

INTERNATIONAL HUMAN RIGHTS SINCE 9/11: MORE CONTINUITY THAN CHANGE

Jack Donnelly

Graduate School of International Studies
University of Denver

jdonnell@du.edu

Note:

After §3 this is an outline rather than a paper.
Please do not circulate beyond the immediate audience.

It is a commonplace to argue that “everything changed” on 9/11. As Vice-President Cheney put it in an interview on *Meet the Press*, “the theme that comes through repeatedly for me is that 9/11 changed everything.” (2003) By early 2003, this was already being described in the mainstream media as a cliché. (McGeary 2003)

In the case of human rights, few people have suggested that everything has changed. A common complaint, however, is that there has been a dramatic deterioration in respect for human rights attributable to “the war on terror.” [examples]

Such claims, I will argue, are largely inaccurate. Continuity is much more striking than change in international human rights policies and practices in the last several years.

War is never good for human rights.¹ The global “war on terror” is no exception. It certainly has had negative consequences – direct and indirect, intended and unintended – for human rights. Nothing, however, has changed fundamentally in either the global human rights regime or the global state of human rights. Except in a few well-publicized cases, the negative changes since 9/11 have been largely incremental, and most often intensified expressions of previously existing problems.

My purpose is neither to deny nor to justify deteriorations in national and international human rights practices. The war on terror has made the world a less safe place for human rights. Even incremental backsliding is to be sorely lamented and struggled against. The failure to build on the progress of the 1990s is indeed a tragic lost opportunity. I readily admit – and in another context would emphasize – all of this, and more.

The issue I want to address here, however, is not whether human rights have suffered as a result of the American-led response to 9/11 but how and to what extent. And rather than focus on well-

¹ For the purposes of this paper, I will take “human rights” in a broad, extended sense of that term, including not only the practices covered in the body of international human rights law flowing from the Universal Declaration of Human Rights and the International Human Rights Covenants, but including as well genocide and complex humanitarian crises in so far as they intersect with human rights or genocide.

publicized cases of deterioration, I try to look at the broad pattern of practice. Such an approach, I will argue, not only gives us a more accurate view of what has occurred in the past several years but has significant implications for the medium run future of national and international human rights policies and practices.

1. THE GLOBAL HUMAN RIGHTS REGIME

Let us begin with the global human rights regime. In the narrowest sense, “the global human rights regime” refers to the multilateral governance institutions and practices dealing with human rights. Thus understood, there has been no deterioration in the regime since 9/11. At the conclusion of this section, however, I briefly sketch a broader conception of “the global human rights regime” that establishes out an outline for the remainder of the paper.

A. The Norms² of the Global Human Rights Regime

There has been steady incremental progress in elaborating and extending the basic normative structure sketched in the Universal Declaration of Human Rights and the International Human Rights Covenants. For example, the International Convention for the Protection of All Persons from Enforced Disappearance³ was opened for signature and ratification on December 20, 2006 and the Convention on the Rights of Persons with Disabilities⁴ and its Optional Protocol⁵ were opened for signature and ratification on March 30, 2007. Work continues on other normative initiatives, such as guiding principles on human rights and extreme poverty. And the problems faced with the United Nations Declaration on the Rights of Indigenous Peoples – it was adopted by the Human Rights Council at its first session in June 2006 but stopped in the General Assembly in November [update] – have had nothing to do with “the war on terror.”

Even more importantly, efforts by the United States and others to obtain formal international recognition for anti-terrorism norms that undermine established principles of international human rights law have been a dismal failure. (Will consider examples of Guantanamo and “renditions” below.) Quite the contrary, the Human Rights Council, at its second session adopted a decision reiterating the applicability of all provisions of international human rights and humanitarian law to those deprived of their liberty in the context of anti-terrorism measures.⁶ Most individual states, and even the U.S. Congress, have also rejected the arguments of the Bush Administration. Even when faced with an aggressive normative challenged backed by the power of the world’s strongest state, international human rights norms have, so far at least, withstood the test. Such nearly global resistance to American efforts, I would argue, has actually reaffirmed and strengthened international human rights norms.

² I use “norms” to include what are often referred to as “principles, norms, and rules,” which are typically understood as “norms” of greater or lesser generality/specificity. An international regime thus understood has both a normative and a procedural dimension.

³ <http://www.ohchr.org/english/law/disappearance-convention.htm>.

⁴ <http://www.un.org/disabilities/convention/conventionfull.shtml>.

