



QUINCY INSTITUTE  
FOR RESPONSIBLE  
STATECRAFT

# The Humanitarian Paradox: Why Human Rights Require Restraint

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# Executive Summary

For the United States to be “committed to a world in which human rights are protected, their defenders are celebrated, and those who commit human rights abuses are held accountable”<sup>1</sup> requires more than rhetorical flourishes. To achieve the goal of protecting and promoting human rights, the United States must embrace a more restrained security posture together with a persistent diplomatic strategy that prioritizes engagement ahead of confrontation.

Military force and economic coercion are the wrong tools for advancing human rights. As the cases of Iraq and Libya demonstrate, preventive or humanitarian wars have critically impaired human rights. Similarly, comprehensive sanctions regimes have imposed severe human rights costs while achieving few U.S. foreign policy goals, if any, in targeted countries. The United States should therefore incorporate the following policy approaches in the service of human rights:

- Right-size its expectations of what American power can achieve to protect and advance human rights abroad. On balance, exaggerated and unrealistic confidence in American power has hurt rather than helped the cause of human rights.
- Serve as a public advocate of human rights in multilateral settings, engaging with international institutions to pressure allies and adversaries alike on their human rights records. At the same time, the United States should raise human rights concerns directly in its bilateral dealings when abuses come to light, using private diplomacy to highlight specific issues or changes that are priorities.
- Do much more to support the protection and promotion of human rights in areas under its direct control or influence. This would include, at a minimum, halting human rights abuses committed by the U.S. in its own counterterrorism

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<sup>1</sup> Blinken, Antony J. “Putting Human Rights at the Center of U.S. Foreign Policy.” Department of State, February 24, 2021. <https://www.state.gov/putting-human-rights-at-the-center-of-u-s-foreign-policy/>.

operations, freezing military aid when U.S. arms are implicated in targeting civilians, building on the recent openness to Ukrainian refugees by strengthening and expanding U.S. asylum and refugee resettlement programs globally, and greatly increasing delivery of humanitarian aid, in the form of funding as well as medical and food assistance, to civilian populations deprived of their socioeconomic rights due to conflict, climate change, and the global food crisis.

## Introduction

Can military action ever be justified in the name of promoting and protecting human rights? In numerous instances over the past 30 years, there have been calls for armed intervention to bring an end to atrocity crimes and address humanitarian crises. The first decade of the post–Cold War period was haunted by this question, as human rights advocates rueled the failure to intervene forcefully to end the Rwandan genocide.<sup>2</sup> Calls for forceful protection of human rights were eventually realized, at the end of the 1990s, in a NATO campaign in Kosovo that lacked Security Council authorization but was widely regarded as a humanitarian intervention.<sup>3</sup> A few years later, when weapons-of-mass-destruction justifications for the Iraq war were discredited, humanitarian justifications again came to the fore with the invasion and occupation described as liberating the Iraqi people.<sup>4</sup> While the Iraq war may have cast a pall over humanitarian justifications for armed intervention and occupation, the idea that a more limited military engagement might serve to protect human rights was invoked in numerous subsequent wars, including the United Nations-authorized intervention in Libya in 2011.<sup>5</sup>

As a legal matter, the U.N. Charter establishes an international security order in which the use of force may be justified only in self-defense or when authorized by the Security

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<sup>2</sup> Power, Samantha. *'A Problem from Hell': America and the Age of Genocide*. New York. HarperCollins, 2003.

<sup>3</sup> Roberts, Adam. "NATO's 'Humanitarian War' over Kosovo." *Survival*, vol. 41, no. 3, 1999. 102–23.

<sup>4</sup> Bellamy, Alex, and Nicholas Wheeler. "Humanitarian Intervention in World Politics" in Baylis, John, Steve Smith, and Patricia Owens, eds. *The Globalization of World Politics: An Introduction to International Relations*, fifth edition. Oxford. Oxford University Press, 2011. 525.

<sup>5</sup> "Security Council Authorizes 'All Necessary Measures' to Protect Civilians in Libya." *UN News*, March 17, 2011.

<https://news.un.org/en/story/2011/03/369382-security-council-authorizes-all-necessary-measures-protect-civilians-libya>.

Council.<sup>6</sup> An unauthorized, nondefensive war fought on human rights grounds remains unlawful regardless of benign intentions.<sup>7</sup> But the Libya intervention demonstrates that the U.N. may itself authorize some humanitarian interventions.<sup>8</sup> Moreover, the relationship between human rights and the use of force raises policy and normative questions that cannot be answered by international law alone.

## *Armed confrontation tends to escalate threats to civilians even when fought on allegedly humanitarian grounds.*

This Quincy Institute policy brief argues that the pursuit of human rights is better served by a policy of military restraint than through coercive measures.

War imperils the human rights of civilian populations proximate to conflict. Armed confrontation tends to escalate threats to civilians even when fought on allegedly humanitarian grounds. Coercive measures, whether military or economic, often harm the most vulnerable populations. For these reasons, the promotion and protection of human rights should be synonymous with military restraint. This brief explores the implications of these insights in the context of humanitarian interventions and counterterrorism and offers proactive recommendations for how human rights might be better promoted by the U.S. through noncoercive strategies.

## **Interrogating humanitarian intervention**

There are important policy reasons human rights advocates should avoid justifying military interventions in support of their cause. During the post–Cold War period, there has been a significant drift in the U.S. toward a militarized conception of human rights

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<sup>6</sup> See United Nations Charter, Article 2, Clause 4, and Article 51.

<sup>7</sup> Heller, Kevin Jon. "Why Unilateral Humanitarian Intervention Is Illegal and Potentially Criminal." *Opinio Juris*, April 17, 2020. <http://opiniojuris.org/2017/04/20/against-unilateral-humanitarian-intervention-and-why-it-can-be-criminal/>.

