

Who will guard over the guardians?

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Abstract

Human rights have been weaponized and transformed into geopolitical tools to target certain states and not others. The rhetoric of human rights has been distorted by politicians, media, think tanks and the emerging “human rights industry” that serves hegemonic powers and not humanity. This constitutes an affront against human dignity.

Quis custodiet ipsos custodies?

(Who will guard over the guardians?)

(Juvenalis, *Sixth Satire*, verses 347–48 (2011 translation))

INTRODUCTION

The issue I wish to take up in this article was familiar to the Romans two millennia ago. They understood that power corrupts and that steps must be taken to prevent that. It is necessary to guard the institutions that a society holds in high esteem and protect them from being hijacked by special interests. But what happens when the “guardians” themselves lose their authority and credibility?

Five decades of work in the human rights arena have given me the opportunity to interact with true heroes of human rights, committed women and men whose ethics inspired them to work for human dignity. I have had the opportunity to serve in many capacities: senior lawyer at the Division of Human Rights/Office of the U.N. High Commissioner for Human Rights; U.N. independent expert; U.N. elections monitor; U.N. envoy to the Baltic countries on the issue of minorities; consultant to the UN Human Rights Council on the issue of mercenaries; expert at UN panels on the human right to peace; president of a nongovernmental organization (NGO); and professor of human rights law at numerous universities. Each of those positions has given

me a different vantage point on the issue of human rights and the way governments and the mainstream media treat those rights.

I am convinced that, notwithstanding multiple problems and dysfunctions, the world has actually made considerable progress since 1945 in the promotion and protection of human rights, especially in standard setting and in the establishment of fact-finding commissions and monitoring mechanisms. Although the goal is to make human rights juridical, justiciable and enforceable, sobering reality reminds us that significant implementation gaps remain.

A recent phenomenon threatens the integrity of the entire system. Many observers have already denounced the hijacking of human rights institutions by governments and transnational corporations, who have gradually transformed human rights discourse into geopolitical tools and weaponized it to target certain states and not others. The rhetoric of human rights has been distorted to demonize rivals. The noble vocation of many institutions has been corrupted by the widespread application of double standards and what I would term “international law *à la carte*.” Chapter “Reflections on the Way Forward”, de Zayas (2021) p. 446 et seq.

Many human rights activists, including professors of international law, have decried the selectivity practiced by some human rights institutions, their skewed focus on marginal issues while ignoring gross violations of human rights. I have personally become aware of the penetration of institutions, academia, and NGOs by intelligence services because I have twice been approached by intelligence officers asking me to serve as a mole.¹ In addition, I have first-hand knowledge of the undue influence of donors in defining the agendas of the Office of the High Commissioner for Human Rights, the U.N. Human Rights Council, and other international bodies. Courts and tribunals are increasingly misused for purposes of “lawfare” to persecute whistle-blowers and other human rights defenders. The case of Julian Assange (Melzer, 2022) is emblematic of the breakdown of the rule of law in the United States, England, Sweden, and Ecuador. The growing politicization of human rights amounts to a betrayal of humanity by those very institutions that were established to promote and protect their rights (de Zayas, 2022, chapter 1, p. 3ff).

Today, it is most urgent to return to the spirituality of the Universal Declaration of Human Rights and revive the legacies of Eleanor Roosevelt, René Cassin, Charles Malik, and P.C. Chang. The world needs to rediscover “general principles of law” (ICJ, 1945, Article 38 (1)(c)). Examples are good faith (*bona fide*), impartiality and listening to all sides (*audiatur et altera pars*), estoppel (*ex injuria non oritur jus*), the prohibition of abuse of rights (*sic utere tuo ut alienum non laedas*), and the overarching principles of nondiscrimination and the common heritage of mankind (de Zayas, 2021, p. 20).

We must push back against the efforts of governments and NGOs alike to subvert language and manage our perception of reality through psy-ops and the manipulation of news and narratives. Indeed, there is an on-going information war that impacts everybody, including the U.N. system of promotion and protection of human rights. This entails cognitive warfare.