⁵ <http://www.un.org/disabilities/convention/optprotocol.shtml>.

⁶ See http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=63&t=3.

B. Multilateral Implementation Procedures

The Office of the High Commissioner for Human Rights (OHCHR) remains an active advocate for internationally recognized human rights⁷ and her office has suffered no deterioration in the level of activity or its professionalism following 9/11. In the United Nations system, even more than most large bureaucracies, funding is the single most important measure of institutional status. The High Commissioner has the good fortune to depend in significant measure on voluntary contributions. These have increased from approximately \$30 million a year in both 2000 and 2001 to nearly \$70 million in 2005 and over \$80 million in 2006, with the percentage of particularly vital un-earmarked funds increasing from barely 5% in 2002 to 37% in 2006. No less importantly, regular budget contributions, which make up roughly a third of total spending, have increased roughly comparably. (Office of the High Commissioner for Human Rights 2007: 158-167)

Special procedures are another good measure of OHCHR activities. Geneva continues to host a considerable array of individuals or groups with special mandates on topics ranging from arbitrary detention to the sale of children to food, education, and the rights of indigenous peoples and migrants, as well as a number of country rapporteurs. In 2007, these experts undertook 62 fact-finding visits to 51 different countries, made 135 reports to the Human Rights Council and 20 reports to the General Assembly, and sent over a thousand communications to 128 countries. (Office of the High Commissioner for Human Rights 2008: 7, 10, 17) There is no evidence of any decline in either activity or impact.

Neither is there evidence of decline in the quantity or quality of the work of the expert bodies that monitor state implementation of international human rights treaties. Consider, for example, the Human Rights Committee. Its review of periodic reports continues apace. And as Table 1 shows, it has significantly increased its work on individual communications since 2001.

Table 1. Communications Considered by the Human Rights Committee. 1997-2005

Year	New Cases Registered	Cases Concluded	Pending Cases
2005	106	96	309
2004	100	78	299
2003	88	89	277
2002	107	51	278
2001	81	41	222
2000	58	43	182
1999	59	55	167
1998	53	51	163
1997	60	56	157

Source: A/61/40 para. 97, A/55/40 para. 539.

In the case of the treaty bodies, as with other multilateral activities, it is important that we not idealize or overemphasize their significance. Reform, which has been on the agenda for a decade,

⁷ The most recent Annual Reports, for 2005 and 2006, are available at <http://www.ohchr.org/english/about/docs/annualreport2005.pdf> and <http://www.ohchr.org/Documents/AboutUs/annualreport2006.pdf>.

has not made much progress.⁸ The quality, and even the submission, of reports remains a problem.⁹ And the impact of the reporting and complaint procedures remains modest at best. But all of these problems long predate 9/11. And there is no evidence that any treaty body has been distracted or deterred in its work by “the war on terror.” [check CAT]

The biggest change in the multilateral machinery since 9/11 has been the replacement of United Nations Commission on Human Rights with a new Human Rights Council. The clear intent of this unprecedented structural change was to strengthen, not weaken, the UN’s human rights machinery. The early evidence suggests to me that such efforts have been largely unsuccessful; the Council seems to be mostly old (and spoiled) wine in new bottles. But clearly there has been no significant deterioration – if only because the Commission had become so thoroughly corrupt and discredited. There may even be modest signs of progress.

Perhaps most promising, in the long run at least, is the system universal periodic review, adopted at the Council’s fifth session in June 2007. The first sixteen countries are scheduled for review in April 2008, with the second and third sets of 16 to be considered in May and December.¹⁰ Given the haste of the process and the political tenor of the Council, expectations for the reviews should be low. Nonetheless, it will be just a bit more difficult for at least some countries to hide from international scrutiny.

C. Regional Human Rights Regimes

A similar story is evident in the European and Inter-American (and African) regional regimes, which for our purposes here can be seen as articulated within the broader global human rights regime. [finish]

None of the above should be take to suggest that existing multilateral supervisory mechanisms are perfect, or even especially good – although I would argue that the regional, and especially global, norms are a fair approximation of what I would like them to be in an “ideal” world. But all the basic problems long predate 9/11. And I at least can see no evidence of any even minor systematic negative effect of “the war on terror.” Quite the contrary, it seems to me that the global human rights regime, and its regional counterparts, are at least as strong as they were in 2001.

D. National Implementation of International Human Rights Norms

The above assessment reflects a narrow understanding of the global human rights regime. Although standard and useful in some contexts, it is vulnerable to the charges of legalism and formalism. I will note these problems only in passing. Three other shortcomings, however, point to areas of practice that will be the focus of the rest of this paper.

