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The Quest for Happiness

How the U.N.'s Advocacy of Economic, Social, and Cultural Rights Undermines Liberty and Opportunity

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Sixty years ago, still shaken by the atrocities of World War II, nations entered final negotiations on the Universal Declaration of Human Rights (UDHR). Seeing its final adoption jeopardized by a standoff on the nature of rights, Charles Malik, one of the negotiators, warned:

Even after man is fully secure in his so-called "economic rights" he may still be not-man. But, unless man's proper nature, unless his mind and spirit are brought out, set apart, protected, and promoted, the struggle for human rights is a sham and a mockery.¹

Diverging perspectives on the meaning of human rights led to deep divisions over the primacy of two kinds of rights. On one hand were state-provided economic, social, and cultural rights promoted by the Soviet states. On the other were inherent individual and personal rights emphasized by the United States and United Kingdom in the tradition of the Magna Carta and U.S. Constitution.²

1. Charles Malik, quoted in Habib Malik, ed., *The Challenge of Human Rights: Charles Malik and the Universal Declaration* (Oxford: Center for Lebanese Studies, 2000), 108–9.

2. Malik, *Challenge of Human Rights*.

This fundamental difference endures today. There remains a tension between championing civil and political rights that expand individual liberty and efforts to include economic, social, and cultural rights to such things as government-mandated health care and access to clean water. Dominated by the United States and other Western nations, the U.N. in its early years held fast to the original focus on civil and political rights. However, as developing countries and Soviet client states gained in number and influence at the U.N., the organization began to focus increasingly on promoting economic, social, and cultural benefits as "human rights."³ In the past three decades, human rights activists inside and outside the U.N. system have also dramatically shifted their priorities from promoting civil and political rights to demanding that governments provide their favored economic, social, and cultural rights.

Six decades after the U.N. was created, few disagree that far too many people still suffer oppression at the hands of abusive governments and the scandal of poverty unalleviated by repeated international efforts. Many objective indexes document the progress or regression in political, economic, and civil rights year to year. Regrettably, many who work in this area seem to have given up on the hard cases and instead spend their days lobbying the U.N. to pressure governments to respect particular rights and expand handouts to certain minorities and groups.

This troubling development accelerated in the 1970s and 1980s as the West and Soviet Union ramped up competition in the developing world to persuade countries to adopt their economic and political models. At the U.N., the dynamic played out in efforts to induce governments to commit to policies that would promote ideals cemented in conventions as aspirations. Binding legal obligations were ascribed to governments to make them accountable for these outcomes, which required a fundamental change in the international economic order. U.N. bureaucrats sought to obligate governments to redistribute wealth in order to fulfill their humanitarian pledges. More recently, they began to claim that the common good requires the protection of every possible social desire, including one's bisexual, homosexual, or transsexual orientation.

This chapter will examine how the United Nations is central to promoting this elitist approach to economic, social, and cultural concerns. Groups with their own narrow interests now understand that if they cannot persuade their governments to give them what they want, they can pressure the

3. For example, when the International Covenant on Economic, Social and Cultural Rights was negotiated in the 1960s, World Bank officials refused to participate, saying such issues were outside its mandate. However, the latest World Bank health strategy indicates that it is deeply interested in such issues, including contraceptive use by women in Madagascar.

U.N. to declare what they want a “right” and pursue a global governance structure to enact and provide for it.

For one who has not followed these issues, this may sound extreme, but the evidence is ripe and growing. This rights-based approach poses significant challenges not only to countries that promote and protect individual liberties, but also to multilateral and international agencies. At the U.N., the rise of civil society and the campaign to change minds by mandating a broad and evolving range of economic, social, and cultural “rights” have pitted U.N. programmatic functions against a sharply increasing legalistic function. The merging of mandates attendant to the rights-based approach has diminished the autonomy, focus, and effectiveness of premier U.N. programs such as the United Nations Children’s Fund (UNICEF) by linking them to more controversial programs and agendas, such as those of the United Nations Population Fund (UNFPA).

Consequently, the U.N. bureaucracy has gained extraordinary skill at promoting new norms and standards, even as it is failing to dispense goods and services to the people most in need. This rights-based approach undermines the rule of law when it circumvents the role of sovereign states in setting standards. Instead, committees of unelected and unaccountable “experts” set the standards and impose them through the human rights system. The credibility of the U.N. in protecting and promoting universally accepted human rights has been destroyed in the process, as Heritage Foundation experts Brett Schaefer and Steven Groves describe in their chapter. Worse, this process undermines the very social and cultural institutions, such as the family and religious networks, that historically have provided the overwhelming majority of effective services.

The evolution of the rights agenda at the U.N. plays out in three troubling ways.

First, it has inherited the ideological mantle left by the end of the Cold War. By exploiting pressing moral and human crises such as extreme hunger, established human rights norms are being redefined, reappearing as radical new “universally agreed” norms.

Second, the international power structure is being moved decidedly against the sovereign state, particularly the United States, and toward political, geographic, and cultural groupings. The very nature of international law is being redefined from a body of legal instruments to the opinions of U.N. officials, who view U.N. human rights and humanitarian proclamations as the only legitimate and universal “laws” and who believe that U.N. committee interpretations of treaties that go well beyond the treaties’ texts are judicable in national courts.

Third, the movement counters the U.S.-inspired, but internationally embraced democracy movement. It seeks to pit economic, cultural, and social privileges against civil and political rights in a competitive way to

advance materialist goals, undermining the freedoms of speech and religion and circumventing democratic deliberation and debate.

In the end, the U.N. has done little to advance the economic, social, and cultural freedom in repressive states, such as Cuba, Sudan, Zimbabwe, China, and Iran. Americans would like to see the U.N. do a better job, but they understand that there is little hope without radical reform and that alternative organizations might provide a better solution. The best way forward is a strategy that utilizes selective participation, demands strict adherence to the agreed language of treaties, and insists that treaty bodies and special rapporteurs adhere to their mandates. It would de-emphasize the U.N.'s top-down, activist-driven projects and would instead promote targeted bilateral and ad hoc approaches.

THE EVOLUTION OF RIGHTS AT THE U.N.

Recovering from the shock of genocide and war, the founders of the U.N. were intent on creating an institution that at its core respected fundamental human rights and freedoms. While not enumerating specific rights save the "equal rights and self determination of peoples," the U.N. Charter made it clear that member states must honor all human rights and freedoms. Notably, the Charter does not hold all rights equal. Article 1 distinguishes between the two goals of "solving international problems of an economic, social, cultural or humanitarian nature" and "promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion." Article 55 adds a third goal, promoting "higher standards of living, full employment, and conditions of economic and social progress and development."

The Universal Declaration of Human Rights, passed by the U.N. General Assembly in 1948, enumerates a broader list of rights than those that were, until then, understood and acknowledged as customary international law. These rights range from the widely accepted rights to life, liberty, and due process under the law to less universally observed rights to work, leisure, and a standard of living adequate for health and well-being. Many of the rights asserted in the declaration remain subject to considerable dispute over their interpretation and the specific obligations that they impose on governments.

Less controversial, in part because of their historical and philosophical grounding, are the political and civil rights enumerated in the International Covenant on Civil and Political Rights (ICCPR),⁴ which was adopted in

4. International Covenant on Civil and Political Rights, March 23, 1976, at www2.ohchr.org/english/law/ccpr.htm (accessed December 16, 2008).

1966 and entered into force in 1976. The ICCPR identifies rights including self-determination of peoples; equal rights of men and women; right to life, liberty, and security of person; freedom of movement; equality before the law; freedom of thought, conscience, and religion; freedom of expression; peaceful assembly; freedom of association; the right of men and women to marry and found a family; the right of children to protection, name, and nationality; the right to vote; and a right to express one's culture and religion. The United States and 161 other states are party to the ICCPR. Repressive countries such as China, Cuba, and Saudi Arabia have not signed the covenant. Most notably, signatories had problems with language in the treaty and filed twenty-eight pages of reservations, understandings, and declarations. The United States filed a full two pages of explanation to clarify that certain statements in the treaty did not supersede the U.S. Constitution, federalist system of government, or laws.⁵

The economic, social, and cultural rights asserted in the International Covenant on Economic, Social and Cultural Rights (ICESCR) have caused considerably more controversy.⁶ The ICESCR was adopted at the same time as the ICCPR and entered into force two months earlier. The ICESCR imposes a broad array of responsibilities on governments, including providing an adequate standard of living, the highest attainable standard of physical and mental health, education, freedom from hunger, labor and union rights, social security, participation in cultural life, and enjoyment of the benefits of scientific progress and its applications. There are 159 states party to the ICESCR, including repressive countries such as China. Except for the Carter administration, every U.S. administration judged the treaty as having no merit and considered it a threat to the U.S. constitutional system and economy. President Jimmy Carter signed it in 1979, but he did not submit it for ratification for political reasons. Each successive administration has examined the treaty and chosen not to press for ratification due to major legal and constitutional concerns.⁷

Why would the United States ratify the ICCPR but not the ICESCR? The difference lies in the role that government is expected to play in assuring civil and political rights on one hand and economic, social, and cultural

5. Declarations and Reservations to the International Covenant on Civil and Political Rights, at www2.ohchr.org/english/bodies/ratification/docs/DeclarationsReservationsICCPR.pdf (accessed December 16, 2008).

6. International Covenant on Economic, Social and Cultural Rights, January 3, 1976, at www2.ohchr.org/english/law/cescr.htm (accessed December 16, 2008).

7. For an earlier Heritage Foundation study outlining the problems that the convention poses to the United States, see Andrew J. Cowin, "Human Rights Treaty Poses Dangers for America," Heritage Foundation *Background*, no. 361 (July 29, 1993), at www.heritage.org/Research/PoliticalPhilosophy/EM361.cfm (accessed December 16, 2008).

“rights” on the other. Broadly conceptualized, civil and political rights identify where government cannot impede on the freedoms of the governed. By contrast, economic, social, and cultural rights are focused on the government’s responsibility to provide for citizens attaining some goal, stature, or aspirational state. Some liken this to the difference between rights and entitlements.