<sup>8</sup> The principal purpose of the authorization to use military force in Libya was the protection of civilians rather than the more traditional basis for Security Council authorized uses of force, which have historically been to respond to threats to international peace and security. For a consideration of the humanitarian grounds invoked by the Security Council's Libya authorization, see Kuperman, Alan J. "NATO's Intervention in Libya: A Humanitarian Success?" in Hehir, A., and R. Murray, eds. *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*. London. Palgrave Macmillan, 2013.

protection and promotion. In the 1990s, interventions in Bosnia, Somalia, and Kosovo were justified primarily on humanitarian grounds, producing a public understanding that wars may be fought for humane purposes.<sup>9</sup> These were formative years for the generation that today leads many international human rights organizations, and they may have imprinted an unwarranted degree of confidence in the benign intentions of Western interventionists.<sup>10</sup> Yet these putatively humanitarian wars produced destabilizing outcomes that in some cases – as in Somalia – resulted in state collapse and ongoing conflict.<sup>11</sup> Even in less catastrophic instances, the interventions of the 1990s have required open-ended commitments to preserving fragile arrangements for decades, either with peacekeepers on the ground or through long-term international administration and oversight.<sup>12</sup>

The logic of armed human rights promotion as ushered in during the 1990s gave way to a more expansive doctrine of humanitarian intervention, often with even worse outcomes. NATO's intervention in Kosovo in 1999, widely acknowledged to be unlawful but nonetheless deemed "legitimate" among Western nations, marked a dangerous turning point.<sup>13</sup> The precedent of the Atlantic alliance engaging in a large-scale military action without Security Council authorization threatened to unravel the international prohibition on the use of force. States with permanent seats on the Security Council already enjoy a geopolitical exemption from accountability for unauthorized uses of force based on their veto power. The Kosovo precedent added a normative gloss by legitimizing certain discretionary violations of the U.N. Charter's prohibition on force, particularly when committed by Western powers on purportedly humanitarian grounds. Whether, on balance, the intervention improved the humanitarian welfare of civilians

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<sup>9</sup> See, e.g., Western, Jon. "Sources of Humanitarian Intervention: Beliefs, Information and Advocacy in the US Decisions on Somalia and Bosnia." *International Security*, vol. 26, no. 4, Spring 2002. 112–142.

<sup>10</sup> See Dalpino, Katharin E. "Promoting Democracy and Human Rights: Lessons of the 1990s." Brookings Institution, September 1, 2000.

<https://www.brookings.edu/articles/promoting-democracy-and-human-rights-lessons-of-the-1990s/>.

<sup>11</sup> Norris, John, and Bronwyn Bruton. "Twenty Years of Collapse and Counting." Center for American Progress, 2011. <https://www.americanprogress.org/article/twenty-years-of-collapse-and-counting/>.

<sup>12</sup> "NATO Mission in Kosovo." <https://shape.nato.int/ongoingoperations/nato-mission-in-kosovo-kfor/>; "General Information." Office of the High Representative. <http://www.ohr.int/about-ohr/general-information/>.

<sup>13</sup> "Press Briefing On Kosovo Commission." United Nations, October 23, 2000. <https://press.un.org/en/2000/20001023.kosovobrfq.doc.html>.

remains in question,<sup>14</sup> as does the political fate of Kosovo even after decades of international tutelage following the intervention.<sup>15</sup>

Most countries of the Global South rejected the famous formula of the Independent International Commission on Kosovo, which was established on Sweden's initiative in August 1999, that the intervention had been "illegal but legitimate."<sup>16</sup> In consequence, a new commission was formed to address the status of unilateral humanitarian interventions.<sup>17</sup> This commission introduced the doctrine of "responsibility to protect." R2P, as this doctrine is commonly called, holds that armed intervention to prevent or stop atrocity crimes is permissible if the motives are primarily (though not exclusively) humanitarian, if force is used as a last resort, if there is a reasonable prospect of success, and if the action is internationally authorized (ideally, but perhaps not exclusively, by the Security Council).<sup>18</sup> The highly subjective nature of many of these determinations — among these assessing whether a threat of atrocities is imminent, evaluating the motives of interveners, and engaging in an ex ante cost/benefit analysis — imposes few meaningful constraints on powerful states if they are motivated to pursue militarized humanitarianism.

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<sup>14</sup> The Kosovo campaign was justified in part by allegations of impending genocide that remain highly contested. See "Kosovo Assault 'Was Not Genocide.'" BBC News, September 7, 2001, a report on the 2001 ruling of a United Nations court that Serbian troops did not commit genocide against ethnic Albanians in Kosovo. <http://news.bbc.co.uk/2/hi/europe/1530781.stm>.

<sup>15</sup> See Pinos, Jaume Castan. "Kosovo: Disputes Continue 20 Years After NATO Bombing Campaign." *The Conversation*, March 22, 2019.

<https://theconversation.com/kosovo-disputes-continue-20-years-after-nato-bombing-campaign-113669/>; on the question of the humanitarian consequences of the Kosovo intervention, see Kuperman, Alan J. "The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans." *International Studies Quarterly*, vol. 51, no. 1, 2008. 49–80.

<sup>16</sup> Independent International Commission on Kosovo. "The Kosovo Report: Conflict, International Response, Lessons Learned." *Oxford Scholarship Online*, 2003,

<https://oxford.universitypressscholarship.com/view/10.1093/0199243093.001.0001/acprof-9780199243099>. The final communiqué of the meeting of foreign ministers of the Non-Aligned Movement — a group of 120 countries primarily from the Global South — that followed the Kosovo campaign in October 1999, reiterated the illegality of unilateral interventions, whether on humanitarian or other grounds. See Ayoob, Mohammed. "Third World Perspectives on Humanitarian Intervention and International Administration." *Global Governance*, vol. 10, no. 1, 2004. 99–118.

<sup>17</sup> This second commission, the International Commission on Intervention and State Sovereignty, was established by the Canadian government in response to a request by then UN Secretary General Kofi Annan. "The responsibility to protect: A CFP condensed introduction to the report of the international commission on Intervention and State Sovereignty." *Canadian Foreign Policy Journal*, vol. 9, no. 2, 2002. 131–139.

<sup>18</sup> "The Responsibility to Protect — Report of the International Commission on Intervention and State Sovereignty, 2001." Global Centre for the Responsibility to Protect, 2001.

<https://www.globalr2p.org/resources/the-responsibility-to-protect-report-of-the-international-commission-on-intervention-and-state-sovereignty-2001/>.

