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HUMAN RIGHTS IN FOREIGN POLICY: CURRENT DILEMMAS

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POLITICISED UN DEBATES

1. The annual sessions of the UN Commission on Human Rights were 'political' from the very beginning, but have become even more so during recent years. With the end of the Cold War the tensions moved from 'East-West' polarities to 'North-South' ones. What remained, however, was a disagreement about the very definition of human rights. Developing countries have argued for a broader concept which would, as the Universal Declaration on Human Rights itself, include economic and social rights. To this the United States has been reluctant and the other Western countries lukewarm.
2. The debate about 'right to development' has been a sad reflection of this disagreement. Though Article 28 of the Universal Declaration states that *'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'*, Western governments have acted as if there was no obligation there. On the other hand, it has not helped that some other governments, among them Cuba, have argued that the right to development simply means a legal obligation for the richer countries to subsidise development in the South. UN High Commissioner for Human Rights Mary Robinson has made constructive attempts to make sense of the discussion and stressed that the human rights approach builds on "development as a process committed to the guarantee of all human rights, the rule of law and democracy"¹. Several governments, including the US administration, have still to demonstrate an understanding of this approach.
3. The twofold principle that human rights are universal and constitute a legitimate international concern appear to be, at least implicitly, accepted nowadays within the Human Rights Commission. The arguments about 'particularities' of certain countries or notions such as the 'Asian values' have been mentioned, but with relatively little impact. Few even question the procedure of discussing country resolutions as such during these meetings, though, clearly, a

¹ Mary Robinson, *Bridging the Gap between Human Rights and Development: From Normative Principles to Operational Relevance*. Lecture at the World Bank. 3 December 2001.

number of governments would welcome a decision that only thematic problems be raised. One point of criticism is 'selectivity', that there are no systematic, objective criteria for choosing the countries to be put on the agenda. This claim is not without justification.

4. There is still a perception of implied 'black-listing' in these discussions. Governments struggle hard to avoid being put on the agenda. Those already on it, argue strongly for being taken off. No one appears to welcome an international discussion on what could be done to improve the human rights protection in their country, not even an exchange on advisory services and technical co-operation. China has managed to prevent a draft resolution (initiated by the US) to be discussed in the Commission through a 'no action' motion, which has been narrowly carried year after year; both China and the United States have lobbied heavily in the world capitals before the votes. The US has also pushed for a resolution on Cuba but objected to proposals to add any mention of the negative impact of the sanctions on economic and social rights in Cuba. Again, these discussions have politicised and poisoned the atmosphere in the Commission.
5. The non-governmental human rights community, on the other hand, has been strikingly unanimous in its stance regarding the issues discussed in the Human Rights Commission. There is within it a broad consensus that economic and social rights are important and indivisible from civil and political rights, that the discussion on the right to development (if not sabotaged) could be an essential framework for discussion on realisation of all rights and that all governments should accept international scrutiny, not least within the UN and its mechanisms.

WESTERN DOUBLE STANDARDS

6. A divide on human rights policies has broadly been drawn between developed and developing countries. Among the former, human rights have been made a priority aspect of the foreign policy. This is partly a result of pressure from the NGOs and the media as well as parliamentary discussions.
7. One effect is the emergence of a 'conditionality' approach to development assistance. Potential recipient countries for aid would be assessed on their human rights performance. The idea was that a bad record would result in no assistance. This approach appears to assume that the human rights situation was more related to political will than the availability of resources - an assumption questioned by representatives of such countries.
8. There have been differences between donor countries. Some appear to apply an almost punitive 'black list' approach while others may have questioned the effectiveness of co-operation with countries where popular participation was curbed. Still, the overall impression conveyed was that aid was handed out as a reward for good behaviour. This has contributed to the notion that some countries are lecturing others on human rights, and doing it in a patronising manner.
9. Some of the Western governments act indeed as if human rights were exclusively a matter of foreign affairs and a non-issue on the domestic scene. In fact, the US has narrowed the definition of human rights to exclude areas of particular domestic sensitivity. The exclusion of economic and social rights has already been mentioned. Such narrowing complicates a discussion of the human rights consequences of poverty in the United States, including child poverty. Further, when Europeans have raised the question of executions, US representatives have responded that capital punishment was not a human rights issue. Neither have criticisms of police brutality and bad prison conditions been received as rights concerns.
10. Consequently, the US has not ratified some key human rights treaties such as the International Covenant on Economic, Social and Cultural Rights, the International Convention for the

Elimination of All Forms of Discrimination Against Women and the International Convention on the Rights of the Child. When it ratified the Covenant on Civil and Political Rights, it did so with several reservations.

