

Report on Wilton Park Conference:
What Future Policies for Protecting Human Rights?

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The Wilton Park Conference, What Future Policies for Protecting Human Rights, offered participants an opportunity to understand the proposed changes to the multilateral and bilateral systems of protecting the wide range of human rights throughout the world. Hosted amidst the beautiful surroundings of Wiston House and its extensive grounds, participation in the conference was a rewarding experience.

The conference began mid-afternoon Friday, January 14, 2005, following our well-organized arrival from Gatwick airport and check-in. A brief introduction to the conference was presented by Ms. Isobelle Jacques, the chairperson of the meetings before the first substantive talk. The former Acting High Commissioner for Human Rights at the United Nations in Geneva, Mr. Bertrand Ramcharan, gave us his views on the major challenges to protecting human rights in today's world. Mr. Ramcharan based his views on books and reports published by various sources, including non-governmental organizations (NGOs) dealing with international human rights, international organizations (including the UN and the OECD), and commentators. He noted that human rights is widely viewed as being in a "time of crisis". Not only is there growing pressure from non-state actors that threaten to violate human rights (such as terrorist movements), as well as the increasing severity of situations leading to human rights violations (such as poverty and growing populations in search of scarce resources), but there is a relatively new occurrence of governments flaunting international law norms. Mr. Ramcharan asked whether traditional human rights protection strategies of spreading knowledge, taking preventative steps in peace time, and mobilizing respect in times of war are enough to offset the threats. He suggested several general strategies that the human rights system could add to the traditional methodology in order to better protect victims or potential victims of human rights. First, the position of the High Commissioner for Human Rights should be strengthened, increasing in particular the amount of time available to the Commissioner to protect human rights. Second, the role of treaty bodies in protection functions ought to be strengthened, particularly in the area of discretionary procedures. Next, field officers need to be given a stronger role in protection. Finally, the role of national courts in the protection of human rights is essential, and so needs to be strengthened (providing, for example, national judges with more education about human rights and giving them better materials). Mr. Ramcharan ended with a call to push harder for democracy and to emphasize preventative strategies in international and domestic human rights protection arenas.

A discussion followed Mr. Ramcharan's talk beginning with a question of how to get past political reluctance by governments to enforce human rights. I felt that this is really the fundamental question – and one without which's answer the human rights program cannot move forward. However, this was the only time the question was brought up and there was no real attempt to answer it from any of the speakers or participants for the rest of the weekend. Discussion continued with several comments as to the frightening long-term consequences of the United States' challenge to the concept of law itself, emphasizing that this is a major new challenge and the quality of human rights as product, tool and bottom line.

The next speaker was Mr. Michael Posner of Human Rights First, a US-based NGO, on the topic of how bilateral and multilateral instruments can be made more effective. Posner was an engaging speaker, who saw four major challenges to human rights protection: the need to address the worst offences, holding the line, the coordination of systemic policies, and the revitalization of the social justice agenda . Mr. Posner's answers to the challenges called for bilateral action in Europe's need to stand up to the United States' administration's attitude toward international law and for governments to both engage with human rights offenders and offer technical assistance. On the multilateral level, Mr. Posner criticized the United Nations institutions, considering the Commissioner's office worthless but finding that the reform proposals circulating now would not improve its effectiveness. He suggested that the Commissioner be given more autonomy from political decisionmaking and encouraged the Security Council to negotiate a definition of "terrorism". Finally, Mr. Posner noted the need for new models in the social justice arena. A general discussion ensued before the day was concluded by dinner.

On Saturday, the emphasis of the morning was "Bilateral Policies for Advancing Human Rights". Session Chairman Wolfgang Bruehlhart from Switzerland noted that the Human Rights Dialogue is a new instrument for attempting to persuade governments to honor their international human rights obligations. Ambassador Piet de Klerk of the Netherlands began the discussion by addressing the questions "How Effective are Human Rights Dialogues? How Can They be Improved?". Mr. de Klerk noted that dialogues are a diplomatic tool, and that the question of if it matters if they are effective is one that politics determines the answer – yes. There are five minimum conditions that Mr. de Klerk sees as necessary for effective dialogues: that there is a country or group of country with specific concerns about another state; that other state is willing to engage in a dialogue with a commitment to change its behavior; the dialogue partner has the ability to enact changes necessary; there is a reasonable chance of the dialogue's success; and the timing of the dialogue is appropriate. He then discussed the China dialogue 's benchmarks, noting a mixed result, but noting a certain amount of dialogue-fatigue setting in. Finally, Mr. de Klerk noted several practical ways in which dialogues can be improved, including trying to bring in symmetry to the dialogue, leaving enough time for topics to be discussed, and accompanying dialogues with broader civil society engagement efforts.

Mr. Tom Malinowsky from Human Rights Watch in Washington, DC continued the discussion of dialogues as a tool for advancing human rights. Mr. Malinowsky warned of "D" dialogues that are often mere speech-giving by both sides with no real expectation of

change, and urged that dialogues should not be seen as an end in themselves – that the talks should be broken off if there is no sign of the target government’s attitudes. As the director of an NGO, his suggestions for improving dialogues not surprisingly emphasized openness of the governments involved: announcing concrete goals to the public, raising human rights issues at the highest levels, bringing in real NGOs to participate, and create incentives to engage outside of the dialogue process.

