

THE JBI HUMAN RIGHTS LECTURE

Why We Stand Up for Human Rights

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Founded in 1971 under the aegis of the American Jewish Committee, the Jacob Blaustein Institute for the Advancement of Human Rights (JBI) continues in that capacity to strengthen human rights through the United Nations and other intergovernmental bodies. JBI strives to narrow the gap between the promise of the Universal Declaration of Human Rights and other international human rights agreements and the realization of those rights in practice.

Jerry H. Biederman is Chairman of the JBI Administrative Council, and Felice D. Gaer is the Director of the Institute.

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Introduction

ON OCTOBER 19, 2017, legal scholars, human rights experts, academics, members of civil society, and friends of the Jacob Blaustein Institute for the Advancement of Human Rights (JBI) assembled in New York City for the third JBI Human Rights Lecture featuring Zeid Ra'ad Al Hussein, the sixth United Nations High Commissioner for Human Rights. The JBI Human Rights Lecture is a series of lectures presented by prominent human rights personalities on pressing international human rights topics.

In this lecture, entitled “Why we stand up for human rights,” High Commissioner Zeid responds to the increasingly common attacks on the ideas and principles of human rights and the claim that they are inconsistent with the realities of the modern world. At a time when extremism, intolerance and hatred are being articulated more boldly by populist ideologues and politicians throughout the world, and crackdowns on dissent, on human rights organizations, on media, and on the very idea of human rights have been growing, High Commissioner Zeid counters both the ‘realists’ who argue for ‘pragmatism’ and the ‘demagogues’ who dismiss the principles of fairness and equality for all as mere idealistic aspirations that have outlived their usefulness. Earlier, he warned such leaders that “we will not be bullied by you, the bully, nor fooled by you, the deceiver . . .” In this lecture, he explores what in fact is needed to change the discourse and to recognize the immense value of the human rights approach in modern life.

High Commissioner Zeid, who previously served as Jordan’s Ambassadors to both the United Nations and the United States of America, has reflected thoughtfully on these issues. He has been a leading figure in the quest for international accountability for present day human rights atrocities, serving as the first President of the Assembly of States Parties to the Rome Statute of the International Criminal Court; as the UN Secretary-General’s advisor on measures to deal with sexual abuse by UN peacekeepers; and beginning in 2014, as High Commissioner for Human Rights, forcefully condemning contemporary atrocities such as those committed against the Rohingya population of Burma.

Professor Louis Sohn, one of the giants of international human rights law, once said that his favorite animal was the giraffe because it was so emblematic of the international lawyer: it has its head in the clouds but its feet on the ground. This comparison is particularly apt for Zeid Ra'ad Al Hussein, who, as High Commissioner, has upheld lofty principles of international human rights law and struggled to create institutions of accountability, yet has also grappled with the reality of human rights abuses as a daily challenge. Recognizing the tension between these roles, he once remarked that, to many contemporary leaders—especially populists and ‘political fantasists’—“I must be a sort of nightmare. I am the global voice on human rights . . . and critic of almost all governments.” It is that voice which the JBI Human Rights Lecture seeks to amplify: one that clarifies, as Zeid states in the lecture, that “human rights law is not some idle luxury” but rather, “one of the most delicate and critical inventions” known to mankind.

Through research, advocacy, constituency building, and collaboration, the Jacob Blaustein Institute for the Advancement of Human Rights has pursued goals that are at the heart of this lecture. JBI was established in 1971 under the aegis of the American Jewish Committee in honor of Jacob Blaustein, a past President of AJC who represented the organization at the San Francisco Conference that established the United Nations and who successfully pressed for the inclusion of human rights in the UN Charter and later, for the creation of the post of the UN High Commissioner for Human Rights. Since that time, JBI has worked with human rights defenders, lawyers and diplomats to generate ideas and clarify human rights concepts, to strengthen international human rights norms and institutions, and to develop means to realize these ideals and proposals. In past years, we at JBI have carried out programs to enhance the content of international legal obligations to prevent genocide and torture; we have called on the United Nations and individual Member States to insist on the protection of the rights of human rights defenders, members of religious minority communities, women, and others under threat; and we have encouraged the development and strengthening of institutions and mechanisms to enforce human rights obligations at both the national and international levels, such as the International Criminal Tribunal for the Former Yugoslavia, the Special Adviser to the UN Secretary-General on Prevention of Genocide, and notably, the post of UN High Commissioner for Human Rights itself.

Indeed, JBI was particularly instrumental in coalescing NGO advocacy around the creation of the High Commissioner post in the months prior to the 1993 World Conference on Human Rights in Vienna. We aspired for a high-level UN official to serve as “conscience for the world”—to be a champion, a critic, a consensus builder, and an administrator all at once, and to function with independence and integrity in the politicized and often toxic world of the United Nations. This is a tall order, yet, as reflected in this lecture, that is precisely what a United Nations High Commissioner for Human Rights must be.