THE QUESTION OF TRUST

It is part of human nature that women and men need a set of values to live by, a moral compass, a sense of proportion, and the hope that our democratically elected governments will keep their promises. It is natural to believe in our institutions, to place our trust in municipal and federal governments, in our ministers and courts, and in committees and commissions that are tasked with the administration of justice and the promotion of the welfare of all without privilege or preference.

The authority and credibility of any institution, whether domestic or international, depend on its adherence to the specific terms of reference laid down in its enabling statute or constitution. Every institution must observe a code of deontology (ethical behavior) and practice transparency and accountability on a daily basis. When an institution oversteps its mandate, applies double standards, shrouds itself in secrecy, or keeps silent about serious crimes, it sacrifices its authority and loses the confidence of those who rely on it. Thus, institutions must not act *ultra vires*—beyond the scope of their mandates—not only because such actions lack legality and legitimacy but also because they put into question their very *raison d'être*. Credibility also depends on the professionalism and impartiality of the institutions' secretariat and on the commitment of the staff to a code of conduct.

This essay will assess the dysfunctions of certain important institutions, including the United Nations, the Office of the High Commissioner for Human Rights, the Human Rights Council, the International Criminal Court, and the Organization for the Prohibition of Chemical Weapons (OPCW).

Undoubtedly, the U.N. General Assembly, the Human Rights Council, and the Office of the U.N. High Commissioner for Human Rights are necessary institutions with tremendous potential to improve the welfare of humanity and preserve the planet for future generations. The priorities should be the promotion of peace, economic development, and human rights. Over the past seven decades, various U.N. organizations and specialized agencies, including UNDP, UNESCO, ILO, WHO, and UNCTAD, have done extremely constructive work, drafted and adopted important conventions, and developed mechanisms to implement and monitor treaty obligations. There have been many successes in all fields of human activity.

Yet, there has been retrogression, too, because the “addiction” of many powerful countries to the use of force is fueled by their enormous military budgets, their propaganda for war, their incitement to hatred toward other cultures and religions, and their imposition of unilateral coercive measures. Those factors have poisoned the atmosphere and adversely affected the functioning of U.N. institutions that need adequate financing if they are going to deliver on their mandates.

Among the many achievements of the United Nations in the recent past, we can name the entry into force of the Convention on Biological Diversity in 1993, the Framework Convention on Climate Change in 1994, the Convention on the Prohibition of Chemical Weapons in 1997, the WHO Framework Convention on Tobacco Control in 2005, the Arms Trade Treaty in 2014, and the Treaty on the Prohibition of Nuclear Weapons in 2021 (U.N., 1992, 1994a; OPCW, 1997; UNODA, 2014, 2021; WHO, 2005). We must also commend the good intentions expressed at the Millennium Summit, when the Millennium Development Goals were adopted in the year 2000, and the subsequent proclamation of the Sustainable Development Goals in 2015 (U.N., 2000, 2015). There are many promises that can and should be kept, but this demands international cooperation and solidarity.

U.S. President Dwight D. Eisenhower (1961) warned the world of the danger to democracy and human rights posed by the emerging military-industrial complex in the United States. Since then, that complex has grown to the point that it corrupts everything. Senators, members of the House of Representatives, and presidential candidates receive huge campaign contributions from the military-industrial complex, which they pay back in the form of military budgets with ever-increasing procurement of weapons, aircraft, ships, submarines, missiles, and drones. This taxpayer-financed bonanza generates huge profits for manufacturers such as Raytheon RTX, Boeing and Lockheed Martin, military contractors, private security companies, and energy multinationals such as Halliburton. Some of those profits are then recycled to endorse political candidates, purchase press and media support, produce narratives about the need for more military

expenditures, finance fake reports by think tanks and academic institutions, and fake assessments by pundits, and conduct research and development into weapons of mass destruction, biological warfare, and lethal autonomous weapon systems (killer robots). In short, priorities are totally wrong, and governments are being strangled by industries that feed on fear-mongering, fake news, and propaganda. We now witness a thoroughly corrupt and incestuous situation. de Zayas (2021), Chapter 4, p. 88 et seq.