*The belief that only Western states can be trusted to act on humanitarian grounds persists despite their long record of failed interventions and serious questions about the mixed motives of some of these operations.*

Against a backdrop of American primacy, R2P runs the risk of serving as a general license for U.S.–led Western interventions. This is troubling for several reasons. First, the doctrine continues the erosion, which began with Kosovo, of the U.N. Charter’s prohibition of the use of force except in cases of self-defense or Security Council authorization. R2P subtly expands the basis for Security Council-authorized uses of force beyond threats to international peace and security to cases wherein the argument for collective use of force is strictly humanitarian. Second, R2P introduces the possibility that the Security Council may not be the sole arbiter of the permissibility of nondefensive uses of force. In addition, by keying the legality of intervention to the intentions of interveners, the R2P doctrine implicitly favors Western states, the U.S. in particular. The human rights ecosystem, much of which is funded by and based in the West, treats the U.S. and Europe as benevolent guarantors of a liberal international order, obscuring the damage done by militarism that is purportedly humanitarian. As a result, the belief that only Western states can be trusted to act on humanitarian grounds persists despite their long record of failed interventions and serious questions about the mixed motives of some of these operations.

The risks of an elective doctrine of armed intervention to protect human rights became tragically clear in 2011. Having endorsed R2P in 2006, the Security Council for the first time authorized military intervention in Libya to “protect civilians and civilian populated areas under threat of attack.”<sup>19</sup> The result was a NATO-led military campaign during which interveners concluded that civilian protection required regime change, tipping the

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<sup>19</sup> UN Security Council Resolution 1973, S/RES/1973, 2011. Paragraph 4.

country into a civil war that continues to rage more than a decade later.<sup>20</sup> The consequences of the intervention included a radical increase in civilian deaths and injuries, a massive flow of weapons into the country and the eventual collapse of the state. The influx of weapons, in turn, eventually spilled across borders and destabilized the wider region, including by energizing an insurgency in the Sahel.<sup>21</sup> The decision to pursue regime change and the catastrophic aftermath of the intervention tarnished the Security Council's credibility as the institutional guarantor of peace and security, as well as the norms and machinery of the human rights system as these were invoked and deployed in support of the war. Moreover, the expansion of a civil war and the increased suffering occasioned by the intervention effectively constituted a U.N.-backed violation of the human rights of multitudes of civilians.<sup>22</sup>

The Libya intervention also produced considerable moral hazards. In Libya itself, insurgents opposed to the Qaddafi regime and supportive of NATO were given broad access to weapons that have exacerbated a decade of violent conflict and extensive human rights violations. Meanwhile, intervention as an international response to the threat of atrocity crimes in Libya may have led armed groups in Syria to escalate that conflict in the hope of similar assistance. For geopolitical reasons, there was no humanitarian intervention in Syria despite clear evidence of atrocities.<sup>23</sup> The selectivity and mixed motives that are the hallmark of elective interventions undermine

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<sup>20</sup> Knipp, Kersten. "Libya Still Plagued By Conflict, 10 Years After NATO Intervention." DW News, March 18, 2021. <https://www.dw.com/en/libya-still-plagued-by-conflict-10-years-after-nato-intervention/a-56921306/>.

<sup>21</sup> Dyke, Joe. "NATO Killed Civilians in Libya. It's Time to Admit It." *Foreign Policy*, March 20, 2021.

<https://foreignpolicy.com/2021/03/20/nato-killed-civilians-in-libya-its-time-to-admit-it/>; Charbonneau, Louis, and Hamuda Hassan. "France Defends Arms Airlift to Libyan Rebels." Reuters, June 29, 2011.

<https://www.reuters.com/article/us-libya-france-defends-arms-airlift-to-libyan-rebels-idUSTRE7270JP20110629>; Marsh, Nicholas. "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya." *PRISM Journal of Complex Operations*, vol. 6, no. 4, 2017.

<https://cco.ndu.edu/News/Article/1171858/brothers-came-back-with-weapons-the-effects-of-arms-proliferation-from-libya/>; Kuperman, Alan J. "Obama's Libya Debacle: How a Well-Meaning Intervention Ended in Failure." *Foreign Affairs*, February 18, 2019. <https://www.foreignaffairs.com/articles/libya/2019-02-18/obamas-libya-debacle>.

<sup>22</sup> "International Commission of Inquiry to Investigate Human Rights Violations in Libya Releases Report." United Nations, June 1, 2011.

<https://www.ohchr.org/en/press-releases/2011/06/international-commission-inquiry-investigate-human-rights-violations-libya/>.

<sup>23</sup> Phillips, Christopher. "How the Wars in Libya and Syria are Strangely Intertwined." *Middle East Eye*, July 22, 2020. <https://www.middleeasteye.net/opinion/how-wars-libya-and-syria-are-strangely-intertwined>; Aaronson, Michael. "Syria and the Crisis of Humanitarian Intervention." *E-International Relations*, 2014. <https://www.e-ir.info/2014/02/11/syria-and-the-crisis-of-humanitarian-intervention/>.

humanitarian claims. Equally, subordinating universal principles based on human dignity to geopolitical calculations is corrosive of human rights.

The use of force in the name of human rights relies on the implicit but enduring assumption that “doing something” will, on balance, protect civilians, while “doing nothing” tacitly condones abuses. This reasoning explains why populations in nations such as Syria might actively seek protection from external interveners. Yet the practical and moral failings of American efforts selectively and unilaterally to remake other nations by force over the past three decades demonstrate the near impossibility of achieving humanitarian ends by military intervention. Deciding when and how to intervene in the name of others’ human rights involves a presumption that the intervener can appropriately identify and protect the interests of an imperiled population and that the humanitarian cause will not be subordinated to geopolitical motivations. In practice, this presumption has rarely proven sound.

*There is little basis for the persistent belief that armed intervention is an effective means of preventing atrocities or ameliorating the humanitarian welfare of populations governed by brutal regimes.*

During an intervention, the intervener’s interests often diverge from those of civilians on the ground. The logics of force protection, zero tolerance for military casualties in humanitarian missions, and the changing operational dynamics of a military campaign all produce imperatives that bear little relation to the humanitarian welfare of civilians. The Kosovo intervention, as one example, was a high-altitude NATO bombing campaign that produced no combat casualties for the intervening force but significant civilian casualties on the ground.<sup>24</sup> This pattern has continued in subsequent interventions, raising serious questions about the relationship between means and ends when armed force is justified on human rights grounds.