Many U.S. government lawyers and officials have obviously concluded that the U.N. effort to impose binding economic, social, and cultural rights through an international system, originally championed by the Soviet Union and its client states, is antithetical not only to state sovereignty and self-governance, but also to long-term economic prosperity. Helle Dale, a foreign policy expert at The Heritage Foundation, has gone so far as to propose that whereas the ten civil and political rights found in U.N. documents are consistent with the U.S. Constitution, the fifteen economic rights directly contradict American political philosophy, springing instead from European political thought, specifically Rousseau and Marx.⁸

During the UDHR negotiations, Malik surmised that fundamental questions were at the heart of the contentious debates: Is the nature of man simply animal or also spiritual? Is he subordinate to or prior to society and the state? Does his ultimate loyalty lie with the state or with intermediate institutions such as family and church?⁹ Those who emphasized the first perspective were more likely to promote material needs through social and economic rights. The latter perspective evoked support for civil and political liberties. Echoing Malik, Heritage Foundation scholars Jennifer Marshall and Grace Melton posit that the European approach puts the “general will” or “common good” at odds with and ahead of the needs of the individual, family, and small community, which are at the heart of the entrepreneurial economic fabric of American civil society.

In this vein, a rights-based approach to development, health, and other social and economic factors can be seen as fundamentally out of step with the American democratic tradition. Furthermore, as this chapter demonstrates, the rights-based approach to economic, social, and cultural policy has become a tool in the broader movement to hold governments accountable to elite, unelected bodies that create and enforce novel and particularistic norms without the consent of the individuals whom they purport to represent.

The inherent tension between assuring civil and political rights and eco-

8. James Jay Carafano, Lee A. Casey, Helle C. Dale, Jennifer A. Marshall, David B. Rivkin, Grace V. Smith, and Janice A. Smith, “Reclaiming the Language of Freedom,” Heritage Foundation *Special Report*, no. 8 (September 6, 2006), at www.heritage.org/research/worldwidefreedom/sr08.cfm (accessed December 16, 2008).

9. Malik, *Challenge of Human Rights*, 110–11.

conomic, social, and cultural rights is not simply a U.S. or Western perception. During the Cold War, the Soviet Union argued that the two types of rights were in a zero-sum relationship. It argued that political rights must be sacrificed so that the state could fulfill social and economic rights. One could argue that the U.N. system supports this viewpoint by how it treats these rights, particularly the proportion of resources dedicated to economic, social, and cultural rights versus the proportion dedicated to civil and political rights. Indeed, while the U.N. officially holds all such rights equal and without distinction for merit or hierarchy, the preference for economic, social, and cultural rights is evident in U.N. statements and debates. For example, in 2003, the Commission on the Status of Women listed the right to development as the first and only right in the opening statement of the "Agreed Conclusions" on violence against women. This effort ultimately failed to secure agreement.¹⁰

The structure of the U.N. system itself elevates economic, social, and cultural rights above civil and political rights. For instance, aside from the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights by state parties, no other institution in the U.N. system is dedicated solely to civil and political rights.

Other U.N. bodies are involved in both civil and political rights and economic, social, and cultural rights. The Commission on Human Rights, which was replaced by the Human Rights Council, was a subsidiary body of the Economic and Social Council (ECOSOC) and split its time between civil and political rights and economic, social, and cultural rights. The Human Rights Council reports to the General Assembly, but similarly divides its time between civil and political rights and economic, social, and cultural rights.¹¹ The General Assembly shares time between these rights in its main committee for human rights, the Third Committee (Social, Humanitarian and Cultural). The Office of the High Commissioner for Human Rights (OHCHR) and the U.N. human rights system under its purview, particularly the treaty bodies and special rapporteurs that monitor and comment on treaty compliance, also cover the range of human rights issues.

10. See Center for Women's Global Leadership, "No CSW Agreed Conclusions on Women's Human Rights and Elimination of All Forms of Violence against Women and Girls," 2003, at www.cwgl.rutgers.edu/globalcenter/policy/csw03/noagreed.html (accessed January 2, 2009).

11. "[T]he work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights. . . ." U.N. General Assembly, "Human Rights Council," A/RES/60/251, April 3, 2006, p. 2, at http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf.

By contrast, key U.N. institutions focused on promoting economic, social, and cultural rights are legion, including one of the six principal organs of the U.N. in ECOSOC; many regional economic commissions; offices of the U.N. secretary-general, such as the Department of Economic and Social Affairs and its divisions such as the Division on the Advancement of Women; the newly created Executive Committee on Economic and Social Affairs, which is to coordinate U.N. funds, programs, and agencies involved in social and economic affairs; and deliberative bodies, including functional commissions on sustainable development, social development, population and development and the Commission on the Status of Women, which issue nonbinding outcome documents for the General Assembly's consideration.

To the extent that specialized U.N. agencies focus on human rights, which they have increasingly done over the past three decades, they typically focus on addressing economic, social, and cultural rights related to their operations. These specialized U.N. agencies include the World Health Organization (WHO) and the Food and Agricultural Organization (FAO), and U.N. development agencies, such as the U.N. Development Program (UNDP), UNICEF, UNFPA, and the World Food Program (WFP). The United Nations Educational, Scientific and Cultural Organization (UNESCO) in particular is rapidly promoting "norming" in its highly touted Management of Social Transformation (MOST).¹²

MUTUALLY REINFORCING AGENDAS

Advancing human rights is not easy. Even with civil and political rights, which have deep legal and historical foundations, efforts to hold governments accountable for violations are difficult.

Member States

The most evident example is that the U.N. includes a number of member states that routinely deny their citizens fundamental civil and political rights, notwithstanding the standards set forth in the U.N. Charter and the provision to expel those who do not abide by those standards. These states routinely use their privileged position to blunt scrutiny and criticism of their failings. Indeed, one of their preferred tactics to counter criticism of their violations of civil and political rights is to change the subject by point-

12. James P. Kelly III, "In the Name of Human Security: UNESCO and the Pursuit of Global Governance," *Engage* 7, no. 2 (2006), at www.globalgovernancewatch.org/docLib/20080211_Kelly_Human_Security.pdf (accessed December 18, 2008).

ing out that other nations—typically the United States and other Western nations that generally observe civil and political rights—fail to provide the full range of economic, social, and cultural rights to their citizens.

For instance, China often deflects criticism for its lack of civil and political rights by touting its progress on the economic front. China's one-child policy violates various civil and political rights that China has agreed to recognize—a fact that has caused the United States to withhold funding from the U.N. Population Fund three times due to its association with the Chinese authorities who enforce the policy. In December 2008, Hao Linna, director of the International Cooperation Department of China's National Population and Family Planning Commission, said, "Without the family planning policy, China would not be able to provide sufficient social welfare for every single child that was born."¹³ This policy puts the right to life at odds with other civil and political rights and with economic and social needs.

However, social projects are not necessarily promoted as economic and social rights. For example, according to those promoting a new international "right" to abortion, six of the seven rights "violated" when a country does not provide abortions are civil and political: life, equality, dignity, liberty, freedom from inhumane and degrading treatment, and freedom of conscience. The seventh "violated" right is the right to health.¹⁴ Hence, it is inexact to say that advocates seek only to circumscribe civil and political rights by advancing economic and social rights. Rather, advocates of new social norms also seek to revolutionize the meaning of civil and political rights as they are commonly understood and certainly as they were understood when the major human rights treaties were negotiated.

Western governments, particularly European governments, contribute to this trend through their forceful endorsement of the need for a rights-based approach to international governance and human rights. European scholars have argued that the increasingly globalized and interconnected world of the twenty-first century is fundamentally different from the world of the past. Military force and "hard power" are outdated, and future influence will revolve far more around economic might, diplomatic influence, and cooperation with international decisions. Many Europeans argue that Europe's strategic advantage is to become the world's "normative power" by broaching and shaping the international legal framework. These analysts

13. Hao Linna, quoted in Xinhua, "Official: China Family Planning Policy Doesn't Contradict Human Rights," *People's Daily* (Beijing), December 3, 2008, at <http://english.peopledaily.com.cn/90001/90776/90882/6545056.html> (accessed January 2, 2009).

14. Nancy Northrup, address at the Women Deliver Conference, London, October 2007.

believe that Europe will come to rival and overtake U.S. global influence by using ever more salient “soft power” and by championing human rights. As the need for military power to offset the threat from the Soviet Union waned, European Union politicians latched on to this theory as a means for increasing their influence at the U.N. and around the world.

To succeed, the European Union must necessarily bolster the means of asserting its normative role in the U.N. system. One example of its normative standard-setting power over sovereign European states is its controversial Charter of Fundamental Rights. Unlike the U.N. human rights treaties, it explicitly requires nondiscrimination for “sexual orientation.”¹⁵

The EU has been increasingly successful in asserting that it speaks for all European member states at the U.N. This is particularly the case during social policy debates, in which voting congruence among EU members has increased to over 85 percent on human rights issues.¹⁶ The EU works closely with human rights activists to negotiate new norms into nonbinding texts and other instruments of “soft law,” such as in Third Committee documents, Human Rights Council resolutions, outcome documents for international conferences, and reports issued by human rights treaty bodies. The EU and some fifteen affiliated states are often joined for press statements by regional leaders such as Brazil and South Africa. In 2007, the EU demonstrated its dominance on social issues by persuading the U.N. General Assembly, against the opposition of the Organization of the Islamic Conference (OIC), to call for a global moratorium on the death penalty.¹⁷

The EU’s success is attributable to its ability to master the two bedrock principles of U.N. negotiation: agreed language and consensus. The reliance of member states on agreed language means that by gradually adding new words and phrases to existing language taken from other state-negotiated documents, the patient negotiator can eventually create new norms. By invoking the specter of parting the curtains and calling for a vote on an issue, negotiators can intimidate dissenting member states into accepting these incremental changes in the name of maintaining consensus and avoiding isolation, as Ambassador John Bolton observes in the foreword of

15. The Charter of Fundamental Rights of the European Union, art. 21, par. 1, at www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed January 2, 2009).

16. Katie Laatikainen and Karen Smith, eds., *The European Union at the United Nations: Intersecting Multilateralisms* (New York: Palgrave, 2006).

17. On December 18, 2007, the General Assembly passed a resolution calling for a “moratorium on the death penalty” by a vote of 104 to 54 with 29 abstentions. The resolution was an initiative of Italy and the EU, which successfully lobbied for it in the Third Committee. See press release, “General Assembly Adopts Landmark Text Calling for Moratorium on Death Penalty,” U.N. Department of Public Information, December 18, 2007, at www.un.org/News/Press/docs/2007/ga10678.doc.htm (accessed December 18, 2008).

this book. In the past several years, U.S. negotiators have been nearly alone in their willingness to call for a floor vote.

