Wolfgang Friedmann Memorial Award Address

ARYEH NEIER*

Aryeh Neier is the fortieth recipient of the Wolfgang Friedmann Memorial Award, which is given annually to an individual who has made outstanding contributions to the field of international law. The award is given by the Journal in memory of its founder, Professor Wolfgang G. Friedmann. It is accompanied by the Friedmann Conference, organized by the Columbia Society of International Law. The following are excerpted remarks from Mr. Neier’s address at the Conference on March 26, 2014 in New York City. Mr. Neier was introduced by Professor Sarah H. Cleveland.

In the late 1970s, when my focus shifted from efforts to protect rights within the United States to promoting rights internationally, a major concern was trying to shape the foreign

* Aryeh Neier is President Emeritus of the Open Society Foundations. He was president from 1993 to 2012. Before that, he served for twelve years as the Executive Director of Human Rights Watch, which he founded in 1978. He worked for fifteen years at the American Civil Liberties Union, including eight years as the National Executive Director. He served as an adjunct professor of law at New York University for more than twelve years and has also taught at Georgetown University Law School and the University of Siena (Italy). Since 2012, he has served as Distinguished Visiting Professor at the Paris School of International Affairs (Sciences Po). He has lectured at many of the country’s leading universities.

Neier is a frequent contributor to the New York Review of Books and has published in periodicals such as The New York Times Magazine and Foreign Policy. He wrote a column on human rights for The Nation for more than ten years and has contributed more than 200 op-ed articles in newspapers including The New York Times, The Washington Post, The Boston Globe, and the International Herald Tribune. Neiever has authored seven books, including his most recent, The International Human Rights Movement: A History (2012), and has also contributed chapters to more than twenty books. He is the recipient of seven honorary degrees and numerous awards from organizations such as the American Bar Association, the Swedish Bar Association, the International Bar Association, and the Committee to Protect Journalists.
policy of the United States. My colleagues and I, who established Human Rights Watch, sought to persuade the United States to place a higher priority on protecting rights in the Soviet bloc countries than had been the case up to then. At the same time, we wanted to stop American backing for military dictatorships and other repressive regimes on the other side of the Cold War divide that our government was supporting because of their geopolitical alignment with the United States and their professed anti-communism.

On both sides of that equation, the stand adopted by the United States mattered a great deal. American concern for the rights of dissenters who were being persecuted in the Soviet Union, Poland, and Czechoslovakia, the communist countries where organized rights movements were then developing, helped to galvanize global attention to those efforts. As for the military dictatorships in Latin America, in certain countries in Asia and Africa, and the Apartheid regime in South Africa, their ability to hold on to power in some cases depended in significant part on the United States. After our government extricated itself from the war in Vietnam earlier in the 1970s, it regained moral authority by embracing the human rights cause. That moral authority became an important force for the protection of human rights in much of the world.

Unfortunately, developments in recent years have cost the United States a great deal of the moral authority that made it at one point a leading factor—perhaps the leading factor—in the promotion of human rights internationally. “Enhanced interrogation,” the euphemism for the cruel, inhuman, and degrading treatment of detainees after 9/11; the long-term confinement of detainees at Guantanamo without charges or trial; the disastrous war in Iraq undertaken on the basis of shifting rationales; and the torture of prisoners at Abu Ghraib all contributed to the loss of moral authority. The same has been true of the failure to establish appropriate and persuasive rules and procedures to regulate the practice of targeted killings. More recently, the disclosures about the global electronic surveillance practices of the National Security Agency, some of them clearly unrelated to the struggle to prevent terrorism, or other matters involving national security, have exacerbated the damage. President Obama has now proposed reforms of the NSA’s collection of data on Americans. Except for saying that our government will no longer eavesdrop on the phone conversations of friendly foreign leaders, such as President Dilma Rousseff of Brazil and Chancellor Angela Merkel of Germany, President Obama has so far said nothing about limiting NSA surveillance practices outside the United States, even though it appears that some of those practices are intended to further commercial interests and not to protect national security.
Today, the non-governmental human rights movement is intent on globalizing itself. In part, this reflects a view that demonstrating that concern for human rights is global is a great advantage for the cause. It also reflects the view that too close an identification with the United States is disadvantageous to the movement. It appears to make American-based organizations responsible for their own government’s violations of internationally recognized human rights.

