

The Future of Human Rights and International Law in a Divided World

by José E. Alvarez



At United Nations Headquarters in New York in early 1955, a man looks at one of the first documents published by the UN—the Universal Declaration of Human Rights, ratified in 1948. THREE LIONS/GETTY IMAGES

“**M**uch of the twentieth century . . . especially its latter half, stands justly hailed as the Age of Human Rights. No preceding century in human history witnessed such a profusion of human rights enunciations on a global scale. Never before have the languages of human rights sought to supplant all other ethical languages. No previous century has witnessed the proliferation of endless normativity of human rights standards. . . . The then Secretary-General of the United Nations was, perhaps, right to observe [in 1993] . . . that human rights constitute a ‘common language of humanity.’”

—Upendra Baxi, *The Future of Human Rights* (2006)

The Rise of the International Legal Regime Governing Human Rights

In many respects, the international regime for human rights, precipitated by the decision to invoke “human rights” in the UN Charter, has vastly exceeded the hopes of those present at

its creation. While the drafters of the Universal Declaration of Human Rights, as adopted by the UN General Assembly in 1948, only dared to proclaim a non-legally binding “common standard of achievement,” nearly all of its contents have since made their way into two binding treaties adopted

JOSÉ E. ALVAREZ is the Herbert and Rose Rubin Professor of International Law at New York University School of Law, where he teaches international law, investment, and organizations. He previously held appointments at Columbia, Michigan, George Washington, and Georgetown law schools. A former president of the American Society of International Law, Alvarez coedited the *American Journal of International Law* and has authored several influential books, including *International Organizations as Law-Makers* and *The Evolving International Investment Regime*. He has published more than 150 scholarly works on international legal issues.



The International Criminal Court building in The Hague, Netherlands, on April 30, 2024.
ANADOLU/GETTY IMAGES

under UN auspices in 1966. Those treaties, the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), along with the declaration itself, have come to be seen as the capstone “international bill of rights” for the “Age of Rights.” By the end of decolonization and with the support of nearly all of the newly independent members of the UN, the two covenants had been ratified by most members of the UN.

Those who established the international human rights regime were clearly not content with universalizing the principle that all persons have “inalienable rights” under only national laws. The UN, along with regional organizations in the Americas, in Europe, and in Africa, embraced the historically radical idea that sovereign states could not be trusted to protect the rights of their own peoples but needed the help—and the scrutiny—of international law. To this end, the world’s governments turned to “treatification” and not just

“universalization” to give effect to human rights, churning out an impressive number of global and regional treaties in addition to the ICCPR and the ICESCR over the second half of the 20th century.

These regional and global compacts add considerable depth to what governments must do, for example, to bar or respond to torture and cruel, inhuman, and degrading treatment or to ban various forms of de facto and de jure discrimination. Through the 1970s and much of the 1990s—in the wake of decolonization, the Cold War, and in its immediate aftermath after the collapse of the Soviet Union—ever greater numbers of states acceded to additional instruments extending rights protections to groups (from women to refugees to stateless persons) that have been historically vulnerable to the abuse of government power.

In the immediate wake of the Cold War, the UN was also instrumental in advancing the long-postponed agenda set at the Nuremberg and Tokyo trials against World War II’s aggressors: imposing international criminal accountability for those alleged to violate human rights in the course of conflict. When the Soviet Union collapsed, the prospects for predictable Soviet

veto to prevent the UN Security Council from taking action in support of human rights diminished at a time when China, another member of the veto-wielding five permanent Security Council members, was not yet comfortable blocking council actions on its own. This led to a remarkable period in the 1990s when the UN authorized ad hoc international tribunals to criminally prosecute individuals for violations of international law in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and Lebanon. The establishment of these tribunals advanced the prospects for creating a permanent global tribunal, the International Criminal Court (ICC). The ICC, headquartered in The Hague, was established in 2002 with jurisdiction to prosecute individuals of any nationality charged with genocide, crimes against humanity, and war crimes (and later, to a more limited extent, aggression) committed in the territories of states that accede to the Rome Statute that established the court.

Other parts of the UN system, particularly the International Labor Organization (ILO), have also contributed to the international legalization of human rights. The ILO, a veritable treaty machine, has elaborated on states’ duties to provide “equal remuneration” for equal forms of work irrespective of sex and their obligations to bar all forms of direct and indirect employment “discrimination,” for example. It also broadened the categories of persons entitled to international rights protection. Over time, many other sub-regimes of international law—dealing with everything from trade and investment to more “technical” topics like global health law—and their underlying institutions have been impacted by the 20th century “human rights revolution.”

UN human rights treaties include mechanisms for their continuing interpretation by “independent” experts. At the global level, faced with resistance by states to establishing judicial bodies capable of issuing binding findings of rights violations against governments, treaty drafters turned instead to committees of experts within each

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treaty—such as the Human Rights Committee under the ICCPR. These committees are charged with responding to the periodic reports required of state treaty parties and have assumed the power to issue general “comments” or “recommendations” to further clarify states’ obligations. States that became parties to the treaties are also given options, as through subsequent protocols, to authorize the same committees to receive “communications” from individuals or groups complaining of treaty violations and enabling the committees to respond with quasi-adjudicative “views” drawing non-binding conclusions on whether rights violations have occurred and, if so, desirable remedies. All these committee outputs, while not legally binding under international law, have come to be cited by advocates (and sometimes by international and national courts) as “human rights jurisprudence.” The opinions of these expert bodies, the only authorized forums for treaty interpretation

contained in the treaties, have helped transform UN human rights agreements into more dynamic “proto-constitutions” capable of responding to emerging new threats to the treaties’ enumerated rights.

Over time, the outputs of UN human rights treaty bodies have been relied on—including by the UN General Assembly and other UN experts—as “authentic” treaty interpretations and, with respect to some issues, as interpretations of “customary” rights that bind every state irrespective of whether they have ratified particular human rights conventions. All of this, including the formal “case law” generated by regional human rights courts established under regional human rights treaties and a welter of other outputs issued under the authority of the UN Human Rights Commission (now Council), is what most human rights practitioners call “international human rights law.”

