THE UN QUEST FOR THE PROTECTION OF HUMAN RIGHTS
The Ninth Magna Carta Lecture

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The historian J.C. Holt, in his work on the Magna Carta, made two points with which I should like to commence this discourse: The Magna Carta, he wrote, was a political document produced in crisis: “It was a product of intermittent negotiations which lasted for at least six months. It was the culmination of hard bargaining and skilful manoeuvring. Perhaps it registered too the weariness of the negotiators in the face of the intractable character of the king, the intransigence of some of his opponents and the hard facts of English administration”.

Magna Carta, he continued, was “a stage in an argument and bore all the characteristic features of the argument – the erection of interests into law, the selection and interpretation of convenient precedent, the readiness to assert agreed custom where none existed. It was not only law: it was also propaganda….It reflected in its quality the character of the men who achieved it and the nature of the society in which it came about.”

The evolution of the human rights idea, and the great national and international charters of rights, bear traces of grievances articulated as claims of rights, negotiations, compromises and distillations, and the recognition and proclamation of these distillations as rights. It is a rolling historical process that continues in our times. The Magna Carta and the Universal Declaration of Human Rights of 1948 share the features of: negotiated documents, projections of visions, and continuing argument.

I am honoured to have been asked to deliver this year’s, the Ninth, Magna Carta lecture, within the series looking to the 800th anniversary of the pioneering charter in 2015. I should like to thank the organizers of this series for giving me this opportunity of discussing the UN Quest for the Protection of Human Rights.

I am the heir of two intersecting intellectual currents that draw upon the Magna Carta and the Universal Declaration of Human Rights. We are here in the vicinity of Windsor and you may find it interesting to learn that I grew up in a village called Windsor Forest on the West Coast of the Demerara, in the then British Guiana, now independent Guyana. Before proceeding to read law in London I served from my teenage years for three years as a Magistrate’s Clerk in Guyana and had the opportunity of seeing the scales of justice in action from the inside. After studying in London I was called to the Bar at Lincoln’s Inn in 1969. In both places I learned of the Magna Carta and of the quest for the rule of law.

1 Previously: Chancellor of the University of Guyana, Professor, First Swiss Chair of Human Rights, Geneva Graduate Institute of International and Development Studies; Deputy and then Acting UN High Commissioner for Human Rights; Commissioner of the International Commission of Jurists; Member of the Permanent Court of Arbitration. Currently President of UPR Info.
3 Ibid, pp. 21-22.
At Lincoln’s Inn, where I was President of the Union, I had the good fortune of meeting the great Lord Denning on several occasions and I join in the tribute Lord Woolf paid to him in his magisterial opening lecture in this series. As a pupil Barrister in the Chambers of the late Sir Dingle Foot Q.C., I saw the great lawyer in action before the Privy Council, the Court of Appeal and the House of Lords pleading fine points of law, including, on one occasion, the right to a jury trial in a Commonwealth country that had brought in trial by three judges. I came to appreciate even more the majesty of the rule of law in action. While continuing my studies I served for four months in the Legal Department of New Scotland Yard and saw great lawyers and judges in action, including the then Editor of Archbold’s Criminal Law and Procedure, who at the time was serving as a Recorder in London. It was a marvel to listen to him presenting a case to a jury for its deliberations. As Lord Woolf reflected in his opening lecture, this is the legacy of the Magna Carta in action.

Finishing a doctorate in international law at the LSE in July, 1973 I was invited to join the UN Secretariat’s department of human rights and ended up spending thirty two years in the service of the world organization, where I served as Special Assistant to the Head of the human rights department for some twelve years, then, after a stint as Chief Speechwriter in the Office of the Secretary-General, Director in the peace processes in the former Yugoslavia, and as Director dealing with Africa in the UN Political Department. I returned to human rights as the Deputy High Commissioner for Human Rights for five years and then served as the Acting High Commissioner for fourteen months. I have written a book that I give to friends which tells of the UN Quest for Protection during the decades of the 1970s, 1980s, 1990s, and the first decade of this century. I relate there in more detail the story of these efforts and of the political and other difficulties encountered. Some scholars have, on their own initiative, put it on the Internet.

My task in delivering this lecture has been greatly facilitated by the distinguished lecturers before me who have shared their insights into the historic document, the Magna Carta, and its contemporary relevance, nationally as well as regionally and internationally. Lord Woolf, the then Lord Chief Justice of England and Wales, made the connection between the Magna Carta, the common law and ‘the establishment of a world governed by the rule of law’. This should indeed be our point of departure, and I shall return to it. Lord Woolf recalled the Lincoln Cathedral copy of the Magna Carta being lent to the United States Library of Congress for safe-keeping in 1939. When, at the end of the war, it was returned to the United Kingdom, he noted that the Minister receiving it on behalf of the Crown had referred to its historic lineage “and considered with justification that the preamble to the United Nation’s Charter was the most recent of Magna Carta’s ‘authentic offspring’.

