

COMMON TRACK THREE

THE UN AND HUMAN RIGHTS: TIME FOR A GREAT AWAKENING

INTRODUCTION

Just a few weeks ago (24 September 2010) the Deputy Prime Minister Nick Clegg made a speech at the United Nations General Assembly that deserves to be noticed: [Clegg speech to UN](#) The *Guardian's* news report, headed 'UN in need of a radical overhaul', said that the address 'had been cleared by Cameron and the Foreign Secretary, William Hague' and I hope that is both true and that it means something.

Of course Mr Clegg promises that 'the United Kingdom will always champion the United Nations' and that if 'it didn't exist, we would have to invent it' but he also says 'let us be frank. Without a radical overhaul, the United Nations will not provide the leadership the world seeks from it and needs from it.' Reform is 'essential' because 'our multi-national institutions have sometimes struggled to adapt to the new circumstances' of recent years.

This speech contains ideas for change which from a senior member of a permanent five government are innovative and timely: I shall return to these later.

What Nick Clegg puts his finger on is the lack of any kind of fit between the UN that we have (the UN of the post-war deal between victor nations) and the UN that we need (the UN of a world facing potentially catastrophic problems that transcend borders and petty geographic partisanship). If we need proof of that, look at how removed the UN has been from addressing the key challenges facing the world today, from climate change (where its powerless panel has nevertheless managed to run into all sorts of difficulties) through economic collapse and terrorism to endangered species.

GRABBING THE FUTURE MEANS BEING HONEST ABOUT THE PAST

We need to recover the idealism of earlier generations when those who stood for the progressive values in which many of us say we still believe were not afraid to map out

visions of the future that were braver (and therefore more heretical) than anything we seem to be able to muster today. Progressive talk used to include almost routine discussion of a world of properly functioning and accountable international institutions, in which the dead hand of state power had been transcended by a new commitment to universalism and mutual support. All of this idealism seems to have been channelled into the creation of the United Nations, and then allowed to drain away.

A first point I want to make here is that the creation of the United Nations in October 1945 represented *not* a high point for international idealism but its defeat, a defeat moreover with which we have been living for some sixty-five years and which explains why Nick Clegg is right when he calls for change. The title of this common track is 'The UN and Human Rights: Time for a Great Awakening' – note that I do not say 'Re-awakening'. So far as human rights are concerned, certainly they have been part of the story throughout the UN's sixty years but their role has been small and insignificant.

From a human rights perspective the UN has been a failure from the start.

Understanding why this is the case, the reasons for this long sleep so far as human rights are concerned, is my goal in the first part of this track.

It is only when we have a clear idea of how and why things are as bad as they are that we can turn our minds to what a fully awake international community would look like: imagining the shape of a revitalised (and I would hope re-named) United Nations is what the second part of this essay is about. And because I appreciate this second of my key points – imagining a future of which we could be proud – may produce despair about its impossibility, I end with some reflections about practical alternatives: what to do pending the achievement of these reforms, reforms which I know will seem to you as improbable as I believe they are essential.

THE DEEP FAILURE OF THE UN

The clue is in the title, 'United Nations'. Early on in the Second World War, the vision had been for a world in which states were to be hamstrung in the name of the greater good. In [the Atlantic Charter 1941](#) sovereignty was clearly linked to 'the right of all peoples to choose the form of government under which they will live' with the 'fullest collaboration' in the 'economic field' being designed to achieve the 'securing, for all, [of] improved labour standards, economic advancement and social security'.

The moral basis for such a new world order had already been made clear in President Roosevelt's famous [four freedoms speech](#) to the US Congress in January 1941, in which he looked 'forward, to a world founded upon four essential human freedoms: 'freedom of speech and expression – everywhere in the world'; the 'freedom of every person to worship God in his own way – everywhere in the world'; 'freedom from want -- which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants -- everywhere in the world'; and 'freedom from fear -- which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour-- anywhere in the world.'

There is nothing here about sovereign power.

To Roosevelt his plan was 'no vision of a distant millennium' but rather a 'definite basis for a kind of world attainable in our own time and generation' one that answered tyranny with a 'greater conception – the moral order'. And what this entailed for human rights was clear: 'Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights or keep them.'

