

## Human Rights v Diplomacy, Foreign Policy and Ors

It has been nearly seven decades since UN trumpeted its infamous and august dictum that, The People of United Nations, are determined “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”<sup>1</sup> These golden words, to flogged and raped humanity, sounded as though the voice of God himself at last—finally descending from His solemn abode above—down on longing-broken souls. The words sounded as though *Eminence Himself!* But it was just that—just words! Not golden, but sly copper in disguise—whose shine illusioned the weary eyes of hope and shut them forever. Since, the actual efforts to achieve that goal are—if not entirely a mere puffery then at the very least—grossly inadequate and the goal itself is still more a dream than reality. A dream for the realization of which, millions died in waiting—and millions are dying still!

The ever more worsening condition of Human Rights (HRs) globally and the passivity—or the sheer inability for that matter—of UN, especially UNSC, to intervene in order to cater the deteriorating abuses of HRs makes one wonder if “the master's tools will ever dismantle the master's house.”<sup>2</sup> The 70 years old resolution rings evermore hollow when one realizes the fact that the lack of positive action on the part of UN, especially the permanent members of UNSC, is less due to some legal or moral constraint and more due to diplomatic convenience—a long practice of sacrificing justice at the altar of foreign policy driven exclusively by selfish national interests.

Whether it is the war in Yemen and Saudi blockade of humanitarian aid or the war in Syria and the HRs abuses by the Assad regime; whether it is the Israeli atrocities in Gaza or the Muslim genocide in Myanmar, they all have two things in common: limited political space for the UN to actively intervene and lack of or grossly inadequate diplomatic pressure from the World leaders. The perpetrators in these examples evade accountability through strong diplomatic ties with power countries founded upon, and

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<sup>1</sup> Preamble to the Charter of the United Nations signed on 26 June 1945.

<sup>2</sup> Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House " (--), available at <[http://s18.middlebury.edu/AMST0325A/Lorde\\_The\\_Masters\\_Tools.pdf](http://s18.middlebury.edu/AMST0325A/Lorde_The_Masters_Tools.pdf)> last accessed at 04:00PM 24 July 2019.

having deep roots in, the underlying bilateral economic relationships that actually guide and shape the foreign policies of those powerful countries in favor of the perpetrators. When the leader of the free world openly expresses his intention of not risking the \$350-billion arms deal with Saudi Arabia '*just*' over a gruesome murder of a journalist<sup>3</sup>, it clearly sends a message that one can escape justice if one can afford it. But it should nevertheless be noted that such a public display of confidence to flaunt the utter disdain and disregard for HRs has its roots in the passivity displayed by the UN itself towards the protection of HRs. In other words the message which is apparent in President Trump's attitude towards HRs abuses by Saudi regime drains down from the UN's passive attitude towards protection of HRs.

During the World Summit of 2005, the UN proudly proclaimed that "there can be no peace without development, no development without peace, and neither without respect for human rights."<sup>4</sup> While the UN demonstrated its commitment to all of the three pillars, i.e. peace, development and human rights; in reality it neither paid the necessary amount of attention towards the third pillar nor did it allocate the necessary amount of budget<sup>5</sup> needed for advancing the goal of respect for and protection of HRs. Therefore, it does not come as a surprise that the only help the victims of these most appalling and horrific abuses of HRs receive from the International Community is nothing more than either the ineffectual pre-trauma requests to maintain order and peace or the usual post-trauma mantra of "Never Again" intoned by the World leaders. We witnessed it after the Srebrenica genocide<sup>6</sup> and we saw it after Rwandan genocide.<sup>7</sup> We heard it during the last

<sup>3</sup> See e.g. (inter alia) "Trump dismisses UN request for FBI to investigate Jamal Khashoggi's murder" available at <<https://www.theguardian.com/world/2019/jun/23/jamal-khashoggi-trump-un-request-fbi-investigation>>; "Why grisly UN report on Khashoggi murder will not change Trump policy toward Saudi Arabia" available at <<https://eu.usatoday.com/story/news/world/2019/06/19/khashoggi-murder-why-un-report-wont-alter-trumps-pro-saudi-policy/1498160001/>>; and "Trump Defends Saudi Arabia Partnership Despite Khashoggi Killing: I'm Not 'A Fool'" available at <[https://www.huffingtonpost.co.uk/entry/trump-saudi-arabia-khashoggi\\_n\\_5d0fba7de4b0aa375f4e5db2?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce\\_referrer\\_sig=AQAAAEHCgGqL7gk5HGPIrDg4HzV3KaunoK1LIGwVktTs7BR8fE-1GwAwmvoyb6qzCF-LH7v785xxnU3xHJZIWH6Mx\\_eNVsp\\_W1Lw2iS7XVULiwUiTGn-LfBy1wFFVMhrkzqNNX6\\_k0j3665pLpIYsqV2Qw-Xvtzw1bGvRolcaBIsHiB0b](https://www.huffingtonpost.co.uk/entry/trump-saudi-arabia-khashoggi_n_5d0fba7de4b0aa375f4e5db2?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce_referrer_sig=AQAAAEHCgGqL7gk5HGPIrDg4HzV3KaunoK1LIGwVktTs7BR8fE-1GwAwmvoyb6qzCF-LH7v785xxnU3xHJZIWH6Mx_eNVsp_W1Lw2iS7XVULiwUiTGn-LfBy1wFFVMhrkzqNNX6_k0j3665pLpIYsqV2Qw-Xvtzw1bGvRolcaBIsHiB0b)>