As the quotation from Baxi at the outset of this essay indicates, today,

virtually all UN members affirm the legitimacy of international human rights as both political principle and legal fact. This is not surprising since every state in the world, including North Korea, is a party to at least one core UN human rights treaty. The Universal Declaration of Human Rights, the most translated document in the world, is widely considered the yardstick by which the world judges “right from wrong.” Appeal to what some call “humanity’s law” is such an important marker of international personhood that entities anxious to fully achieve sovereign status as distinct as Palestine, Taiwan, and Kosovo have sought over recent years to align themselves with international human rights standards. The U.S., authoritarian regimes like those in Russia and China, as well as many governments in-between, have used international human rights to criticize the record of other states—while often ignoring or attempting to distinguish their own.

Current Challenges to the International Human Rights Regime

The global human rights regime is now experiencing what many see as its greatest set of challenges since the UN’s establishment. These have come in the form of sovereign backlash as well as scholarly criticisms.

Sovereign Backlash in the U.S. and Beyond

For most U.S. observers, the “populist” backlash against human rights associated with, for example, Viktor Orbán’s Hungary and far-right political parties in Italy and France, arrived in the U.S. with Donald Trump’s first election. At that time, human rights leaders like Philip Alston declared that the human rights movement was “under siege” amid a “populist threat to democracy” by that administration and other governments around the world that encouraged inequality and exclusion and undermined the struts of international human rights, namely international law, international institutions, and

civil society. Emboldened by securing the majority of the popular vote in 2024, along with his party’s control of both houses of Congress and a

seeming hold on the majority of judges on the U.S. Supreme Court, President Trump in his second term has generated to date a remarkable series of White



Migrants from Guatemala are deported aboard a U.S. military plane from the Fort Bliss facility in El Paso, Texas, on January 30, 2025. ANADOLU/GETTY IMAGES

House-directed actions that many characterize as a “revolution” directed against the liberal international order that the U.S. helped to establish.

Since the inauguration of the 47th U.S. president, the U.S. federal government, with the acquiescence of many of its state governments, has undermined the rights of women, racial and ethnic minorities, documented and undocumented aliens, asylum seekers and foreign visa-holders (including students), as well as LGBTQ+ persons through executive orders or other forms of administrative action. Amid doubts over whether many of these actions were vetted by government lawyers and an unprecedented number of judicial challenges directed at them in U.S. courts that may take years to resolve given the Trump administration’s tendency to resist compliance until the matter is settled by the U.S. Supreme Court, the president and many of his highest officials have, in addition, threatened to retaliate against national and state court judges, prosecutors, lawyers, and academics who raise questions about the legality of the administration’s actions.

Much of the criticism directed at Trump’s actions has focused on whether they violate the U.S. Constitution and its Bill of Rights, other U.S. laws,

or otherwise threaten “democratic values.” International lawyers have argued that many of the administration’s actions and threats also violate U.S. human rights obligations under international law. The administration’s attacks on vulnerable persons, the independence of the press, and judges and others involved in the judicial process, have drawn the most concern. Apart from alleging that attacks on judges and lawyers violate international human rights law in and of themselves, many fear that the administration’s attempts to sanction law firms and law schools (particularly their clinics engaged in pro bono work) will make it harder for lawyers to use the law to protect those targeted. These attacks, which appear to violate the rights of human rights defenders themselves, seem designed to strike fear among those who use international law to protect, for example, reproductive rights or immigrants’ rights in foreign and U.S. courts or international human rights venues. For many international lawyers, the administration’s apparent “war” on certain U.S. universities also constitutes an attack on international human rights since it threatens the freedom to teach, study, and practice international human rights law without coercion or apprehension.

The rights of immigrants in the U.S. or seeking to enter the U.S. have become far more fragile since Trump’s second inauguration. Those rights are particularly undermined by the administration’s sweeping claims to be able to deport anyone and to prohibit increasing numbers of those seeking to enter the U.S. It is widely accepted that deporting persons present in the U.S. to places of detention abroad either in conflict zones or to facilities known for violating the rights of those detained through torture or forms of cruel, inhuman, or degrading treatment, violates customary human rights law as well as the ICCPR and the Convention on Torture, including the prohibition on non-refoulement. Such deportations ought not, in any case, occur in the absence of due process, including to present plausible pleas of asylum. To the extent these deportations are done in secret or by unidentified individuals, they may also constitute arbitrary disappearances comparable to those that led the Mothers of the Disappeared in Argentina to urge states to adopt a convention banning such acts. To the extent deportations to places of detention abroad include individuals not convicted of any crimes, they appear to violate human rights against extrajudicial punishment. To the extent they remove those who have lived in the U.S. since they were children to places to which they have no prior connection, such deportations may in effect render persons stateless and not subject to any state’s protection. And even if the detention and subsequent unlawful treatment of those deported occurs on foreign soil, the U.S. appears culpable for “aiding and assisting” such acts. Of course, to the extent the conditions in which immigrants are confined violate human rights standards—because, for example, they provoke terror among the detained—whether confinement occurs on the U.S. base on Guantanamo or in a newly constructed “Alligator Alcatraz” migrant detention facility in the Florida Everglades is of no consequence.

Other administration actions—from directions to the U.S. attorney general to seek the death penalty for



U.S. president Donald Trump (second left), alongside Florida governor Ron DeSantis (left), tours a migrant detention center dubbed “Alligator Alcatraz” at the Dade-Collier Training and Transition Airport in Ochopee, Florida, on July 1, 2025. ANDREW CABALLERO-REYNOLDS/GETTY IMAGES

federal crimes when these are committed by undocumented persons to an announced “pause” on all civil rights enforcement actions based on proof of “disparate impact”—are widely seen as violating a number of the U.S.’s international human rights obligations. That the U.S. can now be plausibly accused of violating the fundamental premise that all persons have equal dignity and are owed the same core rights to liberty and security seems deeply corrosive of the national and international rule of law. The disdain expressed by Defense Secretary Pete Hegseth at the prospect that U.S. soldiers might be limited by international humanitarian law also suggests that the U.S. is no longer interested in protecting victims of war crimes, particularly in Gaza and perhaps also in Ukraine. For some, these actions threaten not only the international legal regime governing human rights but, according to U.S. diplomat Daniel Fried, the “solidarity of the free world, the core set of U.S. allies with which it shares fundamental values,” and “shared strategic interests.”