So what happened?

The tempting answer is to say that Roosevelt died before he could realise this idealism in his final term. But the pass had been sold, the concessions made, the hopes for the future fully betrayed, well before that sad event, on April 12 1945. As Sam Moyn's wonderful new book *The Last Utopia* makes clear, the key event is the Dumbarton Oaks

conference and this took place the year before, through much of the late Summer and Autumn of 1944.

Dumbarton Oaks put flesh on the bones of the post war world order which (with the now inevitable defeat of Germany) the victorious Allied powers knew that they would be instrumental in shaping. The imminence of their success made morality seem less important than it had appeared in 1941, when they had needed to galvanise world opinion. Gone are any pretences with regard to the self-determination of peoples. Gone too is any serious commitment to human rights: indeed by the time, after Yalta, that the [UN Charter](#) came to be drafted, so immersed was the 'new world order' in the old order of state power (and imperial state power at that) that by now it took a tremendous effort to force even the barest of mentions of human rights into the Charter at all.

Thus while we have in the preamble, a 'reaffirmation' of 'faith in fundamental human rights, in the dignity and worth of the human person' and in the 'equal rights of men and women', this impressive salute to human rights ends in a mystifying reference to the equal rights 'of nations large and small. What is this doing in the perambulatory reference aimed specifically at the rights of individuals?

Even the core purposes of the UN are diluted to avoid the intrusion of human rights into the sovereign sphere. There is to be no direct engagement, merely a desire to 'achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion' (art 1(3)). True, article 55 talks of promotion of 'universal respect for and observance of human rights' as a core UN task in the field of economic and social cooperation, but how is this to be brought about?

Tucked away in Article 62, we find our once dominant moral force relegated to a minor goal among many others of a body that does not even carry its ringing phrase in its title. The Economic and Social Council 'may [note not 'shall'] make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental

freedoms for all'. And that so far as the Charter is concerned was it, from a human rights point of view.

That countries could abuse rights as they wished was specifically guaranteed by the Charter, with article 2(7) having infamously declared, that 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.' While 'this principle [was] not [to] prejudice the application of enforcement measures under Chapter VII', nowhere in that chapter is any interference with sovereignty for human rights breaches contemplated.

Against such a background it is a wonder not that the Universal Declaration of Human Rights that followed three years later is so weak, but that it got written at all. Sam Moyns considers the human rights movement after the war to have been 'dead from birth' and it is hard to argue against such a conclusion, pessimistic and counter the Whiggish tendencies of human rights optimists though it undoubtedly is

Of course there have been recent developments in the field of human rights at the UN and I shall turn to these shortly. But these do not save the UN from failure in the field of human rights; they have not awoken it from its long sleep on issues of freedom, liberty and dignity.

Realism trumps morality

This failure derives directly from the way the UN's founders chose to view the world. At and after Dumbarton Oaks, they saw it as a collection of sovereign entities all jostling against each other for supremacy in a brutalised, international state of nature, with the UN emerging by agreement out of this chaos, a benign (even heroic) Leviathan charged to act in the interests of all so as to achieve and preserve the order for which each truly yearned.

The analogy with social contract explanations of the internal powers of states drives the UN model. At the time it may have been seductive: it certainly fitted at a high level of abstraction with that theory of political obligation which following Thomas Hobbes had

embedded itself in the discourse of the West (or Global North as we would now say) over three centuries.

But if it was obvious, it was also in my opinion wrong – an error on the national level certainly, and one that applied internationally was even worse.

Social contract is an odd idea even at the national level. Explaining the legitimacy of national government by a series of bizarre speculations about a non-existent past and the selfish motivations of impossibly isolated individuals which produces exactly the outcome that the proponent of the theory intuitively wants would seem quite ridiculous today if it were not so familiar to us as part of the brilliant intellectual legacy of such great and influential figures as not only Hobbes, but John Locke and (in our own day) John Rawls as well.

