

HUMAN RIGHTS UNDER SIEGE¹

Philip Alston

- *How to respond to the populist threat facing human rights* •

ABSTRACT

There is little debate that the human rights movement is experiencing unprecedented challenges. Here Philip Alston addresses how the movement needs to respond in order to survive. Firstly, he notes the importance of maintaining perspective, reminding us that the defence of human rights has never been easy. He also argues that we must recognise that this is a long-term effort and will not disappear after Trump leaves office and that, crucially, the movement needs to develop introspection and openness in order to adapt. He then sets out the five key issues that he believes the movement must address in the coming years: the populist threat to democracy; the role of civil society; inequality and exclusion; the undermining of international law and the fragility of international institutions. Finally, Alston suggests a number of strategies that human rights organisations need to adopt in order to respond to this new reality. He ends by saying all this must be done with a sense of great urgency. The time to act is now.

KEYWORDS

Populism | Human rights movement | Strategies | Trump

The human rights movement, as we know it, is no longer.

The challenges that the human rights movement now faces are fundamentally different from much of what has gone before. This does not mean, “the endtimes of human rights”.² But it does mean that human rights proponents need to urgently rethink many of their assumptions, re-evaluate their strategies, and broaden their outreach, while not giving up on the basic principles.

These challenges are seen nowhere clearer than in the election of Donald Trump who has consistently advocated measures that would abrogate civil liberties for American citizens and non-citizens alike. Almost every senior appointment he has made has been a person from the far right of the political spectrum with a total lack of expertise for the relevant portfolio. And while the finer details of President Trump’s human rights policies remain to be worked out, there is an essential antipathy and even hostility to the subject. Beyond Trump, an increasingly diverse array of governments have all expressed a desire to pushback against key pillars of the international human rights regime. And while there have always been coalitions of would-be wreckers, in the past they have been met with at least some pushback from the United States of America (US) and other leading Western and Latin American governments. The prospect of effective pushback in the future is now evaporating before our eyes.

To respond to this, we need to remember three key points. First, we need to maintain perspective, despite the magnitude of the challenges. Defending human rights has never been a consensus project and has almost always been the product of struggle. Second, this is the start of a long-term effort; it won’t be over in four years. And finally, the human rights movement needs to develop a spirit of introspection and openness. Historically, it has not responded well to criticism.

Looking forward, there are a great many issues that will demand our attention in the years ahead, but five will be key. The first is the populist threat to democracy. Much of the problem is linked to post-9/11 era security concerns, which has translated into an actual or constructed fear and hatred of foreigners or minorities. These concerns have been exploited by governments of many different stripes to justify huge trade-offs, for example that security can only be achieved by restricting freedom of movement, privacy, non-discrimination norms, or even personal integrity guarantees.

The second major issue is the role of civil society and how, rather than “shrinking civil space” the reality is that the space has already closed in a great many countries. In my capacity as United Nations (UN) Special Rapporteur on extreme poverty and human rights I have seen this first hand in my country visits to Mauritania and to China, while other countries are excellent students in this domain. Egypt recently passed a law limiting the activity of non-governmental organisations (NGOs) to social and development work, and banning all NGOs from cooperating in any way with any international body without governmental approval.

The third issue is the linkage between inequality and exclusion. Populism is driven in part by fear and resentment. To the extent that economic policies are thus critical, it is noteworthy that mainstream human rights advocacy addresses economic and social rights issues in a tokenistic manner at best, and the issue of inequality almost not at all.³ Similarly, the focus of most human rights advocacy is on marginal and oppressed individuals and minority groups. However, the majority in society feel that they have no stake in this kind of human rights movement, and that human rights groups really are just working for “asylum seekers”, “felons”, and “terrorists”. A renewed focus on social rights and on diminishing inequality must be part of a new human rights agenda. Taking into account the concerns, indeed the human rights, of those who feel badly done by as a result of what we loosely call globalisation-driven economic change is key to ensuring the movement’s success.

The fourth issue is the undermining of the international rule of law, specifically, the systematic undermining of the rules governing the international use of force by Western countries. The US and its ever-supportive, never-questioning allies such as the United Kingdom and Australia and their assiduous efforts to rationalise targeted killings and other dubious acts are now reaping the rewards that they so richly deserve. These countries are no longer in a position to turn around and say that some of the tactics used by other countries are in violation of international rules. There has also been a shocking breakdown in respect for the principles of international humanitarian law. Systematic targeted attacks on medical facilities, on operations by *Médecins Sans Frontières* and other humanitarian groups are commonplace and barely remarked upon. In a 2016 opinion poll undertaken by the International Committee of the Red Cross, a mere 30 per cent of American respondents considered it to be unacceptable to torture a captured enemy combatant “to obtain important military information”. In the same poll, taken in 1999, the figure had been 65 per cent. In Nigeria, 70 per cent supported such torture and in Israel 50 per cent did.⁴

The fifth and final issue concerns the fragility of international institutions. The International Criminal Court is under sustained attack with various African states announcing their planned withdrawals. And the announcement by the Office of the Prosecutor that she is actively investigating the activities of the US Central Intelligence Agency (CIA) and other forces in Afghanistan and related countries will hardly endear the court to the Trump Administration. Meanwhile, the Human Rights Council has been operating in a way that is surprisingly balanced in the last few years. However, the new populism is certain to change this dynamic and China and Russia have both made it clear that they stand ready to introduce or to re-introduce major “reforms” of the Council, a prospect which is hardly grounds for cheer. Similarly, the United Kingdom and many other states have waning affection for the European Court of Human Rights, while Russia and Turkey are virtually unresponsive members. Across the Atlantic, the Inter-American Commission on Human Rights announced, in mid-2016, that it was going to have to lay off 40 per cent of its staff, a fate that was narrowly headed off at the very last

moment by new contributions. But there is no certainty that this rescue operation will be sustainable in the future and it is noteworthy that the US has traditionally played an outsized role in funding the Commission's work. And finally in institutional terms, the slashing of developmental assistance budgets, which is an ongoing process, is likely to be accelerated in the years ahead threatening these institutions even further.