One would expect that with global problems of the magnitude of the threat of nuclear war, climate change, desertification, natural disasters, tsunamis, pandemics, and famine, the United Nations would lead the world in affirming the right priorities and ensuring that financing is directed toward prevention of conflict, mediation, and disarmament for development. Unfortunately, the U.N. agencies do not constitute an organic, coherent institution they are not a “person” or a Platonic “philosopher king” with the competence to pursue the welfare of the majority but only reflect the self-serving agendas of the more powerful of the 193 U.N. member states.

UN GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL, AND OHCHR

The track record of the United Nations corresponds to the power equations that direct the world economies, international trade, and humanitarian activities. The U.S., U.K., French, Chinese, and Russian voting records at the United Nations tell us much about the real priorities and demonstrate who is in favor of peace and international solidarity, who believes that “might is right,” and who believes that international cooperation must be given a chance.

Take the vote by the U.N. General Assembly (GA) on Resolution 76/161 prohibiting unilateral coercive measures (U.N., 2021a). Who supported it? Most nations in the world. Who opposed it? The West. In December 2022 the GA adopted a similar Resolution 77/214 over the opposition of the West. Take the 2021 GA vote on the mandate of the independent expert on the promotion of a democratic and equitable international order (U.N., 2021b). Who supported it? Most of the world, what I like to call “the global majority.” Who opposed it? The “collective West.” The corresponding resolutions in the Human Rights Council were 46/5 and 52/13.

The track record of the U.N. Human Rights Council is similar. Take, for instance, the vote on Resolution 32/28 on the right to peace, adopted by 34 in favor, 9 against, and four abstentions (UNHRC, 2016). The votes against were: Belgium, France, Germany, Latvia, the Netherlands, the Republic of Korea, Slovenia, the former Yugoslav Republic of Macedonia, and the United Kingdom of Great Britain and Northern Ireland. This timid declaration actually represents a retrogression on GA Resolution 39/11 (U.N., 1984). This eviscerated declaration was subsequently adopted by the General Assembly with a similar division of the world into the “West” and the rest of the world (U.N., 2016). Curtis Doebbler, an international human rights lawyer, commented (Doebbler, 2016):

The adopted declaration is an insult to human rights defenders and anyone who puts their faith in the UN to promote peace in the world. Most strikingly the declaration does not reconfirm the right to peace that was recognized for all peoples in a UN General Assembly declaration adopted in 1984. To adopt a declaration on the right to peace that does not clearly and unambiguously state the right to peace sends the message to all of us that our diplomatic representatives are not acting in our best interests. Either the diplomats need to be changed or the government officials who appoint them.

The result was not surprising, as it confirms the mindset of Western countries at the time of the adoption of the International Covenant on Civil and Political Rights (ICCPR), Article 20 of which prohibits propaganda for war. The following countries introduced reservations to the ICCPR, exempting themselves from this restriction: Australia, Belgium, Denmark, Finland, France, Iceland, Ireland, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, and the United States.

Take the vote in the U.N. Human Rights Council (2021a) on Resolution 46/5 on the adverse impacts of unilateral coercive measures, adopted by 30 in favor, 15 against, and two abstentions. Here are the negative votes: Austria, Brazil, Bulgaria, Czechia, Denmark, France, Germany, Italy, Japan, Marshall Islands, the Netherlands, Poland, the Republic of Korea, Ukraine, and the United Kingdom of Great Britain and Northern Ireland. And this in spite of the 2012 GA thematic report (A/19/33) by the then High Commissioner for Human Rights, Navi Pillay, condemning unilateral coercive measures (UN-OHCHR, 2012) and notwithstanding the many reports by Special Rapporteurs Idriss Jazairy and Alena Douhan documenting that “sanctions kill” (UN-OHCHR, 2023).

