

Rights Inflation and Role Conflict in the Office of the High Commissioner for Human Rights

Michael Ignatieff

[Felice. D. Gaer and Christen L. Broecker (eds.) **The United Nations High Commissioner for Human Rights: Conscience for the World, (Leiden, Nijhoff,2014), ps. 35-45**

The scholars, activists and UN civil servants taking part in this collection are all asking the same question: has the UN human rights system as a whole gained legitimacy and effectiveness since the creation of the Office of the High Commissioner for Human Rights? This is a question worth asking. International institutions can't improve unless they subject themselves to a process of adversarial justification at the hands of governments, activists and academics. By 'justification', I mean UN agencies need to account for their record within the UN, but also beyond it, to critical audiences outside the system. By 'adversarial,' I mean, they need to be ready to answer tough questions when their justifications seem to fail.

The last 20 years have been a testing time for the UN human rights system. The first UN High Commissioner for Human Rights took office within days of the genocide in Rwanda.¹ The times since then include Kosovo plus 9/11, followed by the war in Iraq, the operation in Afghanistan, the bloody conclusion of the Sri Lankan civil war, Libya, and now Syria. The UN High Commissioner for Human Rights has affirmed that there are massive human rights violations in Syria.² We could say that she did her job and the Security Council didn't. So Syria is a framing context for our discussion.

An obvious role conflict is built into the office of the High Commissioner for Human Rights. On the one hand, she is a senior UN human rights official accountable to the UN system and member states.³ On the other hand, she is accountable to "we the peoples of the United Nations" and is often described, with some exaggeration, as "the conscience of the world." Accountability pulls her in two different ways. She is accountable to the world's victims and she is accountable to a Human Rights Council made up of states responsible for the abuses. She has to be both a master of quiet diplomacy with rights violating states and a public champion of the abused. She has to extract resources from wealthy states for her UN field presences while criticizing their often faulty human rights record, especially in the fight against global terrorism. She is

¹ José Ayala Lasso arrived in Geneva on April 5, 1994 to begin a four-year term as the first United Nations High Commissioner for Human Rights. On April 6, 1994, Rwandan President Juvénal Habyarimana was assassinated when his plane was shot down above the Rwandan capital of Kigali, marking the beginning of the genocide there.

² UN Department of Public Information, "Top UN Human Rights Official Says Member States 'Must Act Now' to Protect Syrian People, as Violent Crackdown Continues, in briefing to General Assembly," news release GA/11206, February 13, 2012.

³ UN General Assembly. Resolution 48/141, "High Commissioner for the promotion and protection of all human rights," UN Doc. A/RES/48/141, December 20, 1993.

mandated to provide assistance to the treaty bodies and the special rapporteurs and she has to be accountable to the press, and through them to global public opinion, when the UN human rights system fails victims, as it often does.

This conflict in roles is intrinsic to the office, and all of the personalities who have held the office have handled the conflict differently: Jose Ayala Lasso; Mary Robinson; Sergio Vieira de Mello; Bertie Ramcharan, Louise Arbour and Navi Pillay, the current High Commissioner.

If you look at the men and women who have held the post, with one exception, all of them were UN insiders. They got the job in part because they knew the UN system from the inside. They had been UN ambassadors, UN officials, prosecutors or judges in the emerging system of international justice.⁴ The one High Commissioner who wasn't a UN insider was Mary Robinson, but she had an independent political base as a head of state and human rights lawyer in her native land. To be successful, a High Commissioner has to be an insider with experience navigating the UN system and an outsider, a global politician with the status and standing to challenge the system and confront member states. No wonder it is a tough job.

When Sergio Vieira de Mello was transitioning into the High Commissioner's job, Harold Koh, then a professor at the Yale Law School, gave him a good piece of advice. "Well the test, Sergio, for success is when you get in a cab in Mumbai, Beijing, or London or Paris, the cabbie will turn around and say 'oh, you're the human rights guy!'"⁵ Koh went on to say, "you will then have the independent political base that will make you the global conscience, the global spokesman."⁶ The story captures the global expectations that go with the role, but it also captures the conflict between being a UN politician and a global voice of conscience.

