

International Order Means Playing by the Rules

by Alfred de Zayas,* Geneva



Alfred de Zayas
(Photo ma)

*When eight billion human beings have to live on a common planet, it is necessary to establish rules of the game, a certain *modus vivendi* to avoid chaos and violence. Coherent rules enable a peaceful local, regional and international development based on cooperation rather than confrontation. These rules have to be observed in good faith. Cheating is not allowed.¹ Double standards destroy the trust that we place on the institutions that administer the rules.*

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In the 21st Century, we know multiple rules-based orders. Internationally we have the United Nations Charter, which is akin to a world constitution. The United Nations agencies such as ILO, UNESCO and WHO have their own constitutions and enforcement organs. Regional orders are based on treaties, e.g. the Charter of the *Organization of American States*, the *Treaties of Lisbon* and *Maestricht* for the European Union, the *Charter of the African Union*, etc.

Subsidiary organs also have their statutes or “terms of reference”, e.g. the International Court of Justice, which entered into force on 24 October 1945, together with the UN Charter, the *International Criminal Court*, which functions on the basis of the *Statute of Rome* of July 1998. The *Human Rights Council* works on the basis of a 2006 General Assembly Resolution, the Office of the *High Commissioner for Human Rights*, on the basis of a 1993 General Assembly resolution.²

Common to all international and regional orders is the commitment of all States members to abide by the established rules. *Antony Blinken’s* call for an “rules-based international order” is redundant, because we already have the



«The Knotted Gun» (1984), a sculpture against violence, in front of the UN headquarters in New York. (Picture ma)

UN Charter, whose article 103, the supremacy clause, states that the Charter takes priority over all other “orders” such as the *Treaties of the North Atlantic Treaty Organization* (NATO) and the *Treaties of the European Union*. This can be changed, but only pursuant to an amendment to the Charter under its article 108.

The authority and credibility of all “orders” and all organizations established to implement the agreed “order” depends on uniform application of the norms and good faith enforcement of the “object and purpose” of the organizations. In this essay, I will illustrate some problems that plague the work of two important United Nations institutions – the *Human Rights Council* and the *Office of the UN High Commissioner for Human Rights*.

The Human Rights Council

On March 2006 the *UN General Assembly* decided to establish the Human Rights Council to replace the much-maligned *Commission on Human Rights*. Upon the adoption of the Resolution, the then Swiss Ambassador to the UN *Peter Maurer* welcomed it as a “good compromise which created a framework for a “fresh start”, for exploring new forms of engagement, and provided an opportunity to build trust, by addressing human rights in a spirit of fairness, equal treatment and avoidance of double standards. Maurer added, “it is our sincere hope that we will not fall back into old patterns of behavior”.

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Maurer warned “We do not share the intransigent and maximalist approaches of certain delegations, who want to make us believe that they are the only ones fighting for ambitious human rights machinery. All too often, high ambitions are cover-ups for less noble aims and oriented, not at improving the United Nations, but at belittling and weakening it.” He stressed that the adoption of the GA resolution was an important strategic achievement for the overall United Nations reform process, adding “Indeed, change is a process, not an event”.

My own experience with the Commission on Human Rights as a staff member of the OHCHR for more than two decades, and with the new Council as the first *UN Independent Expert on International Order* (2012–18) confirms the concerns expressed by Ambassador Maurer. I would dare say, that the new Council has less authority and credibility than the Commission, and that the level of weaponization of human rights has reached new peaks in the Council. Double standards are not the exception, but the daily fare of the house.

The practice of “naming and shaming” frequently poisons the atmosphere in the Council, precisely because of its confrontational quality, which leaves no room for honest dialogue with an *animus* to reach solutions based on goodwill and common sense. Currently, the Universal Periodic Review of State reports, the reports of the mandate holders under the Special Procedures system is characterized by invective and evidence-free allegations.

What is needed is a Council that endeavours to discover the root causes of problems and is capable of formulating concrete preventive and corrective strategies. The all-too-present practice of “naming and shaming”, advocated by some delegations and even by non-governmental organizations like *Amnesty International* and *Human Rights Watch* – who should know better – has proven to be largely counterproductive,³ because more often than not the countries engaging in the “naming” have lots of skeletons in their own closets,⁴ and the countries being “named” have no inclination to accept the skewed narratives presented in the Council by their accusers and by their complicit helping assistants in the NGO community. Thus, the “tactic” of pointing fingers actually backfires and makes the targeted governments retrench rather than open-up.