11. The US ignored rulings by the International Court of Justice in relation to Nicaragua and has, in general, shown a disregard for international judicial or human rights mechanisms. It is not backing the establishment of the new International Criminal Court for the reason that US personnel might one day be liable to indictment.
12. These positions have been combined with a complacent rhetoric in which the implied message is that the United States is the world's prime protector of human rights. An American scholar described this as "the perpetual rediscovery of [the West's] own perceived innocence". No amount of abuse and exploitation, however catastrophic for the non-Western victims seems to erode this sense of innocence, he wrote and added: "The United States seems especially immune to second thoughts or self-criticism"². For someone who has followed the international human rights discourse for some years, it is easy to agree.
13. Another major factor in this scenario is the obvious double standard in relation to human rights and international agreements in the Middle East. The right of the Palestinian refugees to return has largely been ignored; comparisons with US positions in the Balkans illustrate the inconsistency. Israeli state-organised extra-judicial executions have in reality been accepted and thereby encouraged. Attempts to raise these issues in international fora have to a large extent been vetoed or otherwise prevented.

MULTILATERAL STRUCTURES ARE DOMINATED OR BYPASSED

14. The International Kosovo Commission discussed the bombings of Serbia-Kosovo in 1999 and concluded that they were not legal but legitimate. It wanted to say that these military operations were morally justified in view of the concrete developments in Kosovo, but that the bombings were still illegal because there was no formal approval by the Security Council.
15. In the case of the current crisis in Afghanistan, the approach was different. The Security Council made a connection in its resolution on September 12, 2002 between the fight against international terrorism and the right to self-defence (Article 51 of the UN Charter). It did not explicitly authorise the war against the Taliban in Afghanistan. However, the fact that the Council raised no objections when the American and British reports on the military operations were submitted, has been recognised as an indirect approval, in retrospect.
16. When it comes to precedence, we have now got what appears as an unclear, almost open-ended interpretation of 'the right to 'self-defence' that is of little help for the future, except for those who want to bypass a genuine Security Council discussion. The question has been raised why the US and the UK did not ask the Council for explicit approval of the Afghanistan operation even in a situation when there appeared to be no risk of a veto.
17. It has been noted widely that the coalition against terrorism after September 11 is not an alliance between relatively equal partners but organised as a support structure for US goals. For instance, the sub-committee of the Security Council rubber stamped the lists submitted to it by the US authorities of companies and individuals whose financial assets were to be frozen.

² Richard A. Falk, *Human Rights Horizons. The Pursuit of Justice in a Globalising World*, New York: Routledge 2000, p. 87.

18. The late UN Secretary-General Dag Hammarskjöld saw the United Nations as a protector of the interests and independence of the small countries. This vision is now largely undermined. There are several reasons for that, one is clearly the way the US has related to the world organisation.
19. Irritation on the Capitol Hill against the voting procedures of the UN is understandable, as is the criticism against its heavy bureaucracy. However, the US has not been particularly active for genuine reforms of the UN and its refusal to pay its dues in time has caused enormous problems for the organisation (and contributed to an ad hoc-styled administration). It should also be emphasised that the US has not been helpful towards proposals to increase the budget of the Office of the High Commissioner for Human Rights.
20. The unease about the decision making procedures (in particular, the one member state - one vote approach) may have contributed to a bullying attitude from Washington towards various UN bodies. The United States left UNESCO as it did not like some of its decisions, notably those on a 'new international information order'. Now, it is putting UNICEF under pressure to downplay the rights-based approach and to give little credence to the Convention on the Rights of the Child.
21. In other instances the US has acted to move international issues out of the UN context. On disarmament it has preferred to deal with issues bilaterally (mainly with the Soviet Union and, now, Russia). The peace work on Middle East is another example.
22. All these observations should be related to the discussion inside and outside the US on multilateralism versus unilateralism. There appears to be a broadly shared international worry, at least in government circles, that the US might move towards isolationism. Not least there is a concern that the Congress may act in an irrational and unpredictable way. The European governments, and probably some others as well, are prepared to stand some bullying and distorted priorities in order to please the US enough for it, largely, to stay within the system.