There is a further conflict between legacy roles and emergent ones. The legacy roles include serving as the secretariat for the overburdened and often ineffective treaty bodies that monitor state compliance with UN human rights conventions and treaties. Another legacy role is supporting the work of the voluntary special rapporteurs who produce themed or country-specific reports on human rights abuses. These legacy roles are built into the UN system long-term, but they draw staff and resources away from emerging roles. The chief of these are being a norm entrepreneur for emerging human rights issues like gay, lesbian and transgender rights and being a global spokesman for the human rights crises, like Syria, that draw global media attention. Over the last twenty years, the High Commissioner has had to transition from quiet diplomacy in the corridors of power to public diplomacy through the global media. Feeding the ravenous beast of the media can take any manager away from core business, and for the High

⁴ See biographies of the High Commissioners at UN Office of the High Commissioner for Human Rights, "High Commissioner," <http://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx>.

⁵ Harold Hongju Koh, *A Job Description for the U.N. High Commissioner for Human Rights*, 35 Colum. Hum. Rts. L. Rev. 493, 495 (2004).

⁶ *Ibid.*, 495.

Commissioner the core business has to be building the capability, resources and competence of the UN human rights system itself.

Sometimes these role conflicts have been excruciatingly difficult. Sergio Vieira de Mello's struggle with these roles ended in tragedy. In 2003 he left his job as High Commissioner for Human Rights, in part out of frustration at the paralysis and legalism in the UN human rights machinery. While High Commissioner he was ferociously criticized for being a willing accomplice to American imperialism in Iraq. When he told an interviewer in 2003 that "It's not for me to uphold or to applaud," American conduct in Iraq, his attempt to balance relations with America and its critics did the authority of the High Commissioner real damage.⁷ He then went to Iraq as the Secretary General's Special Representative to put the UN back into the center of the global power game. De Mello's story could be read as a parable of the role conflicts in senior UN posts. Faced with the choice between low profile quiet diplomacy as High Commissioner and a high-risk role as a global politician in Iraq, he chose the latter and paid for the choice with his life.

Over the last twenty years, the potential for role conflict has grown as High Commissioners have chosen to privilege defense of victims over deference to states. If you read the first High Commissioner's reports there is no occasion in which he mentions a member State negatively under any circumstances.⁸ Periphrastic generality ruled. If you look at the current High Commissioner's reports, member States are named, one after another: Libya, Syria, Russia, Sri Lanka, and so on.⁹ The contrast is an important sign, I think, that the High Commissioner is acquiring the authority to privilege her role as global conscience, accountable to victims, over her political responsibility to member states.

The increasing outspokenness of the High Commissioner is an excellent thing, as far as activists and victims are concerned, but it comes with a price. In response, states are shutting the High Commissioner out, refusing to co-operate with special rapporteurs or comply with recommendations from UN treaty bodies.¹⁰ Criticizing states while maintaining access and leverage has not proven easy for the High Commissioner, but on balance, most activists would recommend that a High Commissioner should never pull her punches in order to gain access to some rights-offending politician.

⁷ Tim Sebastian, "War: what price human rights?" *BBC HARDtalk* (interview with Sergio Vieira de Mello), April 14, 2003, <http://news.bbc.co.uk/2/hi/programmes/hardtalk/2946949.stm>.

⁸ See, e.g., Report of the United Nations High Commissioner for Human Rights, UN Doc. A/50/36 (1996), Official Records of the General Assembly, Fiftieth Session, Supplement No. 36.

⁹ See, e.g., the annual OHCHR reports since 2000: <http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/AnnualReportAppeal.aspx>.

¹⁰ For example, under president Alexander Lukashenko, the government of Belarus has engaged in an increasingly harsh campaign to suppress political opposition and has refused to cooperate with the OHCHR or comply with UN recommendations. See Navi Pillay, "Oral report by the United Nations High Commissioner for Human Rights on The Human Rights Situation in the Republic of Belarus to the 18th session of the Human Rights Council," (statement delivered in Geneva, September 20, 2011), http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/Oral_report-on_Belarus20Sep2011.pdf.

