

INTERNATIONAL & NATIONAL SECURITY LAW

BUILDING THE GLOBAL WELFARE STATE: THE UNITED NATIONS AS COMMUNITY ORGANIZER

By James P. Kelly, III*

Recently, many American citizens have vigorously debated current, projected, and proposed government spending on health care, housing, education, social security, and environmental programs, and have organized for political action. At the same time, transnational progressives, in cooperation with United Nations human rights treaty body committees, non-governmental organizations, and foundations, are petitioning the United States government and businesses to adopt and implement additional financial and institutional support for these programs. This article examines the modern roots of the economic rights that are at the center of these opposing developments; explains the UN human rights treaty system that promotes these economic rights at the national level; describes how transnational progressives are promoting the creation of national, state, and local human rights institutions and organizing communities in support of these economic rights; and explains the pressure that the UN and transnational progressives are placing on businesses to fund the realization of these economic rights.

Modern Development of Economic Rights

The economic rights, the government funding of which is being hotly debated at the beginning of the twenty-first century, are rooted largely in Christian New Testament scripture and in the mid-nineteenth century writings of the French liberal Catholic priest, Hugues Felicité Robert de Lamennais. In his book, *Words of a Believer* (1834), Lamennais emphasized the need for Christians to help others realize the right to food, the right to work, the right to property, the right to education, the right to form and join trade unions, the right to personal security, and the right to an adequate standard of living. Yet, in his view, justice and charity, not government funding, were necessary to promote the realization of these rights by those unable to do so. "Each bee has a right to that portion of honey which is necessary for her subsistence, and if, amongst men, there are those who lack this necessary, it is because justice and charity have disappeared from amongst them."¹¹

Lamennais rejected the notion that those with sufficient means should be compelled to support those in poverty. "We cannot destroy poverty by taking that which belongs to others; for how shall we diminish the number of the poor by making people poor? Each one has a right to keep what he has, otherwise no one would possess anything."²²

Radical in its day, Lamennais' message was that the Christian faith could only realize its full potential in a liberal democratic society in which freedom of thought, expression, and action would facilitate voluntary acts of charity on behalf

of the poor. In his view, the required solidarity among men could only be realized through liberty and love:

So long as you remain disunited, each one caring only for himself, you have nothing to hope for but suffering and misfortune and oppression. . . . And God knew that it would be so, therefore, He commanded men to love one another, that they might be united, and that the weak might not fall beneath the oppression of the strong.³³

Lamennais' liberal Catholic viewpoint directly contradicted the view of early French social scientists, many of whom resided in Paris at the same time as Lamennais. In the view of August Comte and later social scientists, providing for the welfare of others was something that could be scientifically planned and administered, without reliance upon Christianity.

Many of the human rights contained in the Universal Declaration of Human Rights, adopted by the UN in 1948, correspond to the human rights articulated by Lamennais in *Words of a Believer*, a book published almost 100 years earlier. Yet, as was the case with Lamennais' book, the Declaration only *articulated* those human rights, leaving for another day the adoption of two international covenants, the International Covenant on Civil and Political Rights (the "ICCPR") and the International Covenant on Economic, Social and Cultural Rights (the "ICESCR") that defined the rights in more detail.

International Covenant on Economic, Social and Cultural Rights

In December 1966, the UN adopted the ICESCR, and the treaty entered into force in January 1976. The ICESCR provisions include, but are not limited to, the following economic rights:

1. The right to work;
2. The right to just and favorable conditions of work, including fair wages; equal pay for equal work; a decent living; safe and healthy working conditions; equal opportunity for promotion; rest, leisure, and a reasonable limitation on working hours; and periodic vacation days with pay;
3. The right to form and join trade unions and the right to strike;
4. The right to social security, including social insurance;
5. The right to an adequate standard of living for oneself and one's family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions;
6. The right to the enjoyment of the highest attainable standard of physical and mental health, including the right to the improvement of all aspects of the environment and industrial hygiene;

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7. The right to education; and
 8. The right to the benefits of scientific progress and its applications.