Lord Woolf added that the principles enshrined in Magna Carta had, in addition to the Commonwealth, surfaced in different parts of the world, and that the principles were universal. Thomas Paine’s Rights of Man had taken them to the different legal systems on the continent. They had played their part in the American and French Revolutions. “After the last war, the world…decided to do better in future and the result was that, in addition to playing a role in establishing the principles set out in the United Nations Charter, the provisions of Magna Carta were highly influential when it came to drawing up the European Convention of Human Rights”. The European Convention, I might add, drew directly upon the Universal Declaration of Human Rights and was based on the draft UN Covenant on Human Rights then under discussion.

Professor The Rt. Hon. Shirley Williams, in her third Magna Carta lecture, looked at the development of human rights law with particular reference to the Council of Europe and the European Convention of Human Rights. She also considered the European Court of Justice with
regard to those elements affecting human rights occurring in the European treaties. She discussed the idea of universal rights and made the interesting point that “The long story of English liberty has been a story of incrementalism, to use Macaulay’s wonderful phrase, ‘broadening down from precedent to precedent’, building brick by brick on the verdicts of the Courts and the statutes of Parliament. Incrementalism, in our submission, is very much the story of international human rights law as pieced together, block by block, by the United Nations.

The then Most Reverend and Rt. Honourable Lord Archbishop of Canterbury, Dr Rowan Williams, delivering the Eighth Magna Carta Lecture last year, had very interesting things to say about Sovereignty, Democracy, and Justice as elements of a good society. These are issues very much at the heart of the UN vision of a world order in which peace and justice would be grounded in respect for human rights and in equitable development. He observed: “Healthy societies are those which understand concepts like sovereignty, democracy and justice against the background of a firm conviction about universal human dignity and the fundamental character and calling of the law to protect this.” The will of the people, the Universal Declaration of Human Rights proclaimed in 1948, shall be the basis of the authority of governments, and this will shall be determined in periodic genuine and fair elections.

Considerations like these very much animated the author and publicist H.G. Wells, who, as far as I am aware, was the first in the twentieth century to have articulated the idea of an International Declaration of the Rights of Man - in a letter that he wrote to the Times of London on 30 September, 1939 and which he elaborated upon in his book, The New World Order. Chapter 10 of this book contained a draft declaration with ten articles meant to prompt the drafting process. The tenth article read as follows: “That the provisions and principles embodied in this Declaration shall be more fully defined in a code of fundamental human rights, which shall be made easily accessible to everyone. This Declaration shall not be qualified nor departed from upon any pretext whatever. It incorporates all previous Declarations of Human Rights. Henceforth, for a new era it is the fundamental law for mankind throughout the whole world.” Those who worked on the drafting of the Universal Declaration of Human Rights confirmed, as Edward Lawson did in his Encyclopaedia of Human Rights, that Wells’ declaration was one of the documents they consulted.

In this presentation of the UN Quest for the Protection of Human Rights I shall focus more closely on the processes and challenges of extending protection, to the extent feasible, to those whose rights are threatened or are being violated. I should, however, acknowledge some historic contributions of the world organization that are very much of the essence of promoting and protecting human rights in a larger sense. Let us recall the following ground-breaking achievements:

- The UN has led the process of mobilising international efforts for development, for poverty alleviation, and for greater economic and social equity. The Millennium Development Goals are the latest manifestation of this.
- The UN contributed in a major way to the decolonisation of colonial peoples and to pursuit, albeit flawed at times, of the principle of self-determination.
- The UN has facilitated global recognition of the universality of human rights, notably at the Vienna World Conference on Human Rights of 1993, and in the human rights principles to guide the conduct of governments enunciated in the Millennium Declaration.
- The UN has made the quest for equality and non-discrimination an article of faith and has consistently championed these principles.
The UN has led the process of championing equality for, and the rights of, women world-wide. This is indeed a continuing struggle but the UN has raised the profile of the issues of justice and equity involved.

The UN has contributed to highlighting the problems and rights of minorities, indigenous peoples, migrants, and other groups. It has also developed norms for the protection of the rights of such groups.

While international wars and internal conflicts are not things of the past, the UN, especially after the end of the cold war, has sought to promote a culture of conflict prevention, a process that was highlighted in Secretary-General Boutros Boutros-Ghali’s Agenda for Peace, the first draft of which I had the honour of writing.