What is needed is effective advisory services and technical assistance, a pro-active Office of the High Commissioner for Human Rights that will show governments how to eliminate obstacles to the enjoyment of civil, cultural, economic, political and social rights by the persons under their jurisdiction.

Back in 2006 the Cuban Ambassador *Rodrigo Malmierca Díaz* had expressed the hope that the new Council would not be befallen by the “political manipulation, hypocrisy and double standards imposed on its work by the United States and the European Union”. Ambassador Malmierca observed that the new Council was by no means a sufficient response to addressing that challenge and that nothing in the creation of the new Council would prevent a repeat of the tradition of manoeuvring by the powers of the North, to unjustly condemn third-world countries.⁵

Cuba had proposed the establishment of a body that would contribute to strengthening the international system of promoting and protecting human rights, through genuine cooperation, but the United States and its allies had insisted on making the “punitive and sanctioning” approach prevail, this time evinced by a provision in the text, which allowed for the suspension of the rights of those who questioned, interfered, or just disagreed, with the “hegemonic domination plans of the Empire”.

When it comes to Special Procedures, the Council would perform better, if it concentrated on thematic mandates such as the Rapporteur on Torture, Violence against Women, Independence of Judges and Lawyers, the Right to Food, the Right to Health, the Right to Development, etc. and gradually phase out the hostile country mandates, which more often than not tend to exacerbate matters. Country mandates are sensible if the purpose of the mandate is to help the country improve its human rights performance through advisory services and technical assistance, through a good faith examination of the root causes of grievances and an effort to find viable solutions. Country mandates are a waste of time and resources when the countries concerned refuse to cooperate with the country’s Rapporteur, who is perceived – sometimes with good reason (I could name many examples) – as a priori biased against them. When a country feels “picked on” and unjustly targeted, it will certainly not comply with the recommendations of any Rapporteur or “Fact-Finding Commission”.

This is so because other countries whose human rights records are objectively worse, escape scrutiny and are not subject to blackballing in the institutional incarnation of a Rapporteur.

It is essential that the OHCHR and the HR Council observe a code of deontology and never, I mean never, apply double standards. The authority and credibility of OHCHR and HR Council stand and fall with the professionalism of the staff and the objectivity of its methodology.⁶ It is not acceptable to focus on the violations of certain countries only, and to pass over the violations by other countries, notably the large donors to the OHCHR.

It is the responsibility of States, not only the 47 member States of the Council, to ensure that the Council is depoliticized, that it be people-centered, that it formulates constructive proposals and establishes follow-up mechanisms. While the *Universal Periodic Review* is useful, it must not overlap with or duplicate the work of the UN treaty bodies such as the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights. Moreover, it must go beyond being a mere diplomatic ritual and an opportunity for some countries to advance geopolitical agendas and score points against other States. When it comes to Special Procedures, the Rapporteurs and Independent Experts must rigorously adhere to their code of conduct under Council resolution 5/2.

International Order means International Cooperation

The key principle of international order must be the principle of cooperation on the basis of the UN Charter, the recognition of the sovereign equality of States and the self-determination of peoples. Let us start by recalling the commitment of all States under the UN Charter, Art. 55, to cooperate with each other in achieving peace and human rights:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: solutions of international economic, social, health, and related problems; and international cultural and educational cooperation”

Many UN resolutions and declarations emphasize the importance of international cooperation. The 1993 *Vienna Declaration and Programme of*

Action reaffirms in its preamble “the commitment contained in article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation.”⁷ Operative paragraph 4 further states: “The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation.

In the framework of these purposes and principles, the promotion and protection of all human rights is an *erga omnes* obligation of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.” Operative paragraph 10 reaffirms the right to development and stipulates “States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.”

Paragraphs 5 and 6 of the Outcome Document of the *World Summit of 2005*, Res. 60/1, emphasizes the importance of multilateralism and international cooperation.