HUMAN RIGHTS DIPLOMACY IS ALSO A QUESTION OF STYLE

23. Governments which are serious about their human rights commitment in foreign affairs, have learnt that, for the sake of effectiveness, it is important to use several approaches and methods. Simple divisions like between multilateral versus bilateral actions, silent diplomacy versus public criticism, aid versus advocacy, and so forth, do not cover the multitude of action possibilities at any given moment. Ideally, the choice of means in each situation should be guided by what can be assumed to be effective. The timing of various moves and the combination of them is often what makes the difference.
24. A major consideration is whether the activity is public or not. The pressure for being open is strong; it has been proven in some cases that it was only through public exposures that impact was made. Also, silent diplomacy by its very nature gives some room for passivity and is therefore liable for mistrust. On the other hand, public exposure is not always effective. After publicity - and thereby political damage, as perceived by the targeted government - the latter may not feel encouraged to 'compromise'. In general, however, it seems wise to aim for public accounting of human rights initiatives sooner or later - though the concrete timing could be adjusted to what can bring result in each particular case.
25. Public or not - there are also differences in style between how governments tend to act on human rights in their foreign policies. There is a wide perception among other governments that US representatives not seldom are blunt and bullying. This can in some instances, be effective. In other situations, it is counterproductive - in particular when the facts are flawed (which they have

been in some instances) - and can provoke a defensive response. Few officials like to be lectured and finger-pointed at, especially on issues that have a moral resonance.

26. This is partly a question of behavioural culture - compare, for instance, the style of Japanese and US diplomats - and would normally not be noteworthy. However, due to the dominant role of the US in the international human rights discussion, this US crusader style has to some extent come to be seen as synonymous with the international human rights campaign, including efforts by non-governmental groups. No doubt, some targeted governments have even encouraged this impression in order to portray human rights initiatives as insensitive or 'imperialistic'. They may, also, for their own reasons prefer human rights to be seen as 'Western' (as, indeed, some Western governments do).

ECONOMIC DOMINANCE

27. The major ideological divide in the human rights discourse relates to economic and social rights. The US resistance against these rights appears to be both logical from the point of self-interest and, at the same time, ill-advised. Clearly, the US would have to take measures to improve its performance in order to meet international standards on these rights, including in relation to the rights of the child. There is also a fear within the US administration that recognising these rights would encourage litigation cases in the courts. On the other hand, the international consensus on human rights is based on the full package as defined in the Universal Declaration (largely inspired by President Franklin Roosevelt's 'Four Freedoms').
28. There is of course no contradiction per se between these rights and a market economy philosophy. Indeed, a great value of these rights, including those defined by the International Labour Office (ILO), is that they address problems which are not automatically solved by the market forces but important for them. However, politicians who want to limit the role of public institutions in all situations may see a contradiction; the guaranteeing of rights does require some organisation of common interests - the 'provision' rights generally more so than the 'respecting' and 'protection' rights. This is probably part of the background to the US position, which makes the discussion more politicised and even ideological.
29. The UN human rights committees have taken no position in relation to the *privatisation* of basic services like health care and education. They have remarked that no matter how these services are organised, the state remains responsible for the implementation of the agreed rights. This requires, at least, an effective watch of the performance of private business in these fields. However, monitoring in turn requires some institutions in order to function in a meaningful manner.
30. The present US administration is pushing a private sector agenda in the multilateral institutions, not least in the World Trade Organisation (WTO) and the World Bank. It wants to promote a global market in private health care, education, water supply and welfare. This will be positive for some US companies - but less so for efforts to protect the political support in the individual countries for universal access to such services - and thereby the possibilities to have them funded. In other words, economic and social rights are at stake.
31. At the same time, it is fair to note that the World Bank programme has developed a social profile during the last couple of years. The importance of social goods such as health and education has been stressed. However, this development does not get much support from the present US administration. Indeed, whether the World Bank can protect its relative independence in this regard is of importance for the human rights cause.