The UN has striven, and continues to strive to expose and stamp out contemporary forms of slavery and slavery-like practices, and similar phenomena, such as female genital mutilation and trafficking in women and children.

The UN Convention on the Rights of the Child was a landmark achievement that is the most widely-ratified human rights treaty in the world today.

I could continue this list of historic achievements but I should now like to return to the nuts and bolts issues of protecting human rights against the egregious violations that are still rampant in many countries of the world. I should like to adduce the following submissions:

- The UN vision is of a world of peace and justice grounded in the universal realization of human rights and in equitable economic and social development. However, it has not always been able to implement this vision. It is still striving to rise to this task.
- At the founding conference of the United Nations in 1945 the major powers made a deliberate choice for normative principles, but promotional rather than protective actions, save in situations involving threats to, or breaches of, international peace and security. Even here it has encountered many difficulties.
- The UN Charter of 1945 highlighted the principles of equality and non-discrimination which were then given prominent place in the Universal Declaration. The UN has consistently championed these principles and played an important role in the struggle against apartheid.
- The Universal Declaration is a great visionary document which brought together classical civil and political rights and newer economic, social and cultural rights.
- The UN has contributed to the universal quest for human rights protection with a veritable international code of human rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which, together with the Universal Declaration are sometimes termed the International Bill of Human Rights.
- The UN has contributed to spreading the human rights idea through pioneering studies, promotional seminars, and world conferences aimed at raising global awareness about the importance of human rights.
- The UN has placed the spotlight on problems in the enjoyment of human rights faced by women, children, minorities, indigenous populations, migrants, and other groups and has drafted standards and undertaken other activities aimed at defending their rights.
- The UN human rights treaty system has sought, with varying degrees of success, to promote human rights world-wide. The contribution of the system is mostly promotional, but petitions and fact-finding procedures do contribute a modest measure of protection and to the development of a jurisprudence of protection.
While the UN has done these creditable things, its Commission on Human Rights had taken a much criticized decision in 1947 that it lacked the competence to deal with petitions containing allegations of violations of human rights reaching it. The then UN senior official dealing with human rights, Henri Laugier, deemed this a shameful decision. Combined with the San Francisco decision of 1945 that the UN would promote international cooperation for the universal realization of human rights rather than actually protect against violations, the UN hobbled itself when it came to dealing effectively with reports of violations.

Since the 1970s, the UN, pushed by NGOs, had sought to develop some protection capacity through practice. Between 1970 and 2005 the UN developed a range of methods to react to gross violations of human rights including: public discussions, consideration of petitions, diplomatic contacts, fact-finding, public condemnations, the provision of human rights technical assistance to governments in need, and the establishment of the post of UN High Commissioner for Human Rights.

In 2006 the UN Human Rights Council replaced the former Commission on Human Rights and, with much effort, retained the procedures and methods that had been established to date but has softened some of them, for example, the public discussion of situations of violations and has a marked reluctance to condemn gross violators. The Council’s refrain is one of dialogue and cooperation instead of ‘confrontation’. The UN High Commissioner and the UN Secretary-General make modest contributions to the protection of human rights.

The UN Security Council has sometimes acted in the face of gross violations of human rights but the prevailing orthodoxy is that it should act only when situations involve threats to or breaches of international peace and security.

Massive violations of human rights continue in our times and the role of the UN in providing actual protection is still limited.

There is little evidence to date that the 2005 decision of the UN General Assembly to declare the doctrine of the Responsibility to Protect has produced much tangible results. But much heart is being put into efforts to take this doctrine forward in politically controversial waters.

International Criminal Tribunals and the International Criminal Court are probably developing a deterrent effect against gross violations of human rights.

Overall, one can say that the UN quest for the protection of human rights boils down to: the provision of an overarching human rights vision, important norms and principles, promotional activities, research and studies, awareness creation, support for national protection systems, some fact-finding and modest protection in the face of egregious violations of human rights world-wide. From the point of view of the actual protection of human rights, it is a record that leaves much to be desired. The UN must do better in the future.

In the foregoing submissions I hope I have been factual and objective. I cannot deny to you that in the contemporary world, even as we meet here today, there are grievous violations of human rights taking place in many parts of the world. The annual reports of Amnesty International and Human Rights Watch, to name but two, attest to this poignantly. The Universal Declaration of Human Rights opens with the proclamation: ‘All Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’ I have studied the records on the drafting of this article and I believe in the precept. And yet, as we read daily of acts of extreme brutality in different parts of the world, including a recent abhorrent crime here in London, I find myself thinking that we have a great deal of work still to do to make it a living reality. We must make
human rights the international constitutional law of the world and we must strive for the 
entrenchment, in all parts of the world, of a universal culture of human rights and of adequate 
and effective national protection systems.