1. This narrow conception of the global human rights regime ignores the fact that international human rights law is based on national implementation of international human rights norms.

⁸ For example, the March 2006 concept paper for developing a unified reporting system (HRI/MC/2006/2) seems not to have garnered much interest or support, although, given the “speed” of change within the UN it is too soon to tell whether anything will come of it.

⁹ The six major treaties have, on average, more overdue reports than parties. And some countries have as many as 20 overdue reports. For current figures, see <http://www.unhchr.ch/tbs/doc.nsf/newhvovertimebytreaty?OpenView>. Reports on the ICCPR are illustrative. At the end of July 2006, 46 countries had outstanding reports that were five or more years overdue – one by 21 years – and 19 of these countries had never even submitted their initial report. (A/61/40) These statistics, sadly, underscore that 9/11 and its aftermath are not the problem.

¹⁰ Information on the UPR process is available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

States bear almost exclusive responsibility for implementing internationally recognized human rights on their own territory. To understand the fate of international human rights norms, we must look primarily to national practice. This will be our focus in sections 2-4.

2. At the level of international action, the account above ignores the important roles played by transnational actors, especially international human rights NGOs, and by bilateral foreign policy initiatives. These will be our focus in sections 5 and 6.
3. The above account adopts a narrow conception of “human rights,” based on the Universal Declaration and Covenants. This ignores genocide and international humanitarian law, which in the 1990s came to be increasingly interconnected with “classical” human rights issues. These will be our focus in sections 7 and 9. In addition, this narrow focus obscures important human rights initiatives taking place under the rubrics of democratization, civil society support, and development assistance, which will be our focus in section 9.

2. GLOBAL TRENDS

Rather than a global deterioration in human rights practices, the available quantitative data indicates that since 2001 there is been rough constancy continuity in the level of respect for civil and political rights, the rights that are most often presented as the principal victims of “the war on terror.” I do not want to place too much emphasis on such global cross-national data. Nonetheless, if there had in fact been a serious global decline in national human rights performance, it is hard to imagine that it would not appear in this data.

A. Data Sources

One standard source of data is Freedom House, whose annual *Freedom in the World* report provides rankings that are generally recognized as providing a reasonably sound overall assessment of the state of civil and political rights.¹¹ Based on the average of separate scores on a seven point scale for political rights and civil liberties, Freedom House rates countries as “Free,” (1.0-2.5) “Partly Free,” (3.0-4.5) and “Not Free” (5.0-7.0).

The other source used here is the CIRI Human Rights Data Project. Two summary measures, the Physical Integrity Rights Index (computed on a scale of 0 [lowest] to 8) and the Empowerment Rights Index (on a scale of 0-10), are most relevant for our concerns here. These indices are constructed from separate scores on torture, political imprisonment, disappearance, and extrajudicial executions for the Physical Integrity index and from political participation and freedoms of movement, speech, religion, and assembly and association for the Empowerment index. Given the special concern often expressed about torture and political imprisonment, these data are also reported separately in Table 4.

The CIRI dataset, however, has one peculiarity directly relevant to our purposes here. In 2001, it was expanded by nearly thirty small countries that as a whole have a significantly higher than average level of human rights performance than both the global averages and their respective regional

¹¹ These rankings explicitly address only civil and political rights, and not even the full range of internationally recognized civil and political rights. Therefore, they are well-known to be a poor measure of human rights performance in general. But they do address most of those rights that have been adversely affected by anti-terrorism measures. And they provide a generally consistent time series based on generally non-partisan data and analysis. For our purposes here, there not only is no better source of data, there is no other source of even close to equal quality.

averages. Comparisons before and after 2001 thus overstate the post-9/11 level of performance when the full dataset is used. Therefore, the reported CIRI data excludes these countries.¹²

B. Freedom House Rankings

Table 2 reports the Freedom House data since 2001, with illustrative comparative figures from earlier decades.¹³

Table 2: Freedom House Rankings, by country

	Free		Partly Free		Not Free	
1974 [153 countries]	42	28%	48	31%	63	41%
1984 [168 countries]	54	32%	59	35%	55	33%
1994 [191 countries]	76	40%	61	32%	54	28%
2001 [192 countries]	85	44%	59	31%	48	25%
2002 [192 countries]	89	46%	55	29%	48	25%
2003 [192 countries]	88	46%	55	29%	49	25%
2004 [192 countries]	89	46%	54	28%	49	26%
2005 [192 countries]	89	46%	58	30%	45	24%
2006 [193 countries]	90	47%	58	30%	45	23%

Source: computed from Freedom House, *Freedom in the World*, 2002-2007 editions.