Another important evolution in the High Commissioner's role has been more authoritative human rights reporting. The current High Commissioner made herself the gold standard on the human rights situation in Syria.¹¹ Her count of the victims and her blunt reporting to the Security Council have consolidated the authority of her office at a time when the UN itself has lost credibility because of the Security Council impasse on Syria.¹² A vital function of a High Commissioner and a key lever for acquiring greater authority is to become the gold standard on the facts. In this role, she faces strong competition. Human Rights Watch and Amnesty have led a revolution in human rights research, marked by a professionalization of standards, improved access on the ground and adept use of the Internet and social media to publicize results. Competition with aggressive, well-funded, multi-million dollar human rights organizations like Amnesty and HRW has forced successive High Commissioners to raise their game.

In this competition for voice and influence in the human rights world, the High Commissioner and the NGOs both have had to keep on the right side of the line between propaganda and information. Strong feelings are not a substitute for the facts and the facts in human rights cases are often complex and ambiguous. A High Commissioner is not in the business of awarding gold stars or conferring moral immunity to the weaker side in a conflict. Of all the role conflicts a High Commissioner has to struggle with, one of the most acute must be inside her own head, struggling to maintain impartiality, discipline and professionalism in the midst of human rights crises that test every observer to the limit.

As she confronts these conflicts of role, and the struggle to maintain impartiality, she has to do so without the resources she needs. There is a ludicrous gap between the UN's human rights rhetoric and the actual resources that member states commit to the office of the High Commissioner. Louise Arbour was vocal in her complaints on this score, pointing out that less than two percent of the UN budget was allocated to human rights defense.¹³ This makes the High Commissioner a larger player than Human Rights Watch, but not by much, and successive High Commissioners now compete with private NGO rivals that are nearly as well resourced and have none of the constraints she faces within the UN system. Mary Robinson was voicing a certain institutional resignation when she said, at one point in her mandate, "The tools at my disposal are modest, the tools being mainly advocacy and persuasion."¹⁴ This is putting the best possible face on

¹¹ See e.g. UN Human Rights Council, 18th Session, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic*, UN Doc. A/HR/18/53, September 15, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/159/68/PDF/G1115968.pdf?OpenElement>.

¹² Ibid.

¹³ Louise Arbour, "Plan of action drawn up by the United Nations High Commissioner for Human Rights," in UN General Assembly, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General, Addendum 3, UN Doc. A/59/2005/Add.3, May 26 2005.

¹⁴ Mary Robinson, "Realizing Human Rights: 'Take hold of it boldly and duly...,'" Romanes Lecture, Oxford University, 11 November 1997, <http://www.un.org/rights/50/dpi1938.htm>.

it, but advocacy and persuasion are no substitute for a robust field presence in rights offending countries, vigorous support for national human rights commissions, independent commissions of inquiry and special rapporteurs. All of these vital functions are drastically underfunded.¹⁵

The resource deficit is made worse by the fact that successive High Commissioners have struggled to move staff out of headquarters onto the front-lines. You can't protect human rights in Geneva and New York. You have to be in Turkmenistan and Equatorial Guinea and Damascus, Benghazi, and so on. Rather like Western development agencies that can't get their staff out of their nation's capitals, the High Commissioner has had recurrent problems in staffing up robust field presences on the human rights front line.¹⁶

This issue, the resistance of the UN bureaucracy itself to making the High Commissioner more visible on the front lines, needs to be put in a wider context. I said at the outset that there's a conflict between her UN role and role as conscience of the world. You could put the point more sharply: the UN system eats away at the legitimacy of the High Commissioner herself. This is a familiar problem to anyone who knows the UN system. The High Commissioner goes to Human Rights Council meetings in Geneva for six weeks, and then has to spend the rest of the year trying to explain why some notorious rights violator was in the chair, why Israel was singled out for sanction and so on.¹⁷ Her role requires her to justify the legitimacy gaps of the UN system itself. You can't get chosen for the job in the first place if you are too obviously hostile either to the UN human rights system or to the dubious human rights conduct of important states. Equally, you can't do the job unless you call a spade a spade. Managing these role conflicts is the core political challenge of the job.