<sup>4</sup> See "Secretary-General's remarks to High-Level Event marking the 70th Anniversary of the Universal Declaration of Human Rights: A Prevention Tool to Achieve Peace and Sustainable Development [as delivered]" available at <<https://www.un.org/sg/en/content/sg/statement/2018-09-26/secretary-generals-remarks-high-level-event-marking-70th-anniversary>>

<sup>5</sup> The UN only allocated a tiny fraction, a mere 3 percent, of the general budget. See "OHCHR's Funding and Budget" available at <<https://www.ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx>>

<sup>6</sup> See UN General Assembly, "Report Of The Secretary-General Pursuant To General Assembly Resolution 53/35: The Fall Of Srebrenica [A/54/549]" November 15, 1999, UN document A/54/549. Drawing lessons from the horrors of Srebrenica genocide, the report held: "The international community as a whole must accept its share of responsibility for allowing this tragic course of events by its prolonged refusal to use force in the early stages of the

stages of Sri Lankan civil war (and after it)<sup>8</sup> and we are still hearing it now amidst the screams for help in Syria and Gaza.

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war. This responsibility is shared by the Security Council, the Contact Group and other Governments which contributed to the delay in the use of force, as well as by the United Nations Secretariat and the mission in the field." It further recommended that "the cardinal lesson of Srebrenica is that a deliberate and systematic attempt to terrorize, expel or murder an entire people must be met decisively with all necessary means, and with the political will to carry the policy through to its logical conclusion."

As for the solemn promise, the usual mantra of "Never Again", the report vowed: "the only meaningful and lasting amends we can make to the citizens of Bosnia and Herzegovina who put their faith in the international community is to do our utmost not to allow such horrors to recur. When the international community makes a solemn promise to safeguard and protect innocent civilians from massacre, then it must be willing to back its promise with the necessary means. Otherwise, it is surely better not to raise hopes and expectations in the first place, and not to impede whatever capability they may be able to muster in their own defence."

<sup>7</sup> See UN Secretary-General, "Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda," December 16, 1999, UN document S/1999/1257 : "The overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or to stop the genocide." Further it states that "UNAMIR, the main component of the United Nations presence in Rwanda, was not planned, dimensioned, deployed or instructed in a way which provided for a proactive and assertive role in dealing with a peace process in serious trouble." Moreover, about the inadequacy of UNAMIR's mandate, it states: "The responsibility for the limitations of the original mandate given to UNAMIR lies firstly with the United Nations Secretariat, the Secretary-General and responsible officials within the DPKO for the mistaken analysis which underpinned the recommendations to the Council, and for recommending that the mission be composed of fewer troops than the field mission had considered necessary." Gen. Romeo Dallaire, Former UN Force Commander in Rwanda, testified before UN about the UN's unforgivable shortcomings in dealing with the situation, he stated that: "This plan of extermination was a deliberate action that we saw coming and watched."

As for future reference, the report recommended that, first of all, "the United Nations should acknowledge its part of the responsibility for not having done enough to prevent or stop the genocide in Rwanda. The Secretary-General should actively seek ways to launch a new beginning in the relationship between the United Nations and Rwanda." More importantly it recommended the not only the Secretary-General must be strong in his/her leadership, but also the UN members must support his/her role in resolving the matters independently and impartially: "A strong and independent role for the Secretary-General is an essential component in efforts by the United Nations to prevent conflict. The Secretary-General deserves the constant support of the membership of the organization in his attempts to promote an early resolution to conflict."