Nongovernmental Organizations

The self-serving support for economic, social, and cultural rights by the EU and developing countries—which use the international commitment to fulfill those rights to call for increased economic assistance from developed countries—goes hand in hand with the aims of leftist nongovernmental organizations (NGOs) and transnational networks that seek to shift the focus of human rights from civil and political rights to economic, cultural, and social rights. Activists look to promote these new norms in the U.N.'s more pliable environment for several reasons. Most importantly, many of their policies are often too radical to succeed in the arena of democratic debate in their home countries.

A telling example is the case of the Declaration on Human Cloning. French and German delegates frustrated with their countries' restrictions on human cloning called for a negotiated document at the U.N. The new document would ban only reproductive cloning, but allow "therapeutic" cloning, thus overcoming their countries' restrictions.¹⁸ However, their plan backfired when the media alerted their governments, which then demanded that their U.N. representatives uphold national laws. The result was a document that banned all forms of human cloning.

Disenchanted with the laborious, time-consuming democratic and bureaucratic process of national policymaking, many activists come to the U.N. for practical reasons. Many are also idealistic, believing in the supremacy of "elite discourse" over appeals to public opinion, especially when the public is not as "enlightened" on the issues of global scope as these U.N. elites claim to be. Frustration with their governments' lack of concern or progress for the poor and marginalized, many small groups return to U.N. meetings year after year as a sort of appeal of last resort. Many of these small groups are unaware that a few privileged NGOs dominate the arena, gradually encroaching on their issues. In recent years, these powerful NGOs have turned away from their traditional activism for civil and political rights toward social and economic rights—even rights not mentioned in any of the international covenants. Amnesty International is perhaps the best-known case.¹⁹

18. See press release, "General Assembly Adopts United Nations Declaration on Human Cloning by Vote of 84–34–37," U.N. General Assembly, at www.un.org/News/Press/docs/2005/ga10333.doc.htm (accessed December 18, 2008).

19. See Joel E. Oestreich, *Power and Principle: Human Rights Programming in International Organizations* (Washington, DC: Georgetown University Press, 2007).

U.N. Treaty Bodies and Bureaucrats

Various U.N. bodies and bureaucrats, which are poised to reap increased influence and resources, are eager partners of the NGOs. Indeed, because advocates for these rights broadly seek the same goals, including the justifiability and extraterritoriality of international law, the push for radical social policy has infected every corner of the U.N. human rights system.

To support this legalistic approach, advocates seek state acceptance of the idea that treaty implementing bodies—usually composed of “experts” who act on their own authority and do not represent their state governments—have the status of high legal authorities whose opinions on any issue can shape current understanding of international law. Yet the treaties themselves vest no such authority in their treaty bodies.

Despite their increasingly intrusive role in asserting new rights and state obligations, the treaty bodies have no enforcement authority or mandate to assert and impose new rights or interpretations of treaty text on member states. Even so, member states often find themselves under extreme pressure to bow to their dictates because of the weight that NGOs invest in their comments and reviews. Treaty bodies receive administrative support from the OHCHR budget, yet they increasingly depend on the legwork and policy support of NGOs. NGOs submit detailed “shadow reports,” which the experts often use as evidence against state parties. These NGOs often have their own representatives serving in the relevant treaty bodies. For instance, half the committee overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee are members of women’s rights NGOs. At least on this committee, activists have realized their goal of holding sovereign states directly accountable to their desires.

In the General Assembly, NGOs rightly lobby member states to support or oppose resolutions that advance their agendas. However, they are far more effective in lobbying the treaty implementing bodies to interpret the treaties in ways more favorable to their agendas, criticize states for failing to observe these interpretations, and press states to change their domestic laws accordingly.

As with the treaty bodies, special rapporteurs have no official legal authority and are largely unaccountable. Yet their activism is increasingly felt in the U.N.’s agenda for economic, social, and cultural rights. Funded through OHCHR, special rapporteurs have mandates from the Human Rights Council or the U.N. General Assembly to investigate, monitor, and recommend solutions to human rights problems.²⁰ The independence of

20. For detailed descriptions of the mandates of rapporteurs, see Office of the U.N. High Commissioner for Human Rights, “Special Procedures of the Human Rights Council,” at www2.ohchr.org/english/bodies/chr/special/index.htm (accessed December 18, 2008).

the special rapporteurs allows them great discretion to interpret their mandates broadly. Often this is advantageous, allowing them to confront and report on abuses freely. However, many have used their positions inappropriately to advocate for economic, social, and cultural rights:

- Paul Hunt, special rapporteur for the highest attainable standard of health, said he used his recently ended tenure to promote “the right to health” and “sexual health rights for girls.”²¹ Shortly after succeeding Hunt, Indian HIV/AIDS activist Anand Grover met with reproductive rights and homosexual rights NGOs in Mexico City during the United Nations Joint Program on HIV/AIDS (UNAIDS) meeting and pledged support for their agenda.
- Special Rapporteur Yakin Ertuk, whose mandate includes violence against women, announced in 2006 that she would place special emphasis on eliminating religious resistance to new rights and asserted that treaty reservations based on religion are “incompatible” with the CEDAW treaty.²² This conflicts with established human rights, which in many places guard religious traditions.²³ In defiance of evidence that religion has historically played a central role in protecting women’s rights and that faith-based organizations have been instrumental in fighting HIV/AIDS, Ertuk called religious belief a root cause of violence against women and said that abstinence-based programs for combating HIV/AIDS “reinforce ideologies of men’s control over women’s sexuality (however they may be culturally framed) and thereby contribute to the perpetuation of the root cause of many forms of violence against women.”²⁴
- U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston, a human rights expert, has argued—in the context of using a “right to food” to force governments to alleviate world hunger—that only a rights-based, litigious approach will make governments take social and economic issues seriously.²⁵

21. Paul Hunt, quoted in Samantha Singson, “UN Special Rapporteurs Attack Religion, Promote Radical Rights at Human Rights Council,” Catholic Family and Human Rights Institute *Friday Fax*, April 12, 2007, at www.c-fam.org/publications/id.509/pub_detail.asp (accessed December 16, 2008).

22. Singson, “UN Special Rapporteurs.”

23. For instance, the ICCPR protects the “liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” International Covenant on Civil and Political Rights, art. 18.

24. Yakin Ertuk, quoted in Singson, “UN Special Rapporteurs Attack Religion.”

25. See Philip Alston and Katrina Tomasevski, eds., *The Right to Food* (Utrecht, NL: Martinus Nijhoff, 1984).

As a practical manner, finding a nation in violation of the progressive attainment of economic, social, and cultural rights is much more difficult than finding violations of civil and political rights. For this reason, the ICESCR constructed a series of steps, often requiring a state to change specific domestic laws and policies, to indicate a nation's move toward progressive realization of economic, social, and cultural rights. Unsatisfactory implementation of these steps—not just the articles of the treaties negotiated by states—determines whether the committee holds states in violation of their treaty obligations under international law.

One of the hallmarks of this rights-based approach is giving social definitions to existing and newly negotiated rights such that any barrier to the right—including attitudes, thoughts, and religious and social moral teachings—constitutes a violation of the state's treaty obligations. The latest human rights convention does exactly this, giving a social definition to "disability" such that any "barriers," including thoughts and attitudes, may be interpreted as a treaty violation.²⁶

Another characteristic of the effort is to tie all these rights together so that asserting acceptance of one right necessitates acceptance of all the others. For instance, ICESCR's nonbinding General Comment 14 asserts that the convention's Article 12 on health should be interpreted to include a broadly defined right that is interdependent and therefore necessitates other broad new rights such as a right to food and a right to work.²⁷

A problem arises with making this social definition justiciable. Under optional protocols to the human rights treaties, private citizens may "communicate" directly with the human rights committees about perceived violations of their government's obligations under the treaties. In this way, treaty bodies such as the ICESCR Committee are transforming all treaty bodies from committees that monitor state compliance to quasi-judicial organs with the authority to supersede national courts. Because the committee does not consult member states in the creation of its interpretations and may add or subtract steps, nations no longer know what their obligations will be under a treaty.

U.N. agencies, in turn, use these steps to create targets and benchmarks in a rights-based approach to programming. This has significantly influenced the work of the agencies. For example, when UNICEF decided to promote the Convention on the Rights of the Child (CRC), it entailed a "substantial expansion of its mandate and agenda. . . . Whereas before the

26. Convention on the Rights of Persons with Disabilities, at www.un.org/disabilities/convention/conventionfull.shtml (accessed December 19, 2008).

27. U.N. Economic and Social Council, "The Right to the Highest Attainable Standard of Health," E/C.12/2000/4, August 11, 2000, at [www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (accessed December 19, 2008).

CRC certain survival issues were considered of paramount importance, now all issues relating to children . . . are rights and therefore nonnegotiable."²⁸ In other words, it is much harder to put programmatic emphasis on the needs most central to child survival. Additionally, the imperative to promote children's empowerment, a hallmark of the rights-based approach, reoriented UNICEF's processes from neutral service provision to a politicized role of lobbying governments to recognize certain rights:

To help children achieve their right to immunization differs from simply providing immunization by placing it in the political context . . . where children and their mothers become empowered to . . . demand them from the primary obligation holder, the government.²⁹

CIRCUMVENTING STATE SOVEREIGNTY TO ESTABLISH A NEW SOCIAL ORDER

Advancing controversial interests under the guise of the common good threatens the very sinews of free societies. This growing confluence of interests among socialist-leaning states, leftist NGOs and activists who believe in global governance, and U.N. bodies eager to expand their influence is a threatening force pressing states to observe a radical interpretation of human rights. The following examples of how these interests cooperate to advance "rights" to health, food, water, abortion, and sexual orientation demonstrate how much the U.N. has become a tool of the leftist agenda and how seriously the United States needs to work to ensure that these efforts do not undermine the freedoms, rights, and prosperity that Americans have come to treasure.

Economic Rights

Activists have worked to advance the economic "rights" of health, food, and water, even though they are not recognized by any binding international treaty.

Health

No widely recognized treaty asserts a binding "right to health." The closest reference is Article 25 of the Universal Declaration of Human Rights, which mentions health in reference to an "adequate" standard of living:

28. Ostreich, *Power and Principle*, 35.

29. Ostreich, *Power and Principle*, 37.

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care . . . and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.³⁰

Although the Universal Declaration is nonbinding, it is universally recognized. Some argue that this means that it has reached the status of customary international law and that U.N. member states are required to honor the rights it enumerates. Yet this assertion is belied by the many nations that have signed the declaration and that fail to honor it in their actions and practices.