Rather than any global deterioration, this data suggests modest incremental improvements in the overall state of respect for civil and political rights. And a similar pattern is evident in the data broken down by population rather than country.

Perhaps this data, which tracks changes across only three broad categories, misses more subtle but still significant changes. Table 3 records all changes in a country's score on either the political rights or civil liberties measure. In every year from 2002 through 2005, there are substantially more countries with improved records; in most years, two and a half times as many. 2006 does mark an unfortunate reversal of that pattern. There is no reason, however, to link this with "the war on terror." It did not take on any new dimension in 2005, nor can such a dramatic change be plausibly attributed to the cumulative effects of actions in the preceding four years.

¹² To illustrate the impact, the Physical Integrity index drops from 5.26 to 4.87 in 2001 and from 5.04 to 4.68 in 2006.

¹³ The Freedom House data by population shows essentially the same pattern; this result is not an artifact of country size, a conclusion that lends further credence to the CIRI data, where the reported figures are country averages.

Table 3: Changes in Freedom House Rankings, by country

	Improvements	Deteriorations
2001	16	17
2002	28	11
2003	25	13
2004	26	11
2005	27	10
2006	21	35

Source: computed from Freedom House, *Freedom in the World*, 2002-2006 editions.

C. CIRI Data

A roughly comparable, although somewhat more variegated, picture emerges from the CIRI data reported in Table 4.

[Table 4 approximately here]

The Physical Integrity index shows no real change. The 2006 figure is 99% of 2001, which happens to be the second highest figure for the entire 1989-2006 period. The 2002-2006 average is 101% of the 1996-2000 and 1991-2000 averages.

There is, however, a modest but clear decline in the Empowerment index, however one cuts the data: the 2002-2006 average is 94% of 2001 and 1991-2000 and only 92% of the 1996-2000 average. Even here, though, almost half of the gap is attributable to a particularly bad year in 2003. Furthermore, the index seems to have peaked in 1996-1998, with the post-9/11 downward trend seemingly continuing a decline that was already under way. And we would expect a negative impact of “the war on terror” to be at least as evident in the Physical Integrity index, which includes torture and political imprisonment. I at least cannot think of a plausible way to explain the decline in only the Empowerment index primarily in terms of anti-terrorism.

Much the same is true with torture. The post-9/11 decline has been modest and apparently a continuation of a decline that began in the 1990s: the 2000 and 2001 figures are already substantially below the averages for all periods in the 1990s. It should also be noted that this torture data makes up one fourth of the Physical Integrity Index, which indicates that there were improvements post-9/11 in the other three elements (political imprisonment, disappearances, and extrajudicial killing) taken together. Most of that improvement lies in a notable decline in the practice of political imprisonment – a result completely the opposite of what would be expected from “the war on terror.”

One might read Table 2 to suggest the 9/11 slowed a long-term trend towards greater respect for civil and political rights. But that trend is not evident in the CIRI data in the years prior to 2001. And there are a variety of factors other than “the war on terror” that might explain the slowdown in the first years of the twenty-first century, including, most prominently, the fact that most of the relatively “easy” progress had already been made and that it is natural to expect a certain degree of backsliding after the substantial rapid progress of the early post-Cold War years. This interpretation is supported by the drop in the Empowerment index, which focuses primarily on indicators associated with democratization.

The slow drop-off in the CIRI Physical Integrity index after 2001, however, is a reason for concern. Were it to continue, we might drop below the level of 2000. But given the picture that typically is painted of the 1990s as an era of major human rights progress, this is hardly reason for gloom about the global status of human rights in the wake of “the war on terror.”

3. REGIONAL PATTERNS

One of the standard problems with global cross-national data is that it may mask important regional variations. The Freedom House data is less amenable to regional comparisons and thus is not reported here. I simply note that as there is no change in the Western democracies, whatever progress has taken place has been in the non-Western world.

Table 5 reports the CIRI data on physical integrity and empowerment for 1999-2006 for eight regions, plus a separate entry for the United States.¹⁴ (Again, for comparative purposes the thirty small, relatively high-performing countries added in 2001 have been removed from the reported data.)

