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## The Multilateral Human Rights Regime: Civil Society and NGOs in the Development of Human Rights<sup>1</sup>

By Manfred Nowak<sup>2</sup>

The United Nations Organization was built in reaction to two World Wars, the Great Depression, the rise of fascism and the barbarity of the Holocaust. It is based on three pillars: Peace and Security (freedom from fear, prohibition of war for the first time in human history), Development and Prosperity (freedom from want and eradication of poverty) and on Human Rights and Human Dignity as the “foundation of freedom, justice and peace in the world.”<sup>3</sup>

Although former UN Secretary-General *Kofi Annan*, in his brilliant report “In Larger Freedom” 2005, rightly recalled the interdependence of these three main goals and objectives of the United Nations and, in particular, stressed that human rights constitute the essential basis for both security and development,<sup>4</sup> these three pillars developed during the Cold War completely separate from each other. Security and the prohibition of the threat or use of military force in Article 2(4) of the UN Charter was assigned to the Security Council and restricted to the prohibition of international armed conflicts. Development was assigned to the Economic and Social Council (ECOSOC) and many UN Programmes and specialized agencies linked to ECOSOC. It was originally restricted to economic development and prosperity in the narrow sense of economic growth, industrialization and modernization.

For the pillar of human rights, which was the most disputed goal between Western, Socialist and States of the Global South, the founders of the United Nations could not even agree to assign it to one of the main political organs of the UN, a proper Human Rights Council. Instead, Article 68 of the UN Charter only allowed for the establishment of a Human Rights Commission, a functional commission of ECOSOC.

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<sup>2</sup> Keynote Speech at the First Global Commemorative Celebration of the 75<sup>th</sup> Anniversary of CoNGO (Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations) held at the United Nations Vienna International Center, in Vienna, Austria on 28 April 2023.

<sup>3</sup> Preamble of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948 in Paris.

<sup>4</sup> Kofi Annan, In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary-General, UN Doc A/59/2005 of 21 March 2005, para 17: “Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.”

In budgetary terms, the human rights programme for many years and decades received only about 1% of the entire UN budget.

The Human Rights Commission was established in 1946 and, under the lead of *Eleanor Roosevelt* and other well-known personalities, was able to draft within two years the Universal Declaration of Human Rights as a milestone in the history of human rights. It constitutes a synthesis between different and partly opposing concepts of human rights. This was only possible thanks to the anti-fascist consensus and solidarity in the immediate aftermath of WW II. However, with the beginning of the Cold War, human rights were seen as a highly contested and ideological topic. This meant that the States in the Commission could only agree on the “no power to take action doctrine.” The Commission was reduced to organizing seminars and similar advisory services and to the drafting of binding human rights treaties to be submitted to ECOSOC and the General Assembly for adoption: The Convention on the Elimination of all Forms of Racial Discrimination (CERD) 1965, the two International Covenants of 1966, which together with the Universal Declaration constitute the International Bill of Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, the Convention against Torture (CAT) of 1984, the Convention on the Rights of the Child (CRC) 1989 and the Convention on Migrant Workers 1990.

The main drivers of the development of human rights during the Cold War were not States but Non-Governmental Organizations (NGOs), above all NGOs with consultative status with ECOSOC. As the umbrella organization of hundreds of NGOs, the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CoNGO), founded in the year of the adoption of the Universal Declaration, played an essential role in coordinating civil society and providing NGOs with physical and political access to the Commission and other UN bodies, such as the Commission on the Status of Women.

It is only thanks to the pressure of NGOs that treaties were drafted and that the Commission during the late 1960s and 1970s slowly abandoned its “no power to take action” doctrine. Milestones in this development were decisive actions against outcasts, such as the apartheid regime in South Africa or the military dictatorship in Chile that had come to power in a *coup d'état* in 1973. For the first time, procedures for dealing with many thousands of individual and NGO complaints against individual States were processed under ECOSOC Resolutions 1235 and 1503, which constitute the beginning of expert investigation bodies (Working Groups, Special Rapporteurs etc.), which are today referred to as “Special Procedures.” Although the Commission was composed only of States, the driving force behind all its resolutions were NGOs, and independent experts gained power as the “eyes and ears” of the Commission. The annual six-week sessions of the Commission each spring in Geneva were the largest gathering of human rights defenders, with up to 3,000 participants.<sup>5</sup>

The end of the Cold War in 1989 opened a unique window of opportunity for the creation of a new world order, promised already in Article 28 of the Universal Declaration, based upon human rights, democracy and the rule of law. The most significant event to shape this new world order was the Second

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<sup>5</sup> On the first decades of the development of human rights in the United Nations see, e.g., John Humphrey, *Human Rights and the United Nations: A Great Adventure*, New York 1984; Phillip Alston, *The United Nations and Human Rights: A Critical Appraisal*, Oxford 1992; Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston 2003, 73 et seq.