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<sup>24</sup> For how Kosovo pushed the limits of international law, see Wippman, David. “Kosovo and the Limits of International Law.” *Fordham International Law Journal*, vol. 25, no. 1, 2001. 129–150.

More generally, there is little empirical evidence to support the claim that military interventions can successfully end atrocity crimes or improve human rights outcomes. The direct toll on civilians of common methods of modern armed conflict and aerial bombardment is well documented.<sup>25</sup> The additional, collateral consequences of military interventions on food supplies, medical and sanitation infrastructure, and economic productivity further imperil the basic human rights of civilians. Given the historical record, there is little basis for the persistent belief that armed intervention is an effective means of preventing atrocities or ameliorating the humanitarian welfare of populations governed by brutal regimes.

Finally, as Sam Moyn has argued, the very idea of humane warfare risks prolonging wars and inuring publics to the terrible toll of hostilities, particularly when that toll is exacted on foreign territory and on the basis of humanitarian claims.<sup>26</sup> Rather than advocating war to end atrocities — and endorsing the logic of deploying mass violence to stop mass violence — protecting human rights requires military restraint and support for the prohibition of the use of force.

## Human rights and preventative war

The U.N.-based prohibition on the use of force is arguably the cardinal achievement of the postwar international legal order. Yet that prohibition is under threat beyond the context of humanitarian intervention. The expansion of the right of self-defense to encompass preëemptive and even preventive uses of force, as asserted by the U.S., has established a precedent widely invoked by America's friends and foes alike under the rubric of the "war on terror."<sup>27</sup> This reinterpretation of defensive exceptions to the prohibition of the use of force has widened the range of unilateral and elective forms of

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<sup>25</sup> Khorram-Manesh, Amir, Frederick M. Burkle, Krzysztof Goniewicz, and Yohan Robinson. "Estimating the Number of Civilian Casualties in Modern Armed Conflicts –A Systematic Review." *Frontiers in Public Health*, vol. 9, Article 765261, October 2021. <https://www.frontiersin.org/articles/10.3389/fpubh.2021.765261/full>.

<sup>26</sup> Moyn, Samuel. *Humane: How the United States Abandoned Peace and Reinvented War*. London: Verso, 2022.

<sup>27</sup> McGlinchey, Stephen. "International Law and the Bush Doctrine." *E-International Relations*, 2009. <https://www.e-ir.info/2009/09/09/international-law-and-the-bush-doctrine/>; Patrick, Stewart M. "Israel's Preemptive Strikes on Syria – Self-Defense Under International Law?" Council on Foreign Relations, February 5, 2013.

<https://www.cfr.org/blog/israels-preemptive-strikes-syria-self-defense-under-international-law>; Schmitt, Michael N. "Russia's 'Special Military Operation' and the (Claimed) Right of Self-Defense." Lieber Institute, February 28, 2022. <https://ieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/>.

coercion regularly exercised internationally. These new forms include ad hoc coalitions interdicting shipping when the presence of WMD is suspected and permissive readings of collective self-defense allowing nonconsensual uses of force on sovereign territory for counterterrorism strikes against armed groups.<sup>28</sup> With this proliferation of justifications to use force come renewed threats to human rights.

During the first years after September 11, 2001, human rights concerns were plainly sidelined at the U.N. and beyond in the name of the imperatives of counterterrorism. Abductions, abusive interrogations, torture, arbitrary and indefinite detention, and targeted killings became the hallmarks of the early years of the war on terror, with U.S. practices effectively undermining well-established human rights prohibitions.<sup>29</sup> The demonstration effect of America's abusive policies was especially damaging given its erstwhile role as the champion of international human rights. Moreover, the outsourcing of abuses through "extraordinary rendition" made the U.S. complicit in human rights violations globally.<sup>30</sup>

Public outrage at home and abroad in response to revelations of abuse at the Guantánamo, Bagram, and Abu Ghraib detention facilities soon led to new counterterrorism methods that were more in compliance with human rights standards.<sup>31</sup> This reframing of counterterrorism and human rights as complementary and mutually reinforcing, as the Office of the U.N. High Commissioner on Human Rights suggests,

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<sup>28</sup> On the use of force based on the "unwilling or unable" doctrine, see Ntina Tzouvala, "TWAIL and the 'Unwilling or Unable' Doctrine – Continuities and Rupture." *American Journal of International Law Unbound*, vol. 109, 2015. 266–270; "Proliferation Security Initiative." U.S. Department of State.

<https://www.state.gov/proliferation-security-initiative/>.

<sup>29</sup> *Enduring Abuse: Torture and Cruel Treatment by the United States At Home and Abroad*. American Civil Liberties Union, 2006. [https://www.aclu.org/files/safefree/torture/torture\\_report.pdf](https://www.aclu.org/files/safefree/torture/torture_report.pdf); for an example of legal interpretations promulgated by the Bush administration's Office of Legal Counsel introducing a permissive standard for torture, see Yoo, John. "Memorandum Regarding the Torture and Military Interrogation of Alien Unlawful Combatants Held Outside the United States." U.S. Department of Justice Office of Legal Counsel, March 14, 2003.

<https://www.aclu.org/other/memo-regarding-torture-and-military-interrogation-alien-unlawful-combatants-held-outside>. A former U.N. Special Rapporteur on torture, Juan Mendez, has considered how U.S. practices helped erode the global prohibition on torture. See, e.g., "Global Use of Torture and the Urgency of 'The Report': A Conversation Between Experts." *Physicians for Human Rights*, November 25, 2019.

<https://phr.org/our-work/resources/the-united-states-and-torture-a-conversation-between-experts/>.

<sup>30</sup> Mayer, Jane. "Outsourcing Torture." *The New Yorker*, February 6, 2005.

<https://www.newyorker.com/magazine/2005/02/14/outsourcing-torture>.

<sup>31</sup> Bazelon, Emily. "From Bagram to Abu Ghraib." *Mother Jones*, March–April 2005.