So, what sort of strategies does the human rights community need to start considering in response to the fundamentally new circumstances that we are now confronting?

1 • Local/international synergies. We need to reflect on how better to ensure effective synergies between international and local human rights movements. The large NGOs have still not achieved the right balance. The activities of international NGOs must have less of an extractive character (extracting information and leaving) and instead focus more on building or complementing national capacity. There will be times when only international groups can function effectively; but there will also be situations in which exclusively international advocacy will be ineffective and perhaps counter-productive.

2 • The economics of rights. Economic and social rights must be an important and authentic part of the overall agenda. A surprisingly small proportion of self-described human rights NGOs do anything much on economic and social rights.⁵ It is argued that if people enjoy political freedoms they can stand up for their social rights. But the enjoyment of civil rights does not always bring social rights. We need to start insisting that the catalogue of human rights includes – equally – both categories of rights. Human rights groups should reflect on ways in which they can constructively contribute to both sides of the agenda. They remain fundamentally misunderstood by the great majority of governments and even by most human rights activists. The rights are conflated or confused with development, or poverty alleviation. But economic and social rights proponents should not be focusing their attention initially on, for example, ensuring that everyone actually enjoys immediate access to all types of health care. Instead, we need to start by constructing an appropriate human rights framework. This involves the same three elements as does a campaign against torture: recognition, institution building, and accountability.⁶

3 • Broadening the base. The human rights community must start expanding its horizons in terms of thinking about which other actors it can work with. We need to begin more of a big-picture conversation with the larger corporations about whether an authoritarian, anti-rights, and anti-welfare future is really in their interests. They, but also we, need to start thinking about where, how and when they can legitimately and constructively stand up to policies that cross certain lines and how they can use their influence and power to make the case for more human rights friendly approaches. And it is not just corporations. We need to start thinking more creatively about other potential allies with whom the human rights movement can cooperate.

4 • Persuasion. We need to acknowledge the need to devote more time and effort to being persuasive and convincing, rather than simply announcing our principles as though they were self-evidently correct and applicable. We need to take a step back from the absolutism that sometimes manifests itself. We pride ourselves, sometimes rightly and unavoidably, on being uncompromising and fear that if we make any concessions along the way we are selling out on the basics of human rights. However, in the words of Jose Zalaquett we must have “the courage to forgo easy righteousness, to learn how to live with real-life restrictions, but to seek nevertheless to advance one’s most cherished values day by day to the extent possible. Relentlessly. Responsibly.”⁷

5 • The role of scholars. What role do scholars have in all of this? As teachers, as researchers, as publicists, we have obligations to our students and to our readers. It has become fashionable, especially at elite universities in the West, to disparage human rights by accentuating the undoubted shortcomings of international human rights norms and institutions. At a range of law schools that I have visited I have encountered students who have become deeply disillusioned or cynical because they have been taught that the human rights enterprise is largely an illusion, that it is not something that they really should be putting their time into and that it has no future. It is our responsibility to suggest alternative strategies, not simply to ensure that students are aware that there are shortcomings.

6 • What each of us can do? A crucial element in responding to the populists and autocrats is for each one of us to reflect carefully on what contributions we can make. All of us can stand up for human rights, but each in our own way. The simple point is that each one of us is in a position to make a difference if we want to do so. Despondency or defeat is not the answer, because there is always something we can do. It might be a rather minor gesture in the overall scheme of things, but it makes a difference. It might be merely a financial contribution. Now is the time to be contributing to human rights groups and advocates in ways that we have not done in the past. It is absolutely essential for us to strengthen the frontline organisations that are going to be best placed to stand up and defend human rights against the threats posed by the new populism.

We cannot wait, we need to start acting; we need to do whatever we can to strengthen respect for international human rights. We need to commit to the principles in our own lives, in our own areas. We are going to need to operate in a much more creative fashion both internationally and locally. There is going to be a complex relationship between these two levels but there are always places where we can make a difference. These are extraordinarily dangerous times, unprecedentedly so in my lifetime. Even during most of the Cold War there was a degree of certainty but today we have lost much of that and almost anything seems possible. The response is really up to us.

NOTES

1 • This is an edited version of an article that first appeared in *The Journal of Human Rights Practice*, which in turn was based on a public lecture given at the London School of Economics on 8 December 2016.

2 • Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca: Cornell University Press, 2013).

3 • For a report on the relationship between extreme poverty and extreme inequality, see *United Nations, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston*, UN Doc. A/HRC/29/31 (26 May 2015), available from http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_31_en.doc.

4 • "People on War: Perspectives from 16 Countries,"

International Committee of the Red Cross (ICRC), 2016, accessed May 21, 2017, <https://www.icrc.org/en/document/people-on-war>.

5 • United Nations, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, on the Marginality of Economic and Social Rights*, UN Doc. A/HRC/32/31 (28 April 2016), available from http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_31_AEV.docx.

6 • This framework is developed in some detail in *ibid.*

7 • José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," (The Mathew O. Tobriner Memorial Lecture), *Hastings Law Journal* 43, no. 6 (1992): 1425.



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Received in March 2017.



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