It ought to be obvious that the High Commissioner's role is inescapably political, but many human rights activists and defenders resolutely insist that human rights work cannot be political. Human rights, it is said, is above politics. It's a kind of anti-politics. That's true in the sense that there are no acceptable political justifications for the abuse of human beings. There are no higher causes, no justification on grounds of political expediency or national emergency that justify indefinite detention without trial, torture or denial of voice rights. To that extent, human *is* an anti-politics. But getting results in human rights is also an intensely political activity. At least one High Commissioner acknowledged as much. At the end of a particularly hypocritical and tendentious Human

¹⁵ See Office of the High Commissioner for Human Rights, "Management Plan 2012 - 2013," Part II, http://www2.ohchr.org/english/ohchrreport2011/web_version/media/pdf/13_OHCHR_OMP_2012-13-Budget.pdf; See also Office of the High Commissioner for Human Rights, "Statement by Ms. Navi Pillay United Nations High Commissioner of Human Rights," New York, October 24, 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12690&LangID=E>.

¹⁶ See generally OHCHR Annual Reports, <http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/AnnualReportAppeal.aspx>.

¹⁷ See e.g., UN Durban Review Conference, "Statement by Ms. Navanethem Pillay, UN High Commissioner for Human Rights, on speech by President of Iran at Durban Review Conference," April 20, 2009, http://www.un.org/durbanreview2009/stmt20-04-09_iran_pillay.shtml.

Rights Council meeting in Geneva in 2003, when a delegate accused another of 'politicizing' human rights, Sergio Vieira de Mello intervened:

"Give me a break. Let me suggest that the word 'politicization' be retired from active service. Let me be frank, most of the people in this room work for governments or seek to effect the actions of governments; that is politics. For some to accuse others of being political is a bit like fish criticizing one another for being wet."¹⁸

The current High Commissioner said recently that she doesn't do politics, she does human rights.¹⁹ This seems to ignore the fact that any High Commissioner has to pick her spots and choose which battles to fight. She's a human rights politician. Of course her politics has to be disciplined by commitments to the conventions, the treaty bodies, the reports of the special rapporteurs. Human rights has a legal frame which limits political discretion. There's the ethical frame as well which should limit moral partiality in her selection of which human rights causes to champion. But let's be honest with ourselves: she picks battles she believes she can win. If she gets the politics wrong, she's accused of partiality or of being a tool of the Security Council P5. If she challenges powerful states, she puts her resources at risk. It's politics, politics, politics, all the way down.

In the High Commissioners' discharge of this highly political role, there have been some high points. They have stood up for the indivisibility and universality of human rights in the face of strong counter challenge from the Muslim world,²⁰ and in 1995, they helped lead the re-affirmation at Beijing that women's rights are human rights.²¹

¹⁸ Office of the High Commissioner for Human Rights, "Commission's Structures Are Sound, Problems Can Be Surmounted, High Commissions Says As Main Human Rights Body Ends Session," press release, April 25, 2003.

¹⁹ See National Museum of Australia, "Mike Gooda joins the conversation," Audio recording transcript, October 28, 2011, http://www.nma.gov.au/audio/transcripts/NMA_Gooda_201111008.html.

²⁰ For example, on a visit to the Maldives in November 2011, High Commissioner Navi Pillay condemned the practice of flogging women convicted of extra-marital sex and said that a constitutional provision prohibiting citizens from practicing any faith other than Sunni Islam was discriminatory and out of line with international standards. UN Office of the High Commissioner for Human Rights, "Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to the Maldives," November 24, 2011.

²¹ In the months preceding the 1995 Beijing World Conference on Women, as states were negotiating the draft outcome document for the conference, the Vatican, certain states with Catholic governments, and the Organization of the Islamic Conference had allied with one another in an attempt to condition the content of women's rights on religious and cultural values. High Commissioner Jose Ayala Lasso, at the request of several NGOs, played a helpful role in pressing these issues by writing the Secretary-General to express concern, emphasizing that "language which could be read to indicate that cultural, religious or other particularities should have priority consideration over human rights, would not respect the well-crafted balance achieved" in earlier U.N. human rights texts such as the Vienna Declaration. Thereafter, Ayala Lasso also made a strong statement to the World Conference itself, reiterating these points. See Jaya Dayal, "U.N. Human Rights Tsar Says Beijing Draft Weakens Rights," Inter-Press Service, July 25, 1995.