Human rights advocates are equally disturbed by the extent and speed with which President Trump appears to be dismantling or incapacitating both domestic and other institutions that would otherwise resist or ameliorate their concerns. The elimination of the U.S. Agency for International Development (USAID) as an institution and, in any case, the abrupt end to much of its funding has radically reduced U.S. human rights assistance around the world, thereby triggering, among other things, a health funding crisis that is also a human rights crisis. The extensive reorganization of the U.S. State Department and dramatic cuts in its funding and human rights reports have been criticized as less motivated by a desire for cost savings and more by ideology: namely, the view that prior administrations’ human rights programs had been captured by a left-wing “woke agenda.” The cumulative impact of budget cuts, new directives, and the reorganization of agencies appears designed to radically narrow the scope for human rights-consistent U.S. foreign policy.



A billboard in downtown Tehran features portraits of Israeli prime minister Benjamin Netanyahu with Persian text announcing that the International Criminal Court has issued an arrest warrant for Netanyahu on charges of war crimes and crimes against humanity, in November 2024. NURPHOTO/GETTY IMAGES

At the same time, the administration is also undermining the UN human rights system. The administration has signaled that it will withdraw from UNESCO, not participate in the work of the UN Human Rights Council, and intends to leave the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). It has also announced an immediate withdrawal from the World Health Organization (WHO) and an intention not to pay monies owed to that organization. The administration has, more ominously, announced a review of U.S. participation in all other international organizations, threatened to deny funding to the UN even pending that review, and imposed sanctions on personnel of the ICC (in retaliation of its issuance of an arrest warrant for Benjamin Netanyahu and his former defense minister) and on a UN special rapporteur critical of Israeli actions in Gaza. These actions and threats—by the UN’s greatest financier—are now rippling through the UN, and, as with respect to USAID, disrupting long-planned human rights projects. Whether or not as a result of these actions, there is also increasing evidence of resistance within the UN itself to holding states accountable even if only by verbal condemnation for human rights violations.

As is made clear by the annual reports for 2024 released by major human rights organizations, the backlash against international human rights now extends beyond the U.S. After surveying developments in every state on the globe, Human Rights Watch describes 2024 as a “year of reckoning” that is testing “the integrity of democratic institutions as and the principles of international human rights and humanitarian law.” Amnesty International’s survey of the world’s regions shows a rise in unlawful attacks (including against civilians) during conflict and increasing disrespect for the ICC’s limited actions in response; acts of domestic repression targeting the freedom of assembly, expression, and association; blatant discrimination directed at refugees, migrants, racial and other marginalized groups, including women and LGBTQ+ persons; forms of economic and climate injustice that violate rights to a healthy environment and other economic and social rights; and failures to respond by both governments and private companies to emerging human rights threats posed by the abuse of technology. That report agrees that the world is at a “historic juncture” in which the “age of rights” could well mutate into something vastly different.

Critiques of the International Human Rights Regime

Ineffectiveness

Current human rights violations around the world underpin a leading complaint: no one takes the regime seriously. Proliferating “rights talk”—whether in the form of binding regional court rulings, “soft law” views issued by UN human rights committees, or critical reports by a welter of other UN experts—have “failed to accomplish [their] objectives;” there is “little evidence that human rights treaties, on the whole, have improved the well-being of people, or even resulted in respect for the rights in those treaties,” according to American lawyer Eric Posner.

Self-described “realists” point to data that, for example, shows an uptick in reported acts of torture in many states *after* they join the Convention Against Torture. This is considered proof that agreeing to such treaties are, particularly for authoritarian states, acts of hypocrisy intended only to placate human rights critics at home or abroad. For political scientist Stephen Hopgood, who describes actions like the establishment of the ICC as an act of “organized hypocrisy” and a “European vanity project,” we are seeing the “Endtimes for Human Rights.” He contends that continuing faith in the regime is based on a kind of (presumably irrational) “secular monotheism” doomed to evaporate as the

American power that once sustained it declines.

To skeptics, the lack of impact of international human rights is, if anything, overdetermined. They note that the only global venue capable of authorizing real enforcement action to protect human rights—the UN Security Council—was handicapped from the outset by the need to secure approval from 9 of its 15 members, including all five of its permanent members. But the absence of mechanisms at the international level capable of enforcing compliance is only one of many reasons for the regime’s ineffectiveness. For critics of the regime, its reliance on voluntary state compliance demonstrates that it was *intended to fail*. States turned to international law as the basis of the regime in full knowledge that it was a fool’s errand to expect that states—most often the violators of human rights—would only abide by rules targeting their own behavior when this was already in their own interests. They knew that it was utopian to resort to a tool used to conclude deals between states to regulate the conduct *inside* states. Human rights advocates should never have given credence to the prospect that states would “turn themselves inside-out” and genuinely commit to limits on how they should treat their own

people. They should have anticipated that such an enterprise, shaky to begin with, would collapse as more political leaders, even in democracies, won elections based on violating rights in order to “defend the family” or oust immigrants.

Others suggest that the mistake was to rely on law instead of other tools and theories of change. The reliance on “legalism” that once drew praise now elicits concerns that lawyers’ arguments are meager tools with which to combat the massive structural inequalities that subject groups of people—from indigenous people to members of racial, ethnic, or religious minorities—to lifelong subordination. The inordinately legalistic regime, it is said, keeps lawyers and legal scholars busy parsing ever more detailed texts at the expense of the political mobilization actually needed to make the International Bill of Rights real. Addressing the deep economic, political, and other substructures that would be needed to prevent the discrimination barred by treaties like the ICCPR, the ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires, in this view, transformative political action, preferably at the local level: marches in the streets, not polite diplomatic rebukes by experts “from nowhere” in distant Geneva.