“5. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect their territorial integrity and political independence, to refrain in our international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, to uphold resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion, international cooperation in solving international problems of an economic, social, cultural or humanitarian character and the fulfillment in good faith of the obligations assumed in accordance with the Charter.

6. We reaffirm the vital importance of an effective multilateral system, in accordance with inter-

national law, in order to better address the multifaceted and interconnected challenges and threats confronting our world ...”

Paragraph 48 highlights the importance of the right to development. “We reaffirm our commitment to achieve the goal of sustainable development, including through the implementation of *Agenda 21* and the *Johannesburg Plan of Implementation*. To this end, we commit ourselves to undertaking concrete actions and measures at all levels and to enhancing international cooperation, taking into account the Rio principles.”⁸

In this context, it is also pertinent to recall the language of the revised draft UN Declaration on the Right to International Solidarity,⁹ which expands on the original draft contained in the 2017 report of the Human Rights Council’s Special Rapporteur on International Solidarity, *Virginia Dandan*.¹⁰

Article 1 stipulates

“International solidarity is an expression of unity by which peoples and individuals enjoy the benefits of a peaceful, just and equitable international order, secure their human rights and ensure sustainable development. 2. In accordance with the Charter of the United Nations, States, international organizations and non-State actors can, through cooperation in good faith, achieve common goals and solve global challenges. 3. International solidarity is a central principle in contemporary international law, based on and in furtherance of: (a) Justice, peace, sustainable development and equitable and fair partnerships between States as a basis for international cooperation ...”

Article 3 stipulates

“The general objectives of international solidarity are to create an enabling environment for: 1. Promoting the realization and enjoyment of all human rights and fundamental freedoms; 2. Engendering trust and mutual respect to foster peace and security, promote early response and prevention of conflict, provide humanitarian assistance and engage in peace-building ...”

Article 7 stipulates

“States undertake to cooperate with each other and with non-State actors to implement the right to international solidarity to prevent and overcome global challenges ... 4. States agree to take appropriate, transparent and inclusive action to ensure the active, free and meaningful participation of all individuals and peoples, including younger generations, in decision-making processes at the national, bilateral, regional and international levels on matters that affect their enjoyment of solidarity. 5. States agree to

adopt and effectively implement policies and programmes, both domestically and transnationally, to promote and protect solidarity based on cultural diversity, engagement and exchange.”

As an Independent Expert on International Order, I participated in the drafting of this document and advocated its adoption by the General Assembly. It is a disgrace, that to this day the *Declaration on the Right to International Solidarity* has not been adopted, although it eloquently expresses the most noble principles of the UN Charter. Who opposes this Declaration? The United States, the United Kingdom and the States members of the European Union. In this context, it is instructive to study the voting record on many resolutions before the General Assembly and Human Rights Council. This will reveal who is really in favour of a rules based international order, and who is ultimately against the sovereign equality of States, and human rights for all members of the human family.¹¹

The High Commissioner for Human Rights

It is opportune to focus on the mandate of the UN High Commissioner for Human Rights. Following up on the recommendations of the *Vienna World Conference on Human Rights*, the General Assembly adopted on 20 December 1993 Resolution 48/141 creating the mandate of the High Commissioner for Human Rights. In its preambular paragraphs, the Resolution recalls “that one of the purposes of the United Nations enshrined in the Charter is to achieve international cooperation in promoting and encouraging respect for human rights”. In operative paragraph 4, the resolution enumerates the responsibilities of the High Commissioner, including “To enhance international cooperation for the promotion and protection of all human rights”.¹²

According to its terms of reference, the *raison d’être* of the Office of the High Commissioner for Human Rights is to advance human rights by means of international cooperation, advisory services and technical assistance. It is regrettable that the secretariat of the OHCHR and the Human Rights Council seem to have forgotten this core vocation of the mandate and prefer to engage in confrontational politicking.

This is not to say that the OHCHR and the HRC should keep silent about violations of human rights wherever they occur. But the condemnation of abuses and crimes by governments cannot be the object and purpose of the OHCHR and

HRC. It is crucial that the common effort to advance the enjoyment of human rights not be limited to rhetoric and lip-service to human dignity. The HR Council has proven to be largely ineffective because it is not a forum of civilized dialogue but rather an arena of gladiators where the knives are out and there are no doctors around.