32. Multilateral institutions, including UN agencies, the Bank group and OECD, have developed much more of a common perspective in their programmes lately. The focus is on *the combat against poverty*, a priority which was strongly supported by the 2000 Millennium Declaration. There is an obvious link between that decision and the protection of economic and social rights. Also, with the broad definition of poverty which has been agreed in various forums, civil and political rights as well are highly relevant to the fight against poverty.
33. This commitment will be further tested at international meetings during the year 2002: on the financing of development programmes, on the rights of children and on sustainable development. It will be demonstrated again that economic policies affect human rights. The issue is not for or against 'globalisation' but to secure respect for the freedom and protection of the individual in the globalised economy.

INTERVENTION WITH MILITARY MEANS

34. One of the key arguments put forward for the bombing campaign over Serbia-Kosovo in 1999 was the protection of human rights. The immediate effect was an escalation of the Serb (Belgrade) repression in Kosovo in late March-early April of that year which in turn led to a mass exodus of about half of the Albanian population in the province. With the Serb defeat, an international presence was established in Kosovo and the refugees were able to return. However, human rights problems remain - now largely faced by the Serbs, Romas and other minorities.
35. The NATO operation was controversial from the very beginning. Not only because of the absence of preventive initiatives at an earlier stage (there had been clear warning signals throughout the nineties) or the fact that the Security Council had been bypassed. In Russia and several countries in the South, governments were concerned that a precedent was being set about further military interventions when the US administration so wished.
36. The feeling that the principle of national sovereignty was being undermined became very clear during the 1999 General Assembly. Even very reasonable remarks by the Secretary-General about the duty of the international community to react when individuals are violated behind national borders, were met with scepticism. The roots were, partly, the fear of how the US might use its military power.
37. The argument for the Afghanistan military campaign since October 7, 2001 has been the fight against terrorism rather than human rights. But the fact that there was no direct discussion and decision in the Security Council about the bombing operations over Afghanistan has fed similar concerns. These will probably be augmented by the fact that the US bombings continued even after the interim government at one stage expressed its wish that they cease.
38. The Canadian government initiated a study into the very dilemma of intervention versus national sovereignty. The International Commission on Intervention and State Sovereignty was co-chaired by Gareth Evans and Mohamed Sahnoun and published its report in December 2001.³ The report argues that state sovereignty implies responsibility and that the prime responsibility is *to protect people* within the state itself. When the population is suffering serious harm and the authorities are unwilling or unable to remedy that, the principle of non-intervention yields to an international responsibility to protect.
39. These principles are not new, they are reflected in the UN Charter itself. But they will now be read against the background of current concerns about how these principles are applied in real

³ *The Responsibility to Protect - Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre, 2001.

practice. The Commission underlines that prevention is crucial and that less intrusive and coercive measures should be considered before stronger ones are applied; military intervention should be seen as an exceptional and extraordinary measure. A threshold should be defined of actual or apprehended serious and irreparable harm to human beings, for instance large scale loss of life or 'ethnic cleansing'.

40. Further, the Commission mentions precautionary requirements to be met before an intervention is decided upon: that the primary intention really is to stop human suffering; that all other options (for instance, diplomatic) have been exhausted; that the scale, intensity and duration of the military intervention is proportional to the defined objective; and that there is a reasonable chance of success (and that the consequences are not likely to be worse than of inaction).
41. A key aspect is of course which authority can decide on intervention. The Commission supports the idea that the Security Council should have a monopoly role in this area. The task is not to find alternatives to the Council but to make it work better than it has. If it still fails to deal with a situation, the issue can be raised in the General Assembly under the 'Uniting for Peace' procedure or be dealt with by a regional organisation (subject to authorisation by the Security Council). The Commission states specifically that:
42. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other measures to meet the gravity and urgency of that situation - and that the stature and credibility of the United Nations may suffer thereby.⁴
43. This can be interpreted as an opening for new operations without the approval of the Security Council, but also as a serious request for UN reform in order to make the Council able to carry the responsibility of deciding on these absolutely crucial issues. The latter also requires another approach in Washington: towards a more genuinely multilateral policy.
44. *The human rights cause should not rely on military interventions by some governments. In the longer run it benefits from an order of international legality, even if that sometimes may lead to paralysis because of different political views or assessments between governments. Justice and military might are not always on the same side.*

