

Source: Lynch C. *Foreign Policy*, February 4, 2020. <https://foreignpolicy.com/2020/02/04/un-chief-antonio-guterres-internal-criticism-human-rights/>

FP

news | analysis | podcasts | the magazine | channels | newsletters

REPORT

U.N. Chief Faces Internal Criticism Over Human Rights

Guterres is said to back down in the face of pressure from powerful member states.

BY COLUM LYNCH

FEBRUARY 4, 2020, 1:41 PM

United Nations Secretary-General António Guterres is facing criticism from his former advisors for what they see as his lax record defending human rights at a time when powerful U.N. member states are growing increasingly brazen in abusing them and the United States has become not only indifferent to the issue but is considered a rights abuser itself.

From China to Saudi Arabia and the United States, according to former U.N. rights defenders, the former Portuguese prime minister has repeatedly chosen quiet diplomacy over candor and public denunciation in responding to flagrant rights violations during his first three years in office. These include such issues as the mass detention of religious minorities in China and the assassination of political and military rivals by regimes.

“I’m sure the secretary-general has convinced himself that he is acting prudently” by holding his tongue, Zeid Raad al-Hussein, a former U.N. political officer in Bosnia and Jordanian ambassador who served as U.N. high commissioner for human rights until August 2018, told *Foreign Policy*. “I think future historians won’t interpret it as prudence but will interpret it as weakness.”

Andrew Gilmour, who stepped down recently as U.N. assistant secretary-general for refugees, voiced concern that the U.N. secretariat under Guterres is retreating on human rights as part of a broader surrender on the core values enshrined in the U.N. Charter, and that it is steadily chipping away at the body’s moral authority.

In a farewell email to Volker Türk, the U.N. assistant secretary-general for strategic coordination, Gilmour faulted the U.N. secretariat for displaying excessive deference to the interests of powerful member states over the principles enshrined in the U.N. Charter and bringing “shame” to the organization through the refusal to hold itself accountable after U.N. peacekeepers brought cholera to Haiti, resulting in the deaths of nearly 10,000 people, or to

accept responsibility for resettling some 600 ethnic minorities, including Roma, near an industrial mine in Kosovo where they were exposed to lead poisoning. Even after the U.N. “was made aware of the health risks,” it failed to relocate the community for more than a decade, according to a scathing report by the U.N. Human Rights Advisory Panel in Kosovo.

“[T]he impression now conveyed by some is that standing up for [U.N.] Charter values and speaking out for principles over expediency, and on major violations of human rights and international law, is somehow a bit quaint, even a sign of zealotry and political imbecility,” Gilmour wrote in the email, which was reviewed by *Foreign Policy*.

Guterres, a former U.N. refugee chief, had the misfortune of taking on the top U.N. job at a time when the organization’s most influential member states were turning away from human rights. His arrival in New York just over three years ago came weeks before U.S. President Donald Trump’s presidential inauguration. The new president, who spoke approvingly of torture during his campaign, and his first top diplomat, Rex Tillerson, were downgrading the importance of human rights in international diplomacy, and other powerful states—including China, Russia, Saudi Arabia, and Turkey—were growing increasingly unwilling to accept criticism of their rights records.

Guterres has made a determined effort to keep his head down, fearing an open confrontation with the United States, China, or another major power might lead them to retaliate against the organization by starving it of funding or impeding its efforts to do its work. In doing so, he has often fallen back on the cautious advice of his legal department, which has counseled him against staking out controversial positions, like accepting responsibility for settling refugees in contaminated camps in Kosovo or invoking his considerable authority under the U.N. Charter to pursue investigations into the murder of the Washington Post columnist Jamal Khashoggi.

But Guterres’s reticence has inspired sharp criticism for what many in the human rights community see as his muted public response to breaches of international law by powerful U.N. members, including Egypt, Saudi Arabia, Turkey, and the United States, and to the mass detention of more than 1 million members of the Uighur minority in China. In a searing op-ed last year in the Washington Post, Kenneth Roth, the executive director of Human Rights Watch, argued Guterres’s term is “becoming defined by his silence on human rights.”