Moreover, states rejected the opportunity to codify an explicit right to health in the ICESCR. When states negotiated the covenant in the 1950s and 1960s, they specifically declined to adopt a definition for the “right to health” based on the Constitution of the World Health Organization, which defines health as the “state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.”³¹ Instead, nations adopted a loose obligation to protect the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” which was to be realized incrementally.³² Although the United States is not a party to ICESCR, it accepts ICESCR’s definition of the existing right, as do the European governments, even left-leaning governments. The governments rejected a broader definition because a broad right to health taken seriously (as the United States would do if it ratified such a right) would impose obligations to provide for such things as universal free health care for their citizens.

Advocates of a right to health are undeterred by sovereign decisions about the implications of a treaty. The Committee on Economic, Social and Cultural Rights (CESCR), which monitors ICESCR compliance, and the U.N. special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health regularly argue that a universal right to health exists. The CESCR acknowledges that the social definition that it is advancing was rejected by the states negotiating the convention, but the CESCR argues that the member states were wrong and that its understanding of the legislative history is more authoritative:

In drafting article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in

30. Universal Declaration of Human Rights, art. 25, at www.un.org/Overview/rights.html (accessed December 19, 2008).

31. U.N. Economic and Social Council, “Right to the Highest Attainable Standard of Health.”

32. International Covenant on Economic, Social and Cultural Rights, art. 12.

the preamble to the Constitution of WHO, which conceptualizes health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” However . . . the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.³³

The CESCR further argues that states are bound to uphold this broader definition and that governments can be held in violation of the treaty’s normative content if they do not realize such a right.

Food

Frustrated with the lack of progress toward ending hunger, human rights expert Philip Alston and others published a strategy for NGOs to reframe the issue of world hunger as an international human right to food.³⁴ As with the right to health, the right to food is not contained in any binding, widely recognized treaty. Advocates for the right also point to Article 25 of the Universal Declaration of Human Rights, which states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food,”³⁵ and to the 1974 Universal Declaration on the Eradication of Hunger and Malnutrition, in which governments pledged to end hunger within the decade.³⁶ However, neither document is binding. Even the ICESCR addresses food only in the context of a “right to an adequate standard of living.”

In fact, states have specifically rejected a binding right to food. According to the activist NGO International Food Policy Research Institute (IFPRI), they reject it and cultural and social rights in general because providing it would be “prohibitively expensive” and “impossible to define in legally enforceable terms” and because enforcing the right would require redistribution of privately held resources and such enforcement could easily be

33. U.N. Economic and Social Council, “Right to the Highest Attainable Standard of Health.”

34. Alston and Tomasevski, *Right to Food*.

35. International Covenant on Economic, Social and Cultural Rights, art. 11, par. 4.

36. Universal Declaration on the Eradication of Hunger and Malnutrition, December 17, 1974, at www.unhchr.ch/html/menu3/b/69.htm (accessed December 19, 2008).

abused by repressive governments.³⁷ The United States and other countries have argued that the right is an “aspiration” best “realized progressively that does not give rise to any international obligations nor diminish the responsibilities of national governments toward their citizens.”³⁸ However, opposition by states has not prevented advocates from moving forward.

The ICESCR obligates its signatories to recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing.”³⁹ However, in General Comment 12, the CESCR redefined state obligations: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”⁴⁰ Comment 12 claims that the right to food is “inseparable from social justice” and is the basis for a host of other rights. Moreover, it claims that the right to food is extraterritorial and that nations must regulate private citizens and companies to ensure that they comply with treaty obligations. This would require the “adoption of appropriate economic, environmental and social policies, at both the national and international levels.”⁴¹ The committee acknowledged that it based General Comment 12 on input from activists, in particular “the draft international code of conduct on the human right to adequate food prepared by international non-governmental organizations” as well as on the nonbinding outcome document of the 1996 World Food Summit.⁴²

NGOs such as FIAN International⁴³ are implementing Alston’s litigious strategy by preparing lawsuits against governments for violating the right to food, using the optional protocol to the ICESCR, and by lobbying courts

37. Per Pinstrup-Andersen, David Nygaard, and Annu Ratta, “The Right to Food: Widely Acknowledged and Poorly Protected,” *International Food Policy Research Institute 2020 Vision Brief*, no. 22 (June 1995), at www.ifpri.org/2020/BRIEFS/NUMBER22.HTM (accessed December 19, 2008).

38. “U.S. Opening Statement for FAO Right to Food Forum,” Rome, October 1–3, 2008, at www.fao.org/righttofood/rtf_forum/files/Right%20to%20food%20statement.pdf (accessed December 19, 2008); and U.S. Department of Agriculture, Foreign Agricultural Service, “World Food Summit,” modified February 22, 2005, at www.fas.usda.gov/icd/summit/interpre.html (accessed December 19, 2008).

39. International Covenant on Economic, Social and Cultural Rights, art. 11.

40. U.N. Economic and Social Council, “The Right to Adequate Food (Art. 11),” E/C.12/1999/5, May 12, 1999, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9) (accessed December 19, 2008).

41. U.N. Economic and Social Council, “Right to Adequate Food.”

42. U.N. Economic and Social Council, “Right to Adequate Food.”

43. FIAN is a Germany-based NGO funded largely by FAO and the governments of the Netherlands, Norway, and Sweden and by major Belgian, British, Canadian, and German foundations.

and bureaucracies in fifty countries. Their purpose is to establish a legal, widely accepted right to food. One example of this effort is the 2004 decisions of the FAO's Committee on World Food Security to adopt voluntary guidelines. FAO's legal counsel hailed this as a "major breakthrough" because the guidelines would provide a "human rights-based tool" for identifying states' obligations under a right to adequate food.⁴⁴

Such a right, if taken seriously by states, would require sweeping changes to the international economic order. The highly controversial Swiss sociologist Jean Ziegler, who occupied the special rapporteur position for this right from 2000 to 2008, argued that capitalism, particularly the globalization of neoliberal trade, is the *primary* cause of world hunger, causing a "daily genocide" of the poor by rich countries.⁴⁵

While Ziegler's view is extreme, his policy prescriptions line up with those of other advocates, including the CESCR, IFPRI, and FIAN. Belgian university professor Olivier de Schutter, Ziegler's successor as special rapporteur, has worked with European institutions to regulate successful transnational corporations and to prosecute them and their executive directors under EU human rights law. Along with Socialist Party members of the European Parliament and the EU-funded NGO European Coalition for Corporate Justice, de Schutter is a leader in the international campaign to prosecute transnational corporations using a broad interpretation of "foreign direct liability," which currently applies only in very limited cases such as maritime law.

Water

No widely recognized, binding treaty establishes a "right to water." The Universal Declaration of Human Rights and the ICESCR do not even mention water. However, in 2002, the CESCR set forth a general right to water in General Comment 15. This determination is also based on the same article in the ICESCR that underpins the right to food. However, in General Comment 15, the committee interprets the right to water as including a breathtaking array of additional obligations, such as to (1) regulate corporations to expand agreed definitions of nondiscrimination to include sexual orientation; (2) guarantee noncitizens the same rights as citizens; (3) limit the "use and testing of weapons" and proscribe certain military tactics in warfare; (4) mandate technology transfers from rich to poor nations; and

44. See U.N. Food and Agriculture Organization, "Committee on World Food Security Adopts Right to Food Guidelines," September 24, 2004, at www.fao.org/newsroom/en/news/2004/50821/index.html (accessed December 19, 2008).

45. "Globalized Capitalism Blamed for Increasing Famine," *Guardian*, April 6, 2005, at www.cpa.org.au/garchve05/1222famine.html (accessed December 19, 2008).

(5) regulate lending policies among international financial institutions. These steps and interpretations of obligations are outlined in the CESCR's guidelines for states to avoid "violating" the ICESCR.⁴⁶

The committee sees these steps as necessary to progressively realize a right to water. States that have not "taken the feasible and necessary steps toward the realization of a right to water" as interpreted in General Comment 15 have "failed to act in good faith" and will be found in "violation of the right."⁴⁷

General Comment 15 takes advantage of the transborder nature of water resources to push even further the claim of extraterritoriality of human rights law set out in General Comment 14 on the right to food. The committee maintains that state parties are obligated to help other countries meet their treaty obligations, essentially making states responsible for citizens of other countries:

For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfill their core obligations.⁴⁸

Social and Cultural Rights

In addition to a variety of economic rights being broadened and increasingly asserted through the U.N. system, a mutually reinforcing group of NGOs, internationalists, and U.N. human rights experts have sought to promote extreme social and cultural activities by creating and imposing select human "rights." Two of the most contentious deal with abortion and sexual orientation.

Abortion

Long frustrated by the resistance of nations to abortion, advocates have turned increasingly to the U.N. to pressure governments to legalize abortion. The strategy involves claiming that abortion rights are a prerequisite

46. U.N. Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)," E/C.12/2002/11, November 26, 2002, at www.unhcr.ch/html/menu2/6/gc15.doc (accessed January 4, 2009).

47. U.N. Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002)."

48. U.N. Committee on Economic, Social and Cultural Rights, "General Comment No. 15 (2002)," par. 38.

for or are inextricably linked to all other human rights and desirable outcomes, such as human development and maternal and child health.

To provide legal footing for international recognition of this right, U.N. bodies interpret treaties in new ways to assert that restrictions on abortion violate human rights. For instance, even though the Convention on the Elimination of All Forms of Discrimination against Women does not mention abortion, the committee that monitors CEDAW implementation by its signatories has asserted in its General Recommendation 24 that abortion restrictions violate Article 12 on health. CESCR, the committee monitoring the International Covenant on Economic, Social and Cultural Rights, similarly asserted in General Comment 14 that Article 12 requires state parties to provide "sexual and reproductive health services," which abortion advocates claim includes abortion. The CESCR has pressured more than a dozen countries on the matter since 1998, including Bolivia and Benin in 2008.⁴⁹ The Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, similarly began pressuring countries in 2003, claiming that the ICCPR includes abortion and sodomy rights. The committee recently attacked Botswana and Ireland for their laws restricting, respectively, sodomy and abortion during their 2008 reviews.⁵⁰

NGOs assist the effort by encouraging citizens to bring lawsuits against their governments alleging failure to observe their "right to abortion." The NGO Center for Reproductive Rights (CRR) chose to look for a plaintiff in Brazil because of the favorable disposition of its left-leaning judges, backing the first case against Brazil in 2008.⁵¹

To circumvent resistance to a right to abortion, advocates have tried to link it to a new "right to maternal health." This strategy, called the Interna-

49. See U.N. Economic and Social Council, "Benin," 2008, at www2.ohchr.org/tbru/cescr/Benin.pdf (accessed December 19, 2008); and "Bolivia," May 16, 2008, at www2.ohchr.org/tbru/cescr/Bolivia.pdf (accessed December 19, 2008).