Louise Arbour also stood up against the damage done to the international human rights framework by the counter-terrorism policies of the US, Great Britain and other liberal democracies after 9/11.²² Safeguarding respect for human rights in the core countries of the common law tradition has turned out to be more difficult than anyone would have supposed in the heady days after the fall of the Berlin Wall and we supposed, for an instant, that human rights would advance in tandem with the spread of democracy. The High Commissioner has to defend human rights in Washington, London, Paris, Ottawa, and Canberra, just as much as in the capitals of the global south and the High Commissioner cannot afford to back down from that challenge.

If these were some of the high points of the High Commissioner's work in the past twenty years, the low points were a failure to control rights inflation, the tendency to codify aspirations in the economic, social and cultural field into rights language.²³ It's hard to think of a single poor person in the developing world who gained anything from the attempt to turn aspirations for global justice and a fairer international division of labor into a 'right to development.' A rights-based approach to development is a whole other story.²⁴ Empowering women, with voice rights and participation rights is crucial to economic development. The human rights agenda that matters is always simple: protect voice, enhance agency, put cruelty first. Keep it simple. Voice, agency, cruelty: these are the core of the mandate. The right to development effort was the pursuit of a mirage.

It's also obvious that the Durban Conference on racism, however well intended, was a disaster for the UN human rights system, with the conference deformed by efforts to insert the unseemly and false equivalency of Zionism as racism.²⁵ Israel has a right to be judged by exactly the same standards as any other state, and the spectacle of flagrant rights-abusing states using a conference to put Israel exclusively in the dock damaged the UN system in the eyes of European and North American opinion. The High Commissioner herself may not be responsible for the conduct of delegations at global conferences, but—and this is how politics works—she has to carry the can when things go wrong.²⁶

²² See Column Lynch, "U.N. Human Rights Chief to Leave Post," Washington Post, March 3, 2008.

²³ On "rights inflation," see Stanford Encyclopedia of Philosophy, "Human Rights," <http://plato.stanford.edu/entries/rights-human/>. "Human rights inflation is...the devaluation of human rights caused by producing too much bad human rights currency."

²⁴ See Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (2006)(HR/PUB/06/8), <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

²⁵ Tom Lantos, "The Durban Debacle: An Insider's View of the World Racism Conference at Durban," *The Fletcher Forum of World Affairs*, 26 (1) Winter/Spring 2002, Reprint. http://www.eyeontheun.org/assets/attachments/articles/568_durban_debacle.pdf.

²⁶ See *ibid.* ("To many of us present at the events at Durban, it is clear that much of the responsibility for the debacle rests on the shoulders of UN High Commissioner for Human Rights Mary Robinson, who, in her role as secretary-general of the conference, failed to provide the leadership needed to keep the conference on track.").

In managing her always scarce supply of resources and legitimacy against the almost infinite demands on her time, it seems important, in conclusion, for the High Commissioner to fight role inflation, just as she needs to fight rights inflation. Role inflation occurs when you succumb to headline chasing. A reasonable desire to stay relevant can degenerate into a scramble to say something about each and every abuse that occurs in our turbulent and bitter world. This is why she needs to pick her battles. She does so to use scarce resources wisely and to convey the sense that she drives the agenda instead of allowing herself to be driven by civil society, the media and victim's groups. Maintaining control over your own agenda is how to preserve the political standing of the office.

Finally, doing the job well means knowing what your business is. The High Commissioner is not in the development business: leave that to the development agencies, governments and economists. She is not in the prosecution business: leave that to the prosecutor and the court at the ICC. She is not in the intervention business: leave that to states and the Security Council. She is in the human rights business, and the core of that is to build the capacity of human rights defenders in states around the world: to anchor rights in the constitutions of emerging states; to advance judicial and police training so that ordinary people actually experience that blessed thing, the rule of law; to promote the independence of human rights commissions so that ordinary people have real redress in their own countries; and finally to use her unique power, as sober, fact-based voice of the global conscience to call states, large and small, democratic and undemocratic, powerful and powerless, to account for their conduct towards their citizens. The goals of the office are simple, really: to fight cruelty, enhance voice and protect agency. Judged by that standard, the Office of the High Commissioner has challenges ahead, to anchor human rights observance on the ground, where it matters, among the people of the world that she serves.