Zeid, the former U.N. high commissioner for human rights, believes there is an underlying assumption by many at the U.N., including Guterres, that openly confronting world leaders responsible for atrocities closes off diplomatic opportunities to moderate their behavior—and ultimately costs more lives. “It doesn’t hold water,” Zeid said. “I broke precedent by attacking leaders by name, and what I found is that it didn’t bring the house down.” Public opinion and public pressure, he added, are “an enormous source of influence if you decide to use it. But you have to get to the point where you can’t be afraid to use it.”

The debate over the virtues of naming and shaming influential rights violators underscores the underlying challenge faced by each U.N. chief to uphold the principles of the U.N. Charter, which cites the promotion of human rights as one of its primary purposes, while managing relations among capricious world leaders who seek to use the organization to advance their own personal or national interests. Guterres, like his predecessors, is called upon to play multiple

roles—diplomat, politician, referee, civil servant—in an institution that receives its marching orders from 193 fractious members.

Guterres has never fully embraced the role of U.N. secretary-general as a secular pope—a phrase associated with previous U.N. leaders such as Dag Hammarskjöld and Kofi Annan. But he has been willing to speak out on some human rights crises, acknowledging publicly that Myanmar engaged in ethnic cleansing against the country’s minority Rohingya and prodding the U.N. Security Council to take steps to resolve the crisis. He ordered a ban on Sri Lankan peacekeepers in some U.N. missions after the government appointed a suspected war criminal as head of the country’s military—though the secretary-general left open a loophole that allows Sri Lankans to participate in peacekeeping operations if their role is considered vital.

Guterres defended his record on human rights during a press conference on Feb. 4 at U.N. headquarters, telling reporters he must balance human rights advocacy with the need to engage with governments to end conflicts and pursue peace.

“We are not an NGO,” he added. “We are an organization whose objective is to address simultaneously the problems of peace and security, human rights, and development and to make sure that we have, in this regard, the most effective capacity to serve and to benefit the people we care for.”

That, he said, requires a certain division of labor between himself and his high commissioner for human rights, former Chilean President Michelle Bachelet.

“My role is essentially to define the principles and to define what needs to be done,” he said. “Her role is more to look into the concrete situations.”

Guterres has also defended his response to China’s detention of the Uighurs. “I don’t think anyone has been more persistent and more clear in talking to the Chinese authorities in relation to this issue than myself,” he told reporters in September 2019. “It is absolutely not true that I’ve only done discreet diplomacy.”

The Roots of Moral Decline

But even critics such as Gilmour don’t place all the blame on Guterres. The roots of the U.N.’s moral failings, Gilmour suggests, predate his arrival, reaching a high point in the U.N. decision to shirk responsibility for its peacekeepers introducing cholera into Haiti in 2010.

The U.N. legal counsel at the time, Patricia O’Brien of Ireland, was at the forefront of efforts to insulate the U.N. from any legal liability for Haiti’s cholera epidemic, which was traced back to a Nepalese peacekeeping contingent.

Her successor, Miguel de Serpa Soares of Portugal, maintained the U.N.’s hard-line legal position, triggering a scathing rebuke from the special rapporteur on extreme poverty and human rights, Philip Alston: “The U.N.’s explicit and unqualified denial of anything other than a moral responsibility is a disgrace,” he said in October 2016.

The U.N.'s legal office, he added, put forward a "patently artificial and wholly unfounded legal pretense for insisting that the [U.N.] must not take legal responsibility for what it has done." In response to Alston's findings, document in a report earlier that year, the U.N. deputy secretary-general at the time, Jan Eliasson, pressed Guterres's predecessor, Ban Ki-moon, to accept some share of the blame for the cholera epidemic. But he faced intense resistance from the lawyers, who vigorously opposed any acknowledgement of responsibility, according to several U.N. sources.

In December 2016, Ban did ultimately issue a formal apology to the Haitians for playing a role in the cholera outbreak and acknowledged the U.N. bore a "moral responsibility" to help Haitians recover from the calamity—though he never accepted legal responsibility, sparing U.N. member states the obligation to pay compensation.

