

Progress and Retrogression in Human Rights

by Alfred de Zayas,* Geneva



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(Photo ma)

Progress and retrogression characterize the reality of international law, international relations, and the concrete enjoyment of human rights by women and men throughout the planet. We hail the tides of opportunity, the times of liberation and expansion, but we should not

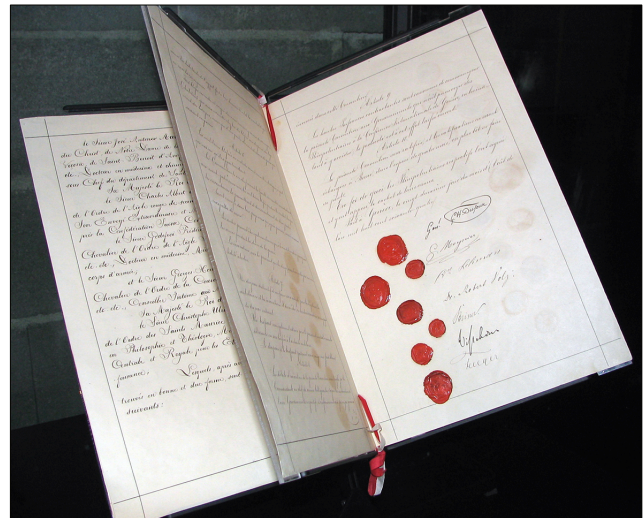
be blind to recurrent abuses, crimes, and moments of disgrace.

Today our world is experiencing chaos, but not more so than in the 18th, 19th and 20th centuries. At least we are not burning witches or massacring indigenous Hopi, Pequots, Sioux, Quechua and Taínos, the slave trade is abolished, colonialism is drastically reduced.

We welcome the landmark resolution 48/7 adopted by the *UN Human Rights Council* on 8 October 2021 concerning the legacies of colonialism in Africa, Asia and Latin America, particularly concerning indigenous peoples whose suffering over the centuries has not been assuaged and who continue to suffer from the sequels of structural violence.¹

On the positive side, we have witnessed a phenomenal codification of legal norms, the UN Charter, the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), the *Vienna Convention on the Law of Treaties*, the *Vienna Convention on Diplomatic Relations*, the *Geneva Red Cross Conventions*, the establishment of national human rights institutions and regional human rights courts. Proposals for the creation of an International Court of Human Rights whose judgments would be enforceable² are under discussion.

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A facsimile of the signature-and-seals page of the 1864 Geneva Convention.
(Photograph Source Kevin Quinn, Ohio, US – CC BY 2.0)

We are justified in applauding the growing recognition of the rights of half the population of the planet – women – we hail concrete measures being taken on behalf of persons with disabilities. We welcome the entry into force in January 2021 of the Treaty on the *Prohibition of Nuclear Weapons*,³ the Declaration of October 2021 by the Human Rights Council recognizing a "clean, healthy and sustainable environment" as a Human Right.⁴ We express relief over the gradual abolition of the aberration of "capital punishment".⁵

On the negative side

Notwithstanding the self-congratulatory celebrations around the 75th anniversary of the adoption of the UDHR, we must admit that there is significant retrogression in many fields, including the erosion of the concept of Peace as a Human Right, the backsliding from General Assembly Resolution 39/11 of 12 November 1984,⁶ the belligerent intransigence of many countries and their unwillingness to talk with each other, in spite of their hard law obligation to do so pursuant to article 2(3) UN Charter.

We denounce the continued practice of torture in many countries, the disgrace of Abu Ghraib, Guantanamo,⁷ "extraordinary renditions", secret CIA prisons, indefinite detention,⁸ the glorifica-

tion of war, the social acceptance of war propaganda, notwithstanding the fact that it is specifically prohibited in article 20 of the ICCPR, the weaponization of the administration of justice in many countries and the breakdown of the rule of law in some countries ostensibly committed to human rights, e.g. in the US, UK, Sweden, Ecuador, as meticulously documented by UN Rapporteur on Torture, Professor *Nils Melzer*, in his well-sourced book on the persecution of whistleblower *Julian Assange*.⁹

Indeed, the scandalous treatment of Assange constitutes torture under article 7 ICCPR, a gross violation of the rights of journalists, and a violation of our right to know under article 19 IC-CPR. What Professor Melzer reveals is far worse than the Dreyfus Affair of 1898. Melzer is the *Emile Zola* of the 21st century.

We deplore the scourge of 25 million victims of human trafficking, including 3.4 million children. We denounce the escalation of urban violence and mass-killings, the rise of international terrorism. Notwithstanding the many institutions established to monitor adherence to human rights treaties, notwithstanding the regular meetings of the Human Rights Council, Human Rights Committee, Committee Against Torture, national human rights institutions, civil society organizations, outrageous violations of human dignity continue to occur. Is this perhaps partly attributable to the fact that some of these institutions have been hijacked by geopolitical players, display selective indignation and practice double-standards?

Today there is scarce protection of the democratic right to know, the right to access information, the right to freedom of opinion and expression.¹⁰ We see censorship by governments and the private sector, arbitrariness in *Facebook* and *YouTube*, the blocking of news services including RT, Sputnik and Tass in EU countries, the Orwellian new Digital Services Act, the brazen brainwashing practiced by the media, the excesses of “cancel culture”, the epidemic of self-censorship, the social acceptance of Russophobia and Sinophobia, the weaponization of sports so that sportswomen and men can be banned from competition merely on account of their nationalities.

Serious retrogression becomes evident in the weakened protection of privacy, the Orwellian surveillance of NSA and other government institutions as revealed by *Edward Snowden* in his

watershed book “Permanent Record”.¹¹ We deplore the failure of governments to protect family life and family values, the concerted attacks on the concept of the family and parental authority, the denigration and ridicule of religious beliefs.

