made by foreign NGOs about the need for compliance with human rights lack credibility. Moreover, how does one incentivize China or Russia to play a more constructive role internally and externally on human rights?⁷⁷ What are the necessary and sufficient strategies for “dismantling” institutions of violence? For the “thousands of torture cases, there is but one remedy: institutional changes in police that may eventually lead to the reduction of torture.”⁷⁸ What are the best ways of achieving that remedy? Finally, what effect will the financial crisis have on specific kinds of human rights abuse and on the philanthropy that has been critical to the development of the movement in the last 30 years?

Simply put, the consensus on human rights remains fragile. As Massimino noted, even with Obama’s election, “[W]e are still left with this fairly entrenched view among people in this country and other countries that the world is just too complex and dangerous to put human rights in the center of things, that these are trade-offs that must be balanced, and who can be against balance—it’s so inherently reasonable, right—but that’s in large part how we ended up with this mess.”⁷⁹ The vision of how U.S. foreign policy ought to be

under an Obama administration, however widely shared by many human rights activists, competes or appears to compete with numerous other policy agendas including arms control or relations with Iran or Russia. Until the human rights community in the United States can make the strategic case about the inherent dangers for national security that come from overlooking abuse or corrupt rule of law, it will face an uphill battle in shaping policy. In some small way, a moment of opportunity may arise from the extreme damage to the U.S. reputation caused by the Bush administration's policies. As noted above, bipartisan agreement has emerged around certain issues, such as the need to close Guantánamo and the dangers of torture, which now should be cultivated and strengthened, especially before another terrorist attack occurs.

Either the last eight years have been a temporary aberration, a momentary retreat in the wave that is the human rights movement, or this is the beginning of worse things to come. One perhaps could say the same about U.S. power. The fate of the human rights movement, at least in the Euro-Atlantic region, and the health of U.S. power do seem tied together for better or worse. Most activists and scholars with whom I spoke want to believe that the era of human rights still lies ahead. With the glow of the 2008 election still on us, it is perhaps easier and more comforting to think of this moment as the end of a bad stage rather than the alternative. Certainly, no magic bullet exists to make human rights norms more robust from a policy perspective, and we have yet to see the effect of a number of strategies and tactics, particularly when combined and targeted at specific audiences. There is a growing consensus that we need to see much greater demand for human rights compliance by elites and the general public. This demand will not come spontaneously. It must be nurtured. The Obama years seem an opportune time for this to occur.

Notes

1. United Nations, "The Universal Declaration of Human Rights," <http://www.un.org/Overview/rights.html>. The declaration was adopted on December 10, 1948, by the UN General Assembly as Resolution 217 A (III).
2. For the links between the UDHR and the fight for racial justice in the United States, see M. Glen Johnson, "The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights," *Human Rights Quarterly* 9, no. 1 (1987): 40–41.
3. Wilder Tayler, interview by author, Geneva, September 29, 2008 (acting secretary general, International Commission of Jurists) (hereinafter Tayler interview).
4. Larry Cox, telephone interview by author, November 4, 2008 (executive director, Amnesty International USA) (hereinafter Cox interview).
5. David Rieff, "The Precarious Triumph of Human Rights," *New York Times Magazine*, August 8, 1999, <http://query.nytimes.com/gst/fullpage.html?res=9CODE3D81E31F93BA3575BC0A96F958260&scp=1&sq=&st=nyt>.

6. Aryeh Neier, telephone interview by author, November 3, 2008 (president, Open Society Institute) (hereinafter Neier interview).
7. Jessica T. Mathews, "Power Shift," *Foreign Affairs* 76, no. 1 (January/February 1997): 50–66.
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11. Tayler interview; Dick Oosting, telephone interview by author, November 3, 2008 (Europe director, International Center for Transitional Justice [ICTJ]); Cox interview.
12. Human Rights Web, "A Summary of United Nations Agreements on Human Rights," January 25, 1997, <http://www.hrweb.org/legal/undocs.html>.
13. Ben Ward, telephone interview by author, November 3, 2008 (associate director, Europe and Central Asia Division, Human Rights Watch [HRW]) (hereinafter Ward interview).
14. Fionnuala Ní Aoláin, telephone interview by author, October 27, 2008 (professor, University of Ulster and University of Minnesota) (hereinafter Ní Aoláin interview).
15. Human rights lawyer and grant maker, telephone interview by author, October 30, 2008.
16. Ward interview.
17. Cox interview.
18. Neier interview.
19. These include the tribunal for the former Yugoslavia located in the Hague, the tribunal for genocide in Rwanda located in Tanzania, the Sierra Leone tribunal in Sierra Leone, and the Cambodian tribunal in Cambodia. See <http://www.pict-pcti.org/>.
20. Ken Roth, telephone interview by author, October 28, 2008 (executive director, HRW) (hereinafter Roth interview).
21. Ní Aoláin interview.
22. Human rights lawyer, interview by author, October 30, 2008.
23. Ward interview.
24. Ní Aoláin interview; Adam Liptak, "U.S. Court Is Now Guiding Fewer Nations," *The New York Times*, September 18, 2008, http://www.nytimes.com/2008/09/18/us/18legal.html?_r=1.
25. *Brief for the United States as Amicus Curiae*, 1952 WL 82045 (U.S.), p. 4. The author thanks Ní Aoláin and Ashley Deeks for help locating the brief.

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28. The author sits on the advisory committee to the Europe and Central Asia Division of HRW.
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36. Elisa Massimino, interview by author, Washington D.C., November 3, 2008 (executive director, Human Rights First) (hereinafter Massimino interview).
37. Cox interview.
38. Elizabeth Andersen, telephone interview by author, November 4, 2008 (executive director, American Society of International Law); Dorothy Thomas, telephone interview by author, November 4, 2008 (human rights consultant); Liptak, "U.S. Court Is Now Guiding Fewer Nations."
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 49. Conor Gearty, telephone interview by author, October 31, 2008 (director, Centre for the Study of Human Rights, London School of Economics) (hereinafter Gearty interview); Gillioz interview.
 50. Senior EU diplomat, telephone interview by author, November 10, 2008.
 51. Ibid.; Thomas interview.
 52. Human rights activist, telephone interview by author, November 3, 2008.
 53. Legal scholar, telephone interview by author, November 10, 2008.
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