<https://www.motherjones.com/politics/2005/03/bagram-abu-ghraib/>.

has produced its own corrosive legacy for human rights alongside that of the outright abuses of the immediate post–September 11 period.<sup>32</sup>

To understand counterterrorism as a means to promote human rights depends on a definition of terrorism as a global threat to U.S. national security and as a catchall term for armed nonstate actors that threaten the rights of local populations. Here the logics of counterterrorism and humanitarian intervention bleed into one another, as the use of force against alleged terrorist groups can also be presented as advancing the humanitarian welfare of civilians. As the cases of the Taliban and ISIS demonstrate, the war on terror effectively became a new kind of militarized human rights campaign in which America's geostrategic interests were said to align with the protection of defenseless civilians.<sup>33</sup> America's ever-expanding global military footprint during the war on terror might, on this reading, be understood as a kind of militarized protection force for vulnerable populations terrorized by armed groups.

And what of the civilians in places like Afghanistan or Yemen who may be supportive of armed insurgents that the U.S. and its allies deem to be terrorists? Here, the counterinsurgency manuals of the last 10 years have emphasized the importance of "winning the hearts and minds" of local populations.<sup>34</sup> This kinder, gentler war-making involves shielding civilians from violence in armed conflict and, where possible, offering benefits to persuade locals to cut off supplies and assistance to insurgents. In this way, counterinsurgency has become part military campaign and part contest for legitimacy, with the familiar comingling of violence and humanitarianism and its attendant risks.

While some critics of this approach have argued that popular support does not win wars, and more coercive approaches are more effective, few have questioned the credibility of armed forces purportedly advancing local empowerment.

Counterinsurgency strategies embed troops in civilian populations and seek to shape their interests and institutions to support the intervener's military objectives. The claim

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<sup>32</sup> "Human Rights, Terrorism, and Counter-Terrorism." Office of the United Nations High Commissioner for Human Rights, 2007. <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf>.

<sup>33</sup> Popal, Farhat, and Chris Walsh. "U.S. Efforts to Protect Afghan Women and Girls." George W. Bush Institute, 2021. <https://www.bushcenter.org/publications/articles/2021/policy-recs/protecting-afghan-women-and-girls.html>.

<sup>34</sup> Nell, Karl E. "Hearts and Minds – A Strategy of Conciliation, Coercion, or Commitment?" U.S. Army Peacekeeping & Stability Operations Institute, 2012. <https://publications.armywarcollege.edu/pubs/1274.pdf>.

that this highly coercive context is conducive to advancing human rights presents perhaps the most acute version of the paradox of humanitarian war.

Whether cast as humanitarian intervention, counterterrorism, or preventive war, the costs of such a militarized conception of human rights are manifold. For those on the receiving end of Western air strikes, purported wars of liberation, and counterinsurgency campaigns, the language of human rights may come to be a sinister weapon in the arsenal of warriors. Civilians thus become wary of the principal international normative system for protecting their interests. And, perhaps equally problematic, the allegedly humane intentions of those who resort to force tend to short-circuit any mechanisms of accountability.

*As the U.S. pivots from the global war on terror toward new geopolitical rivalries, there is an urgent need to explore how human rights might be better served by a foreign policy of military restraint.*

Those committing human rights violations on ostensibly humanitarian grounds, whether the U.S., NATO or others, have acted with impunity at the international level since the 1990s. Civilians harmed in the violent aftermath of interventions such as those in Somalia to Libya, no less than those killed and injured in counterterrorist drone strikes and counterinsurgency campaigns, are unlikely to see reparative justice or accountability. Beyond damaging the credibility of the U.N.'s human rights machinery and exposing the selectivity of the International Criminal Court's investigations, this absence of accountability has also compromised the reputations and perceived neutrality of major international human rights organizations. This is because the name-and-shame campaigns of leading Western human rights groups have failed adequately to address the militarism through which Western states have advanced their purportedly humanitarian goals. In short, military interventionism has undermined human rights and the systems and organizations working to protect them.

As the U.S. pivots from its preoccupation with the Middle East and the global war on terror toward new geopolitical rivalries, there is an urgent need to explore how human rights might be better served by a foreign policy of military restraint.

## Human rights and the limits of coercion

As its starting point, this inquiry acknowledges the limitations of the tools on which the United States has often relied in its strategies to promote and protect human rights. Put simply, human rights are rarely served through America's use of coercive measures. Our tool box for promoting human rights relies excessively on coercive means ranging from trade penalties and sanctions all the way to military intervention. This has been so despite mounting evidence that sanctions, like military interventions, are frequently ineffective and even counterproductive in the protection of human rights.<sup>35</sup>

Further, the U.S. typically focuses its human rights protection strategy on countries that are adversaries or with which it has limited ties. Countries such as Iran, Syria, North Korea, Venezuela, and Cuba top Washington's list of human rights abusers. More recently, the U.S. has paid some attention to flagrant abuses committed by allies such as Saudi Arabia, but the spotlight on the case of Jamal Khashoggi, the *Washington Post* columnist murdered while in Saudi custody in 2018, is in some ways the exception that proves the rule. Because U.S. policy toward the Middle East remains anchored on relations with Israel and key Gulf Arab states, the Khashoggi affair has now been sidelined. This was most recently evident during President Biden's July 2022 trip to Saudi Arabia, when human rights concerns were subordinated to other political imperatives. This return to form underscores the degree to which human rights promotion is a strategy of coercion toward adversaries that does not apply to abuses committed by friends.

The priorities and the tool kit the U.S. employs for the protection and promotion of human rights need revision. The United States must reset expectations concerning the

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<sup>35</sup> Mulder, Nicholas. *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War*. New Haven and London. Yale University Press, 2022; See also Bâli, Aslı, and Aziz Rana. "Sanctions Are Inhumane – Now, and Always." *Boston Review*, March 26, 2020.

<https://bostonreview.net/articles/aziz-rana-asli-u-bali-sanctions-are-inhumane-now-and-always/>.

effectiveness of coercive tools and the circumstances wherein it may wield influence over the human rights records of other countries. In many ways, it is American primacy that has instilled exaggerated and unrealistic confidence – particularly among Washington foreign policy elites – in America’s capacity to defend and advance human rights through coercion. In reality, America’s ability to forcibly remake the world for the better is far more limited.