50. In its 2008 country reviews, the Human Rights Committee told Panama and Ireland that they should liberalize their abortion laws based on Article 6 (the right to life). The committee told Botswana to decriminalize sodomy, asserting that the law violated Article 17 on privacy and Article 26 on nondiscrimination based on "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See U.N. High Commissioner for Human Rights, "Letter to Permanent Mission of Panama to the U.N.," August 15, 2008, at www2.ohchr.org/tbru/cehd/Letter_Panama.pdf (accessed December 19, 2008).

51. Luisa Cabal, remarks at the Women Deliver Conference, London, October 2008. For details on the case, see Center for Reproductive Rights, "Center Challenges Brazil's Record on Maternal Mortality," December 7, 2007, at www.reproductiverights.org/ww_lac_brazil.html (accessed December 19, 2008).

tional Initiative on Maternal Mortality and Human Rights,⁵² specifically links “unsafe” abortions (ostensibly all illegal abortions) to maternal mortality. The initiative was launched at the U.N.-sponsored Women Deliver Conference in London in 2007. It is the latest step in a legal strategy conceived at an exclusive 1996 meeting hosted by OHCHR, UNFPA, and the U.N. Division for the Advancement of Women. The meeting produced a roundtable report that served as a guide for persuading treaty bodies to reinterpret the rights to life, privacy, health, and nondiscrimination and a host of other rights to include abortion.⁵³ The advocates have since claimed that abortion is a prerequisite for human development under the U.N. Millennium Development Goals, specifically fulfilling goal 4, “Reduce Child Mortality,” and goal 5, “Improve Maternal Health.”⁵⁴ Claiming a new Millennium Development Goal (MDG) target for reproductive health, no matter how dubious, is important for securing U.N. funding.

U.N. treaty bodies increasingly depend on NGOs such as International Planned Parenthood Federation, CRR, International Women’s Health Coalition, and others to provide detailed shadow reports, which experts can use to criticize states. In fact, according to Human Rights Watch, U.N. treaty bodies have pressured at least 93 countries 122 times to liberalize their abortion laws based on NGO reports citing novel treaty interpretations.⁵⁵ These special interest NGOs also sponsor citizens’ lawsuits against governments to induce national courts to decide that legal abortion is a prerequisite for upholding a state’s legal obligations under U.N. human rights treaties and also its alleged development commitments under the

52. See Center for Reproductive Rights, “International Initiative on Maternal Mortality and Human Rights,” at www.reproductiverights.org/pdf/MMHR%20brochure%20revised.pdf (accessed December 19, 2008).

53. Activists staged the 2007 Women Deliver Conference in London. It was launched by UNFPA’s Thoraya Obaid, former U.N. high commissioner for human rights Mary Robinson, the then U.N. special rapporteur for health and the initiative’s author Paul Hunt, and Nancy Northrop, president of the public interest law firm Center for Reproductive Rights, which serves as secretariat for the initiative. The core planning group, which called itself the Partnership for Maternal and Child Health, consisted of UNFPA, UNICEF, WHO, and the World Bank. The event was organized and run by a handful of large abortion providers and advocacy groups with U.N. accreditation, including International Planned Parenthood, Ipas, and Family Care International. Major backing included only four U.N. member states: Britain, the Netherlands, Norway, and Sweden.

54. See U.N. Department of Public Information, “Millennium Development Goals,” at www.un.org/millenniumgoals (accessed December 19, 2008).

55. Human Rights Watch, “International Human Rights Law and Abortion in Latin America,” July 2005, p. 5, at www.hrw.org/legacy/background/wrd/wrd0106/wrd0106.pdf (accessed December 19, 2008).

MDGs. The effort arguably hit its high point in 2006 when Colombia's constitutional court overturned abortion restrictions, citing comments by U.N. human rights treaty bodies.

The United States is not immune to this campaign. For instance, in 2008, the U.S. House of Representatives passed H.Res. 1022, "Reducing Maternal Mortality at Home and Abroad," introduced by Representative Lois Capps (D-CA). The Senate passed a similar resolution introduced by Senators Blanche Lincoln (D-AR) and Olympia Snowe (R-ME). Conservative senators successfully removed language that would have declared "maternal health as a human right."⁵⁶

Other U.N. bodies often provide academic and medical reports to reinforce the advocates' claims. A WHO-sponsored paper claimed that "comprehensive reproductive health care," including abortion, was one of the top three necessary responses to the problem of maternal mortality, even though WHO and other U.N. offices often refute this claim in their reports.⁵⁷

U.N. conferences similarly advance this agenda. Among the 1,700 participants at the 2007 U.N. Women Deliver Conference were midwives and midlevel health providers from South Asia and sub-Saharan Africa, flown in courtesy of corporate sponsors such as Brazil's Tibotec, Exxon Mobil, and GlaxoSmithKline. UNFPA's Thoraya Obaid announced at the conference that the role of her and other U.N. agencies is to break down religious and cultural barriers to abortion and other progressive sexual norms in a campaign of "destigmatization."⁵⁸ Breaking down religious barriers was the stated goal of the only official outcome document from the conference. The

56. A Resolution Reducing Maternal Mortality Both at Home and Abroad, H.Res. 1022, 110th Cong., 2nd sess., and A Resolution Reducing Maternal Mortality Both at Home and Abroad, S.R. 616, 110th Cong., 2nd sess.

57. U.N. Population Division and WHO reports show that developing countries do not report the cause or sex of the deceased, making such a figure impossible to verify. The claim that "comprehensive reproductive health services" tops the list of necessary medical responses is not supported by the majority of the medical community, which identified access to skilled birth attendants and emergency obstetric care as the two best ways to reduce maternal mortality. See U.N. Economic and Social Affairs, Statistics Division, *The World's Women 2005: Progress in Statistics*, 2006, at www.globalpolicy.org/soecon/inequal/gender/2005/11unwomanstats.pdf (accessed December 19, 2008). Another problem is that WHO often uses the terms "comprehensive reproductive health" and "family planning" interchangeably, even though some U.N. officials use "comprehensive reproductive health" to include abortion and member states defined "family planning" in the Cairo Program of Action as excluding abortion.

58. Thoraya Obaid, executive director, UNFPA, address at the Women Deliver Conference, London, October 2007.

U.N. tightly controlled the press at the event, providing NGO escorts for each reporter and limiting access to the pressroom through a guarded entryway.

Indeed, supported by a network of activists, U.N. experts and bodies have become highly effective in their attempts to change norms. For instance, at the Commission on the Status of Women in 2007, EU negotiators defeated a resolution sponsored by the United States and South Korea that condemned the rising global trend of killing baby girls because the resolution criticized sex-selective abortion.⁵⁹ The Commission on the Status of Women's dogged silence on this increasing assault on the girl-child through sex-selective abortions indicates how much the activists have achieved.

Sexual Orientation

Advocates have been increasingly effective in garnering U.N. support for broadening the definition of gender and asserting a "right to sexual orientation," despite substantial objections from the member states. Perhaps no document better shows the defiance of U.N. officials against the consensus of member states than the 2007 "Yogyakarta Principles: The Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity." Authored by eleven special rapporteurs and U.N. human rights treaty body members in 2007, the principles were endorsed by former U.N. high commissioner for human rights Louise Arbour.⁶⁰ They take twenty-nine human rights already in binding international law and reinterpret each one to include broad homosexual rights that require nations "to take all legislative, administrative and other measures" to grant homosexuals the right to marry and serve in militaries; remove conscience clauses for churches; control the media's portrayal of homosexuality; change "notions of public order, public morality, public health and public security" to favor homosexuals; and implement other sweeping economic, social, and cultural changes.

Fundamental to the principles is the assertion that they are *already binding on state parties*.⁶¹ The document gives sexual orientation a social definition and mandates a vast social and cultural engineering project to enforce

59. The author was a member of a civil society group that participated in the negotiations during the 2008 Commission on the Status of Women.

60. International Gay and Lesbian Human Rights Commission, "The Role of the Yogyakarta Principles," August 4, 2008, at www.iglhrc.org/site/iglhrc/section.php?id=5&detail=868 (accessed December 19, 2008).

61. "The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity," March 2007, at www.yogyakartaprinciples.org/principles_en.pdf (accessed December 21, 2008).

it.⁶² U.N. human rights experts who support it flout the member states' repeated refusal to include sexual orientation on the list of recognized non-discrimination categories. In 2003, Brazil tried and failed to pass a resolution on it at the Human Rights Commission in Geneva. Yet, a recent UNESCO document actually cites this failed effort as proof of international consensus in favor of a right to sexual orientation.⁶³

Activists are also seeking to secure acceptance of these new rights by linking homosexuality to "gender," which they then use to claim the same rights as women for people who are homosexual, transgender, or transsexual. The U.N. General Assembly defined "gender" when it adopted the 1995 Beijing Platform for Action, which stated that gender was "commonly used and understood in its ordinary, generally accepted usage."⁶⁴ Moreover, the treaty creating the International Criminal Court states that gender "refers to the two sexes, male and female, within the context of society."⁶⁵

However, examples of U.N. officials ignoring these precedents abound. The U.N. secretary-general's special adviser on gender issues maintains publicly that gender is a "social construct" that is open to many interpretations.⁶⁶ The 2007 UNICEF annual report refers to more than two genders.⁶⁷ At the June 2008 high-level meeting on HIV/AIDS, numerous activists asserted—and the U.N. did not deny—that the U.N. interprets gender to include transgender, transsexual, and even men-having-sex-with-men activities. The secretary-general went so far as to call for repealing laws that crim-

62. "Yogyakarta Principles."

63. U.N. Educational, Scientific and Cultural Organization, "UNESCO Guidelines on Language and Content in HIV- and AIDS-Related Materials," October 2006, p. 34, at <http://unesdoc.unesco.org/images/0014/001447/144725e.pdf> (accessed December 21, 2008).

64. *Report of the Fourth World Conference on Women*, A/CONF.177/20/REV.1, September 4–15, 1995, p. 218, at <http://daccessdds.un.org/doc/UNDOC/GEN/N96/273/01/PDF/N9627301.pdf> (accessed December 21, 2008).

65. Rome Statute of the International Criminal Court, A/CONF.183/9, art. 7, par. 3 (July 17, 1998), <http://daccessdds.un.org/doc/UNDOC/GEN/N98/281/44/IMG/N9828144.pdf> (accessed December 21, 2008).