The provisions of most international human rights treaties, including the ICESCR, require States Parties to report on the progress that they are making in promoting, protecting, and, in some cases, fulfilling, the human rights that are the subject of the treaty. Nevertheless, at the time most of the State Parties ratified those treaties, the State Parties were unaware, and did not anticipate, that the UN would adopt robust reporting regimes managed by newly created treaty body committees that rely on the work of UN human rights “experts,” a professional class of UN bureaucrats, and external non-governmental organizations (“NGOs”). Ultimately, through these enhanced reporting processes, the UN and NGOs have become deeply involved in the domestic affairs of State Parties to the major international human rights treaties. Such is the case with respect to reporting requirements under the ICESCR and subsequent UN resolutions relating thereto.

Article 16 of the ICESCR provides that the States Parties to the ICESCR are to undertake to submit reports on “the measures which they have adopted and the progress made in achieving the observance of the rights recognized in the ICESCR.” Article 17 provides that the reports “may indicate factors and difficulties affecting the degree of fulfillment of obligations” under the ICESCR. Article 17 leaves it to the UN Economic and Social Council to establish a program for the States Parties to furnish the reports in stages within one year of the entry into force of the ICESCR.

Most likely at the insistence of the States Parties negotiating the ICESCR, the provisions of the ICESCR pertaining to the reporting by States Parties of their progress in achieving the observance of the rights contained in the ICESCR did not create a robust mechanism for the UN’s scrutiny of the performance record of the States Parties. In order to transform the reporting process under the ICESCR into a much more rigorous and public one, in 1985, the UN Economic and Social Council (“ECOSOC”) adopted a resolution creating the Committee on Economic, Social and Cultural Rights (the “Committee”).

The Committee is comprised of eighteen members who, according to the ECOSOC resolution, “shall be experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographic distribution and to the representation of different forms of social and legal systems.” The ECOSOC resolution requires the Committee to meet at least annually in sessions lasting up to three weeks to review the reports submitted by States Parties and to hold hearings on those reports. The Committee submits a report to ECOSOC with respect to the review of each States Party’s report. According to the ECOSOC resolution, the Committee is to make suggestions and recommendations of a “general” nature on the basis of its considerations of those reports.

Since the adoption of the ECOSOC resolution creating the Committee, the Committee has adopted working methods that have turned the limited reporting process contemplated

by the provisions of the ICESCR into an in-depth and highly controversial examination of the domestic human rights record of the States Parties to the ICESCR. The working methods include the following requirements, none of which are contained in the ICESCR or were necessarily contemplated by the States Parties at the time each of them ratified the ICESCR:

1. A pre-sessional working group, composed of five members of the Committee, meets for five days prior to each of the Committee’s sessions.
2. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States.
3. In preparation for the pre-sessional working group, Committee staff provide an analysis of the status of economic rights in each of the reporting States, including information and documentation submitted to the staff from all concerned individuals, bodies, and NGOs, who themselves may have conducted thorough interviews and information-gathering within the reporting States.
4. The pre-sessional working group gives a list of issues to a representative of each reporting State Party and urges the State Party to provide written replies to the list of issues in advance of the session at which its report will be considered.
5. The Committee generally devotes three meetings of three hours each to its public examination of the States Parties’ reports and generally devotes between two and three hours toward the end of the session, in private, to its discussion of each set of concluding observations that it will be making on each State Party report.
6. In order to ensure a constructive dialogue with the Committee, the Committee encourages representatives of the reporting States to be present at the public examination of their reports. The State Party introduces the report with some brief introductory comments and introduces any written replies to the list of issues drawn up by the pre-sessional working group. The Committee then considers the report in clusters of ICESCR articles, with questions or comments being welcomed from Committee members and with immediate replies from the State Party being welcomed.
7. The Committee permits representatives of relevant specialized agencies and other international bodies to contribute at any stage of the dialogue.

The Committee’s working methods have resulted in the institution of a well-oiled machine for the detailed examination by Committee members and staff of the human rights records of States Parties to the ICESCR. Notably, at the time the treaties were signed, there did not exist the present network of NGOs that work closely with the Committee staff and domestic civil society organizations (“CSOs”) in the countries subject to the monitoring process.