[Table 5 approximately here]

We will return to this data as we proceed. A quick examination, however, suggests that the regional data largely replicates the global picture of relatively constant levels of protection of physical integrity rights and modest declines in protection of empowerment rights. As a rough and ready measure, we might define “significant” regional change as five percent or more in the 2002-2006 data compared to either 2001 or 1999-2000. Of the 32 comparisons in Table 5, there are twelve significant declines to eight significant improvements, with only three of the declines but six of the improvements in physical integrity rights. Interestingly, though, the regional concentration of the decline in the protection of empowerment rights in Africa, Asia, and Latin America is not consistent with “the war on terror” as a cause – especially in light of the dramatic improvement in Southwest Asia/Middle East.

A. National Practice in the Western Democracies

[Start with two paragraphs of violations, one on U.S. (e.g. Patriot Act, warrantless searches), one on Europe.]

¹⁴ Regions are defined as follows. Africa: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Democratic Republic of), Congo (Republic of), Cote d'Ivoire, Eritrea, Ethiopia, Gabon, Gambia, The, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe. East and Southeast Asia: Brunei, Burma, Cambodia, China, Indonesia, Japan, DPR Korea, Republic of Korea, Laos, Malaysia, Mongolia, Philippines, Singapore, Taiwan, Thailand, Vietnam. South and Central Asia: Afghanistan, Bangladesh, Bhutan, India, Iran, Kazakhstan, Kyrgyz Republic, Nepal, Pakistan, Sri Lanka, Tajikistan, Turkmenistan, Uzbekistan. Western Asia / Middle East: Bahrain, Cyprus, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Saudi Arabia, Syria, Turkey, United Arab Emirates, Yemen. Western Europe: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom. Central and Eastern Europe: Estonia, Latvia, Lithuania, Albania, Bosnia Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Serbia and Montenegro, Slovenia, Yugoslavia, Yugoslavia, Federal Republic of, Belarus, Bulgaria, Czech Republic, Czechoslovakia, Hungary, Moldova, Poland, Romania, Russia, Slovak Republic, Soviet Union, Ukraine, Armenia, Azerbaijan, Georgia. Latin America: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela. Other “Western”: Australia, Canada, New Zealand, United States.

But we should not ignore the health of the forest because of the sickness of some individual trees. In Western Europe, neither CIRI index changes significantly. And the significant decline in the Other “Western” group is attributable to the United States, whose record on physical integrity rights did decline dramatically in and after 2001.

This is not to deny or denigrate the importance of the attacks on privacy, freedom of association, and other civil and political rights that have occurred in the name of anti-terrorism. Every violation of every right is a matter of legitimate concern. Even modest and limited systematic infringements of a limited range of rights – which we have seen in a number of countries – merits the strongest resistance from human rights advocates and concerned citizens.

Nonetheless, we should not overlook the broad picture while pursuing our concerns over particular violations in particular areas. And the retrenchments we have seen since 9/11 simply do not add up to even a modest systematic pattern of deterioration. The Western liberal democracies remain deeply committed to the full range of internationally recognized civil and political rights, and both individually and collectively they retain generally effective practices to implement those rights.

B. South and Central Asia

South and Central Asia has been the principal locus of the global war on terror. It seems, however, not to have fared particularly poorly – although how much of that is due to the poor level of performance prior to 9/11 is a matter of legitimate debate.

Physical integrity rights seem not to have suffered. 2000 was an unusually poor year and 2001 an unusually good year. But the average score for 1999-2001 was 2.67, which is actually three percent below the 2002-2006 average of 2.77. Empowerment rights did decline, but only at the same rate as the global average.

Even the regional level of aggregation may mask significant systematic variations. Therefore, a brief look at some selected countries is called for. Afghanistan and Pakistan have been the “front line” of America’s anti-terrorist struggle. Uzbekistan was at one point an important staging point. And Sri Lanka has continued its long-running internal struggle with separatist terrorists. Table 6 reports data on these four countries, along with three regional countries that have been minimally if at all influenced by the global “war on terror,” namely, Bangladesh, India, and Tajikistan.

[Table 6 approximately here]

Pakistan does show the “expected” decline in respect for physical integrity rights. Furthermore, there is good reason to attribute much of this decline to “the war on terror.” Even here, though, one must note that the years 1999-2001 are identical to 2002-2004. And, strikingly, the level of protection of empowerment rights did not decline after 2001.