CONCLUSIONS

45. It is more difficult for the human rights movement to stand 'above' politics as human rights have been put more firmly on the political agenda. Military interventions have taken place - causing considerable civilian casualties - with human rights protection as the justification. Globalisation of the economy does affect human rights directly and indirectly, as does the US political dominance unilaterally and within multilateral institutions.
46. While human rights groups in the past may have seen the reference to 'national sovereignty' mainly as an excuse by governments to avoid international critique, the analysis must now dig deeper.
47. The weakness of state structures has caused severe human rights problems in some countries. In the development debate, it is now more widely recognised that 'ownership' of the development process must stay firmly at the national level; the outside can contribute (at least avoid sabotaging). Therefore, multilateral actors and outside governments need to respect and relate to local structures, not undermine them. Also, NGOs, both national and international, need to

⁴ Ibid.

define an approach to the temptation to take over the role of the authorities, including through receiving development assistance which otherwise might have gone to the state programmes.

48. Implicit in this is that the human rights cause ought not to be pursued only through 'naming and shaming' from outside. Contributions to active institution building are required as well. This does not mean that human rights groups should abstain from monitoring and reporting in order not to weaken national state structures. On the contrary, watching should be seen as a constructive activity and the basis for genuine reform.
49. Several issues related to US global dominance were raised above. They are of major concern for the human rights cause and underline the importance of a sound discussion in the US itself and the very important role of the domestic NGOs in that context.
50. However, the response from outside also requires self-critical discussion. The September 11 attacks may have increased the understanding in the US about the value of international co-operation (particularly that partners stand up for international principles and the idea of multilateralism). Equally, it should be made clear that co-operation is not a one-way street.
51. Five aspects appear particularly important in this context:
 52. *That the combat against terrorism be conducted with respect for human rights and within the framework of international law.*

The extra-ordinary mobilisation of governments in this campaign contributed to some severe human rights problems. In some countries laws that undermine rights to a fair trial or proper asylum procedures have been enacted. Sweeping legislation based on an unclear definition of the very concept of 'terrorism' may have made it possible to target also peaceful expression of dissenting views. Bilateral monitoring appears to have weakened in cases described as 'terrorism', for example in Chechnya. Likewise, the continued warfare in Afghanistan does raise humanitarian law and human rights issues of great significance. There is an urgent need to discuss the very concept of 'proportionality'.
 53. *That the conflict in the Middle East be brought to a peaceful and just settlement.*

The continued Israel-Palestine conflict violates individuals in the region, but also poisons the international atmosphere, including within UN structures. Western double standards in relation to Israeli violations of humanitarian law and human rights violations do undermine the notion that these standards are universal.
 54. *That it be recognised that economic and social rights are important and that standards in this area are essential elements for economic and other policies.*

This would considerably help develop a genuine consensus behind international human rights norms and their realisation. It would also constitute an important counter weight in relation to the unwanted effects of policies of privatisation and deregulation.
 55. *That developed countries, including the Western ones, reduce their level of complacency regarding human rights and face up to domestic problems.*

The full and genuine recognition of economic and social rights would force the developed countries to be more self-critical. Much remains in the field of national planning and monitoring in relation to human rights enforcement. Also, a number of transnational issues require self-critical review, including asylum policies and the human rights component in development cooperation.

56. *That a discussion be started on a genuine reform of the UN and other key international structures in order to safeguard the interests of small states and at the same time ensure that larger states have a proportionally sound chance to influence.*

The structure for the global governing is more than fifty years old and in many respects outdated. This has contributed to mistrust between member states and kept non-governmental efforts marginalised. It has given conservative forces in the US a pretext for unilateralism and, at the same time, made other countries suspicious about the misuse of the institutions against their national interests. Such a discussion will be extremely difficult, but has to start some time. In the end, its success will depend on whether there is a common vision of the need of mutual respect and co-operation.