66. Catholic Family and Human Rights Institute, "UN Agency Promotes Change in Traditional Understanding of Gender," *Friday Fax*, March 30, 2001, at www.c-fam.org/publications/id.183/pub_detail.asp (accessed January 7, 2009); and U.N. Department of Economic and Social Affairs, Office of the Special Adviser on Gender Issues and Advancement of Women, "Gender Mainstreaming: Concepts and Definitions," at www.un.org/womenwatch/osagi/conceptsanddefinitions.htm (accessed January 7, 2009).

67. U.N. Children's Fund, *State of the World's Children 2007*, 2006, at www.unicef.org/sowc07/docs/sowc07.pdf (accessed December 21, 2008).

inalize “vulnerable groups . . . for their lifestyles,” such as prostitution and sodomy laws.⁶⁸

This deliberate confusion has important implications for U.N. funding and reform because plans are advancing for a new “gender architecture.”⁶⁹ Gender has gone to the head of the line for U.N. reform along with governance, finance, and country team coordination—themes that member states decided to consider in the first basket of concerns for the U.N.’s systemwide coherence effort borne out of the 2005 World Summit.⁷⁰ According to proponents, a new gender office will have unprecedented influence, a budget on par with UNICEF’s budget, and an executive director who reports directly to the secretary-general.⁷¹

The effort to impose these social and cultural norms extends throughout the U.N. system, involving even seemingly unrelated discussions on treaties such as the Convention on Rights of Persons with Disabilities. In the pursuit of new social norms and rights, the EU has become a prime mover at the U.N., adducing support by powerful NGOs, U.N. agencies, and developing states that Europeans cultivate through their assistance. Interest groups and neoclient states, in turn, accept the EU’s progressive social agenda, without the knowledge of and regardless of the best interests of their people, in order to advance various causes. Thus, the EU and its affiliated states are often joined by regional leaders, such as Brazil and South Africa. On the other side is a core group within the Organization of the Islamic Conference, Group of 77, and sometimes the Group of Latin American and Caribbean Countries that parries and thrusts to preserve traditional societies—often in sheer displays of bloc politics.

In the final negotiating round of the Disabilities Convention, the EU successfully played the internal competing interests of the OIC off one another

68. Ban Ki-moon, “Remarks on Handover of the Report of the Commission on Aids in Asia,” March 26, 2008, p. 3, at http://data.unaids.org/pub/Speech/2008/20080325_sg_asia_comission_report_speech_en.pdf (December 21, 2008).

69. The Department of Economic and Social Affairs houses the Office of the Special Adviser for Gender Issues, which is in charge of implementing the plan for the gender architecture.

70. Global Policy Forum, “Member States Move towards a ‘Basket’ Approach to System-Wide Coherence,” March 21, 2008, at www.globalpolicy.org/reform/initiatives/panels/coherence/2008/0321basket.htm (accessed December 21, 2008).

71. According to Nafis Sadik, the office would act as “a system-wide watchdog” with the authority to set standards, enforce accountability, and intervene at all levels of decision making from country to regional to international. It would focus on overcoming religious and cultural resistance to new sexual norms. Conceivably, the new office would focus not only on women’s rights, but also on advancing homosexual rights, despite the opposition of some member states.

to secure, for the first time, the term “sexual and reproductive health” in a binding U.N. treaty document.⁷² This was arguably a major EU goal, and the victory was no doubt sweeter because they achieved it over U.S. objections. Along with the United States, Holy See, and others, the OIC, led by Egypt, worked to keep the terms “sexual and reproductive health” and “gender” out of the document, but ultimately yielded in order to include language aimed against the United States and Israel referring to situations of “foreign occupation.”⁷³

In its explanation of position in the General Assembly the day that body adopted the treaty, the U.S. representative expressed concern on another level. Specifically, the Americans warned that the references to “armed conflict and foreign occupation, which are governed by international humanitarian law and not human rights law, would create unnecessary legal confusion.”⁷⁴ The confusion proliferates as human rights law increasingly permeates the functional areas of humanitarianism and security at the U.N.

UNDERMINING THE U.N.’S FUNCTIONAL OPERATIONS

In each of these cases, “rights” are being asserted and advanced without explicit legal founding, promulgated by a group of left-leaning NGOs and U.N. treaty body “experts” with minimal consultation with member states and in some cases in defiance of them. This process has significant implications for the legitimacy of these rights and their impact on state sovereignty, the international economic order, and international law. The effort to establish economic, social, and cultural rights also arguably jeopardizes the work and reputation of the U.N.’s operational, development, and humanitarian agencies.

UNESCO

The United Nations Educational, Scientific and Cultural Organization was created to “contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the

72. Convention on the Rights of Persons with Disabilities, art. 25, at www2.ohchr.org/english/law/disabilities-convention.htm (accessed December 21, 2008).

73. Convention on the Rights of Persons with Disabilities, preamble.

74. Richard T. Miller, “Explanation of Position on the Convention on the Rights of Persons with Disabilities, Agenda Item 67(b), in the General Assembly,” U.S. Department of State, December 13, 2006, at www.state.gov/p/io/rls/rm/81455.htm (accessed December 21, 2008).

world, without distinction of race, sex, language or religion, by the Charter of the United Nations."⁷⁵ Yet UNESCO has downgraded its operational activities, which actually serve its member states, in favor of advocating various rights because:

It is not enough to build classrooms in devastated countries or to publish scientific breakthroughs. . . . [They are] the means to a far more ambitious goal: to build peace in the minds of men.

Today, UNESCO functions as a laboratory of ideas and a standard-setter to forge universal agreements on emerging ethical issues.⁷⁶

One example is UNESCO's work in human security. James Kelly, director of international affairs for the Federalist Society for Law and Public Policy Studies, has analyzed the work of UNESCO's MOST Program and found that its purpose is to spread UNESCO's influence in social and economic decision making throughout the world.⁷⁷ According to Kelly, the program was established in 1994 to network social science researchers to advise UNESCO; advance understanding of social transformations; establish sustainable links between social science researchers and decision makers; strengthen scientific, professional, and institutional capacities, particularly in developing countries; and encourage the design of research-anchored policy. The program set up liaison committees in fifty-nine countries and comprises seventeen international research networks, which include global governance, multicultural and multiethnic society, urban development and governance, poverty eradication, sustainable development and governance, and international migration.

Its 2006 meeting in Buenos Aires exemplifies how UNESCO seeks to internationalize European-style social and economic order through means such as the MOST Program. According to Kelly, the conference overwhelmingly rejected the global consensus for neoliberal policy framework (the Washington Consensus) in favor of a "'reformist' redistributive global social democracy that promoted economic human security."⁷⁸ The plan is to secure support for the global social democracy agenda by funding more research to back it, while activating civil society to agitate for the enactment

75. Constitution of the United Nations Educational, Scientific and Cultural Organization, art 1, par. 1, at http://portal.unesco.org/en/ev.php-URL_ID=15244 (accessed December 21, 2008).

76. U.N. Educational, Scientific and Cultural Organization, "What Is It? What Does It Do?" updated October 8, 2007, at http://portal.unesco.org/en/ev.php-URL_ID=3328 (accessed December 21, 2008).

77. Kelly, "In the Name of Human Security," 127.

78. Kelly, "In the Name of Human Security."

of UNESCO's redistributionist policies and then enforcing the new order through U.N. channels.

UNICEF

UNICEF's hallmarks are its large footprint in many countries, and quick and effective emergency responses to provide basic needs. Despite all its good work in the past, UNICEF leadership has increasingly incorporated the rights-based approach into its mission and work. In 1986, UNICEF made the fateful decision to include negotiation and promotion of the Convention on the Rights of the Child and promotion of the CEDAW in its mandate.⁷⁹

A tragic outcome of this decision is that UNICEF is now encouraging countries to permit the killing of unborn children. In October 2006, the UNICEF country team representative to Nicaragua signed a letter urging the Nicaraguan National Assembly to keep therapeutic abortion legal. Initially, UNICEF's press office claimed that the country representative was obliged to sign the letter to support the broader One UN program.⁸⁰ Later, UNICEF's regional director made it clear that, as far as he was concerned, speaking out to keep abortion legal was in keeping with UNICEF's mission, which includes advancing the rights of women.⁸¹ UNICEF felt that keeping abortion legal was necessary because doctors were not providing adequate emergency care during pregnancy. Essentially, this is saying that giving women recourse to abortion is easier than giving them decent care. It perfectly captures the shifting mind-set at UNICEF from humanitarian and development assistance to human rights activism.

This case also shows an inherent danger of the One UN initiative, specifically that the agendas of other organizations could undermine the unique priorities of individual U.N. programs. The entire U.N. team, including a CEDAW Committee member, falsely represented Nicaragua's international obligations to justify intervening. They even argued that Nicaragua's support for the Cairo Program of Action, Beijing Platform for Action, and other nonbinding documents required them to permit abortions. This deliberately ignores Nicaragua's reservation to Cairo:

79. Ostreich, *Power and Principle*, 26–58.

80. The One UN program is designed to place overall responsibility for coordinating U.N. activities in a country under one U.N. authority, the scandal-ridden UNDP. Although reconciling often-contradictory U.N. activities may be necessary in some cases, the proposal could backfire and undercut U.N. reform by making assets fungible within a country. This would further remove national oversight and jeopardize other initiatives.

81. Nils Kasberg, UNICEF Latin American regional coordinator, interview with the author, February 2008.

The Government of Nicaragua, pursuant to its Constitution and its laws, and as a signatory of the American Convention on Human Rights, confirms that every person has a right to life, this being a fundamental and inalienable right, and that this right begins from the very moment of conception.⁸²

UNICEF's annual report, *State of the World's Children 2007*, raises another red flag. Instead of focusing on children, it focuses almost exclusively on women's rights. It makes little mention of the top six killers of 10.6 million children each year: pneumonia, diarrhea, malaria, neonatal sepsis, preterm delivery, and asphyxia at birth. However, it did recommend imposing gender quotas on political office, funneling more money to gender equality issues, and increasing the number and activity of women's groups.⁸³ UNICEF's adoption of a rights-based approach has demonstrably undercut its credibility.

WHO

The World Health Organization works with UNICEF on some core initiatives, such as recently vaccinating over one million children in southern Afghanistan. WHO also aggressively promotes abortion in its fieldwork, even in countries where it is illegal. In 2008 WHO promoted abortion using plastic suction devices called "menstrual regulation kits," or manual vacuum aspirators (MVAs), in Bangladesh.