Fairly peculiar when applied to the internal affairs of a state, surely it is downright mad when applied to international affairs. There is no underlying morality that can possibly be said to govern the affairs of states in the same way that it is said to affect the judgments of individuals in a fabricated state of nature. Nor does mutual reciprocity operate between states, or at least between the states that existed as a matter of fact in that post war world world onto which the UN was grafted in 1945.

There are three obvious defects when the social contract model is grafted onto an international status quo.

First the simple but inexorable fact is that nations are not equal and therefore the very premise upon which the whole scheme of world government is required to be constructed is defeated at the outset.

Second, nations are neither necessarily representative nor indeed are they even nations. Many states are run by dictatorial cliques just as large numbers of such sovereign entities are amalgams of nations, patchwork quilts of different ethnic, cultural and religious communities. How can any of such places be capable of making judgments about a state's self-interest in the way that a person (implausibly I say but still marginally coherently) can make about his or her own future?

And *thirdly*, the idea of a national interest hinges on assumptions about self-sufficiency and independence which however odd when applied to individuals has never been remotely credible so far as states are concerned, and is even less so (if that is possible) in today's globalised world.

Of course the arrangement of states along the lines set out in the UN charter works to an extent. I am not denying that co-operation between states is often useful and is certainly facilitated by having something like the UN to hand. But the failure of the social contract structure that underpins it and the contradictions inherent in imposing this model on the international sphere, are revealed in the various ways in which the UN never has been and is not today (as a Labour Home Secretary once said of his own department) remotely 'fit for purpose' – at least if we think of that purpose as having a human rights dimension.

Failure in practice

This is evident in the very structure of the organisation, and in particular its security council veto – catastrophic cravenness in the face of historic sovereign power.

It is apparent too in the way in which the security council has seized what is effectively a legislative power which it has deployed to quite shocking effect in the shape of so-called terrorist blacklists and other demands to nation states to engage in legislative and executive action which is self-evidently and quite consciously inimical to basic human rights standards (a point emphasised again and again by the estimable Martin Scheinin, the scholar asked by the UN to oversee such laws from a human rights point of view).

It is clear too in the way in which so-called great powers feel free to ignore the UN entirely when they feel like it, or at best to muster some flimsy camouflage to pretend respect when actions speak of contempt.

There is no international court with any capacity to hold such states to account.

Nor can such nations be compelled to provide properly resourced peacekeeping forces where these have been deployed by order of the organisation's institutions.

And the Human Rights Council, supposed defender of human rights, is too often seen as composed of nations dedicated to their destruction.

I have acknowledged a moment ago that there has been some institutional progress in recent years. The flying of any kind of credible human rights flag is increasingly left to the relatively newly established High Commissioner for Human Rights and that cadre of latter day saints, the Secretary General's representatives, independent experts, special rapporteurs and various commissioners who for no salary and less prestige travel the world under cover of the UN seeking to do good. But these are functionaries cling on to the system trying to do good – they are decorative – attractive for sure but not part of the basic architecture, and as a result all too easy to remove or ignore when the going gets tough.

My point in this first part of my essay is that the problems that so damage the UN's engagement with human rights derive not from some failure on the part of this or that body or a calamitous intervention by a particularly hostile state: they are structural, the result of imposing a half-baked social contract on an asymmetrical world with a bogus human rights ethic to disguise the ammorality that lies at the organisation's core.

Central to making this system work is that the human rights commitment within it should have no effective impact. Human rights protection is weak at the UN not because of some mistake in how the UN behaves but because of what the UN is – the problems are in the design not the inclination.

AWAKENING

This is why Nick Clegg is right in his attack on the UN.

Having diagnosed the problem he is impressively unafraid of proposing what for a serving UK minister is a dramatic reform, the extension of permanent membership of the security council to Brazil, India, Germany and Japan, and for African representation as well, on the ground that '[p]ut simply, the UN cannot speak for the many if it only hears the voices of the few.' He is correct as well to call for changes to the Human Rights Council to make it able to do 'more to ensure that states implement their obligations' under the various human rights covenants to which they have notionally committed themselves.