JBI is grateful to Robert S. Rifkind for his vision and generosity in establishing the JBI Human Rights Lecture series. Mr. Rifkind, a distinguished attorney and civic leader, served as Chair of the Institute’s Administrative Council from 2000 to 2007 and remains an active member of its Steering Committee. His steadfast belief in the efficacy of law and indispensable need to guarantee and protect the human rights of every person has been an inspiration to JBI’s Administrative Council and staff. We welcome his ongoing involvement, advice, and support.

Previous lectures in this series have addressed the topics of upholding human rights and humanitarian law in asymmetric conflicts and the universality of human rights. We encourage those reading this lecture to consult the others, too, and to join JBI in seeking to live up to the ideals reflected by Professor Sohn’s image of the giraffe—keeping our feet on the ground as we wrestle with aspirations some consider still to be “in the clouds.”

—*Felice D. Gaer*
DIRECTOR

Why We Stand Up for Human Rights

DEAR COLLEAGUES,

DEAR FRIENDS,

WHAT is happening to us? When human rights have to be defended, everywhere, increasingly. When our outrage finds no pause and our concerns over violations only heighten, instead of ebbing, even in countries that are prosperous and stable. How is it a child can easily understand the critical need to uphold human rights—the idea of fairness—and yet their significance seem to defeat so many governments? More and more leaders no longer even pretend to care about rights, seduced as they are by the masculine posturing of power relationships—“realism” is what it used to be called. Now, the US administration refers to it as “principled realism” to pitch it as something other than rapacious or capricious.

Forgive me for asking, but why is it not obvious to the champions of this approach that, even when shunned in their world-view, human rights nevertheless in reality remain stubbornly centre-stage?

Human experience is simply unyielding on this point. When a state becomes hollow of principle—for example, defaults on its human rights obligations to its own people, or even in the way it treats others elsewhere, does it not provoke those who sense the injustice? Is it not the case, those who feel wronged will usually choose to express their discontent democratically or, if the state is authoritarian, at least in non-violent forms of dissent. If their pleadings are then ignored or dismissed over years or decades by the state authorities or, even worse, crushed violently and brutally by them, is it not plausible the opposition could then harden? Even become militant. If a panicking government, which is persuaded force is the only solution then feverishly begins stripping the wider population of its rights, as it goes about annihilating what it sees as a threat, what then? The winners would be the recruiters for the militants. Helped from other quarters, terrorism could then burst forth, with acts that horrify all of us, and a shaken government

sinks itself into ever greater spasms of violence, in response. By that stage the state is wracked by insecurity. People flee and huge numbers suffer grievously. Multiply many times over and, regrettably, this is the ascending portrait of much of our world today.

The Jacob Blaustein Institute has been a tireless friend to human rights and to my Office—and may I take this occasion to pay a special tribute to Felice Gaer who has been an exceptional friend to me personally, and to my Office for many years, as well as a highly-regarded champion of the universal human rights agenda in her own right, and particularly when it comes to the prohibition of torture.

And because of these many years of support and helpful reflection by the Jacob Blaustein Institute, I want to examine with you today the fallacy, the growing belief, which holds that somehow human rights are inconsistent with the world of today—a world which demands of us a steelier, more Machiavellian orientation. It is a world-view which contrasts the excitement of political combat, the thrill of military action, with the tediousness of principle, of law, of human rights—a view that some, who have turned away from the lessons of history, are inclined to embrace.

The kaleidoscope of global power is also changing. Most evidently, the rise of China: economically, and in terms of the consolidation of power within the country and its strategic ambitions. There is also the assertiveness of Russia: the un-hasty but steady wielding of its power and influence. And yet this confidence, on the part of both countries, is at odds with their seeming fear of independent civil society, human rights defenders, and the universal human rights agenda finding anchor within their countries, and then growing. How the two will relate to each other in the future is anyone's guess. Then there is the tumult the US finds itself in now, caught somewhere between isolationism and militarism, with no clear direction in foreign policy apart from a few notable, exceptional, files.

The European Union faces multiple quandaries too: Brexit, Poland, Hungary and now a young 31-year old Austrian leader, whose populist-leaning views on migration may well pose further challenges.

In this landscape, I must also factor in the rise of the major IT firms, investing heavily in artificial intelligence and machine learning—some becoming more powerful than many states, but still subject to the enormous forces generated by the major powers as they elbow each other for global influence—and as they wage a half-voiced, low-level cyber-warfare against

each other, while also producing deadlock in the world's major multilateral fora. Fora crafted for the sake of ultimately settling emerging crises but which now, for the most part, only pass comment on them.