***It is difficult to identify a single instance in the last quarter century in which the imposition of sanctions improved human rights outcomes.***

When confronted with a deeply abusive regime suspected of atrocity crimes, calls to “do something” become acute. Yet, when the available tools risk exacerbating a humanitarian crisis, acting with restraint may produce better human rights outcomes. Examples of this basic lesson abound in cases wherein American sanctions intended to pressure abusive regimes have instead worsened shortages of food and basic medicines for vulnerable civilian populations. The most extreme current case is in Afghanistan, where sanctions and asset freezes are ostensibly targeted against the Taliban regime, but with the result that nearly 20 million people – almost half the population – faces life-threatening food insecurity, according to the United Nations.<sup>36</sup> There may be other policy objectives that are well served by sanctions, but it is difficult to identify a single instance in the last quarter century in which the imposition of sanctions improved human rights outcomes.

The failure to intervene to prevent the Rwandan genocide in 1994 was a formative experience for many policymakers now active in Washington. If not through sanctions or intervention, how should the United States respond to a future instance of suspected genocide? This is among the key challenges for U.S. policymakers.

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<sup>36</sup> “Afghanistan – Nearly 20 Million Going Hungry.” UN News. May 9, 2022. <https://news.un.org/en/story/2022/05/1117812>.

We must note that there have been many instances of genocidal atrocities since the 1990s that have occasioned no interventionist debate in the U.S. Such cases include the Great Lakes region of Africa – where atrocity crimes continue, particularly in the Democratic Republic of the Congo – and the recent case of the Rohingya in Myanmar.<sup>37</sup> The convergence of atrocity crimes with geopolitical interests and strategies better explains the impulse to intervene directly than pure humanitarian considerations. But these geopolitical considerations may also crowd out or even trump concern for human rights when the U.S. intervenes unilaterally or through ad hoc coalitions. The far better and more effective response to concern about impending atrocity crimes, or crimes that are under way, is to invest in multilateral strategies that involve assistance to targeted populations and negotiations with governments to end abuses.

Investing in the U.N. rather than incapacitating it is one way the U.S. can support multilateral efforts to promote human rights in places where the coercive tool box has proven ineffective. Critically, the United Nations is an organization that has a diplomatic and humanitarian mandate: It is neither a hegemonic actor nor a strictly geopolitical player in the conflicts that produce atrocities. As a consequence, it retains a credibility and margin of maneuver that the United States lacks in addressing crises as they are unfolding.

At the same time, and in part due to the withdrawal of U.S. support, the U.N. currently lacks the means to address crises effectively. The organization faces a vast, unfunded mandate in the midst of simultaneous energy, climate, and financial crises, a global pandemic, and a worldwide food shortage. Redoubling support for the U.N. and its mandate for peacemaking and human rights promotion should be an urgent priority for the U.S. Returning to the case of Rwanda, it was not the failure to intervene but the active decision to remove U.N. peacekeepers already on the ground that was decisive in

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<sup>37</sup> *The World's Most Neglected Displacement Crises in 2021*. Norwegian Refugee Council, June 1, 2022. <https://www.nrc.no/shorthand/fr/the-worlds-most-neglected-displacement-crises-in-2021/index.html>. This report examines selectivity in humanitarian concern and neglect of ongoing conflict in the eastern region of the Democratic Republic of the Congo. Pak K. Lee and Cecilia Ducci. "No Humanitarian Intervention in Asian Genocides – How Possible and Legitimate?" *Third World Quarterly*, vol. 41, no. 9, 2020. 1575–94. The authors address the failure to consider humanitarian intervention in Myanmar and other cases despite evidence of genocidal atrocities.

the trajectory of the genocide.<sup>38</sup> Had the United States and other powers enhanced the peacekeeping operation in Rwanda rather than withdrawn it, many atrocities may have been averted.

A commitment to using the U.N. and other multilateral fora for public advocacy of human rights could also pay dividends in the effectiveness of American efforts to address issues of concern involving abuses by adversaries. As Rachel Esplin Odell has argued, the U.S. could use its seat on the U.N. Human Rights Council, to which it returned in 2021 after a three-year hiatus, to push for an investigation into China's policies toward Uighurs in Xinjiang Province.<sup>39</sup> This would offer a forum in which Muslim-majority countries and governments in the Global South might join an international campaign that spotlights abuses and works to persuade Beijing to alter policies without triggering those countries' reluctance to sign on to a strategy of economic pressure. In addition, the U.S. could also press for specific changes in policy through direct bilateral engagements with China, as Odell recommends, in which administration officials should "grandstand less in favor of private persuasion."<sup>40</sup>

The United States should also strengthen the noncoercive elements available in its own diplomatic tool box. American sanctions can certainly cripple the economies of most other countries, but that does not make them an effective means of inducing their governments to change policies or improve human rights. The U.S. has many other, more subtle diplomatic levers of influence that can and should be used to improve human rights, particularly when engaging with allies. Returning to the example of Saudi Arabia, President Biden's fulsome statements about the Khashoggi case after his meeting with Mohammed bin Salman, the crown prince, amounted to little more than a loud denunciation, given the evident unwillingness of the administration to use leverage to seek meaningful change on questions of accountability within the kingdom. Had the

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<sup>38</sup> Dallaire, Romero. *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. Boston. Da Capo, 2004. In this memoir, the force commander of the U.N. Assistance Mission for Rwanda describes the catastrophic failure by Security Council powers to support ongoing peacekeeping efforts in Rwanda.

<sup>39</sup> Odell, Rachel Esplin. "Washington Needs a New Approach to Human Rights Promotion – in China and Beyond." *Responsible Statecraft*, June 9, 2021.

<https://responsiblestatecraft.org/2021/06/09/washington-needs-a-new-approach-to-human-rights-promotion-in-china-and-beyond/>.

<sup>40</sup> Odell. "Washington Needs a New Approach."

administration instead raised concerns privately, conveying forcefully in closed-door discussions that the U.S. prioritized specific human rights improvements alongside other strategic goals, more might have been achieved.