Some human rights skeptics contend that the problem is not only what the regime’s legal instruments ignore (such as harms inflicted in the name of global capitalism), but also what they license. Because the sources of international human rights were left to states to define and negotiate, they authorize what Baxi calls “distinctive hierarchies of legitimated pain and suffering.” They enable, for example, states to suspend many rights in situations of “emergency,” accord them considerable discretion in how rights are interpreted and by whom, and license harm



A woman pleads with Immigration and Customs Enforcement (ICE) officers not to detain her, saying she has a 15-year-old son at home, after leaving her scheduled court appearance at Federal Immigration Court at 26 Federal Plaza in New York City on June 4, 2025. ANDREW LICHTENSTEIN/GETTY IMAGES

(as by way of unilateral or collective economic sanctions) in the name of protecting human rights.

Lack of Universality

A second leading category of criticism contends that international human rights are not as “international” as advertised. This challenge, which first arose when the Universal Declaration of Human Rights was in draft, continues to be popular among rival “cultural relativists” touting the regime’s alleged insensitivity to “Asian,” “African,” or “traditional” values.

This criticism is now most frequently made by self-identified “post-colonial” scholars. Critical scholars associated with, for example, Third World Approaches to International Law (TWAIL), have challenged the bona fides of international human rights because, like all of international law, it continues to pursue, even after decolonization, a neocolonial “civilizing mission.” Universally applicable human rights actually seek to impose, they argue, “Western values” on “uncivilized” others. The charge is that much of what the human rights movement demands of countries in the Global South smacks of “cultural absolutism.”

In the view of Kenyan-American law professor Makau Mutua, for example, international human rights proponents have prioritized the legal rights of individuals while relegating the rights of communities, collectives, and groups (including rights to culture, development, or the environment that are dependent on group rights), to the realm of mere policy. Critics like former Ugandan academic Sylvia Tamale argue that CEDAW’s goal of protecting the “equal” rights of individuals or “gender equality” is “foreign” to Africa. For her and certain feminist critics, CEDAW privileges the demands of an “essentialist” (largely Western) woman. It encourages human rights advocates, largely based in the West, to presume, for example, that individual women and girls everywhere should have the right to refuse to wear the veil and should have access to contraception and abortion

on demand—but should only be able to enter into non-polygamous marriages. Comparable tensions arise with respect to international advocacy on behalf of human rights by recent Democratic administrations in the U.S. to advance the rights of LGBTQ+ persons, including the rights of transgender persons. Resistance to and backlash against such rights—amid claims that foreign efforts to promote gay rights have been counterproductive and have hurt those it wishes to help—appears to have had a strong impact on the Trump administration’s reformulated human rights foreign policy. That policy now emphasizes the pursuit of avowedly “Western natural rights” based on a firm binary between the roles (and identities) of men and women, the sanctity of (heterosexual) marriage, the freedom to worship, and keeping the state out of the “private” realm of the family.

U.S.-Centrism

Others voice comparable criticisms of international human rights but pin the blame on the U.S. Yale political scientist Samuel Moyn argues, for example, that the international human rights regime was actually established not at the end of World War II but in 1977 when President Jimmy Carter elevated human rights within U.S. foreign policy. For Moyn, the human rights movement went wrong thanks to the U.S. arrogantly elevating its own concept of civil and political rights to “universal” legal status. In his view,

the regime, which was only briefly rhetorically influential, began to lose its global legitimacy when, after achieving victory over the USSR, the U.S. turned it into a tool for advancing neo-liberal economic policies. Many of the regime’s critics share Moyn’s view that international human rights never developed a strong backing in many parts of the world and particularly among peoples of the Global South, because, as designed by the U.S. and the human rights movement that it led, these rights could not satisfy the demands many people value the most: affirmative duties on government to guarantee basic shelter, food, and health care.

Criticisms that international human rights are lacking in universal appeal and are overly dependent on the U.S. are deeply entangled. Some who believe both to be true blame U.S. support for certain culturally sensitive “rights” like the rights of women or protecting gender identities as well as its support for economically material rights that are consistent with U.S. interests in protecting global capitalism. All of these critiques tend to end up in the same place. The international human rights regime is in “dire crisis” not just because the state most responsible for establishing and funding it is now seeking to undermine international human rights at every turn but also because the gap between what most people on the planet want/need and what the regime actually offers has become too wide.



U.S. president Donald Trump addresses the 80th session of the United Nations General Assembly at UN Headquarters in New York City on September 23, 2025. MEHMETESER/GETTY IMAGES

Defenses of the Regime and Possible Futures

Defenders of international human rights strongly contest the three general critiques summarized above, namely that they lack real world impact, are not truly “universal,” and, in any case, do little to advance anything other than certain blinkered rights familiar to Western democracies and, in particular, the U.S.

Contestation on the regime’s effectiveness requires a closer look at the underlying studies on the extent that they “comply” with international human rights. The regime’s defenders contend that those studies reveal a more nuanced picture than is suggested by the doomsayers. For every study coming to the conclusion that international human rights are “ineffective” or “lack impact,” there are others that are more positive or leave us with more questions than answers. The reasons for uncertainty often stem from methodological challenges on how best to measure “impact” given difficult questions about what ought to be considered evidence of “compliance,” successful domestic “implementation,” or “effectiveness.”

Defenders of the regime warn against drawing adverse conclusions on its impact from current Amnesty International and Human Rights Watch reports on the state of the world. Even assuming such reports are based on solid data, many things account for current human rights violations: a rise in more repressive governments, an increase in the numbers of conflicts, economic difficulties in particular countries or regions (particularly in the wake of COVID), the worsening consequences of climate change, to name but a few. Tracing cause and effect once states enter into a human rights treaty turns out to be tricky business since, for example, an ostensible increase in human rights violations after a state signs onto a human rights treaty may indicate that treaty adherence generates greater attention by those reporting such violations.