The Committee’s reporting methodologies enable NGOs to regularly immerse themselves in examining the status of economic, social, and cultural rights in the States Parties and to produce and deliver to the pre-sessional working group

and Committee so-called “shadow” reports. Produced with the assistance of CSOs that work at the grassroots level in the different human rights areas examined during the reporting process, the NGO shadow reports regularly present a very bleak picture of the status of public health care, public education, labor relations, employment opportunities and work conditions, the environment, housing, and personal security.

The United States of America has signed, but is one of the few countries in the world that has not ratified, the ICESCR, and, therefore, is not subject to its reporting requirements. Nevertheless, by instigating public and political debate over the proper level of government funding for national social welfare programs, the Committee and its partner NGOs, the names and website links of which are listed on the Committee’s homepage, have created a formidable process for promoting the realization of economic rights in the many fiscally-challenged countries that are States Parties to the ICESCR. Whether by lobbying for United States Senate ratification of ICESCR or by implementing a parallel reporting process that employs similar work methods as the Committee, NGO and foundation leaders have set their sights on implementing a system to build political support for publicly holding the United States government and transnational businesses accountable for failing to adequately fund economic rights.

Community Organizing for the Promotion of Economic Rights in the U.S.

During the past decade or so, at the encouragement of UN officials and members of the international human rights professional class, NGO leaders have mounted a significant public relations campaign to pressure the United States Senate to ratify the ICESCR. These NGO leaders are frustrated that, in partnership with the Committee, they are unable to use the same means of public, political, and media scrutiny of U.S. domestic economic and social welfare policies as they use in almost every country in the world. With the election of President Barack Obama, who embraces an agenda for the government funding of the realization of economic rights, these NGO leaders and their UN counterparts had hoped that Senate ratification was just around the corner. Yet, a rapidly shifting political landscape, brought about by an economic collapse of historic proportions and negative public perceptions of government spending (especially in the area of ambiguous economic rights, such as the right to health care and housing), has dampeden, but not extinguished, this hope.

On October 30, 2008, the American Constitution Society for Law and Policy (the “ACS”) released the report, *Human Rights at Home: A Domestic Policy Blueprint for the New Administration*, authored by Catherine Powell of Fordham Law School (the “Blueprint”). According to the ACS:

The Blueprint lays out a series of recommendations for ensuring that the next Administration will honor the United States’ commitment to human rights not only overseas but at home, in U.S. domestic policy. It points to the relevance of human rights principles to domestic issues such as: inequalities in access to housing, education, jobs, and health care; the application of the death penalty; and the prohibition of torture. Professor Powell argues that

by enhancing attention to human rights at home—by, for example, revitalizing an executive branch Interagency Working Group on Human Rights and establishing a national Human Rights Commission—the United States will be in a stronger position both to secure justice at home and to bolster the nation’s moral authority to lead other nations by example.⁴⁴

In keeping with the theme and many recommendations contained in the Blueprint, a handful of well-funded NGOs have embarked on a campaign to institutionalize a permanent system within the United States designed to replicate the work of the Committee which, absent Senate ratification of the ICESCR, cannot officially monitor and report on alleged inadequacies in the realization of economic rights. This campaign includes:

1. Research on the degree to which economic rights are not being realized in the United States.
2. The identification and, if necessary, creation of grassroots CSOs that are trained to report, and protest against, alleged shortcomings in the realization of economic rights, and lobby for remedial measures.
3. The arrangement of meetings between the CSOs and relevant human rights treaty body committees to whom the United States government has a reporting obligation, including the Committee on Human Rights created under the ICCPR and the Committee on the Elimination of Racial Discrimination created under the International Convention on the Elimination of All Forms of Racial Discrimination.
4. The preparation of NGO shadow reports detailing alleged human rights abuses or shortcomings and that are submitted to the relevant treaty body committees.
5. The establishment of contacts with government officials within the agencies that are responsible for promoting and funding the realization of economic rights and for interfacing with relevant human rights treaty body committees, including the Department of State, Department of Education, Department of Health and Human Services, and Department of Homeland Security.
6. The identification and education of news and social media sources sympathetic to the government funding of economic rights.
7. The promotion of legislation or an executive order creating a national human rights institution with which NGOs can partner on a permanent basis for the realization of economic rights.
8. The identification or creation of state and local human rights agencies, and inter-agency working groups, with which NGOs and the national human rights institution can partner in order to organize community support for economic rights and to implement a process for the public hearing, consideration, and reporting of alleged shortcomings in the realization of economic rights.
9. The identification and facilitation of individual communications regarding human rights abuses or