In general, the U.S. should certainly raise human rights issues in bilateral discussions with abusive allies, but the focus should be on gaining traction on specific problems rather than virtue signaling by issuing public condemnations with little meaningful pressure on allies or with massive sanctions against adversaries. Yet the tendency in Washington is to overstate what can be achieved through coercion and undervalue the persuasive tools of diplomatic engagement. As was evident at the June 2022 Summit of the Americas, U.S. support for authoritarian allies elsewhere undercuts public condemnation of other regimes the U.S. deems authoritarian.<sup>41</sup> Relying less on coercion and condemnation and more on improving human rights at the margins through bilateral engagement and private diplomacy might yield better results given that the U.S. continues to rely in many contexts on its alliances with human rights abusers.<sup>42</sup>

## Human rights begin at home

The most effective thing that the United States can do for the promotion and protection of human rights is to implement its policies at home as well as abroad in ways that are attentive to human rights. This would mean, first and foremost, a policy of military restraint for the reasons articulated above. Were the United States to pursue its objectives in ways that reduce human rights abuses, this would improve the humanitarian welfare of civilians from Somalia to Pakistan.

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<sup>41</sup> Ryan, Missy. "U.S. missing opportunities with Latin America, Chile's leader says." *Washington Post*, June 9, 2022. <https://www.washingtonpost.com/national-security/2022/06/09/united-states-chile-president-boric/>.

<sup>42</sup> This might involve raising the case of a specific wrongfully detained individual – as may have happened in 2021 in the case of Saudi women's rights activist Loujain al-Hathloul – or a particularly egregious set of practices, such as restrictions on media freedoms or the targeting of journalists. Chulov, Martin. "Saudi women's rights activist Loujain al-Hathloul released from prison." *The Guardian*, Feb. 10, 2021. <https://www.theguardian.com/world/2021/feb/10/saudi-womens-rights-activist-loujain-al-hathloul-released-from-prison>.

Members of the Biden administration have suggested media freedom is a key priority in current US foreign policy on human rights. Blinken, Antony J. "A Commitment to Journalistic Freedom." Remarks at the Media Summit of Americas Session, June 7, 2022. <https://www.state.gov/secretary-antony-j-blinken-panel-discussion-at-the-media-summit-of-americas-session-a-commitment-to-journalistic-freedom/>.

By stemming human rights abuses in implementing its counterterrorism and security policies – the so-called collateral damage of these policies – the United States would enhance its credibility on human rights matters, especially among Muslim-majority nations. This, in turn, might also enhance its ability to influence allies in the region to adopt more policies protective of human rights, particularly in their own counterterrorism strategies. The U.S. triggered a terrible domino effect when it openly embraced abusive interrogation and detention standards in the immediate post-September 11 period, and then did so again when it shifted from those abusive tactics to a drone program that shaded into a license for systematic, extrajudicial killing under the Obama administration.<sup>43</sup> The U.S. could produce a powerful reverse demonstration effect by correcting policies that are abusive of human rights and setting the same expectations for allies. A first step in this direction has been the seriousness with which Congress has reexamined the license provided by the U.S. to the Saudis and Emiratis in their war in Yemen.<sup>44</sup> Rather than resuming the sale of offensive weapons to Gulf allies, the Biden administration should heed the concerns raised by Congress.<sup>45</sup>

Beyond its engagement with other countries, there are important human rights steps the United States can take at home. The U.S. could adopt policies that are far more welcoming of refugees fleeing humanitarian crises, especially where those crises are related to American actions, as in Afghanistan. This is the first and most obvious way the United States could better promote human rights – by accepting a larger proportion of the world's refugee population, particularly those displaced by U.S.-led wars.

In this connection, the stark contrast over the past year between the treatment of Afghan refugees fleeing the aftermath of two decades of American-led intervention and

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<sup>43</sup> Mayer, Jane. "Torture and Obama's Drone Program." *The New Yorker*, February 15, 2013. <https://www.newyorker.com/news/news-desk/torture-and-obamas-drone-program>. Media reports suggest that when President Biden brought up the assassination of Jamal Khashoggi to Mohammed bin Salman of Saudi Arabia, the crown prince countered by referencing U.S. torture practices and abuses at the Abu Ghraib prison in Iraq. Mattingly, Phil, Allie Malloy, Tamara Qiblawi, and Celine Alkhaldi. "MBS Hits Back at Biden After the President Confronts Saudi Prince About Khashoggi." CNN, July 17, 2022.

<https://www.cnn.com/2022/07/16/middleeast/biden-mbs-khashoggi-abu-akleh-intl/index.html>.

<sup>44</sup> Demirjian, Karoun. "House Votes to Block Trump's Arms Sales to Saudi Arabia, Setting Up a Likely Veto." *The Washington Post*, July 17, 2019.

[https://www.washingtonpost.com/national-security/house-votes-to-block-trumps-arms-sales-to-saudi-arabia-setting-up-likely-veto/2019/07/17/7f329a9c-a8ce-11e9-9214-246e594de5d5\\_story.html](https://www.washingtonpost.com/national-security/house-votes-to-block-trumps-arms-sales-to-saudi-arabia-setting-up-likely-veto/2019/07/17/7f329a9c-a8ce-11e9-9214-246e594de5d5_story.html).

<sup>45</sup> "U.S. weighs possible resumption of offensive arms sales to Saudis." *Reuters*, July 11, 2022.

<https://www.cnbc.com/2022/07/11/us-weighs-possible-resumption-of-offensive-arms-sales-to-saudis.html>.

the welcome afforded to Ukrainian refugees since the Russian invasion began in February raises pressing questions about the double standards considered above. This is a case where the imbalance should be corrected – not by reducing the number of Ukrainians the U.S. welcomes but by increasing the number of others it treats commensurately.<sup>46</sup>

The vast majority of Western interventions have been on territories of the Global South populated by brown and black people, notably in Central Asia, the Middle East, Africa, Central America, and the Caribbean. Unlike Ukrainians, displaced people from these regions face closed borders. Conservative estimates place the number of those forcibly displaced by post–September 11 interventions at 37 million to nearly 60 million.<sup>47</sup> The bitter irony here is that Western resettlement and asylum programs have become less rather than more generous during this period.