I am a strong supporter of the Office of the U.N. High Commissioner for Human Rights (OHCHR). I participated in the 1993 Vienna World Conference on Human Rights, which proposed the creation of this office. The High Commissioner’s mandate is defined in Resolution 48/141 (U.N., 1994b). Over the years, the High Commissioners have gradually expanded the mandate and undertaken a variety of studies on specific country situations, even though such reports were not mandated by the General Assembly or by the Human Rights Council. Two very unbalanced reports were issued concerning Venezuela (UN-OHCHR, 2017, 2018).² The UN-OHCHR’s (2022b) office also issued a methodologically unsound “Assessment” in August 2022 concerning China.³

Alas, OHCHR reports are not always reliable, as we can see from the reports by the two UN rapporteurs who visited Venezuela and fact-checked the OHCHR reports (U.N. Human Rights Council, 2021b). The China “Assessment” is a regrettable *faux pas*, incompatible with the end-of-mission statement delivered by High Commissioner Michelle Bachelet in Guangzhou on May 28, 2022 (UN-OHCHR, 2022a). The best that can be said is that the OHCHR China “Assessment” was premature and not sufficiently evidence-based. It must be discarded as unprofessional, unbalanced, and political. In this connection, I dare propose that outside auditors should examine the *modus operandi* of the staff of the OHCHR, many of whom, as I can say from experience, are ideologues and do not feel bound by the ethics of impartiality and methodological rigor.

During my 22years of working as a lawyer with the Division/Center for Human Rights/OHCHR as Deputy Chief of the Communications Branch, Chief of the Petitions Section, and Secretary of the U.N. Human Rights Committee, I had the opportunity to observe many “irregularities” and the growing politicization of the institution. As a frequent speechwriter for the High Commissioner, I witnessed how a D-1 who was representing the High Commissioner in his absence simply discarded the statement approved by the HC. As a participant at the expert consultation, I printed and handed out the statement for the benefit of the other experts. I subsequently published the full text of the statement as an annex to my book *Heimatrecht ist Menschenrecht*.

As chief of the petitions department, I was seriously handicapped by understaffing. When compared with the European Court of Human Rights or the Inter-American Commission on Human Rights, it is anomalous that the petitions department of the OHCHR only has about 20 lawyers to deal with all petitions to be examined by the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, Committee on Economic, Social, and Cultural Rights, and the Committee on the Rights of the Child.

During my years as deputy chief of the Communications Branch and subsequently as chief of the petitions department, I had a small team of very good lawyers to sort the incoming petitions, prepare them for registration, and draft decisions on admissibility and merits. On one occasion, I found a petition in the waste-paper basket. The petition was subsequently registered and went on to be considered by the committee. I had to call in my staff and remind them of our code of deontology and warn them that if I ever caught anyone filtering the communications, disciplinary action would be taken. I wonder how many petitions have landed in the bin since I left my function as chief of petitions. I fear there have been many, since I have been approached by numerous petitioners and NGOs who have complained that they never received an acknowledgment of receipt or information about the registration of their petitions. Some who have called OHCHR and complained were informed that their petitions were “in the pipeline,” but they doubted the information because they never heard anything more after the oral confirmation. As I have learned by discreetly asking the current leadership, on occasion a petition does disappear into the bin, an ethically unacceptable practice that has not been properly audited. During my more than 20 years processing communications from victims of human rights violations, I learned from colleagues at the Inter-American Commission on Human Rights that the practice is not unknown there. It is tacitly accepted and covered up. This explains why “politically incorrect” victims have little or no chance of being heard. This kind of “cancel mentality” will continue to flourish until measures are taken to ensure that the code of deontology (ethical behavior) is embraced by all secretariat members.