Defenders of the regime also contend that in some instances scholarly conclusions on “impact” say more

about the ideology of those doing the studies than on their methodology as such. The impact of international human rights, they argue, should not be discounted simply because states have a self-interest in complying rather than being engaged in conscious “rule-following.” Compliance studies are flawed from the outset, they argue, if they start from the premise (1) that impact can only exist if rules are enforced by a judge and that ruling elicits compliance or (2) that the only kind of impact that matters requires showing changes in state behavior that follow relatively quickly from application of the legal rule and can be attributed to “rule compliance.” This ignores how most laws, whether at the national or international level, frequently (and perhaps most often) elicit routinized behavior without coercive enforcement. States, like persons who comply with national laws, may comply with human rights laws because they seek reciprocal benefits (as with respect to how their own nationals are treated abroad) or because they want to maintain a reputation as law-abiding. A state’s participation in the reporting obligations required under a human rights treaty may itself convince a state that adhering to human rights standards is actually in their self-interest.

At the same time, the regime’s impact is shortchanged to the extent that what compliance work examines are only certain “international” remedies such as whether states abide by rulings issued by the ICC, immediately implement recommendations made by UN treaty bodies in Geneva, or take seriously critical reports issued by prominent organizations like Human Rights Watch. Defenders of the regime question the limits of such inquiries given other possible routes for “impact,” such as actions resulting from the use of international human rights by rights defenders before national courts, legislatures, and administrative agencies.

Critics’ favorite target—the ICC—draws more specific responses. If one focuses on the small number of

criminal prosecutions successfully tried by the ICC to date or on whether states routinely comply with the court’s demands to arrest high level officials, it is easy to conclude that the regime is “in crisis.” But defenders argue that these are unfair metrics to judge a regime which, on the whole, does not emphasize criminalization. Moreover, an examination of the success of the permanent criminal court, which has been in operation only since 2002, sets a high bar by which to judge any legal system since few states, no matter how legalized, have been successful in prosecuting their highest government officials—from current or former prime ministers to the current president of the U.S. It is also suggested that any fair assessment of the ICC (which can only take a case if the state whose nation is the alleged perpetrator or where the crime has been committed is unwilling or unable to prosecute) should also take into account other forms of impact apart from whether high level government officials reach its dock in The Hague. The court’s critics should consider, for example, whether the ICC has had effects on national criminal prosecutions involving the same crimes, on national peace processes which may prevent further mass atrocities, or on whether national courts investigate in civil cases more human rights violations that have been the subject of ICC consideration, as well as whether the ICC’s attention has generated “truth telling” (as under truth commissions) as a form of accountability that is often demanded by victims of rights violations or their families.

Responses to criticisms that international human rights are not universal and instead manifest the material interests and/or cultural values of powerful Western states, and particularly of the U.S., begin by challenging the underlying historical accounts of the regime propounded by some critics. Moyn’s influential account of how and when the international human rights regime came about, for example, has drawn sharp criticism by human rights’

defenders like Philip Alston, a former UN special rapporteur and New York University professor of law.

Alston describes Moyn's "revisionist" history as based on a "big bang theory" that ignores everything that came before 1977—and every nation or person that influenced the international human rights regime other than the U.S. and those working in Jimmy Carter's administration. He argues that Moyn's U.S.-centric account ignores the regime's far deeper and more cosmopolitan roots. He contends that Moyn's version of history renders invisible the contributions made by the ancient Greeks or Romans, the Magna Carta, the Enlightenment, the Age of Revolutions, British responses to humanitarian crises later in the 19th century, the struggle against the slave trade, the affirmation of minority rights after World War I, reactions to the Holocaust, the conclusion of the UN Charter, and the diverse voices of those who drafted the Universal Declaration of Human Rights and of those who negotiated the treaties that came after. He contends that Moyn's radically discontinuous account overstates the impact of the U.S. and predetermines his conclusion that the regime will collapse as U.S. support for it does.

Others, like Baxi, have defended the universal appeal of international human rights by describing its geographically diverse ethical roots, its repeated invocation in the grammar of national and international governance, its use as transformative "insurrectionary praxis," and its presence as a form of universally applicable "cultural software" with hermeneutic power capable of binding groups under common objectives. Defenders of the continuing universal appeal of human rights also point out that no government today seeks to excuse its behavior simply by saying that it is not bound by human rights but, on the contrary, usually makes repeated efforts to explain why their actions conform with the regime's norms. While, as noted, a growing number of UN members are not joining some UN resolutions that condemn human rights violations by other UN



King John of England signs the Magna Carta at Runnymede on June 15, 1215. UNIVERSAL IMAGES GROUP/GETTY IMAGES

members, those objecting to the resolutions usually do so not on the basis that the underlying allegations, if true, are legally permissible but rather on the basis that either the facts are not as claimed or that there are better ways to persuade states to comply than "mobilizing shame" against them, which triggers backlash. In any case, even those UN resolutions that are harshly critical of states' rights violations are usually adopted by majority vote within the underlying UN bodies.

States' criticism of other states' human rights practices also draw mixed conclusions. While the selectivity that often characterizes states' behavior inspires complaints of hypocrisy and cultural relativism, states' attempts to rely on the "soft power" of human rights even while distinguishing or ignoring their own (or their allies) behavior tells us something of human rights' residual legitimacy. Prior U.S. administrations that long resisted pressures to submit foundational human rights treaties like the Genocide Convention, the ICCPR, and CERD to the U.S. Senate

for ratification, nonetheless sought to align the U.S. with their contents. During the Cold War, the U.S. tried to convince the world—despite Soviet propaganda targeting U.S. racial relations—that adherence to such treaties was unnecessary because U.S. laws and practices were already in compliance with their demands. The Biden administration sought, over Russia's opposition, condemnations of Russia's human rights violations in Ukraine both at the Security Council and the General Assembly while objecting to those bodies' criticisms of Israeli practices in Palestine and Gaza, largely on the basis that the facts were not as portrayed. And barely a week after vowing in Saudi Arabia that the U.S. would never intrude in other countries' "internal" (translate: human rights) matters, President Trump, in a White House meeting with South Africa's president, charged him with colluding with "white genocide." Even Trump, it seems, recognizes the power of international human rights when it is consistent with "making America great."