Obstacles to international cooperation

Among the many obstacles to peace and international cooperation is the ongoing information war, the very high level of fake news, fake history and fake law disseminated by a complicit media that acts as an echo chamber for governments.¹³

In the paragraphs above I have flagged some problems in the functioning of the HR Council's Universal Periodic Review (UPR), notably the confrontational approach instead of cooperation based on the UN Charter. Double standards destroy the authority and credibility of the institutions. The "weaponization of human rights" means that human rights are being instrumentalized as weapons to attack other countries. This corruption of a noble humanistic principle is tantamount to blasphemy and sacrilege.

Conclusions and recommendations

I propose that the HR Council's thematic mandates be strengthened, that confrontational country mandate be phased out. All UN mandate holders must rigorously observe the code of conduct (Resolution 5/2). A code of conduct for NGOs should be drafted and adopted by the General Assembly. Ngo's that violate their code of conduct should be promptly stripped of consultative status, especially when they have engaged in ad hominem attacks or disseminated evidence-free allegations. The procedures of the UPR process should be revised to avoid duplication and to ensure constructive discussion and avoid the petulant and hypocritical tactic of "naming and shaming". The method of appointing Rapporteurs should be revised to ensure that the best candidates are selected and not the "politically correct" candidates, not only the US and Europe-centred candidates (regardless of nationality). It is crucial to democratize the HR Council's "Special Procedures" by ensuring that there is not only gender-balance, but also a balance of legal approaches and philosophies. An "Observatory" to ensure that double standards are not accepted in the debates should be established, a kind of "double-standards watch". A fol-

low-up procedure should be set up to monitor whether any of the recommendations of Rapporteurs are actually being followed, or whether the rapporteurs are just an assembly of loud-mouthed "namers and shamers" or even worse – irrelevant Cassandras.

Bottom line: International order means international cooperation. This entails goodwill, which currently is in short supply. It entails a commitment to playing by the same rules and not constantly trying to take advantage of the other guy.

Civil society should contribute to a rediscovery of the spirituality of the Universal Declaration of Human Rights, demand that their governments channel their tribal instincts into constructive cooperation paradigms. I cannot help but think of Yuval Noah Harari's "Sapiens" and "Homo Deus". Indeed, if we want to survive the 21st century, we had better get our act together and rediscover the advantages of cooperation and compromise.

Source: <https://www.counterpunch.org/2024/01/19/international-order-means-playing-by-the-rules/>, 19 January 2024

¹ See «A Culture of Cheating» <https://www.counterpunch.org/2022/01/28/a-culture-of-cheating-on-the-origins-of-the-crisis-in-ukraine/>

² <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F48%2F141&Language=E&DeviceType=Desktop&LangRequested=False>

³ <https://publicseminar.org/essays/why-naming-and-shaming-is-a-tactic-that-often-backfires-in-international-relations/> and <https://journals.sagepub.com/doi/abs/10.1177/1369148120948361>

⁴ <https://www.ohchr.org/en/statements/2013/11/statement-alfred-maurice-de-zayas-independent-expert-promotion-democratic-and>

⁵ <https://press.un.org/en/2006/ga10449.doc.htm>

⁶ See Chapters 2 and 3 of Alfred de Zayas, *The Human Rights Industry*, Clarity Press, 2023. <https://www.claritypress.com/product/building-a-just-world-order/>

⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

⁸ [https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F2625\(XXV\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F2625(XXV)&Language=E&DeviceType=Desktop&LangRequested=False)

⁹ <https://www.ohchr.org/sites/default/files/documents/issues/solidarity/reviseddraftdeclarationrightInternationalsolidarity.pdf>.

¹⁰ Annex to Report A/HRC/35/35. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/099/39/PDF/G1709939.pdf?OpenElement>

¹¹ A de Zayas, *The Human Rights Industry*, Chapter 8, "The Bottom Line", Clarity Press, 2023.

¹² <https://undocs.org/Home/Mobile?Final>

¹³ A de Zayas, chapter 7 *The Human Rights Industry*, Clarity Press, 2023.