Uzbekistan also shows a significant decline in the protection of integrity rights after 2001. In addition, respect for empowerment rights drops from dismal to abysmal. A link to “the war on terror,” however, is hard to sustain. The much more plausible interpretation is that the complete collapse of political freedom, for entirely internal reasons, led to increased violations of personal integrity rights. And this is one case where American support or acquiescence cannot be part of the explanation. The data bottom out in 2004 and 2005 – precisely when the United States suspended aid in protest against increasing Uzbek repression and stuck to its harshly critical policy even when threatened with eviction from Kharshi-Khanabad Air Base, the major staging station for combat and humanitarian missions in Afghanistan – a threat that was actually carried out in the middle of 2005.

Afghanistan shows a clear pattern of improvement. The extensive direct external role, however, makes it a clearly exceptional case.

Sri Lanka shows a huge improvement in respect for physical integrity rights. This is clearly attributable to the 2002 ceasefire between the government and the Tamil Tigers. Likewise, the deterioration in 2006 reflects the unraveling of that ceasefire, which was finally formally annulled by the government in early 2008. “the war on terror” either had no effect or a modest positive effect (as a result of the post-9/11 delegitimation of terror as a tactic encouraging the Tigers to accept the ceasefire).

The three control cases – which I chose for loose similarity and before looking at the data – show respect for physical integrity rights and (to a lesser degree) empowerment rights improving in one country, deteriorating in another, and remaining roughly constant in the third.

Taken together these seven cases support the idea that the regional pattern, at least in South and Central Asia, is largely driven by factors internal to individual countries. In fact, these cases suggest that even when one looks for it in the most likely places, a significant negative impact of “the war on terror” is hard to find.

Again, this is not to suggest that things have not been made worse, especially in Pakistan, by “the war on terror.” But even there, in what is perhaps the best case for the position I am arguing against, the impact is modest.

C. Southwest Asia/Middle East

Southwest Asia is defined here to encompass Bahrain, Cyprus, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Saudi Arabia, Syria, Turkey, United Arab Emirates, and Yemen. Absolute and relative levels of respect for physical integrity rights remain low and the regional record on empowerment rights is notably lower than all seven other regions. Nonetheless, there were significant improvements in both areas following 9/11. In fact, it is the one region where all four comparisons show not only progress but significant progress.

Again, though, let us consider some individual countries. Iraq, Israel, Lebanon, and Turkey all have faced significant terrorist threats. Egypt, Saudi Arabia, and Kuwait, given the level of American support, merit a look as well. Table 7 reports the data on these countries.

[Table 7 approximately here]

Israel does show the “expected” decline, with a notable drop in respect for personal integrity rights and a decline in empowerment rights that substantially exceeds the global average (in a region where the trend was strongly in the opposite direction). A similar modest but notable decline is evident in Egypt. In both cases, it can be plausibly argued that not just American support in general but “the war on terror” facilitated and intensified human rights violations being undertaken for largely internal reasons.

Saudi Arabia and Kuwait, however, do not show much change – although both are below the regional average and an argument of American toleration in return for political support is certainly plausible. Iraq and Lebanon are in different ways special cases and each in its own way defies analysis before and after 2001.

Turkey is the one country in this set where we cannot plausibly argue for a negative impact of “the war on terror.” Respect for personal integrity right improves – as in Sri Lanka, perhaps, in part because of the delegitimation of terror as a tactic after 9/11. There was a decline in respect for

empowerment rights. This was driven, however, entirely by long-standing internal Turkish struggles over the role of religion in politics.

Taken as a whole, though, these cases do suggest a systematic negative impact of American support that is plausibly attributable, in part, to “the war on terror.” But even here, deteriorations take the form of modest increases in existing levels and types of violation. And they are restricted to individual countries rather than the region as a whole – where respect for personal integrity and empowerment rights has improved since 2001.

D. Central and Eastern Europe

E. Africa and Latin America

F. Conclusion

There is no general negative impact of “the war on terror” on personal integrity or empowerment rights evident in any region. Regional deteriorations are driven almost entirely by internal forces. We can discern individual cases where “the war on terror” has indeed had a negative impact. But these cases are clearly exceptional and reflect an unusually high level of American support. Furthermore, in these cases the negative impact of “the war on terror” has not only been modest but usually has served only to provide additional support for modest intensification of violations of a familiar type.

Let me repeat, once more, that this does not mean that “the war on terror” has not caused some violations. It certain has. And some of those violations have been severe. The issue I am addressing, however, is an alleged systematic negative impact. This simply cannot be found in the regional data.