World Conference on Human Rights, held in June 1993 at the Austria Centre of Vienna (next to the Vienna International Centre) with 171 participating States, represented at the highest level and more than 1,500 NGOs from all parts of the world. Together with CoNGO, the Ludwig Boltzmann Institute of Human Rights in Vienna and the International Service of Human Rights, I had the honour of being the main NGO spokesperson responsible for the organization of an NGO Forum with more than 3,000 NGO participants as well as more than 400 parallel workshops, seminars, film screenings and other events that took place in the ground floor (NGO floor) of the Austria Centre, the Amnesty International tent on the Danube Island, the Filmcasino and other locations in the City of Vienna.

Without the pressure of NGOs, the World Conference would not have been successful in adopting, after long and highly controversial discussions, the Vienna Declaration and Programme of Action, which created the Office of the UN High Commissioner for Human Rights, emphasized the principles of the universality, equality, interdependence and interrelatedness of all human rights (our motto as NGOs was “All Human Rights for All”), mainstreamed the rights of women in the private sphere as human rights and still constitutes the main basis of the human rights programme of the United Nations in the decades to come.<sup>6</sup> Without the strong call by civil society in Vienna, there would not exist an International Criminal Court, established by the Rome Statute in 1998. Under Secretary-General *Kofi Annan*, human rights were mainstreamed into all policy areas of the United Nations. In 2005, the Commission of Human Rights was elevated into the Human Rights Council as a subsidiary body of the General Assembly with the Universal Periodic Review (UPR) as its major new procedure for monitoring human rights in all member States of the United Nations.

Beginning with the neoliberalist economic policies expressed in the Washington Consensus of 1989<sup>7</sup> and most significantly after the terrorist attacks of 11 September 2001 and the ill-conceived so-called “war on terror,” a backlash against human rights, democracy, multilateralism in general and the idea of a world order based upon human rights, democracy and the rule of law occurred which led to the tragic current state of affairs, in which the United Nations seems to be marginalized in combating armed conflicts, such as most recently and visibly in Syria, Afghanistan and the Russian war of aggression against Ukraine. Similarly, although the UN disposes of a comprehensive toolbox of human rights monitoring bodies, ranging from the Human Rights Council, its High-Level Investigation Commissions and Special Procedures to a multitude of treaty monitoring bodies in which NGOs play a vital role (State reporting, complaints and inquiry procedures), the current state of human rights in the world is simply alarming.

It is high time to fundamentally change this deplorable situation by decisively strengthening the United Nations and by addressing the main problems and challenges of the 21<sup>st</sup> century: rising economic inequality caused by neoliberal global economic policies, the environmental crisis with a rapidly declining biodiversity and an imminent climate disaster, digitalization and the threats of artificial intelligence as well as the threat of another world war, which might even lead to the use of nuclear arms and other weapons of mass destruction.

The 75<sup>th</sup> anniversary of CoNGO and the Universal Declaration of Human Rights, as well as the 30<sup>th</sup> anniversary of the Vienna World Conference on Human Rights, constitute a decisive moment in human history to start a new era

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<sup>6</sup> See Manfred Nowak (ed), *World Conference on Human Rights: The Contribution of NGOs, Reports and Documents*, Vienna 1994.

<sup>7</sup> See e.g. Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, Philadelphia 2017.

of multilateralism going beyond crisis management but laying the foundations for a new era of human rights as the basis for sustainable peace, sustainable development and decisively addressing the enormous challenges of our present time by protecting the rights of future generations of human beings, non-human beings and the rights of nature. Political leaders need to understand that we will only be able to save our planet if we all (States, international organizations, civil society and the corporate sector) stand together in fighting these enormous challenges rather than fighting each other.

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