Pro-Palestine demonstrators protest outside a court hearing on the Israel genocide case in The Hague, Netherlands, on January 11, 2024. NURPHOTO/GETTY IMAGES

Vladimir Putin's diplomats could not resist the allure of human rights—even while their country was engaged in killing and raping civilians and kidnapping children in Ukraine—when they sought to justify the invasion of Ukraine on the basis that Ukrainians were violating the rights of Russians and perhaps even committing genocide. China, a country with a notorious human rights record on many civil and political rights, has regularly touted its achievements in advancing the economic rights in the ICESCR as well as the goals of the General Assembly's Declaration on the Right to Development. Under President Xi Jinping, China has adopted an ambitious project to rethink the meaning of the national as well as international “rule of law” without renouncing either—or international human rights as such. To date, China has not expressed opposition to the UN human rights system. It argues that it simply wants to reform it and make it more effective by, for example, using UN human rights treaty bodies to adopt a less confrontational, more cooperative (“win-win”) posture when commenting on states' human rights records, a posture that is more respectful and likely to be successful.

The contention—by Moyn and others—that the U.S. controls the international human rights regime puzzles many human rights lawyers around the world. While it is true that thanks to its wealth and power, U.S. nationals and U.S.-based organizations have been particularly active within the human rights movement, this says little about the impact of the U.S. government on either the contents of human rights instruments or on their evolving interpretations over time. Outside the U.S., most would question the premise that the U.S. has had an exceptional influence on international human rights—even if the inquiry is directed, as Moyn insists, on what has happened since 1977. The U.S. record with respect to formal participation in (and therefore day-to-day impact on) human rights treaties is, by comparison with much of the planet, actually poor. Despite the actions of the Carter administration, that record did not significantly improve after 1977. The U.S. remains to this day one of the few countries in the world that is not a party to nearly universally adopted human rights treaties like the ICESCR, CEDAW, or conventions protecting the rights of the child, disabled persons, refugees, or stateless

persons. It has not acceded to the convention banning arbitrary disappearances, even though such acts clearly violate customary international law and probably the highest form of international law, namely, *jus cogens*. Its ratification of the Genocide Convention, which elevates the targeting of specific groups for extermination to an international crime, 44 years late, was accompanied by a controversial reservation that the U.S. has never renounced refusing to accede to the jurisdiction of the International Court of Justice should interpretative disputes arise. It finally ratified the ICCPR decades after it was negotiated but did so only after hedging on its duties under that treaty through no less than 14 reservations, declarations, and understandings. Some of these attempts at taking exceptions to the civil and political rights most associated with the U.S. drew the ire of the Human Rights Committee, which found that reservations like many of those made by the U.S. effectively undercut the “object and purpose” of that treaty. Despite those criticisms, the U.S. has not removed its objectionable reservations and has instead threatened to exit the ICCPR should these not be accepted.

The U.S. has made sure that it is also not subject to the jurisdiction of any international court specifically charged with interpreting human rights. Unlike most of its neighbors in the Americas, the U.S. is not a party to the American Convention of Human Rights and is not subject to jurisdiction of the Inter-American Court of Human Rights. Further, not only did the U.S. attempt to restrict the ICC's jurisdiction during the Rome Statute's negotiation so that the court could exercise jurisdiction only with the approval of the Security Council (and therefore subject to the U.S. veto), it has since attempted on a number of occasions to make sure that the ICC could not exercise jurisdiction over any U.S. nationals, even if they were to commit an international crime in a ICC party's territory. The U.S. has also an exceptionally poor record of acceding to the International Labor Organization's numerous treaties recognizing international labor rights.

The U.S. might indeed be described as “exceptional” when it comes to the international human rights regime (as Moyn suggests) if what is meant is that the U.S. has for a long time taken exceptional care not to be subject to the binding judgment of international courts when it comes to human rights. Given the U.S.’s long history of isolating itself from the scrutiny of others when it comes to its own human rights practices, the current Trump administration’s overt hostility to the regime is not likely to doom an international regime that has relied on U.S. support in the past.

The distinct criticism that, irrespective of its actual formal participation in human rights treaties and related institutions like the ICC or regional human rights courts, the U.S. government has managed to turn the international human rights regime as a whole into a prisoner of neoliberal economics is also subject to serious contestation.

It is true that the international human rights regime has generally prioritized civil and political rights. For some time, human rights advocates distinguished among “generations” of human rights, contending that those in the ICCPR were of the “first” and more deserving of immediate attention. This reflects the fact that the ICCPR envisions the immediate implementation of its rights into national law while the ICESCR commits states only to “take steps . . . to the maximum of its available resources” to progressively achieve the full realization of its rights “by all appropriate means.” Unlike the ICCPR, the ICESCR did not anticipate the need for a distinct human rights committee charged with monitoring states and such a committee, established by the UN’s Economic and Social Council, did not meet until 1987, over 20 years after the adoption of the two covenants.

But there has been some evolution with respect to economic, social, and cultural rights that eludes American-centric critics of human rights like Hopgood and Moyn. As indicated in the ICESCR’s preamble, the two sets of rights have been, from the start,

formally interdependent and indivisible. This has been taken seriously in later UN human rights treaties to protect the rights of women, children, indigenous people, and the disabled, all of which affirm both sets of rights without distinction or prioritization. Further, contrary to what some suggest, the human rights jurisprudence generated under those treaties or under the ILO cannot be fairly characterized as “neoliberal.” Rather than protecting the absolute right to property, states’ right to deregulate in favor of the market, or economic globalization, the human rights jurisprudence generated under the ICESCR and CEDAW committees or under ILO conventions privilege the dignity of persons over growth in gross domestic product, the protection of global supply chains, or the rights of foreign investors.