4. BILATERAL HUMAN RIGHTS POLICY: THE CASE OF THE UNITED STATES

Perhaps the strongest case for the argument of major systematic changes attributable to “the war on terror” can be made in the case of the bilateral foreign policy of the United States. There have been striking systematic changes for the worse. And given that the United States is both the world’s most powerful country and arguably the global leader in international human rights diplomacy for the past three decades, this is a truly significant reversal.

Three or four paragraphs of examples, involving both strategic decisions to overlook human rights violations in particular countries that are perceived or presented as “allies in the war on terror” and diversions of resources and attention intensified and enable by the ideology of not just war but a war for survival.

Nonetheless, even in this case we must be careful not to exaggerate.

a) Much less an absolute decline in the value attributed to international human rights than a relative decline caused by the rise of anti-terrorism on the American foreign policy agenda. (This has implications for the future, especially if the U.S. adopts a less ideological interpretation of “the war on terror.”)

- b) More a matter of enabling, or failing to resist, local forces hostile to human rights than a principal source of the problem. (Partial exception of Iraq.)
- c) Still considerable day to day diplomatic activity on behalf of civil liberties and political rights, even sometimes in countries involved in “the war on terror” (e.g. Uzbekistan).
- d) Continuing work on civil society promotion, democratization, and integration of human rights into development assistance programs. (See section 9.)
- e) Some issues (e.g. slavery, trafficking, and religious liberty) have actually seen a more aggressive American policy under the Bush administration.
- f) Some of the deterioration under Bush predates 9/11.
- g) Examples of torture policy and “extraordinary renditions” shows substantial domestic and international resistance that has forced significant modifications of rights-abusive policies and practices.
- h) Balancing human rights objectives against other foreign policy objectives has always been standard policy for all states.

Overall, clear deterioration clearly attributable in significant part to “the war on terror.” But arguably more similarities than differences in an overall comparison with the Clinton administration. And taking a somewhat broader historical perspective, Bush has pushed things “back” no further than his father. Certainly American international human rights policy under the current administration is more aggressive, even-handed, and effective than under Reagan (who left office less than twenty years ago).

5. INTERNATIONAL HUMAN RIGHTS NGOS

Argue that there has been no systematic deterioration in either the level of activity or its impact.

6. GENOCIDE

Disturbing example of inaction in Darfur, especially troubling given progress in the 1990s culminating in Kosovo and East Timor. But only indirect impact of “the war on terror,” largely through tying down resources by “the war in Iraq” (which in its genesis had nothing to do with anti-terrorism). Important role of China and failure of European leadership (both unconnected with terrorism or anti-terrorism).

7. INTERNATIONAL HUMANITARIAN LAW

Work principally with examples of Guantanamo and Abu Ghraib.

Reading of Guantanamo: Clear violations of international humanitarian law. But complete failure to convince *any* other leading state that this is anything other than a violation of international law. And a series of subtle but significant steps back by the Bush administration under continuing national and international pressure.

Abu Ghraib: Enabled by “war” ideology. But never clearly official policy. And since revelation, has been denounced at all levels of the American administration and significant steps have been taken to prevent recurrence. Furthermore, limited willingness to prosecute American service personnel for violations in Iraq and Afghanistan.

8. DEMOCRACY, CIVIL SOCIETY, AND DEVELOPMENT ASSISTANCE

9. CONCLUSION

The world is a less hospitable place for human rights as a result of 9/11 and the American-led militarized response. Anti-terrorism, however, explains only a tiny fraction of human rights violations in the contemporary world. The global state of human rights today is only marginally inferior to that in 2001. And even international human rights policies and practices generally are only incrementally worse. Continuity has been more notable than change when we consider the full range of international human rights policies and practices since 9/11.

How, though, can we explain the commonly held view that there have been significant systematic negative human rights consequences of the war on terror. At least three reasons merit brief mention.

First, there are indeed striking international examples that undoubtedly merit the concern, even anguish, of concerned citizens and foreign policy makers. And in foreign policy, the standard pattern is to respond to immediate issues of pressing concern, rather than to reflect on broader patterns.

Second, the United States has since the mid-1970s been the most vocal, aggressive, and perhaps even consistent supporter of international human rights – at least in so far as international human rights norms and procedures apply to other countries. The Bush Administration's irrational exuberance in its "war on terror" has indeed called into question this important American commitment and contribution. And abuses such as Abu Ghraib, Guantanamo, clandestine renditions, and the stubborn refusal to renounce the use of torture have indeed eroded whatever elements of American moral leadership remained from the 1990s.