Serpa Soares hit back at his critics, dismissing Alston's findings as "a piece of advocacy." He also disputed the portrayal of an internal bureaucratic fight over the admission of responsibility for the Haiti cholera epidemic. "There was no disagreement," he said. "I was absolutely instrumental in validating that new approach."

Gilmour wrote in his farewell email that nothing in the U.N.'s recent history "comes close to the ethical morass of our response on Haiti cholera." But he said the "shame" was compounded by efforts to "impugn the integrity" of U.N. officials who had pushed "for some form of UN apology and at least 'moral responsibility'" for what happened in Haiti.

"Our Organization makes great play of demanding accountability on the part of others," Gilmour added. "Thus the sight of the extraordinary internal campaign (that was waged to thwart DSG Eliasson's efforts) of presenting legal arguments against even the most limited accountability for that avoidable tragedy, while derisively rejecting arguments in support of the UN Charter and Haitians' rights, may rank as the single greatest example of hypocrisy in our 75-year history."

"Guterres Needs to Own This"

During his first months in office, Guterres faced a similar moral dilemma in Kosovo, where the U.N. stood accused of settling hundreds of ethnic minorities in an environmental hellhole. He sided with the lawyers.

In 1999, the U.N. moved some 600 ethnic Roma, also known as gypsies, into camps near a former lead-smelting factory, where residents cited a history of health concerns. Families living in the camps said that dozens of children died from illnesses related to lead poisoning, prompting a scathing investigation by the U.N. mission's human rights office, which accused the organization of gross negligence.

In December 2016, shortly before Guterres was sworn in as secretary-general, Eliasson and other top officials produced a "draft apology statement" to be read out by the U.N.'s top official in Kosovo, according to a report in the *New York Times*. *Foreign Policy* obtained a copy of the draft.

The U.N. legal office initially agreed to an apology but changed its view after Guterres took charge, according to the Times. One former U.N. official confirmed the account.

In May 2017, Guterres's spokesman expressed "profound regret" for the plight of the Roma and established a voluntary trust fund to aid victims, but he offered no apology and no compensation.

Serpa Soares said he was unaware an apology was on the table.

"The [Times] story is totally false. My position and the position of the Office of Legal Affairs which is the position of the UN has remained the same and has never changed at any time: there was no issue of legal responsibility of the Organization," Serpa Soares wrote in an email to *Foreign Policy*. "As to the draft apology that you have mentioned I have never seen such a draft and I was not aware of its existence. This discussion was much broader involving other Senior Managers and other alternative solutions beyond the one being incorrectly described."

"Guterres needs to own this," said Louis Charbonneau, the U.N. director at Human Rights Watch. Whatever advice he received from his lawyers, he had plenty of other advisors telling him that morally, it was right to issue an apology, Charbonneau added. "He chose to go the other way," he said.

Bring in the Lawyers

Guterres also sided with his lawyers when he reversed course on his predecessor's most important human rights initiative.

The Human Rights Up Front initiative was launched by Ban Ki-moon in 2013 in response to a damning review of the U.N.'s failure to promote the protection of hundreds of thousands of Tamil civilians trapped on the battlefield in the final months of Sri Lanka's brutal civil war.

The scathing 2012 review, conducted by a former senior U.N. official, Charles Petrie, charged the U.N. leadership team in Colombo, Sri Lanka, as well senior officials in New York, with downplaying the Sri Lankan government's complicity in killing more than 40,000 civilians by indiscriminate shelling. The U.N. team in Sri Lanka "did not perceive the prevention of killing of civilians as their responsibility—and agency and department heads at UNHQ were not instructing them otherwise," Petrie wrote.

The new rights initiative—which was spearheaded by Eliasson—was designed to change that. The former Swedish foreign minister—who carries a worn copy of the U.N. Charter in his coat pocket—assembled a small team of civil servants in the secretary-general's executive office to promote the plan. They organized quarterly, high level meetings to discuss crisis situations. If a country began to spiral into chaos and violence, the U.N. top brass would convene emergency meetings to plot a response.