Several days ago, Russian President Vladimir Putin made a speech in Moscow about the annexation of Crimea by Russia. It was a remarkable speech, filled with nostalgia for past glory and brimming with resentment against those Putin blamed for humiliating Russia in the years since the dissolution of the Soviet Union. I found one passage especially striking. Putin said:

> Our western partners led by the United States, prefer not to be guided by international law in their practical policies, but by the rule of the gun. They have come to believe in their exclusivity and their exceptionalism that they can decide the destinies of the world, that only they can ever be right. They act as they please: here and there, they use force against sovereign states, building coalitions based on the principle “if you are not with us, you are against us.”

It is, of course, easy to be cynical about Putin’s denunciation of those who violate international law and his criticism of those who rely on the rule of the gun. I am cynical about such statements. At the same time, however, I think it is appropriate to recognize that his words probably resonate with many persons in Russia and elsewhere to whom he was addressing his remarks. They do see the United States as insistent upon American exceptionalism, exempting ourselves from rules that apply to others, and as a country that often pays little attention to international law. Would it make any difference to the way Putin behaves in the case of Crimea if the United States conducted itself in a different way? I doubt it. Most likely, Putin would have acted the same way even if the United States were a paragon of respect for international law. Yet the consequence might be that Putin would be even more isolated than is now the case if Russia stood alone in demonstrating disregard for international law. No rational person would espouse the use of force to prevent Russia’s takeover of Crimea. The only realistic remedy is to get the world to deal with Russia as a pariah because of Putin’s forcible seizure of the territory of another sovereign state. That can probably be done more readily by governments that have demonstrated their own adherence to the norms and rules of international law than by
those whose moral authority is compromised.

Unfortunately, there is no other government, or intergovernmental body, that can be a substitute for the United States as a global force for the promotion of human rights. It is not a role that is ever likely to be played effectively by the United Nations because the world body is the creature of its member states and so many of them have badly flawed records on human rights. Nor is it a role that the European Union seems able to play because its member states have been preoccupied with internal concerns. They are inward looking and hardly ever seem able to get beyond matters of domestic concern so as to speak clearly with one voice on the great issues of global concern. No other regional body, and no other government on its own, has sufficient weight in international affairs so as to provide a credible substitute for moral leadership by the United States.

Of course, in important respects, the policies of the United States have improved dramatically from the period in which I first became professionally engaged in the effort to promote human rights internationally. With a few notable exceptions, particularly in countries of the Middle East, the United States is no longer a backer of governments that themselves engage in severe repression. Yet our government’s role in certain abuses that have captured international attention has tended to obscure this very substantial improvement in American performance with respect to human rights.

Despite the fact that geopolitical considerations no longer distort American foreign policy in the manner that was the case during the Cold War era, the international non-governmental human rights movement is often largely dependent on itself to speak out loudly, consistently, and forcefully on critical issues. There are many matters on which it is essential to be outspoken. They include the ongoing slaughter in Syria; the re-establishment of military authoritarian rule in Egypt and the sharply increasing authoritarianism of the government of Turkey; the pervasive repression in China; the persecution of the Rohingyas in Burma and its neighbors in Southeast Asia; the lack of accountability for great crimes in such countries as Afghanistan and Sri Lanka; the crushing of civil society in Russia; the repressive practices of the present government of Iraq, which came into being because of our overthrow of the Saddam Hussein dictatorship; the pillage of the Democratic Republic of the Congo; and a host of other gross abuses of internationally recognized human rights. Of course, the human rights movement attempts to enlist governments and intergovernmental bodies to join it in addressing such issues. Sometimes, it does so successfully. But the impetus usually comes from the non-
governmental movement.

I suspect that if an official of the State Department or the National Security Council were to respond to my remarks, he or she would point to statements that Washington has made on a number of the issues that I have cited. Indeed, hardly any of them have gone unmentioned. My concern is that little has been done, however, to indicate that these are matters of great importance to the United States. Sometimes, I think that the failure to speak out more clearly, and more firmly, reflects doubts within the Administration about its own capacity to embody moral leadership when addressing crucial human rights issues. Also, I am concerned that there does not appear to be any sense of urgency in Washington to address the issues that have diminished the credibility of the United States when it does speak out on such issues.

Of course, this is not all President Obama’s fault. In some instances, he has made reforms and, in other instances, Congress has blocked reforms. Where he can be faulted, however, is for his failure to try harder to make the case to the American public that re-establishing the moral authority of the United States internationally by making crucial reforms is important both because of its instrumental value in furthering America’s foreign policy interests and because of the intrinsic significance of embodying moral authority.