The “abuse of power” by some members of the Secretariat goes so far as to deny access to legitimate NGOs that ask to be received by someone in OHCHR in order to deliver a petition or report. Several NGOs have brought to my attention the fact that their emails to OHCHR are ignored, that they receive no answer, and that when they succeed in contacting a person by telephone, they are told that they are too “busy” and cannot receive them. This never happens if the NGO is a Western-friendly NGO such as Amnesty International, Human Rights Watch, or the International Service for Human Rights.

International Criminal Court

Another example of an institution that is not living up to expectations is the International Criminal Court (ICC). Such a court can only be envisaged if there is a commitment to investigate all war crimes and crimes against humanity, regardless of who the suspect is. There cannot be punishment for some and impunity for others. This runs counter to every sense of justice and every principle of the rule of law.

Since its establishment in 2002, pursuant to the entry into force of the Statute of Rome of 1998, the ICC has demonstrated double standards and selective indignation. Thus far, only Africans have been tried. Investigations seem to prosper only when the accused are geopolitical rivals of the United States. Many observers have even questioned whether the ICC is just the legal arm of the U.S. and U.K. military agencies (Doutaghi & Ramasubramanyam, 2019).

In my opinion, the International Criminal Court will not have any credibility until it decides to apply the Statute of Rome seriously and go after the likes of George W. Bush, Tony Blair, Barack Obama (the king of the drones), Donald Trump, Joe Biden, Benjamin Netanyahu, Mohammed bin Salman and other powerful figures. Hitherto, the West has “gotten away with it”—but for how long?

In 2020, Fatou Bensouda, the chief prosecutor at the International Criminal Court, announced that she would investigate allegations of war crimes and crimes against humanity in the Afghan war, including crimes allegedly committed by NATO members (ICC Office of the

Prosecutor, 2020). Bensouda's successor, Karim Khan, did a U-turn and announced that, while he would continue investigations concerning war crimes by the Taliban, he had discontinued the investigation against U.S. forces (Al Jazeera, 2021). Nothing discredits the ICC more than this flagrant absence of objectivity and impartiality. The ICC's warrant for the arrest of Vladimir Putin in 2023 may be the last nail in the coffin of its authority.

Organization for the Prohibition of Chemical Weapons

Transparency and accountability are hallmarks of every institution under the rule of law. The authority, credibility, and, ultimately, effectiveness of institutions depend on the professional and impartial performance of their mandates.

Ultra vires activities and unethical tampering with evidence constitute a form of fraud on society and destroy the trust placed in the institutions. This unsatisfactory situation can lead to cynicism, chaos, and anarchy because those who recognize the fraud may go on to reject the exercise of authority and view governments and institutions as illegitimate or *magna latrocinia*—kingdoms of theft. This could also induce the rejection of the social contract that holds society together (de Zayas, 2023, Chapter 5, p. 95ff).

There are abundant examples of organizations being subjected to political pressures, intimidation, and blackmail with the result that they can no longer function professionally. Their reports must be put into question. All too often, teleological reports are issued by United Nations and other agencies. Pseudo-investigations are carried out that seek, *a priori*, to arrive at politically desired conclusions. They are fundamentally flawed and *contra bonos mores* because they are methodologically corrupted and distort reality.

A transparent investigation of flawed methodologies must be conducted. Politically tainted reports must be withdrawn. The situation is further aggravated when an institution fails to conduct timely internal investigations and refuses to address pertinent questions raised by its own inspectors.

A cover-up aggravates matters, and that is why whistle-blowers play such an important role in democratic societies by exercising their ethical responsibility to expose misdeeds and demand accountability. Nevertheless, for this to be successful, a free and independent press is necessary. Alas, the experience of the past 30 years is that the mainstream media (corporate media) increasingly misinform the public, uncritically disseminate political narratives, and suppress crucial information that the public has a right to know pursuant to Article 19 of the International Covenant on Civil and Political Rights. Again and again, the media have failed to expose what can be described as fraud on the public and on the world.