Today, it is widely accepted that ICESCR rights embrace states’ duties to *protect* rights, to *ensure* that others (such as market actors) do the same, and to actually *fulfill* rights (such as rights to health care, shelter, or food) that may be judicially enforceable and may require immediate implementation (particularly but not only when the state is alleged to be engaged in

discriminatory application of such rights). Human rights advocacy has undergone considerable evolution both in the direction of attempts to enforce these ICESCR rights and to prioritize “bottom-up” approaches to their continuing evolutive interpretation.

Complaints that the regime’s focus on the rights of individuals fails to address the rights of groups of persons to a clean environment also seem outdated. It ignores, for example, the creative (and often successful) use of human rights by those engaged in strategic climate change litigation in national courts around the world. It also ignores the groundbreaking separate advisory opinions issued in 2025 by the Inter-American Court of Human Rights and the International Court of Justice, each affirming that states violate human rights when they ignore their responsibilities under climate change agreements. While only advisory, those opinions, like a number of others produced by these courts, are likely to reverberate throughout the world’s courts and legislatures.

The contest between these rival views of the value and impact of the international human rights regime suggests at least three possible futures.



Evelyn Ombok (right), a mother mentor with the Prevention of Mother-to-Child Transmission (PMTCT) program, sits with Elizabeth Atieno (left) and her child, Mickey, inside a consultation room at Migosi Sub-County Hospital in Kisumu, Kenya, on April 24, 2025. Kisumu has one of the highest HIV rates in Kenya, with about 17.6% of adults living with the virus—nearly five times the national average of 4.5%—as U.S. funding cuts from USAID strain the local health system. MICHEL LUNANGA/GETTY IMAGES

Endtimes for Universal Human Rights

The regime's critics do not attempt to describe what the "endtimes" of the international human rights regime looks like. Assuming some are right in predicting that the "global human rights system" would not survive the withdrawal of U.S. support and that the existing regime does not represent truly universal rights, one possible outcome would be a retreat from universalization in terms of both the content of human rights and their instrumental implementation. This could take the form of a continuation, on paper, of the UN human rights system but with "zombie" institutions displacing much of the actual work of the human rights treaty bodies or the UN Human Rights Council.

One could also imagine the actual dismantling of the UN human rights regime, particularly in the face of dramatic cuts in U.S. financial support for the organization or those parts of which the Trump administration disapproves, such as the Human Rights Council and UN human rights treaty committees. If other UN members fail to make up for the absence of U.S. financial support, one could imagine the effective termination of all UN human rights efforts in Geneva. The same fate could befall the ICC, particularly should current U.S. sanctions on its personnel be emulated by others or encourage others to

disregard that court's orders. The fate of regional systems of human rights, in the face of these developments, are difficult to predict. Regional human rights courts in the Americas, Africa, and Europe could remain operative, or one or more of them could also face backlash and possible extinction in the face of rising populist resistance in the respective regions.

A more radical possibility for "endtimes" could also be envisaged in which the decline of the global system of rights protection would hasten the end of universally applicable international law centered on the UN system. Under one view of this possible future, distinct geopolitical spheres of influence would emerge. In this future, the U.S., Russia, and China would each determine whether and which human rights would be recognized within their respective spheres of hegemonic control. The U.S. could opt, for example, to protect only the more limited set of "Western natural rights" now favored by the Trump administration within the Americas through a revamped Organization of American States and perhaps the termination of or radical amendment of the American Convention of Human Rights. Given the resistance of Trump (and any likely MAGA successors) to international courts, the new regional rights system for the Americas presumably would

not include an Inter-American Court of Human Rights charged with enforcing the approved set of "Western" rights. Russia and China would each promote within their respective spheres of influence their own set of human rights, responsive to each state's material and culturally specific set of interests.

Status Quo: Nothing Much Changes

In accord with the adage that bureaucracies never die, the global human rights system survives its current challenges to live another day. This could occur if, for example, President Trump's challenge to the regime proves ephemeral—if his second administration, like his first, gives way to a different president who, like Biden, opts to resume support for the liberal international legal order, including the international human rights regime. That regime could also survive mostly intact if, as many believe, the international human rights regime was never as dependent on U.S. government support as critics (like Moyn) believe. The status quo is all the more likely if, whatever happens in the U.S., the populist challenge to it around the world does not spread or endure, but there is instead a counterreaction where U.S. allies that the Trump administration has affronted unite to defend (and fund) the



Relatives of people allegedly killed for political reasons stage a protest as UN human rights investigator Philip Alston visits the national headquarters of the Philippine police on February 13, 2007. RICO GONZALES/GETTY IMAGES

human rights regime, along with the international legal order on which it is grounded. The global human rights system could continue to rely on “soft” methods to persuade states to comply, while human rights advocates could continue to use international human rights in other forums, including in national and regional courts.

International Human Rights (2.0)

In this scenario, in accord with the adage that a “crisis is too good an opportunity to waste,” a group of reformers, including leading states from the Global South and progressive human rights scholars and advocates, take advantage of populism’s challenge to make course corrections to the old regime. The opportunity for a serious reconsideration may emerge due to *realpolitik*: the reigning hegemon’s declining influence over the regime affords an opportunity to reorient its priorities (assuming the U.S. hegemon had that impact that some presume). At the same time, even if the populist wave continues to threaten existing democracies, there are signs that even authoritarian states (like China) may not resist the legitimacy of protecting human rights that it considers consistent with promoting sustainable economic development (and, for example, furthers China’s own economic interests in advancing “green” industries).

In accord with prescriptions for

change recommended by some policy-makers from developing countries as well as prominent human rights scholars like Philip Alston, in this possible future reformers would urge more support for those parts of the regime that focus on protecting the economic, social, and cultural rights contained in the ICESCR and in other more recent human rights instruments. The recommendations made by the ICESCR as well as those made under other instruments that cross the ICCPR/ICESCR divide would secure greater prominence (and possibly greater resources to aid governments seeking to implement them). There would be greater attention to using human rights to assist the UN’s development agenda—and to ensure that this agenda does not reify neoliberal economic recipes for growth over justice.