But what neither Mr Clegg nor the array of world figures who spoke at the same debate can say, what their status as national leaders makes it impossible for them to say, is that to work effectively, to deliver on the commitments on human rights and global values in which all say they believe, to recover the mood of the Atlantic Charter, an entirely different model of global governance is required.

The UN needs to shed its love affair with Hobbes and Locke, its foundational commitment to the autonomy of the nation state in this mad fantastic state of nature that it has created for itself as a drag on all its actions.

It needs instead to return to an earlier view of international law, one that was less enamored of the sovereign power of the state and more concerned with issues of fundamental morality.

Digging past the state of nature

It is true that the famous early 17th century jurist [Hugo Grotius](#) was closely associated with the Dutch East India Company and that much of his work can be seen in the light of the commercial issues of his time, and in particular the value to the Dutch of the period of being able to trade freely across the seas. But that does not mean that we cannot make his view of the moral base of international law speak to us today. He is pre-Hobbes and my main argument in this essay is that his should be our guiding voice towards a new world order.

For Grotius 'all entitlements in the international community, including national sovereignty itself, derive ultimately from the dignity and the sociability of the human being.' (Nussbaum, *Frontiers of Justice*, p 230). To Grotius the located, socialised individual is the starting point for the moral law. Out of this flows a society which is rooted not in mutual advantage and calculated reciprocity but in an intuitive understanding of the importance to all of justice being accorded to each.

This idea of a set of entitlements required to be extended to all, entitlements that justice demands in order that dignity be respected, lives on today as a subaltern tradition in international law. The shape it takes today is that of the international human rights

movement, the soft underbelly of a UN constructed, as we have seen, of harsher pseudo-Hobbesian material. It is reflected in the human rights outriders that I mentioned earlier and also in the work of the UN's Development Programme. When Nick Clegg tells the UN that the UK 'will continue to push for human rights across the world' he is not being dishonest; rather he is drawing from the minor Grotian tradition rather than the mainstream pseudo-Hobbesian one.

Reversing the flow

Can the UN be turned on its head, the Grotian commitment to basic human outcomes made universal and freed from distortion at the hands of the national middleman? The Hobbesian primacy of the state flipped over into state subjection to human rights principles and values?

Only with extreme difficulty it has to be acknowledged.

There have been moves in this direction, first as we have seen under the direction of President Roosevelt and then more recently in the last decade of the 20th century, with a relatively benign US leadership allowing a certain post Cold War drift towards a global market underpinned by a human rights ethic, one of that series of movements in history that has enjoyed a certain brief celebrity as the latest 'third way' proposed to solve our problems.

But its faltering progress was brought to an end by the responses of the US and others to the attacks on Washington and New York on 11 September 2001. The first decade of the 21st century has seen a reassertion of national power, and for many a plunge back into the certainties of statehood at a time of great international insecurity.

The economic crisis of the past few years seems to have confirmed rather than undermined the state as the primary decision-maker in international affairs: even if Obama were a Roosevelt, the US is not what it was and there is certainly no Churchill abroad or far-sighted Congress at home to think big thoughts and then bring them about.

The efforts of Kofi Annan to reform the UN – efforts which dominated his final years in office – are a warning if a warning be needed of how great the task is: the Human Rights

Council is depressingly different from the body with which it was initially proposed to replace the discredited Human Rights Commission, to take just one relevant example from among many. Rights reports remain scattered in the archives of the UN unnoticed and unimplemented.

The UN needs to break free of its national model into one which respects universal human rights, has the democratic authority to make judgments as to what this commitment to human rights entails and then has the executive capacity (backed by a proper code of international law, overseen by a credible judicial branch) to bring such judgments about, operating through regional and state bodies for sure, but not being held up by them.

Everyone might know this and desire it indeed but few think it can ever be brought about. Is this then a story unfolding before us like the many told in Jared Diamond's popular book of some years ago, *Collapse* – we are drifting over the cliff, we know we are but are systemically prevented from stopping the destruction that our drift and inability to act is bound eventually to precipitate?

Perhaps, perhaps not.

The expansion of the Security Council along the lines suggested by Nick Clegg would be a start and this would in turn surely help generate a momentum for change towards some kind of qualified voting system which could enable the UN to overcome the veto problem, and as a result develop a better capacity to deal with global issues in a way that had at least a fighting chance of transcending national interests.