A few years ago, before I assumed my current position, I witnessed this paralysis first hand in the short months I served in the UN Security Council. Chairing two sanctions committees in relation to the Democratic Republic of the Congo and Liberia, it was hard for my team to accomplish much when the US and the Russian Federation gummed up much of the work through reciprocal blocking actions, which stemmed from the deep divide between them created by the Syrian conflict. And this was felt throughout much of the agenda of the Security Council at the time. It has only become worse since then, reducing a once powerful global body to what is now a faint likeness of what it was intended to be.

My subsequent appointment as High Commissioner also coincided with the horrors of Daesh, as its crimes were being posted online. For almost forty years, *Takfiri*-driven terrorism, together with its Shi'a counterpart in the Middle East, has stalked parts of the planet and proven itself utterly resistant to security-only approaches. It has been forced back at times, yes. But then rebounded quickly: feeding off the resentment that blindly oppressive force always creates. Yet governments have continued to abide by the same failed strategies. The most glaring of all mistakes in fighting terrorism is the sidelining of human rights concerns, and, worse still, the willful destruction of civil society – using terrorism as a pretext. Ultimately, these measures serve the cause of terrorists; and yet governments persist in this stupidity.

The negative consequences of denying space to human rights considerations are brutally obvious to me, and to you. But it appears many leaders view human rights as an esoteric stream of international law promoted mainly by Western idealists, leftists, liberals or hypocrites, with little applicability to the big issues. This view is not monopolized by authoritarian leaders only; others in well-established democracies are straying into this form of thinking. I devoted a lecture to this topic in London a few months ago, after Prime Minister Theresa May said publicly that human rights laws would be overturned if they “get in the way” of fighting terrorists. It was shorthand for saying human rights law was inconsistent with the real world.

Does this reflect the failure of the human rights movement to demonstrate the relevance and enormous practical value of measures to uphold human rights? The system itself: Treaty Bodies, the Human Rights Council and its

Special Procedures; my own Office, to some extent—we have perhaps failed to stimulate very broad public interest. The human rights machinery will often appear to the layperson as too rigid, too lawyerly, almost indecipherable; like the terms on a banking document, recognized as important, but not written to be read, much less understood, by an ordinary person. And to the national leader, in the day-to-day struggles, human rights probably come across as nagging constraints.

The same could be said of many diplomats with whom we work; and even inside the UN itself there is an under-appreciation of human rights in some quarters. The current press attention on the UN's handling of the Rohingya file in Myanmar alleges not all UN officials in recent years understood the consequences of downplaying the violations of human rights suffered by the Rohingya community.

But time and again, the denial of human rights considerations by national leaders, diplomats and international actors alike has in the longer term proven itself to be absolutely disastrous in terms of preventing terrorism, conflict and violence. And yet it still happens.

To compound our difficulties, the multilateral framework itself is now accused of being a threat to states, or portrayed as the object of manipulation by states.

In his address to the General Assembly on 19 September, President Trump attacked unnamed authoritarian powers for seeking “to collapse the values and systems” put in place since the end of the Second World War.

He exhorted the assembled delegations to “put your countries first” and made constant references to sovereignty. But he also introduced something else: a variation of Marine Le Pen's argument that global organizations and institutions have become, in themselves, a danger to the diversity of cultures and sovereign decision-making on the part of states. Speaking of “far-away bureaucrats” President Trump implied that, at the very least, these institutions had become a medium exploited by some governments at the expense of others.

In other words, from the US President's perspective, the global organizations and I presume their international legal frameworks, including universal human rights, were now becoming part of a problem and not the solution. There could be no substitute, he concluded, for “patriotism,” “coalition-building,” and ultimately “confrontation” if so required. That was the President's “realism”—accented by principles, or values, which he did

not go on to define. His constant invoking of patriotism led many in the audience to conclude the term was a euphemism for nationalism: chauvinistic nationalism.

When I heard the speech, my immediate reaction, like so many others, was: well, we have been here before. This very cocktail was consumed in the last century. One part chauvinistic nationalisms. One part balance-of-power swordplay and a crumbling adherence to law. Add in the belief that threats of violence and ultimatums will be effective. Swirl in the presence of terrorism—creating combustible fears which can be manipulated, and then stampede the public into policies from which there is no way out. The combination of all of this, in the early part of the twentieth century, led to the annihilation of millions of people.

The calamity of two world wars and the Holocaust was precisely what led humanity to create in the first place, our global security architecture, our global financial and human rights architectures. Now they were being questioned by the leader of the very country that shouldered the lion's share of building and maintaining those very institutions.

I then asked myself: if the President of the United States was seemingly triggering a gradual US abandonment of the international legal order, was it because we—who work for the United Nations and its human rights mechanisms—have failed catastrophically to make our case?