Retrogression is also apparent in the actions and omissions of institutions established to protect our rights. Many institutions, rapporteurs, “independent commissions” are demonstrably in the service of certain powerful countries and lobbies, have become hostage to donors who pretend to set the agendas of monitoring bodies and mechanisms that should be rigorously neutral and professional.¹²

*Quis custodiet ipsos custodes?*¹³ Who guards over the guardians? Crucial institutions such as the UN Human Rights Council, *European Court of Human Rights* (ECHR), *Inter-American Commission on Human Rights* (IACHR), *Organisation for the Prohibition of Chemical Weapons* (OPCW), ICC are betraying their mandates, instrumentalizing human rights for purposes of geopolitical confrontation, instead of devising preventive strategies and mechanisms to secure human dignity for all women and men on the planet.

Only we can be the guardians! While we realize that governments lie to us on a daily basis, we must push back and reclaim democracy. We do not need any Ministry of Truth as in “1984”. Alas, it appears that we have gradually entered the dystopia of *Aldous Huxley’s* “Brave New World”.

Amnesty, Impunity, Reconciliation

Among the gravest instances of retrogression is the degradation of international criminal law into a political tool of “lawfare”. One observes an unhealthy obsession with punishment, an aggressive self-righteousness that invites us to lapidate the adulteress (*John VIII*, 1-11). If Christianity taught us anything, it is that we must forgive to be forgiven: *et dimite nobis debita nostra sicut et nos dimittimus debitoribus nostris*. The recognition that the world is not black and white is not just a religious tenet but actually belongs to civilization. It is easy to understand that sometimes there is bad in the good and even some good in the bad. Revenge is surely not conducive to reconciliation, and in order to live together in mutual respect, we must practice understanding and *caritas*.

Alas, the mainstream ngo’s – with the complicity of the media – have transformed the

concept of “amnesty” into a curse word. Yet, amnesties are not bad *per se*. Sometimes amnesties are necessary for peace. Article 6 of the Second Additional Protocol of 1977 to the Geneva Conventions stipulates “the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict”. Article 2 of the Peace of Westphalia stipulates “there shall be on the one side and the other a perpetual Oblivion, Amnesty, or Pardon of all that has been committed since the beginning of these Troubles, in what place, or what manner soever the Hostilities have been practiced, in such a manner, that nobody, under any pretext whatsoever, shall practice any Acts of Hostility, entertain any Enmity, or cause any Trouble to each other other ...”¹⁴ Similar amnesties were agreed upon in countless peace treaties e.g. the Peace of Rijkswijk of 1697, the Congress of Vienna of 1814–15, and more recently the Evian Accords of 1962.

We are told that the establishment of the International Criminal Court in 2002 represents progress. Some, however, consider it a significant step back to the primitive age of the law of revenge, *lex talionis*. Indeed, vengeance is incompatible with the *acquis* of civilization. Punishment is hardly a civilized answer to problems, *inter alia* because punishment is *ex post facto*, after the fact, and frequently does nothing at all for the victims. Moreover, there is scarce evidence that international criminal law has generated any deterrence.

What society really needs is prevention of crime, prevention of war, prevention of hatred. A *Global Pact on Education for peace and empathy* would be a way forward. The United Nations should champion such an initiative and place all UN agencies in the service of peace, notably UN-ESCO. Conflict-prevention depends on good faith, mutual respect, international solidarity – and, yes, intellectual honesty.

The *Universal Declaration of Human Rights*, adopted 75 years ago at the Palais Chaillot in

Paris, was indeed a high point in the tide of human rights. Hitherto we have failed to implement its provisions, particularly article 28: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” That remains our challenge, to rediscover the spirituality of the Universal Declaration of Human Rights and revive the legacy of *Eleanor Roosevelt*.¹⁵

Source: <https://www.counterpunch.org/2023/09/26/retrogression-in-human-rights/>, 26 September 2023

- ¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F48%2F7&Language=E&DeviceType=Desktop&LangRequested=False>
- ² <https://www.deepdyve.com/lp/brill/an-international-court-of-human-rights-N0d0HxEk8H>
<https://www.ohchr.org/en/special-procedures/ie-international-order/mr-alfred-maurice-de-zayas-former-independent-expert-2012-2018>
- ³ <https://disarmament.unoda.org/wmd/nuclear/tpnw/>
- ⁴ <https://digitallibrary.un.org/record/3945636>
- ⁵ <https://www.cambridge.org/core/books/abolition-of-the-death-penalty-in-international-law/28291346A4A68C4CA2097E813007EC3A>
- ⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-peoples-peace>
- ⁷ <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e301>
<https://searchlibrary.ohchr.org/record/6182>
<https://www.lewrockwell.com/2003/12/alfred-de-zayas/the-many-faces-of-guantanamo/>
- ⁸ https://www.icrc.org/en/doc/assets/files/other/irrc_857_zayas.pdf
- ⁹ Nils Melzer, *The Trial of Julian Assange*, Verso Books, New York 2022.
- ¹⁰ <https://www.cambridge.org/core/journals/netherlands-international-law-review/article/abs/freedom-of-opinion-and-freedom-of-expression-some-reflections-on-general-comment-no-34-of-the-un-human-rights-committee/AD-CD74F635F688851788E9079E1ABB76>
- ¹¹ Metropolitan Books, New York, 2019.
- ¹² Alfred de Zayas, *The Human Rights Industry*, Clarity Press, 2023.
- ¹³ Juvenal, 6th Satire.
- ¹⁴ <https://theranddaily.com/the-peace-of-westphalia-treaties>
- ¹⁵ www.eleanorlives.org