A 2006 report titled *Sexual and Reproductive Health: Forming the Foundation of a More Just World* details WHO's rights-based approach to health and documents its experimentation with new abortion techniques on women in traditional societies and training of scarce medical professionals to perform risky techniques in the developed world. WHO says it has trained one-third of Mongolia's gynecologists, some 100 physicians, in the use of MVAs for second-trimester abortions and has aggressively experimented with chemical abortions throughout the developing world.⁸⁴

82. Quoted in Samantha Singson, "UNICEF Attempts to Intervene in Nicaraguan Abortion Debate," Catholic Family and Human Rights Institute *Friday Fax*, October 31, 2006, at www.c-fam.org/publications/id.485/pub_detail.asp (accessed January 7, 2009).

83. U.N. Children's Fund, *State of the World's Children 2007*. Early in her tenure, the current executive director expressed a desire to return UNICEF to its core mission of child survival, but whether UNICEF will be able to recover from the rights-based policies set in motion by her predecessor remains to be seen.

84. World Health Organization, *Sexual and Reproductive Health: Laying the Foundation for a More Just World through Research and Action* (2006), 22–24.

UNFPA

The United Nations Population Fund was founded in 1969 to “sanitize” Western funding for aggressive population control in the developing world.⁸⁵ Today, with developed countries struggling to cope with the social and economic fallout of their fertility declines, aging populations, and dwindling labor bases to sustain economic growth and entitlements, many argue that UNFPA has outlived its mandate.⁸⁶ Yet like many resilient bureaucracies, it has rebranded itself and assumed roles already in the purview of other U.N. agencies. For instance, it now claims its mission is to promote “the right of every woman, man and child to enjoy a life of health and equal opportunity” and “to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV/AIDS, and every girl and woman is treated with dignity and respect.”⁸⁷ These missions are already covered by WHO, UNICEF, UNAIDS, and a host of development organizations.

UNFPA couches these objectives as realizing international human rights. As a chief promoter of the Maputo Plan of Action, UNFPA worked against some African heads of state in 2006 to ensure that the document promoted abortion and other special interests. The Maputo Plan of Action asserts that it is a framework that operationalizes reproductive health and rights on the continent by setting specific benchmarks that countries must reach in order to meet international obligations such as the Millennium Development Goals.⁸⁸ UNFPA has announced it will use this controversial plan of action as part of its rights-based approach with the tacit understanding that achieving the targets would help to determine which countries receive development funds. This would occur even though the Maputo Plan of Action is nonbinding, many African countries have not ratified the Maputo Protocol, and it promotes abortion as a means of family planning against the consensus reached at the U.N. population conference in Cairo.

Moreover, despite U.S. objections, UNFPA executive director Thoraya

85. Matthew Connelly, *Fatal Misconception: The Struggle to Control World Population* (Cambridge, MA: Harvard Belknap Press, 2008), 286.

86. Matthew Connelly argues that fertility rates declined independent of population programs. His exhaustive history of the population control movement concludes that fertility rates plummeted similarly in states with and states without population control programs. Connelly, *Fatal Misconception*, 374.

87. U.N. Population Fund, “Our Mission,” at www.unfpa.org/about/mission.htm (accessed December 21, 2008).

88. See African Union Commission, *Plan of Action on Sexual and Reproductive Health and Rights (Maputo Plan of Action)* (September 2006), at www.unfpa.org/africa/newdocs/maputo_eng.pdf (accessed December 21, 2008).

Obaid continues to claim a new MDG target under goal 5 that includes achieving “universal access to reproductive health by 2015.”⁸⁹ The member states have rejected this target twice in open debate, but UNFPA claims that the General Assembly approved the new target in a routine document adopted in December 2007.⁹⁰ However, inclusion of that particular wording was never mentioned or debated, undercutting any claim that member states endorsed a new target.

World Food Program

The World Food Program (WFP) has similarly let a rights-based approach impede its operational focus. The world faces a global food crisis that is expected to last for years. Yet when food riots broke out in 2007 and 2008 in Burkina Faso, Cameroon, Egypt, Haiti, Somalia, and other countries, the WFP admitted that it had failed to keep its granaries full and would not be able to meet the need.

This admission followed nearly twenty-five years of efforts to advance the right to food. World leaders had signed the Universal Declaration on the Eradication of Hunger and Malnutrition in 1974, pledging to end hunger within the decade. Ten years later, the pledge remained unfulfilled, and Philip Alston and other human rights experts published their strategy to reframe the issue of hunger as an international human right. In 2004, the U.N. Food and Agriculture Organization’s Committee on World Food Security adopted voluntary guidelines on the right to food, which they hailed as a major breakthrough and a “human rights-based tool” for inducing states to fulfill their obligations to provide a right to adequate food. The normative effort distracted the WFP and other humanitarian agencies from their primary missions.

The case of Kosovo illustrates how much the rights-based approach has affected U.N. efforts on the ground. At least fourteen U.N. agencies, programs, and funds and some four thousand NGOs flooded into Kosovo after the 1999 NATO bombing campaign expelled the Serbian army and ended the ethnic cleansing of Kosovar Albanians. When the Serbian province declared independence on February 17, 2008, it issued a draft constitution that is striking in its social and cultural progressiveness, including broad

89. Thoraya Ahmed Obaid, statement to UNDP/UNFPA Executive Board, June 16, 2008, at www.unfpa.org/news/news.cfm?ID=1147 (accessed December 21, 2008).

90. U.N. General Assembly, “Report of the Secretary-General on the Work of the Organization,” A/62/1, 2007, p. 67, at www.un.org/millenniumgoals/sgreport2007.pdf (accessed December 21, 2008).

homosexual and reproductive rights. The people of Kosovo were never allowed to see the draft during the year that they were to publicly debate it. The draft was authored by the U.S.-based and George Soros-backed Public International Law and Policy Group, and it was rushed through parliament without debate.⁹¹

Thus, after a decade of U.N. management, the mainly Muslim people of Kosovo have only three hours of electricity per day, a 60 percent unemployment rate, and a sudden rise in problems such as prostitution and human trafficking. However, their constitution does guarantee expansive sexual freedoms. In Kosovo, the effort to promote economic, cultural, and social rights has clearly undermined the U.N.'s more fundamental and traditional objectives.

IMPLICATIONS

The drive for “global governance” lies somewhere between the extremes of conspiracy and chaos. At the U.N., it has been a deliberate and coordinated effort to transform the economic, social, and cultural order, too often in defiance of the will and interests of member states. Advocates from all sides agree that solving problems such as world hunger and maternal mortality simply requires the political will, and this may be true. However, the claim that the international political will must be expressed as the acceptance of the U.N.'s positions and its rights-based solutions to economic, social, and cultural problems is disingenuous.

Many people believe that everyone should have access to adequate food, water, and health care. Such moral imperatives not only underpin humanitarian relief and development programs, but informed the decisions of the founders of the U.N.

By contrast, the movement to solve global humanitarian crises through litigation and international norms is founded on an erroneous belief that world politics are essentially normative and that elites need to compel states to act by finding moral imperatives in previously negotiated legal agreements.⁹² From this elitist perspective, genuine political will—the will of the people—is not enough because “the people” do not understand the issues. Elites must therefore do what they can to force states to enact their policies. While this movement's initial aims, such as relieving hunger and poverty, may have been just, the trend is toward injustice: destroying the

91. Author interviews with the president of Kosovo, parliamentarians, and civil society during the adoption of Kosovo's constitution, Pristina, April 2007.

92. Phillip Alston announced in 1984 that a rights-based approach to humanitarianism was needed to compel states to act morally. See Alston and Tomasevski, *Right to Food*.

cultural and social fabric of society. This approach is shortsighted and could undermine the very nature of international agreements and commitments to human development and human rights.

The way in which nations have allowed expansive definitions of rights to proliferate is a real cause for concern. Most of the nations have no intention of enforcing these rights. This calls into question whether they could reverse the trend even if they decided to do so. The fallout from giving so much authority and credence to NGOs and unaccountable "expert" committees is a profound lack of consensus and ownership among U.N. member states on all kinds of matters.

In this fractured environment, determined American leadership is essential. It can strengthen the resolve of other nations that also want to push back at activist U.N. committees and bureaucracies to protect their own societies. To that end, the United States should:

Seek to focus the Human Rights Council on its core purpose

The Commission on Human Rights was instituted sixty years ago to be the guardian and champion of the UDHR. Instead, it became, to paraphrase Charles Malik, "a sham and a mockery." Regrettably, the Human Rights Council, which replaced the commission in 2006, has suffered a similar fate. Some argue that the United States would lend legitimacy to the body by joining, enabling it to reform from the inside. This is the view of the Obama administration which successfully ran for a seat on the Council in 2009. An effective Council requires more than U.S. participation, however. The U.N. could begin to reform the council during its mandatory review, which must occur before 2011, by restricting participation by states that are known violators of human rights. The United States could also use the degree of reform to guide its funding decisions for the council. If substantive reforms are not made, the United States should distance itself from the Human Rights Council and tightly restrict U.S. funding.

Reclaim the language of human rights and restore a proper understanding of treaty documents

Activists seeking controversial new rights have been defeated in the democratic process in the United States and in other countries. To overcome this resistance, they turn to activist judges and the U.N.'s expert committees and agencies for top-down enforcement of their agenda from international bodies. Lacking transparency and accountability, this process has resulted in outrageous interpretations of the most basic principles of human rights, such as the right to life, in the pursuit of narrow special interests. The

United States should affirm and insist on adhering to the original understanding of the language of the treaties through clear and consistent statements during its treaty reviews and in the General Assembly and other U.N. bodies.

Continue to reject the proliferation of new rights

The recent “no” vote from Ireland on the Lisbon Treaty shows that some other nations still want to protect their sovereignty due to social concerns. The United States needs to bring together that group to push back the move toward global governance that poisons international relations. Too often, NGOs and U.N. activists have assumed that they know best. For example, a U.N. University study in 2007 called for reopening the contentious cloning debates even though member states carefully negotiated a declaration on the matter. In 2008, UNESCO followed this by convening the International Bioethics Committee to provide more evidence that the consensus of sovereign states reached in 2005 was flawed.