What seems self-evident to us in the human rights community may seem less so to others. My own thinking on this is best captured by the wording of paragraph one of the preamble of the Universal Declaration of Human Rights, as it was in the Cassin draft, the second draft. The version I always preferred because of its starkness—before it was repackaged into more polished diplomatic language and placed in the second paragraph of the eventual text. In its earlier, sharper, version, the text begins: “That ignorance and contempt of human rights have been among the principal causes of the sufferings of humanity.”

Now ignorance was never going to be a problem for the generations who experienced the global catastrophes of the twentieth century, because they knew first hand what the alternative would bring. But it could be a problem once those generations began to take their leave of us. And the obvious challenge is this: can historical memory alone sustain the international legal order, even if it had been consecrated in law, principally treaty law?

Tragically, the increasing human rights violations around the world and the growing flirtation with realism, would seem to answer the question for us and explain the contempt for human rights more generally—stemming as it does from corresponding ignorance.

How do we change this? How do we make those who believe in realism grasp the extent to which any tactical advantage gained from abandoning the legal framework and human rights will matter little, when all is ultimately destroyed? How do we convince them?

The antidote must surely lie in first building a campaign devoted to rapidly expanding the knowledge about human rights—and then putting the argument across to the skeptics. It will mean weaving together a large number of states; those who still believe in the importance of a rights framework to help us better promote the system. Many will not volunteer so easily—antagonizing some of the major powers is not a joyful experience. Unless, of course, they felt compelled to do so by their own vulnerabilities and by their own people.

What is missing, therefore—and what would change the trajectory, would be the existence of a much broader, indeed world-wide, wave of popular support for universal human rights—pushing, prodding, holding their governments to the mark, and shaking-up the slumbering politicians.

We must now intensify, greatly, our advocacy and expand our reach in a manner that is without precedent. No longer should we be satisfied that sessions of the Human Rights Council achieve a few thousand views online, or that press releases from Special Rapporteurs or Commissions of Inquiry generate a few thousand press articles, or that my Office has almost two million followers on our twitter feed. Not in a world of 7.6 billion people. We need now to connect to tens of millions of people, and quickly.

In a few weeks we will begin a year-long celebration of the 70th anniversary of the Universal Declaration of Human Rights: this mighty set of commitments that discredits the tyranny, discrimination and contempt for human beings which have scarred human history. We must use this commemoration to alert, and crucially, to inform. To explain clearly to people the world over, that human rights law is not some idle luxury, weird or out of touch with the realities of today. Rather, it is one of the most delicate and critical inventions contrived by humans for the upholding of global peace.

Because we are now in a world being thrown off balance by lies and deceit, we need the certainty and security of its universal laws. We need the anchor

of principle, steeped in the lessons of human experience. Ultimately, this is not only about people's intrinsic rights, it could well be about their lives.

Those who once believed technology and globalization would save humanity, have been proven wrong in the past—and dramatically so. In 1913, the President of Stanford University, David Starr Jordan, famously said “The Great War . . . that eternal threat will never come. The bankers won't come up with the money needed for such a war, and industry won't support it and so the statesman simply won't be able to do it. There will be no Great War.” The president failed to factor in the toxicity of delusion.

Jacob Blaustein spoke to this point many years later. In April 1950, he spoke to the American Jewish Committee about “the spirit of belligerent fanaticism.” Once it was let loose, he warned, it overwhelms “the voice of reason.”

But even today, as we seem to be edging back to those calamitous policies, that lure of “belligerent fanaticism,” the struggle which has fallen to our generation is not hopeless. Yes, chauvinistic nationalism is dangerous—and the politics of scape-goating, which cultivates fear, shapes it into blame, and then harvests it as roaring crowds blindly lash out at the vulnerable, are a potent and damaging force. But so too were other historic challenges confronted successfully by advocates of what is right and just. Our predecessors, the giants of the rights movements, ended slavery, colonialism, segregation, apartheid and more.

Now it is up to us. It is up to me; to you, in this room; to every kind of audience we can reach, in every country where there is still space to express thoughts, participate in decisions, raise one's voice. We need to stand up for the human rights system, and act to promote peace. We need to fight back against discrimination, and uphold justice, even at this most difficult time. It may well be thankless and dangerous work at times—especially for the human rights defenders in authoritarian countries who are at the sharp end of the wedge. But I have always found solace in Dag Hammarskjöld's reflection in this respect. “To build for man a world without fear, we must be without fear.”

To answer my own question posed at the start of this lecture: what is happening to us?—the answer is straightforward. We are beginning to organize, to stir and mobilise, in defence of human decency, in defence of a common future and in defence of human rights, which—returning to Jacob Blaustein, is the very voice of human reason itself.

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