I believe that this is the historic mission of the United Nations and that though, reflecting the 
state of the human condition, the going is rough, it will succeed in the final analysis. For 
humanity has no choice but to make human rights the law of the public sphere while faith or 
belief remain matters of personal conscience in the private sphere. The international norms 
provide for human rights strategies of governance within each State and for human rights 
principles arbitrating claims within and among societies in pursuit of what Lord Woolf called 
‘the establishment of a world governed by the rule of law.’

It is important that I leave you with optimism about the quest for the universal 
protection of 
human rights. In doing so I must pick up some of the concepts I flagged at the beginning of this 
lecture: first the political context, which the historian Holt recognized in the drafting of Magna 
Carta; second, the incrementalism that Macaulay recognized in the development of liberties in 
this country; third the continuing march of universal principles, which inspired H.G. Wells and 
which Lord Woolf, Baroness Williams, and Archbishop Roman Williams stressed; and fourth, 
the ever present need for constant vigilance in all societies over the implementation of norms 
and the role of the courts and similar institutions in upholding these norms.

I should like to address each of these in turn in the international context. Drafting, distilling 
and recognizing norms internationally, as well as promoting them and monitoring their 
implementation is very much at the heart of international politics. I need to point no further than 
the contemporary debate about upholding human rights in the course of dealing with terrorism. 
My point here is that in seeking to take forward the universal implementation of human rights 
the United Nations works with and through its Member States, buttressed by the role of NGOs 
and civil society which, in itself attracts much political fire. The challenge of the UN is to take 
forward the human rights idea in the midst of this highly politicised and complex world.

This brings me to the point of incrementalism. When the United Nations was established, the 
leading Governments, as I mentioned earlier, were against giving it the competence to protect 
human rights. This competence had to be built up block by block, to use the words of Baroness 
Williams. The UN is still striving in this domain, but I believe that incrementalism is helping us 
to take forward the human rights idea in practice. I see this point of incrementalism even in 
relation to the responsibility to protect, a still highly contested concept whose implementation 
was so controversial in Libya and is much argued about in our time in relation to Syria. I have 
lived this dilemma first hand in relation to the conflicts in the former Yugoslavia, while I was 
Director of the International Conference on the Former Yugoslavia for over three years.

There is an Asian country in respect of which the concept of the responsibility to protect was 
much advocated in the recent past. There were grievous problems in this country but two things 
stood out: first, major powers were influenced by their competing interests in the country’s 
natural and other resources; and second, the country had an army of half a millions soldiers. It is 
no light matter to contemplate going to war against such a country to vindicate the principle of 
the responsibility to protect. Negotiation is also a principle of protection and sometimes we need 
to recognise its place in intractable situations.
The contemporary situation in Syria presents many of the dilemmas the UN often faces: political differences among leading powers, the supply of arms to different sides, and the phenomenon of the veto in the UN Security Council.

Difficulties there certainly are but I believe that the process of incrementalism is taking forward even the controversial concept of the responsibility to protect, step by step, with lessons learned along the way. The concept will prevail in the end, though perhaps not necessarily in the black and white ways its terminology suggests.

Thirdly, there is the issue of the universality of principles and norms. Notwithstanding all of the political complexities that the UN has faced since its establishment in 1945 in taking forward the human rights idea, it is incontestable that it has helped in the development of universal norms for the protection of human rights. As a matter of solid international law we now have what are termed international norms of public policy, or in technical parlance of *jus cogens*. These are norms from which no State may derogate in any circumstances. They include the prohibition of slavery, and the prohibition of torture.

Next, there are norms of international customary law. Obligations undertaken by a State under a treaty are voluntary obligations. Obligations under customary law are mandatory obligations. A State may not opt out of them. I would argue that the norm not to discriminate adversely is a contemporary customary norm of public international law.

There are also general principles of law shared by the major legal systems. These provide a reservoir of principles for dealing with situations not expressly covered otherwise. One could say that the principle of due process is such a general principle of law.

The Universal Declaration of Human Rights inspires and buttresses these human rights norms of public international law. The idea of the universality of human rights, once contested in some quarters, has been firmly established by the World Conference on Human Rights held at Vienna in 1993 and by the UN’s Millennium Declaration, which set out human rights principles to guide Governments and to judge their conduct in particular situations.