At a time when the Security Council is seeking to hold egregious human rights violators such as the Burmese junta accountable, the U.N. needs to bolster states’ commitment to human rights, not undermine it. One reason that so many states resist the new concept of “responsibility to protect” is that once it is codified in international agreements, it will need to be enforced by U.N. elites demanding other countries to intervene where they have no overriding security interest.⁹³

Ensure that treaty monitoring bodies stay within their mandates

Treaty bodies increasingly overstep their mandates and misinterpret the documents that they are entrusted with monitoring. To counter this trend, the United States and like-minded countries should demand that the human rights monitoring bodies no longer issue general recommendations or general comments that are out of step with the treaties. Instead, the treaty bodies should issue revised recommendations and comments to overturn inappropriate earlier positions. As a party to the ICCPR, the United States could call for a conference of state parties to review committee interpretations. Mechanisms should be put in place to ensure that committee member comments and positions are recorded for more transparency. The United States and allies should insist that only representatives who display

93. Susan Yoshihara, “How to Think about the Responsibility to Protect,” *First Things*, June 2008, at www.firstthings.com/onthesquare/?p=1093 (accessed January 12, 2009).

a proper understanding of international law be appointed to the committees to avoid situations such as the CEDAW Committee, which is composed largely of representatives from activist NGOs. Finally, states should continue to push back at committees during reviews and in written reports when the experts misinterpret the documents.⁹⁴

Insist that expert committees not depend unduly on the interpretations put forth by narrow special interests

Nongovernmental organizations have a long and distinguished history of good humanitarian and human rights work dating back to the founding of the Red Cross and numerous philanthropic foundations in the early twentieth century. Yet by 1990, renowned international political theorist James N. Rosenau identified a trend toward “post-internationalism” in which nations are becoming less influential in world decisions.⁹⁵

This is troublesome for a number of reasons. Human rights activists who seek a world in which governments are more accountable to “civil society” may seem to have much in common with the American democratic ideal, but these networks do not legitimately represent all of civil society. Most NGOs lack even minimal standards of transparency and accountability that are applied to public institutions.

The growing role and influence of leftist NGOs at the U.N. is promulgated by U.N. bureaucrats who want to control what states do. The secretary-general’s 2004 Panel of Eminent Persons on United Nations–Civil Society Relations issued the Cardoso Report, which exemplifies this strategy.⁹⁶ However, this reform effort failed when member states disagreed with its recommendation to eliminate the NGO Committee, the consultative body of member states that decides which NGOs are accredited to the Economic and Social Council.⁹⁷ While NGO participation has been a part of the process since the U.N.’s founding, the current situation is out of step with the founders’ intentions. The work of powerful NGOs, backed by a handful of wealthy foundations and member states—sometimes called GONGOs (government-operated NGOs) for their level of government

94. Douglas Sylva and Susan Yoshihara, “Rights by Stealth: The Role of U.N. Human Rights Treaty Bodies in the Campaign for an International Right to Abortion,” *National Catholic Bioethics Quarterly* 7, no. 1 (Spring 2007): 128.

95. James N. Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton, NJ: Princeton University Press, 1990), 6.

96. U.N. General Assembly, “Strengthening of the United Nations System,” A/58/817, June 11, 2004, at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/376/41/PDF/N0437641.pdf> (accessed December 21, 2008).

97. Peggy Kerry, U.S. Mission to the United Nations, interview with the author, May 30, 2008.

involvement—should be made more transparent. At the same time the playing field should be leveled to allow the voices of smaller civil society groups to be heard. Expert committees have become unduly dependent on the research work of special interest NGOs and need to be held accountable for seeking a balance of sources from states and the full range of civil society organizations.

Consider voluntary funding of the U.N. instead of just giving the U.N. a blank check

According to the secretary-general's High-Level Panel on UN System-Wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, voluntary funding is to be used for development expenditure, while assessed funding is intended to support activities "in which all Member States have an interest, principally the setting of global norms and standards and ensuring the provision of global public goods."⁹⁸ The assumption that all member states want the U.N. to set global norms and standards should be questioned. The United States helped to create the U.N. to restore and preserve international peace and security, not to set sweeping normative agendas.

Shifting more budgets from assessed dues to voluntary funding would help to build accountability and results into the U.N.'s work. The U.N. regular budget is financed through assessed contributions, of which the United States pays 22 percent. This funds the general operations of the U.N. Secretariat and supports the Office of the High Commissioner for Human Rights, the Human Rights Council, the special rapporteurs, and activities in the Third Committee. Some of these offices and activities have merit; others do not. Nations should be able to choose which activities to fund. Yet under the current funding structure, countries that object to specific U.N. activities funded through assessed budgets have little ability to express their discontent. They can only choose to withhold voluntary funding or a symbolic amount of assessed dues proportional to their percentage of a committee's budget. For example, the United States has done this with the U.N. Human Rights Council.

Minimize the damage done by activist U.N. officials and experts

The United States should work with allies to revise the mandates of special rapporteurs who inappropriately use their autonomy to expand their

98. Secretary-General's High-Level Panel on UN System-Wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, "Funding

work to include economic, social, and cultural rights not expressly included in their mandates. Rapporteurs who continue to abuse their mandates should be replaced.

The Bush administration took a principled stand by not joining the Human Rights Council, and the U.S. has not ratified certain treaties that violate American constitutional principles. But the U.S. can and should do more to remedy the lack of credibility in the U.N. human rights system. Because funding for the treaty bodies is channeled through the OHCHR, the United States could tie its support for that office to specific reforms. The United States should work with the secretary-general to promulgate a regulation or a General Assembly resolution mandating that U.N. staff cannot serve on the boards of NGOs with consultative status. The secretary-general should be directed to take appropriate action to resolve any conflicts of interest. Finally, the United States should insist that NGO conferences backed by only a few member states not be promoted as U.N. events without General Assembly support. For example, the 2007 Women Deliver Conference in London was backed by only four member states.

Refuse to participate in, appear before, or fund committees for treaties that the United States has not ratified

The United States should not lend legitimacy to U.N. human rights bodies that flout the will and consensus of U.N. member states. The United States should not sign (and therefore be somewhat constrained by⁹⁹) treaties that it is unlikely to ratify. A consistent approach would lead the United States to “unsign” dead-end human rights treaties, at least those that the Senate has not ratified within ten years of the United States’ signature. Likewise, the United States should redirect its funding away from treaty bodies that it does not support and toward those to which America is party and which uphold their mandates.

Withdraw from U.N. bodies that do not support U.S. interests and prove immune to reform

Voluntary funding may not always provoke reform. UNFPA’s current functions could be carried out by other U.N. bodies, such as the U.N. Popu-

for Results: Funding the UN System on Development, Environment and Humanitarian Relief,” at www.un.org/events/panel/resources/pdfs/IN_business_prac.pdf (accessed December 21, 2008).

99. The Vienna Convention on the Law of Treaties specifies that signatories incur an obligation not to defeat the object and purpose of the treaty before it enters into

lation Division or the Commission on Population and Development,¹⁰⁰ but it has successfully resisted reform efforts by several U.S. administrations.¹⁰¹ Legislatively, Americans have thrice tried to use a withdrawal of its contribution to prevent UNFPA from supporting China's brutal one-child policy. Other big donors have rushed in to fill the void. The United States may have little choice but to withdraw from those U.N. bodies that prove immune to reform. Such was the case with UNESCO in 1984 when U.S. and U.K. withdrawal precipitated changes that eventually led the United States to rejoin in 2002.

Use targeted, bilateral approaches rather than top-down, expert-imposed dictums when they are likely to lead to better results

A growing body of work in the humanitarian and development fields criticizes the U.N.'s top-down, expert-driven system on practical grounds. Alex De Waal, a British researcher on African issues at Harvard University, criticizes the "humanitarian international" that focuses too much on courting donors and hitting benchmarks while ignoring the role of corrupt governments propped up by international aid. William Easterly, a former World Bank economist, has shown why the U.N.'s technological "utopian social engineering" approach to development championed by Jeffrey Sachs, special adviser to the secretary-general on the Millennium Development Goals, fails to work despite the \$2.3 trillion spent thus far.¹⁰²

Easterly and others call for a more humble "piecemeal democratic reform" approach, including local initiatives such as oral rehydration and

force. Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1e1969.pdf (accessed December 21, 2008).

100. ECOSOC commissions are comprised of fifty-four members, who serve three-year terms. They meet annually to address pressing development issues with the benefit of having direct oversight and involvement by member states. Likewise, the U.N. Population Division has gained a reputation as the world's most authoritative source of data on international demographic trends.

101. UNFPA was unique in that it would be held accountable only to the secretary-general and a small executive board, thus circumventing member state scrutiny. Since then, some U.S. administrations have tried to distance themselves from the abuses of this overzealous agency, such as its massive botched forced sterilization campaigns, dumping of defective IUDs, and public humiliation of families with more than two children. Connelly, *Fatal Misconception*, 278.

102. William Easterly, "A Modest Proposal," *Washington Post*, March 13, 2005, BW03, at www.washingtonpost.com/wp-dyn/articles/A25562-2005Mar10.html (accessed December 21, 2008).

vaccinations. Edward Green, who works on HIV/AIDS issues in Africa at Harvard's Center for Population and Development Studies, concludes that faith-based organizations work far better than the "commodities" approach promoted by UNFPA.¹⁰³ Targeted efforts such as the President's Emergency Plan for AIDS Relief (PEPFAR) take advantage of local social and cultural circumstances in recipient nations and have far greater and measurable outcomes. American ingenuity should be brought to bear on issues for which the U.N. has become too large, too bureaucratic, and too politicized to address.

CONCLUSION

"Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed."¹⁰⁴ Thus begins the constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO). After the great wars, idealism about what man can accomplish was understandable. Hopes were raised high that by changing minds, men could transform the world. The problem is that totalitarians believe the same thing. Today, the United Nations, which was created to protect human rights and fundamental freedoms, often serves to undermine those very goals. Even if one has a more sanguine view of things, the tension at the U.N. between doing good and changing minds has clearly shifted toward the latter and morphed into changing cultures rather than celebrating them.

Aided and abetted by activist NGOs, the U.N. retains sweeping plans to remake the world, but at steep cost to its traditional role of providing vaccinations, medicine, clean water, and a helping hand. Without strong American leadership, the U.N. will continue to excel in promoting new norms at the expense of aiding those most in need. Far better than transforming the world into a single culture is a strategy that promotes development without undermining the ability of sovereign states to protect and promote the best of every culture to meet the needs of humanity. It is time for courageous leadership to restore respect for genuine human rights, those that unshackle human life, mind, and spirit.

103. Edward Green, *Rethinking AIDS Prevention: Learning from Successes in Developing Countries* (New York: Praeger, 2004), 14-15.

104. Constitution of the United Nations Educational, Scientific and Cultural Organization, at http://portal.unesco.org/en/ev.php-URL_ID=15244 (accessed December 21, 2008).