shortcomings that can be submitted for consideration by relevant human rights treaty committees that are authorized to hear, consider, and rule upon such communications.

10. The design and promotion of customary international law in the area of human rights upon which national and international courts can rely in deciding their cases and providing equitable relief and/or monetary awards.

11. The sharing at the international level of “best practices” relating to methodologies for realizing the government funding of economic rights.

12. The formation of partnerships with domestic and international foundations to fund these activities.

Community organizing for the realization of economic rights is at the core of many of these activities. The effectiveness of these activities was evidenced by the successful organizing of civil society in connection with the first Universal Periodic Review (“UPR”) of the human rights record of the United States conducted by the UN Human Rights Council (the “U.S.-UPR”). The UPR was established in 2006 with the creation of the UN Human Rights Council whereby, every four years, each of the 192 Member States of the United Nations is reviewed on the level of fulfillment of its human rights obligations, including economic rights.

In anticipation of the inaugural UPR of the U.S. human rights record by the Human Rights Council in November 2010, the United States Human Rights Network (“USHRN”), a coalition of human rights activists, established the following goals for its role in facilitating and coordinating civil society participation in the U.S. UPR:

1. Promote U.S. compliance with human rights standards, including encouragement for treaty ratification.

2. Broaden public education and grassroots engagement to build human rights consciousness in the United States, with an emphasis on all of the rights contained in the Universal Declaration of Human Rights.

3. Strengthen accountability mechanisms in the United States to enhance treaty implementation at all levels of government, including: the adoption of implementing statutes; the creation of comprehensive monitoring and reporting processes; and the development of effective enforcement capabilities at the local, state, and federal level.

4. Advance the human rights dialogue at all levels of government and improve engagement of civil society in human rights reporting mechanisms and implementation.

5. Advance discourse on economic, social, and cultural rights, and the interdependence of rights.⁵⁵

With the above goals in mind, the USHRN undertook extensive outreach and conducted trainings on the UPR. It actively participated in, facilitated coordination of, and sought public participation in onsite consultations with U.S. government officials across the country. That outreach led to the USHRN’s coordination, preparation, and submission to the UN of coalition stakeholder reports containing key concerns and recommendations regarding the U.S. government’s performance

on core human rights norms set forth in the Declaration. Moving forward, the USHRN and its stakeholder CSOs are using the lessons learned from their involvement in the U.S.-UPR to build an infrastructure for further human rights monitoring and reporting activities in the United States.

In an action that will further the agenda to build institutional and grassroots support for increased government funding of economic rights, on December 14, 2010, President Barack Obama signed an Executive Order creating the White House Council for Community Solutions (the “Executive Order”). The stated purpose of the Executive Order is “to encourage the growth and maximize the impact of innovative community solutions and civic participation by all Americans.”⁶⁶ It does so by establishing the White House Council for Community Solutions (the “Council”) “to support the social innovation and civic participation agenda of the Domestic Policy Council.”⁷⁷ The stated mission and functions of the Council include:

1. Identifying the key attributes of effective community developed solutions to our national problems.

2. Identifying specific policy areas in which the Federal Government is investing significant resources that lend themselves to cross-sector collaboration and providing recommendations for such collaborations.

3. Highlighting examples of best practices, tools, and models that are making a demonstrable positive impact in communities and fostering increased cross-sector collaboration and civic participation.