With not too much tinkering the Security Council could re-emerge as the prestigious upper chamber to the General Assembly's lower house, each driven by a nuanced voting system which ensured a capacity for progress while also displaying a proper sensitivity to regional needs.

Sub-global regional frameworks – anticipated as I noted earlier in the UN Charter's chapter VIII – are the great plus that the world now has as compared with 1945: not just Europe, but Africa, the Americas, and even recently South-East Asia as well. The UN can do

much more to connect with these bodies in a way that integrates them into its universal polity.

In short things are difficult but do-able.

Just as events throw up opportunities, so ballots produce leaders, and crisis can in the right hands be a route to a better future and not simply (as at present) an excuse to hunker down with the certainties of the past.

Scholars and intellectuals cannot themselves *effect* a new future but by their writings and anticipatory thoughts about structures and systems they can *affect* – and profoundly affect – the future that comes around. There is no guarantee of influence but it would be tragic if a progressive internationalist mood did come knocking and the academy found it had nothing interesting to say. We can do our bit by forgetting how expert we are on the status quo and think the unthinkable for a while about the kind of global world a truly effective United Nations (or maybe United Peoples) would inhabit. The spirit of that great mid 20th century jurist (and advocate of human rights) Hersch Lauterpacht needs to be recovered and nurtured.

A DIFFERENT WAY OF LIVING

And if this never happens?

The Irish constitution used to have a provision which while declaring the country united went on to extend practical jurisdiction over only three-quarters of it, ‘pending the re-integration of the national territory’. Well, in this last part of this essay, I want briefly to ask what should be done ‘pending the re-integration of the people into a new global order’. In the absence of grand global change, how can we roll out our Grotian vision of an international order that effectively serves the people – their individual dignity and sociability – rather than the bits of land they happen to inhabit?

The answer lies in noticing that it has already begun to roll out, in the regional arrangements to which I have already referred. All of these are characterised by a strong

commitment to human rights and by, in each case, a capacity far stronger than that of the UN to engage critically with national sovereignty. Whereas the global momentum is towards national power, the regional movement is headed in the opposite direction, towards less state sovereignty and more pooling of resources and of power.

With national control undermined in this way, it becomes perfectly possible to develop an approach to state partnerships in which human capabilities are permitted to trump sovereign interests.

This trend is most apparent in Europe, but not the Europe of the Council of Europe with its state-based approach to human rights and its court burdened by a deluge of cases and enormous problems of implementation and enforcement. (How can we place any of our hopes in an organisation in which two of its members have engaged in an armed conflict without seeming to see any inconsistency between this and their continued commitment to the European Convention on Human Rights?)

It is the other Europe, the European Union which has shown the way.

Of course for decades it ignored human rights completely, but all this time we can now see that it was doing important work, breaking down national boundaries in the name of free trade, of *homo economicus*. And where economic man has tread, social man has now followed. The EU of the first decade of this century is a union of markets but also a union of humans – what it is not is a union of national states. Of course there are tensions: the nation state has not gone away. The charter of rights and the rights provisions on which it builds have many faults. There are obvious issues of enforceability.

But we should recall this central fact, that the EU has reached out to rights as a way of giving itself an ethical base. Recently the European Court of Justice has refused to implement UN black listing resolutions. It is the [European Commission](#) that takes a stand against the French president's opportunistic assault on the Roma people. EU laws protect minorities and do their best to ensure workers' rights while European officials work abroad to seek to ensure the kind of stability in central and Eastern Europe that for short-hand we can call a human rights culture.

This ongoing and practical (albeit regional) solution to the Hobbesian dilemma that has robbed the UN of so much of its energy needs to be supported and nurtured. Its great success makes it a model for other regions.

We should encourage this.

Trade is the Trojan horse within which our human rights warriors can breach all sovereign defences. And who knows: if enough of the world follows suit, there may be so many regional interventions creating space for dignity and the common good that the UN will find itself either unnecessary or very easily adapted to fit the overlapping consensus of a truly modern, truly moral age.