The Ukrainian precedent on refugees – with millions of Ukrainians granted protected status in European countries and 100,000 invited to resettle in the U.S. – is an example to emulate, particularly in cases when we owe an even greater moral and material debt to those displaced. Requiring the United States to absorb some of the collateral costs of its own military operations might also strengthen calls for military restraint. The impunity enjoyed by the U.S. is exacerbated by the fact that so many of the country's interventions have been overseas, with the destabilizing aftereffects of war contained in distant regions, leaving them virtually invisible to the American public. Internalizing some of the medium-term costs of using force by requiring interveners to resettle

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<sup>46</sup> Ratwatte, Indrika. "News Comment: UNHCR: Afghans Struggle to Seek Safety As Borders Remain Shut to Most." UNHCR, December 1, 2021.

<https://www.unhcr.org/en-us/news/press/2021/12/61a72ed34/news-comment-unhcr-afghans-struggle-seek-safety-borders-remain-shut.html>; Abdelaaty, Lamis. "European Countries Are Welcoming Ukrainian Refugees. It Was a Different Story in 2015." *The Washington Post*, March 23, 2022.

<https://www.washingtonpost.com/politics/2022/03/23/ukraine-refugees-welcome-europe/>; Wilde, Ralph. "Hamster in a Wheel – International Law, Crisis, Exceptionalism, Whataboutery, Speaking Truth to Power, and Sociopathic, Racist Gaslighting." *OpinioJuris*, March 17, 2022.

<http://opiniojuris.org/2022/03/17/hamster-in-a-wheel-international-law-crisis-exceptionalism-whataboutery-speaking-truth-to-power-and-sociopathic-racist-gaslighting/>.

<sup>47</sup> Vine, David. "Creating Refugees – Displacement Caused by the United States' Post 9/11 Wars." Watson Institute for International and Public Affairs, 2020.

[https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Displacement\\_Vine%20et%20al\\_Costs%20of%20War%202020%2009%2008.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Displacement_Vine%20et%20al_Costs%20of%20War%202020%2009%2008.pdf).

displaced populations would constitute a small step toward reparative justice, if not accountability.

Human rights promotion would also counsel a reduction in weapons sales by the U.S. to abusive regimes. The United States has sold hundreds of billions of dollars' worth of weapons and related technical support to nearly 170 countries over the past 20 years.<sup>48</sup> While human rights conditions are technically attached to such sales, the sheer number of abusive countries purchasing U.S. military supplies demonstrates the failure of such conditionality.<sup>49</sup> For instance, having entered into putatively counterterrorist alliances with some of the most egregious human rights abusers in the Middle East, Republican and Democratic administrations alike have waived human rights conditions on arms supplies to countries such as Saudi Arabia, the United Arab Emirates, and Egypt.<sup>50</sup> What is needed is not selective human rights conditionality but an end to arms sales to abusive regimes.

Enforcing current conditionality might go part of the way toward achieving this goal, but the U.S. government's deep ties to weapons manufacturers and the use of military aid to shore up alliances with abusive regimes suggests that a more fundamental shift of policy priorities is in order. If the U.S. were to ground its policies in human rights protections, this would mean rethinking the current approach to allies and adversaries more broadly.

At a minimum, human rights promotion would need to be delinked from geopolitical competition.<sup>51</sup> This would be beneficial for human rights priorities across the spectrum. With respect to allies, instead of ignoring or affording impunity to human rights abuses to advance geostrategic preferences, the U.S. should engage with partners on their human rights records bilaterally, where there is greater leverage. By the same token, the

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<sup>48</sup> Bâli, Asli. "The Futility of Conditionality – How U.S. Military Aid Undergirds Middle East Repression." Democracy for the Arab World Now, August 19, 2021.

<https://dawnmena.org/the-futility-of-conditionality-how-u-s-military-aid-undergirds-middle-east-repression/>.

<sup>49</sup> "Conditionality as a Tool for Human Rights Advocacy: Workshop Report and Recommendations." Democracy for the Arab World Now, August 5, 2021.

<https://dawnmena.org/conditionality-as-a-tool-for-human-rights-advocacy-workshop-report-and-recommendations/>.

<sup>50</sup> Hansler, Jennifer. "Biden Administration Authorizes \$2.5 Billion in Arms Sales to Egypt Despite Human Rights Concerns." CNN, January 25, 2022. <https://www.cnn.com/2022/01/25/politics/us-arms-sales-egypt/index.html>.

<sup>51</sup> Odell, "Washington Needs a New Approach."

United States would also need to avoid linking objections to adversaries' human rights records to efforts to contain them militarily or through economic coercion.

## *What is needed is not selective human rights conditionality but an end to arms sales to abusive regimes.*

As noted, the Biden administration has already reversed the Trump administration's decision to withdraw from the U.N. Human Rights Council.<sup>52</sup> But the U.S. should more actively engage with, and increase funding to, the multilateral human rights system. Supporting the HRC's efforts to hold hearings on a range of human rights issues, including those the U.S. and its allies deem sensitive, would be very beneficial in depoliticizing and restoring the credibility of human rights institutions in Geneva. Consistent support for multilateral efforts to protect human rights would go some way toward correcting the record of selective and often unilateral imposition of American values over the last 20 years, whether through "nation building" exercises or in counterterrorism contexts. Moreover, the U.S. could lead by example, acknowledging legitimate concerns about its own human rights record in matters of racial justice and social inequality at home and its military activities abroad. Finally, the United States should substantially enhance its foreign aid—bilaterally and multilaterally—in ways targeted to protecting vulnerable populations facing extreme precarity as a consequence of pandemic, climate change and a global food crisis.<sup>53</sup>

Advancing a commitment to human rights must begin with a focus on America's actions and policies. Recognizing its own human rights challenges and engaging multilaterally will ameliorate U.S. practices while improving the image of the country as a credible advocate for human rights globally.

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<sup>52</sup> Edelman, Adam. "Biden Administration to Rejoin U.N. Human Rights Council in Another Reversal of Trump." NBC News, February 8, 2021.

<https://www.nbcnews.com/politics/joe-biden/biden-administration-rejoin-u-n-human-rights-council-another-reversal-n1256997>.

<sup>53</sup> "Convergence of conflicts, COVID and climate crises, jeopardize global goals." UN News, July 7, 2022.  
<https://news.un.org/en/story/2022/07/1122112>.

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