4. Making recommendations to the President on how to engage individuals, state and local governments, institutions of higher education, non-profit and philanthropic organizations, community groups, and businesses to support innovative community-developed solutions that have a significant impact in solving our Nation’s most serious problems.

5. Honoring and highlighting the work of leaders in service and social innovation who are making a significant impact in their communities.⁸⁸

The Executive Order states that the Council shall be composed of not more than thirty members from outside the federal government appointed by the President. The initial list of appointees to the Council, named by President Obama at the same time he signed the Executive Order, includes, among others, the former CEO and current Senior Advisor to the Bill and Melinda Gates Foundation; the President of the Rockefeller Foundation; the General Counsel and Secretary of Starbucks Coffee Company and the Starbucks Foundation; the Chief Foundation Officer of Gap, Inc.; the former U.S. Ambassador to the United Nations Commission for Human Rights, who serves as the co-chair of Amnesty International’s 50th Anniversary Year “to build a larger international grassroots movement to prevent abuse and promote human rights;” the chief executives of two foundations engaged in social justice and civic activism; and a Senior Fellow at the Center for American Progress, who previously served (2009-2010) as Senior Advisor

for Social Innovation at the White House, in the newly created Office of Social Innovation and Civic Participation, and who, prior to joining the White House, co-edited the Center for American Progress Action Fund's presidential transition book titled *Change for America: A Progressive Blueprint for the 44th President*.

Because the Executive Order does not expressly revitalize an executive branch Interagency Working Group on Human Rights or establish a national Human Rights Commission, NGO leaders may feel as though it does not go far enough in building a monitoring and reporting mechanism that will hold national, state, and local governments accountable for funding economic rights. Nevertheless, the Executive Order empowers the Council, many of the members of which are experienced human rights advocates and/or community organizers, to facilitate the organization of communities for the pursuit of domestic policies that are designed to promote economic rights.

Beyond Corporate Social Responsibility

The inclusion of representatives on the Council from Starbucks Coffee Company and Gap, Inc. highlights the important role that the human rights community sees transnational businesses playing in the realization of economic rights. However, what these and other leaders of the world's largest companies may not realize is that UN and NGO expectations regarding the human rights responsibilities of transnational businesses have moved beyond mere corporate social responsibility ("CSR"). Recently, the UN has entered into strategic relationships for monitoring and assessing the degree to which transnational businesses are promoting, protecting, and fulfilling human rights, including the economic rights of their employees and the citizens in countries in which these companies conduct their business operations.

The United Nations Global Compact ("UNGC") is a policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment, and anti-corruption. Structured as a public-private initiative, the UNGC is a policy framework for the development, implementation, and disclosure of principles and practices that are designed to build a more sustainable and inclusive global economy. The UNGC is the largest corporate citizenship and sustainability initiative in the world, with over 7,700 corporate participants and stakeholders from over 130 countries.

Since the formation of the UNGC, its critics have maintained that it is an ineffective voluntary effort that gives transnational businesses political cover in exchange for their promise to follow the unenforceable ten principles. Until recently, the UNGC has had no mechanism for assessing the performance of its corporate participants on the ten principles. However, on May 28, 2010, the UNGC announced that it had reached an agreement with the Global Reporting Initiative ("GRI") to align the ten principles with the GRI reporting framework.

The GRI Reporting Framework (the "Framework") sets out the principles and indicators that organizations can use

to measure and report their performance in implementing universally accepted environmental, social, and governance ("ESG") policies, such as the UNGC's ten principles. The foundation of the Framework consists of detailed ESG guidelines, the third version of which, known as the G3 Guidelines, was published in 2006. Now that the UNGC and GRI have reached an agreement, the GRI is revising the G3 Guidelines, and the Human Rights Performance Indicators contained therein, to incorporate the UNGC's ten principles and other ESG reporting standards as they have evolved since 2006.