The scandal surrounding the alleged chemical attack in Douma, Syria, in 2018 undermines confidence in the professionalism of the OPCW. In 2021, the first Director of the OPCW, José Bustani, former UN rapporteur Professor Richard Falk, and former U.N. Assistant Secretary-General Hans von Sponeck formed the Berlin Group “to follow developments regarding the controversy over the OPCW investigation of alleged chemical weapons use in Douma (Syria).” The Berlin Group 21 (2021) issued a statement of concern that was signed by many luminaries, including Noam Chomsky, Daniel Ellsberg, and Tulsi Gabbard, and was largely suppressed by the media. The statement of concern was primarily addressed to senior officials of the OPCW who allowed potentially false evidence to be entered into the record of a fact-finding mission (FFM) regarding an alleged chemical attack in Douma on April 7, 2018. Field staff who were aware of the politically motivated changes in the report were not given a chance to formally protest the changes to top officials. Thus, the views of

inspectors who gathered scientific evidence to evaluate the original allegations were ignored in the final report. The statement of concern by the Berlin Group 21 (2021) concludes:

The issue at hand threatens to severely damage the reputation and credibility of the OPCW and undermine its vital role in the pursuit of international peace and security. It is simply not tenable for a scientific organization such as the OPCW to refuse to respond openly to the criticisms and concerns of its own scientists while being associated with attempts to discredit and smear those scientists. Moreover, the ongoing controversy regarding the Douma report also raises concerns with respect to the reliability of previous FFM reports, including the investigation of the alleged attack at Khan Shaykhun in 2017.

We believe that the interests of the OPCW are best served by the Director General providing a transparent and neutral forum in which the concerns of all the investigators can be heard, as well as ensuring that a fully objective and scientific investigation is completed. To that end, we call on the Director General of the OPCW to find the courage to address the problems within his organization relating to this investigation and ensure States Parties and the United Nations are informed accordingly. In this way, we hope and believe that the credibility and integrity of the OPCW can be restored de zayas (2021), p. 48, 180, 237. The Berlin Group 21 published a 162-report in June 2023 entitled *A review of the Organisation for the Prohibition of Chemical Weapons fact-finding mission report into the alleged use of chemical weapons in Douma, Siria, in April 2018: Evidence of manipulation, bias and censorship*.

CONCLUSION

The corruption discussed here in the OPCW and in various human rights organizations of the United Nations brings us back to the original question: “*Quis custodiet ipsos custodes?*” These agencies have been granted the role of guardians of the public good, guardians with the duty to ensure that other public watchdog agencies will do their jobs properly. What if they violate their sacred responsibility to the truth?

Clearly, there is no simple answer to this conundrum. Otherwise, we would not be repeating a saying that is almost 2000 years old.

ENDNOTES

- ¹ On both occasions, I declined the offer for ethical and temperamental reasons. I have always thought that it is dangerous to act in a manner contrary to one's conscience. Furthermore, I consider myself untalented as an actor or dissimulator.
- ² A more balanced methodology can be found in the reports by the UN Independent Expert on International Order (UNHRC, 2018) and by the Special Rapporteur on Unilateral Coercive Measures (U.N. Human Rights Council, 2021b) both of them based on country visits and evaluation of documents and other evidence provided by the Venezuelan government, the opposition, and more than 40 NGOs. The reports by the rapporteurs question the methodology used by the OHCHR in establishing its own reports (UN-OHCHR, 2017, 2018) without any in-situ visit.
- ³ This report contradicts the findings of High Commissioner Bachelet, who conducted a well-prepared *in-situ* visit, including of Xinjiang. Her end-of-mission statement is valid, whereas the OHCHR report suffers from serious methodological deficits.

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How to cite this article: de Zayas, A. (2023). Who will guard over the guardians? *American Journal of Economics and Sociology*, 00, 1–10. <https://doi.org/10.1111/ajes.12542>