This reprioritization of what human rights are for would respond to many of the criticisms of the “material” priorities of the current regime made by Moyn, Hopgood, and others. It would signal acceptance by deed and not only by word that civil and political rights cannot be achieved if people are not sheltered, healthy, and fed. In accord with many of the same criticisms, reformers would seek more effective synergies between international and national human rights mechanisms to secure compliance. They would emphasize greater efforts to work with, build on, and complement capacities at

the local level to protect human rights within the nation in accord with recipes for successful bottom-up “vernacularization” of human rights in lieu of the top-down efforts favored by globally prominent human rights organizations.

To the extent that international human rights regime 2.0 responds to the concerns of the Global South, the fate of human rights considered by some developing countries as “culturally sensitive”—such as some rights associated with gender equality—would be less certain. But given the importance of gender equality to advancing virtually all of the UN’s sustainable development goals (SDGs), it is unlikely that there will be widespread support for curtailing the gains women have made under CEDAW or SDG 5 on the grounds that these are “culturally inappropriate.”

Efforts to curtail some LGBTQ+ rights might also be expected to draw resistance, particularly from those who have experienced its protections, including those who are now in civil unions or marriages under national laws inspired by international LGBTQ+ rights. There is also likely to be resistance to any efforts to curtail civil and political rights simply because economic and social rights receive renewed attention. It seems doubtful that democracies grounded in long-standing civil and political rights will be willing to give up on them on the premise that the world of human rights is zero-sum.

Conclusion

Critics and defenders of international human rights in the age of populism should not forget that the “age of rights” occupies only a short blink in time. Most date modern international law to the Treaty of Westphalia in 1648. Assuming that the world turned to international human rights in 1945 with the establishment of the UN, we have only had some 80 years to attempt to displace resort to “Just War” with the UN’s collective security system to protect human security; to supersede centuries of near total impunity for wartime atrocities with

some forms of international criminal accountability; to use international rules not only to conduct “foreign” relations between states but to regulate sensitive matters within states and between them and their polities; and to develop viable interpretations of how best to balance international human rights constraints with sovereigns’ right to rule. Given its brief hold on our collective imagination, the international human rights regime is indeed fragile. All three of its possible futures identified here (along with others) remain plausible.

Those who continue to have faith that international human rights can improve the human condition would argue that their hopes are not based on spurious “secular monotheism” (as Hopgood argues), ignorance of the underlying facts (as realists contend), or blind self-centeredness (as Moyn proclaims). They would argue that it is based on the same rational self-interest suggested by the Sermon on the Mount. Whether that faith will survive the age of Trump and other populist leaders remains to be seen.

Discussion Questions

1. After reading Alvarez's piece, what do you see as the true value of the international human rights regime—its ability to enforce standards, its capacity to “elicit routinized behavior without coercive enforcement,” or something else?
2. Do you think President Trump's rhetoric alone is enough to undermine the international human rights regime, given that the U.S. has already distanced itself from many of the core documents, treaties, and organizations (such as the ICC) that govern it?
3. Which critique of international human rights—ineffectiveness, lack of universality, or U.S.-centrism—do you find most convincing, if any?
4. Do you find the “ineffectiveness” critique persuasive—that human rights law has had little measurable impact—or does the real problem lie in how we measure compliance?
5. Regarding the criticism that international law lacks universality, can you think of a geopolitical situation where “the rights of communities, collectives, and groups” have been ignored or relegated to “the realm of mere policy”? If so, how should international law better address group rights?
6. Postcolonial scholars argue that human rights perpetuate a neo-colonial “civilizing mission.” Is universality inherently incompatible with cultural diversity?
7. Which future of international human rights do you think is most likely: endtimes for universal human rights, continuation of the status quo, or the emergence of a reformed system?
8. Can the U.S. credibly advocate for human rights abroad while rejecting or undermining similar obligations at home? What role, if any, do citizens have in shaping that credibility?

Suggested Readings

Al Hussein, Zeid Ra'ad. “I Will Not Stay Silent. Our Leaders Are Failing Human Rights.” *New York Times*, May 6, 2019. Former U.N. high commissioner for human rights argues that global leaders are weak and shortsighted, failing to defend human rights, and stresses the importance of sustaining international human rights protections.

Alston, Philip. “The Populist Challenge to Human Rights.” *Journal of Human Rights Practice*, 2017. Analyzes how populism, central to the “Age of Trump,” has eroded institutions and rhetoric sustaining global human rights protections.

Baxi, Upendra. *The Future of Human Rights*. New Delhi; New York: Oxford University Press, 2002. Explores how the international human rights regime emerged, contemporary discourse on human rights, and the future trajectory of human rights protections.

Craw, Victoria, and Sammy Westfall. “What Is the U.N. Human Rights Council, from Which Trump Has Withdrawn.” *Washington Post*, February 4, 2025. Explains the significance of the UN Human Rights Council, criticisms of the institution, and the impact of the U.S. withdrawal under the Trump administration.

Donnelly, Jack. “The Relative Universality of Human Rights.” *Human Rights Quarterly*, 2007. Johns Hopkins University. Explores the tension between universality and cultural relativism in human rights, highlighting challenges to the legitimacy of the international human rights regime.

Hopgood, Stephen. *The Endtimes of Human Rights*. Cornell University Press, 2013. Argues that the idea of universal human rights is ill-suited to the contemporary political landscape, highlighting the contradictions and weaknesses exposed by American decline and shifting global power.

Powell, Catherine, Beth Van Schaack, and Desirée Cormier Smith. *Trump's Boycott of the UN's Human Rights Process Puts America Last, Not First*. Council on Foreign Relations, 2025. Details the U.S. withdrawal from international human rights mechanisms, emphasizing the domestic and international consequences for marginalized groups and American commitment to human rights principles.

Wong, Edward. “Human Rights Report Under Trump Blunts Language on Israel and El Salvador.” *New York Times*, August 12, 2025. Analyzes how recent human rights reports by the Trump administration omitted language on persistent abuses present in prior reports, illustrating changes in enforcement under his administration.

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