Third, Americans in particular have been justifiably concerned by the assaults of their government on their own civil liberties, as symbolized in the Patriot Act. And in the United States, human rights standards have indeed been lowered in ways that show up significantly in standard quantitative assessment schemes.

In other words, bad things are indeed happening to human rights, both at home and especially abroad, as a result of the way the Bush Administration has chosen to pursue its "war on terror." And concerned human rights advocates and ordinary citizens are well-aware of these frequent public reverses. The burden of my argument, however, has been that most people have over-generalized from these examples. And too many people simply overlook the often no less striking evidence on the other side. For example, the American Congress, the American military, and the American public all support an absolute ban on torture. Even the current extremely conservative Supreme Court has repeatedly forced the Bush Administration to back off of some of its more pernicious claims and practices. Renditions have been curtailed (apparently against the preference of the Bush Administration). And even senior Administration figures are talking about closing down Guantanamo.

9/11 simply has not been the disaster for human rights that it has often been presented to be. And the fact that there has not been a global, or even regional, rollback of the progress of the 1990s has major implications for both continuing and new efforts to improve the protection and implementation of internationally recognized human rights.

In an article written in 2003 I suggested, based on impressionistic interpretations and a couple brief case studies, that this was what we were indeed seeing. (Donnelly 2004) The more comprehensive

and robust data considered in the first three sections of this paper strongly supports that reading. Therefore, I think it is worth repeating the interpretation of these results that I advanced there, focusing on the international dimensions of the global struggle for human rights.

Human rights, I believe, have not suffered an absolute decline in the foreign policy of the United States or other western powers. In addition, there has been no decline in either the absolute or relative importance attached to human rights in global or regional human rights institutions. And although there are countries where we can indeed see a decline in internal commitment to human rights, these are pretty much matched by other countries where there has been an improvement.

What has changed is the relative place of human rights in Western, and especially American, foreign policy. Anti-terrorism has been placed at the top of the list of priorities, in a clumsy and heavy-handed way in the United States, in a more nuanced and less destructive way in most other Western countries. This has indeed had modest but real negative consequences in several particular countries, including the United States. But there is good reason to believe that even many of these reverses will be short-lived.

Even in the United States, the relatively hysterical pursuit of “the war on terror” appears to be ebbing. Although anti-terrorism remains at the top of the agenda, it crowds out less than it did in 2002 and 2003. And the debacle in Iraq seems to have convinced most Americans that however deeply committed they are to fighting “them” “over there,” this needs to be done in a thoughtful, measured way as a part of a broader American foreign policy that pursues a wide range of objectives. All three major American Presidential candidates appear committed to treating anti-terrorism as a policy pursued in the national interest rather than a crusade – and thus subject to cost-benefit analysis and tradeoffs rather than the often blind, uncalculating commitment of aspirations and resources that has characterized American policy in the past several years.

Both because the rollback from the 1990s has been so limited and because the pre-emptive power of anti-terrorism is on the decline, it seems to me reasonable to expect the international human rights situation to return to something like its early 2001 state in the next year or two. Certainly if we look at the United States, we can expect international human rights to have no less a prominent place than they did in the early months of 2001 – which was not all that much less than during the Clinton Administration. There may even be reason to hope that with sound, thoughtful American leadership – real leadership rather than bullying and dictation – the general lull and limited setbacks of recent years will give way to another flowering comparable to the middle-1990s.

My guess is that that is probably too rosy a picture. I am fairly confident, though, that barring another disaster with the psychological impact of 9/11, we will look back in ten years on the years following 2001 as a relatively brief and modest deviation rather than a significant reversal of the human rights progress of the 1990s. This has not been a good several years for human rights and their advocates. But in the medium and long run, it has been a less significant setback than many have feared or imagined.

References

- Cheney, Dick. 2003. Transcript of Meet the Press, NBC News (September 14, 2003).
- Donnelly, Jack. 2004. International Human Rights: Unintended Consequences of the War on Terrorism. In *Wars on Terrorism and Iraq: Human Rights, Unilateralism and U.S. Foreign Policy*, edited by T. G. Weiss, M. E. Crahan and J. Goering. New York: Routledge.
- McGeary, Johanna. 2003. Dissecting the Case. *Time* 161 (6):56+.
- Office of the High Commissioner for Human Rights. 2007. Annual Report 2006. Geneva: Office of the High Commissioner for Human Rights.
- . 2008. United Nations Special Procedures: Facts and Figures 2007. Geneva: Office of the High Commissioner for Human Rights.