Fourth, there is the issue of the international rule of law when it comes to monitoring the implementation of international human rights norms. In comparison with the European system, specifically the activities of the European Court of Human Rights, the UN’s record is more quasi-judicial. The UN has many promotional and fact-finding procedures for dealing with situations of concern, and human rights bodies established under specific treaties have contributed to an impressive body of case-law. But there is still a debate about how binding their decisions are. This is an area where the UN has to do better, but can only do so if Governments would be willing to accord it this competence. There is an incipient idea to establish a world court of human rights but this idea, in all probability, will have a long road to travel still. The International Criminal Court is the strongest judicial institution associated with the United Nations and is in the process of establishing its potency.

Where does all of this leave us? I should like to ask us to think of the quest of the UN through the imagery of a centre and three concentric circles. At the centre there is the principle of commitment to international human rights law established in the UN Charter and through the other legal processes I have mentioned earlier. Universality has taken hold and there are imperative norms of international public policy. This commitment is reaffirmed and strengthened by each generation, especially by young people.
Outside of the principle of commitment at the centre, there is a small circle of achievement, things we have accomplished through studying the situations of societies, groups and individuals, through the establishment of laws, and through the development of some incipient methods of supervision and of monitoring.

Outside of the first circle, there is a second circle of things that can be accomplished in the coming period. I would say that the entrenchment of equality for women is one such thing. Another is the development of adequate and effective national protection systems in all countries, and assisting national courts to implement international human rights law.

Then, at the perimeter, there is a third circle of global challenges, so many of them, that need to be tackled: problems of injustice, of discrimination, and of gross violations of human rights. This outer circle could well be with us for quite some time to come. And it is indeed daunting, but we must never relent.

So long as the principle of commitment remains at the centre and holds, and if we continue to enlarge the circle of achievement and of protection outwards, seizing opportunities at hand, we can gradually diminish the third, outermost circle, and spread the circle of achievement.

The mission of the UN is to help the circle of achievement expand and cover the other two circles, the circle of immediate opportunities, and the circle of global problems to be solved.

I believe that the principle of commitment will hold, and that the UN is continuing to enlarge the circle of achievement. And that, at the end of the day, is its historic contribution to the quest for the universal protection of human rights. To think otherwise would be to give up on humanity. That is not a choice open to us.

The international norms of human rights beckon us to human rights strategies of governance within and among all countries, and to the establishment of a world governed by the rule of law as championed by Lord Woolf in the spirit of the Magna Carta.

This year we are commemorating the twentieth anniversary of the historic 1993 World Conference on Human Rights. As we reflect on the ground covered in the past twenty years we must have in our sights some building blocks for the coming period. The world is not what it was in 1993, with new threats and challenges, and one of the key issues we must take into consideration is how to prevent violations of human rights nationally, regionally, and internationally.

Fostering adequate and effective national protection systems must always be a key priority. The National Responsibility to Protect must always feature in our policies and strategies and in our advocacy. We must consider how the contributions of national courts can be better supported.

We must have in view scientific and technological developments as they are affecting and will affect the realization of human rights. The recent report of a UN special rapporteur on modern weapons of war come to mind here.

We must have in view the plight of the poorest in the world, for whom the realization of human rights remains illusory in many situations.
Equality and non-discrimination remain crucial. The empowerment of women must be a constant priority.

We must act to support and strengthen the contributions and challenges of the UN human rights fact-finders, the ‘special procedures’ in UN parlance.

We must keep in mind the concerns being expressed about the approach of the UN Human Rights Council in emphasizing dialogue and cooperation in the face of grievous violations of human rights. We must consider how we can increase support for the UN High Commissioner for Human Rights and the Office of the High Commissioner.

We must consider how we can increase support for human rights NGOs like Amnesty International and Human Rights Watch.

We must have in view the emerging power configurations in the world and the strategic importance of the International Bill of Human Rights as the foundation of what Henry Kissinger has called a strategy of ‘co-evolution’ of China and the USA.

We must bear in mind the promise and the challenges of implementing the Responsibility to Protect, especially having regard to contemporary situations of concern.

And, finally, we must invest more in human rights education in every country of the world. One of the ideas I launched when I performed the functions of UN High Commissioner for Human Rights was to call for a UN Convention on Human Rights Education. This led, as a first step, to the drafting and adoption of a UN Declaration on Human Rights Education. There is need for much more action in this area.

It is through human rights education that we can help entrench a universal culture of human rights, and that we can help advance the UN vision of a world of peace and justice grounded in equitable economic and social development and in respect for, and protection, of human rights and fundamental freedoms for everyone.