The GRI Human Rights Performance Indicators are designed to facilitate the disclosure by businesses of the human rights impacts of their activities and those of their significant suppliers and contractors. In September 2009, a GRI Human Rights Working Group (the "Working Group") recommended that the Universal Declaration of Human Rights, the ICCPR, and the ICESCR should serve as points of reference for determining what is relevant with regard to the human rights responsibilities of businesses and their key stakeholders. Also, the Working Group recommended that the HR2 Performance Indicator within the G3 Guidelines should require businesses to disclose the percentage of their significant suppliers, contractors, and other business partners that have undergone assessments on human rights throughout the year.

Whether in the form of the revised GRI Guidelines, including revised Human Rights Performance Indicators, or in the form of other leading tools for measuring business compliance with human rights, in the years ahead, transnational businesses will be expected to conduct human rights impact assessments of their own business operations and of the business operations of many of those entities with whom they do business.

Presently, the most comprehensive tool available for companies to check their human rights performance is the Human Rights Compliance Assessment (the "HRCA"), launched by the Danish Institute for Human Rights, a national human rights institution (the "Institute"). An interactive online database with about 350 questions covering more than 1,000 indicators allows registered users (often business CSR consulting firms or NGOs) to systematically assess the human rights impact of particular projects or overall business operations. The analysis is based on more than eighty human rights treaties and ILO conventions covering internationally recognized human rights and criteria updated on a yearly basis. Indicators cover policy, procedure, and performance for each area. After completion of the questionnaire, companies receive a report outlining key areas of compliance and non-compliance and offering suggestions for strengthening the most crucial areas. The analysis can be adapted to specific sectors and operators. Numeric scores are provided to allow companies to track their performance.

The tool was developed in a six-year consultations process with NGOs and the business community to ensure that it sets high standards while staying close to business reality. It currently has more than 500 registered subscribers in fifty-eight countries. A reformatted version with additional features, including the creation of a compliance rating and a reorganization of

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indicators in line with the UNGC reporting categories, should be available in the near future.

The increasing cooperation among the UNGC, the GRI, and the Institute is a tipping point for transnational businesses. Once the UNGC's ten principles in the areas of human rights, labor, environment, and anti-corruption are incorporated into the GRI Framework and the Institute's HRCA tool, the UN human rights treaty body committees and NGOs will have the means available to annually access the ESG policies and practices of corporations and demand remedial action. If necessary, the UNGC and its NGO allies will publicly shame corporations that fail to implement or adhere to the Framework or HRCA.

Conclusion

In this information age, where it is possible for UN human rights treaty bodies and NGOs to globally monitor the human rights records of governments and transnational businesses through the use of internationally recognized reporting and assessment tools, the proverbial genie is out of the bottle. As official human rights institutions or comparable unofficial networks and mechanisms for organizing communities in support of the realization of economic rights are put into place in the United States, it will be easy to build a body of evidence showing that there are inequalities and insufficiencies regarding the realization of economic outcomes in the areas of health care, housing, education, social security, and the environment. What will remain difficult is the question of the extent to which these shortcomings in the realization of economic rights should be remedied by higher taxation and increased government spending, through voluntary initiatives of a compassionate citizenry, or a combination of both.

What American citizens and transnational businesses based in the United States can be sure of is that, for better or worse, United Nations treaty body committees and international NGOs will become a pervasive permanent fixture in the national, state, and local domestic policy debates relating to the realization of economic rights.

Endnotes

1 F. LAMENNAIS, WORDS OF A BELIEVER 47 (1834).

2 *Id.* at 54.

3 *Id.* at 48-49.

4 CATHERINE POWELL, HUMAN RIGHTS AT HOME: A DOMESTIC POLICY BLUEPRINT FOR THE NEW ADMINISTRATION (2008), available at <http://www.acslaw.org/files/Powell%20full%20combined.pdf>.

5 US HUMAN RIGHTS NETWORK, UNIVERSAL PERIOD REVIEW JOINT REPORTS (2010), available at http://www.ushrnetwork.org/sites/default/files/USHRN%20Human%20Rights%20Report_0.pdf.

6 Exec. Order No. 13,560, 75 Fed. Reg. 78,875 (Dec. 17, 2010), available at <http://www.whitehouse.gov/the-press-office/2010/12/14/executive-order-white-house-council-community-solutions>.

7 *Id.*

8 *Id.*