<sup>8</sup> See "Report of the Secretary-General's Internal Review Panel on United Nations action in Sri Lanka," November 2012. According to the report, throughout the final stages of the conflict, member states did not hold a single formal meeting on Sri Lanka in the Security Council, General Assembly, or Human Rights Council. Perhaps the most sickening part of the report is its findings in paragraphs 76-77 where it states that:

76. There was a continued reluctance among UNCT institutions to stand up for the rights of the people they were mandated to assist. In Colombo, some senior staff did not perceive the prevention of killing of civilians as their responsibility – and agency and department heads at UNHQ were not instructing them otherwise. Seen together, the failure of the UN to adequately counter the Government's under-estimation of population numbers in the Wanni, the failure to adequately confront the Government on its obstructions to humanitarian assistance, the unwillingness of the UN in UNHQ and Colombo to address Government responsibility for attacks that were killing civilians, and the tone and content of UN communications with the Government on these issues, collectively amounted to a failure by the UN to act within the scope of institutional mandates to meet protection responsibilities.

Thus, it goes without saying that unless there is a systematic change in the foreign policies of UN members, especially of the veto gang, through an emphatic and consistent pressure from UN, abuses of human rights would continue to exist with impunity. Unless the World leaders make the concern over HRs issues a key part of their bilateral relationships, especially the economic ones, the perpetrators would continue to find refuge, through their key trading position, to secure their subsistence which would help them maneuver through criticism on their HRs abuses without ever substantially changing their attitude towards them. Without true commitment, backed up by actual efforts to pressure and mold foreign policies of its members, even an International Organization like the European Union<sup>9</sup> cannot effectively achieve the goal of respect for and protection of HRs.

It's been 15 years since the Iraq war. I was 9 years old then but I can still vividly recall a report telecasted on BBC...

Where an injured lady with a dead child in her arms, standing in rubbles of her house, cried: "Why? Why? Why!."

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77. The tone, content and objectives of UNHQ's engagement with Member States regarding Sri Lanka were heavily influenced by what it perceived Member States wanted to hear, rather than by what Member States needed to know if they were to respond. Reflection on Sri Lanka by UNHQ and Member States at the UN was conducted on the basis of a mosaic of considerations among which the grave situation of civilians in Sri Lanka competed with extraneous factors such as perceptions of the role of the Secretariat in its relations with Member States and frequently inconclusive discussions on the concept of the Responsibility to Protect. In particular, the Security Council was deeply ambivalent about even placing on its agenda a situation that was not already the subject of a UN peacekeeping or political mandate; while at the same time no other UN Member State mechanism had the prerogative to provide the political response needed, leaving Sri Lanka in a vacuum of inaction.

<sup>9</sup> Despite being far more strict in its rules and having more political as well as legal authority over its members than the UN, EU appears to fail in matters where foreign policy of its strong members comes in conflict with EU's human rights objectives. See, e.g., *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60. More importantly see, *Campaign Against the Arms Trade v The Secretary of State for International Trade and Others* [2019] EWCA Civ 1020. In this case one of the arguments tendered by Campaign Against the Arms Trade (CAAT) was that the Secretary of State failed to ask the questions identified in the User's Guide (to The EU Common Position 2008 "defining common rules governing control of exports of military technology and equipment"), and in particular failed to answer the following matters specified in the User's Guide: "(1) whether the state in question has legislation in place prohibiting and punishing violations of International Humanitarian Law (IHL), (2) whether there are mechanisms in place to ensure accountability for violations of IHL committed by the armed forces, and (3) whether there is an independent and functioning judiciary capable of prosecuting violations of IHL." The Court of Appeal held that the Secretary of State did not need to consider these questions, despite the fact that let alone asking these questions, the Secretary of State conceded that he does not even know whether there is any domestic Saudi law which requires Saudi regime to comply with IHL as well as whether there are any independent judicial institution in Saudi Arabia which enforce compliance with IHL. See paragraphs 146-154 of the said judgment.

I was a child. I did not have the answer then. But I guess I have it now: “The master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”<sup>10</sup>

So now when I see suited-booted men with dressed shinny hairs, in the air-conditioned hall of general assembly at the UN building, proclaiming: “Never Again!” or that “they are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...” Shall I say to them:

*“...it is not eminence chills  
but the snigger from behind the covers of history,  
the sly words and the cold heart  
and footprints made with blood upon a continent?  
Let your words  
tread lightly on this earth's maimed skin  
lest her broken bones protest!”*<sup>11</sup>

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<sup>10</sup> Lorde (n 2).

<sup>11</sup> This is an excerpt from Emanuel Litvinoff's exquisite poem “To T.S. Eliot” available at <<https://iamthelizardqueen.wordpress.com/2008/05/02/emanuel-litvinoff-to-ts-eliot/>> last accessed on 30 July 2019. The author has quoted this excerpt with a little editing, and he would unequivocally apologise to Emanuel Litvinoff (and all lovers of poetry) for butchering his poem. See also Anthony Julius, T.S. Eliot, Anti-Semitism and Literary Form (--), available at <<http://davidfrum.com/article/t-s-eliot-anti-semitism-and-literary-form>> last accessed 30 July, 2019.