

THE FUTURE OF HUMAN RIGHTS: SHIFTING PRIORITIES AND A COMMUNITY IN RECESSION

By M. Cherif Bassiouni



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The veneer of legal civilization is very thin.

It took the single incident of September 11, 2001, for the United States to launch its extraordinary renditions program and Guantanamo Bay detention camp. The egregious kidnapping, torturing, and imprisonment of nearly 850 detainees was heightened by the revelation that some 600 were mistakenly held captive. In certain cases it took between two and 10 years to release those who did not constitute a threat to the United States.

If anything else, this is symptomatic of the fact that when security is concerned, neither domestic nor international law protects human rights.

The enunciation of internationally protected human rights in the modern world began with the 1948 Universal Declaration of Human Rights. In 1963, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were

adopted. These treaties and covenants are described as the declarative stage of human rights protection.

The two covenants spawned a number of specific conventions on subjects such as the International Convention on the Elimination of All Forms of Racial Discrimination (1979), the Convention on the Elimination of all Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1990). This was, for all practical purposes, the second generation of human rights protection; the prescriptive stage.

The third, proscriptive stage soon followed and criminalized some of these violations, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984; whose drafting committee I co-chaired). Similarly, the Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 criminalized that form of racial discrimination.

In 2005, a summit of heads of states took place at the UN General Assembly in New York. The Responsibility to Protect was adopted as a principle permitting states to intervene to protect those in another state who were the targets of genocide or crimes against humanity.

International humanitarian law developed separately from these covenants and declarations through what became known as the Geneva Conventions. Comprised of four treaties, its purpose is to humanize armed conflict, reduce human harm, and enhance the protection of noncombatants and hors de combat.

Various international human rights conventions have also included treaty bodies as enforcement mechanisms, but they have had limited effect on the enhancement of human rights enforcement in national systems. The United Nations developed international fact-finding missions that have proven effective in monitoring human rights violations in conflict and post-conflict justice situations. Regional human rights conventions and enforcement mechanisms have been established in Europe, the Americas and Africa. These include the European Court of Human Rights, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples' Rights.

All of this gave rise to international criminal justice through the UN Security Council's establishment of the two international tribunals, the International Criminal Tribunal for the former Yugoslavia (1993) and the International Criminal Tribunal for Rwanda (1994), followed by the establishment of the International Criminal Court (1998), and a number of mixed-model tribunals in Kosovo, Cambodia, East Timor, Syria Leone and Lebanon. But, these international justice organizations will be closed by 2014.

The ICC will remain the only international criminal justice institution alive. But, it is under strong criticism for prosecuting violators from Africa and ignoring violators from other countries. The Security Council has referred the case of Darfur, the Sudan and Libya to the ICC, but it refuses to financially support the ICC in seeking the arrest of President Bashir for the crimes committed in that part of the Sudan. Most recently, the African Union has asked the Security Council to defer prosecution of President Kenyatta of Kenya. Russia's opposition to any action by the Security Council in Syria provides an impunity shield to President Bashar-al Assad, making the Security Council impotent to act. All of this contributes to an impending crisis in international criminal justice.

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The international community is once again entering a higher state of self-interest, where the pursuit of power and wealth prevails over other values and interests. But, this era of globalization is presenting the world community and individual states with challenges that appear increasingly more difficult to overcome. This includes the increasing challenges of governability in both developed and developing states, national and international concerns about security threats arising out of international and national sources, illegal migration deriving from poverty in developing countries, the number of failed and failing states whose population in whole or in part presents danger to neighboring states and to the region where they are located, environmental issues, and the frailty of the international financial system.

As the world population approaches eight billion, with hunger, and disease increasing, the international community as a whole—and major states in particular—are pulling back from their earlier commitments to individual and collective human rights.

The combination of a number of global factors constitutes a serious threat to the future of human rights. In the face of these threats, states are changing their priorities from upholding and enforcing the values of individual rights to the protection of collective and national rights. This transformation means that even though the values of human rights remain, their priority in relationship to the risks and challenges facing states is receding.

The intellectual and doctrinal foundation for the recognition and respect for human dignity, which the age of enlightenment brought to Western civilization and later to the world, is eroding. In the absence of state commitment to such values, I submit that it is those of us who embark on the legal profession that must commit to uphold these values, and that is part of the Vincentian mission.

If the legal profession fails to accept this responsibility, then who else will?