The discussion following this session included comments as to the need for symmetry in dialogue – some speakers agreeing that openness to criticism by the initiating government is helpful, while others argued that the imbalance is good. Another comment went to the need for structure among the several dialogues pursued with one country, and finally, the need for confidence-building was noted as important to human rights protection, and thus a call for improving the diplomacy of dialogues was issued.

Parallel discussion groups on “How to Optimize the Impact of Human Rights Dialogues” followed the break, and I chose to attend the group focusing on China, since China’s economic power makes it particularly difficult politically for one country to impose trade sanctions on it. Neither the speakers nor the discussion, however, addressed even tangentially the issue of trade sanctions as a tool to back up dialogue demands. The first speaker was from EDA, Ms. Pascale Baeriswyl. She explained the “Berne Process”, noting that ten countries involved in dialogues with China are organized through a series of meetings with each other. The dialogues have three levels: official meetings; the exchange of experts; and projects.

Ms. Sharon Hom, the executive director of the NGO Human Rights in China spoke next. Ms. Hom told us how civil society is on the rise in China, and that there is intense movement for change within the country. As a result, her organization acts to a great extent to assist groups within China press for reform, but they help mainly from outside China (since their entrance to the country is restricted). Ms. Hom then explained her organization’s internet project. Using cyber technology, a communication “highway” is created to avoid governmental censorship and bring information on human rights out of China and then re-direct it back into China, so that there is communication on the issues among the communities of protestors in that country. Ms. Hom sees her project as an adaptive solution with a multiplier effect.

The afternoon session was focused on human rights promotion at the multilateral level. Our discussion started in plenary with Mr. Gudmundur Alfredsson’s presentation on “How Effective is the UN Commission on Human Rights in Advancing Multilateral Human Rights Policies? How Could Its Reform Improve Performance in this Respect?”. Mr. Alfredsson commented that the Commission may be losing relevance, as human rights are being mainstreamed into the UN bodies and the treaty bodies are increasing their relevance. He suggested ending the Commission’s representation through diplomats, replacing them with people from ministries that are responsible for implementation of human rights domestically. Finally, he noted that there is a need for more human rights education.

Mr. David Petrusek, the director of the Centre for Humanitarian Dialogue, followed by hypothesizing the abolishment of the Commission. His tally of gains and losses led to a conclusion that the four useful functions of the Commission that would be lost (name-

and-shame; supervision; creation of human rights instruments; policy-legitimization) could be replaced on an individual basis. The gains, which include de-politicization of the Office of the High Commissioner, modernization of the human rights agenda, saving financial resources, and promoting treaty bodies, therefore outweigh the losses and thus, the Commission should be abolished.

Discussion following these presentations revolved around the double-standards issue, many criticizing Western governments' attacks on developing country human rights offenders while shielding themselves from accusations of violations at home, while others regarded double-standards as "a fact of life". Professor Walter Kälin, from Bern, noted that what is needed is better policies, not less politics.

The afternoon was concluded with parallel discussion groups on various UN human rights institutions. I chose the group with the topic, "Protection and Assistance: Is there a Conflict?", led by Mr. Nicholas Howen from the International Commission of Jurists. Mr. Howen proposed that human rights are being "dumbed down" by their mainstreaming into the UN and resultant application by non-experts. Moreover, protection of human rights seems to be taking a back-seat to technical assistance (or, "capacity-building", as we preferred to label it). Thus, the essential nature of human rights – in the end conflictual – is being negated by consensual hopes of future goods. While there need be no conflict between protection and capacity-building, scarce resources and lack of institutional organization often lead to a preference of one at the cost of the other.

Much of the group discussion focused on whether protection or capacity-building should be prioritized, with one comment arising, that protection in the form of high-publicity jailing offenders often brings with it tremendous capacity-building. A representative from the Commissioner's office informed us that the new Commissioner is very dedicated to protection, and it appears that in the next few years, protection work will be put back at the center.

Sunday was the final day of the conference, and it was appropriately devoted to "Present and Future Challenges". We started with a presentation by Ms. Elizabeth Dugan from the United States' Department of State who told us about what the Bureau for Democracy, Human Rights and Labor does to protect human rights bilaterally and multilaterally. Using three case examples, China, Sudan, and Iraq, Ms. Dugan explained that the instruments the US uses depends on the situation. She also reminded the participants that the US is sometimes unfairly isolated in its multilateral attempts to secure human rights protection. Finally, she concluded with a call for encouraging public-private linkages and encouraging the devotion of more resources (and their efficient use) to human rights protection.

The meeting concluded with an address by Ambassador Michael Smith (of Australia) on the next steps for "Moving the Human Rights Agenda Forward". He called for greater effectiveness in advocacy, institutions, and in building support for human rights standards. Mr. Smith also noted the need to invest greater resources in the various institutions and mechanisms at the UN. He concluded by encouraging the "bedding" of human rights enforcement at the grass roots by encouraging governance in bilateral aid programs and dialogues, by supporting national human rights institutions, and by educating children and significant groups in developing countries about human rights.

The final discussion was severely constrained by time. The final comment, however, seemed apt for the conference close: the paradigm of human rights need to be viewed by governments not as the problem, but rather as the solution to their troubles.

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