"It was a comprehensive prevention vision to ensure that the UN would not have to say, once more, 'never again' as we did after Sri Lanka (and regrettably since then in Myanmar)," Gilmour wrote in his email. "And it was an effort to return to UN Charter values; moral courage in

speaking up; as well as a recognition that everyone who works for the UN has some responsibility to promote human rights.”

But support for the initiative faded under Guterres’s watch.

On his first day on the job, Guterres invited his top advisors to lunch in the delegates dining room at the U.N. headquarters building, where the discussion quickly turned to human rights.

Serpa Soares questioned the worth of Ban’s initiative, which was designed to encourage the U.N.’s humanitarian, development, and political officials in the field to speak out more forcefully in the face of atrocities in countries where they are stationed, according to two sources. Serpa Soares questioned the worth of Ban’s initiative, which was designed to encourage the U.N.’s humanitarian, development, and political officials in the field to speak out more forcefully in the face of atrocities in countries where they are stationed, according to two sources.

The initiative was unpopular with many key member states, including China and Russia, which were seeking to kill funding for a small team in the secretary-general’s office that spearheaded it. Serpa Soares—who had previously criticized the initiative for straining U.N. relations with member states—argued that it duplicated the human rights role of other U.N. agencies and it should be eliminated, according to three sources. More than a year later, Guterres shuttered the office, after Moscow and Beijing succeeded in blocking its funding. Guterres rejected an offer from a group of Scandinavian governments to cover the costs.

Still, the U.N. decision to shutter the rights office in the secretary-general’s office marked a blow to the efforts of Eliasson and his team to provide encouragement and political cover for U.N. workers in the field to call out human rights abuses.

It also highlighted the sway of the U.N. legal office in shaping the organization’s approach to some of the most sensitive political and moral issues, from the defense of human rights to the determination of U.N. responsibility for the actions of more than 100,000 U.N. personnel deployed around the world.

“There was skepticism from the new team and the old team,” recalled Jeffrey Feltman, a former U.N. undersecretary-general for political affairs, who defended the rights initiative at the Jan. 3, 2017, lunch. “The legal advisor did not see the value.”

Gilmour said that “a persistent effort to denigrate” the human rights initiative came from “the same quarter as the resistance to accept any accountability for Haiti.”

Gilmour did not name any individuals he believes bear responsibility for curtailing the U.N. commitment to human rights in his exit email. But several U.N.-based sources said that Serpa Soares had long opposed the initiative, saying it would anger member states.

Serpa Soares challenged that account and said that his recollection of the luncheon differed.

He said that he had not openly opposed the initiative—though he had raised concerns about what he considered its flaws. “The exchange was totally different” from that described in the above

account, he told *Foreign Policy*. “I said that we need to define [human rights up front] more clearly ... because even I would have difficulty explaining the content.”

When Feltman pointed out “that it would be close to [an] early warning system on human rights violations,” Serpa Soares said he responded: “That’s good. That makes sense and it’s clear for people. That’s the only exchange.”

Still, several U.N. officials believed that the growing resistance to the rights initiative in Guterres’s office marked an early act of surrender to big-power politics and the forces of nationalism and populism sweeping across the globe, with a new generation of autocratic leaders less willing to brook U.N. criticism of its treatment of its citizens, according to former and current U.N. officials.

“I really did underestimate the hostility to this initiative,” Feltman said. “I thought once people on the 38th floor understood why this was something positive they would no longer object, and I was wrong.” (The secretary-general and his executive staff are located on the 38th floor of the U.N. headquarters building.)

“In subsequent meetings, any written product referring to human rights up front tended to be stripped out by the 38th floor,” he added. “It became the U.N. initiative that shall not be named.”

Guterres’s advisors countered allegations that the U.N. was retreating from the defense of human rights. Guterres, they said, has been deeply committed to pursuing a pragmatic course to human rights since his days as high commissioner for human rights, looking for discreet ways to nudge rights-abusing countries such as China and Saudi Arabia to mend their ways without entirely alienating them. They note that he routinely urges China’s leadership to observe human rights. The principles underlying Ban’s human rights initiative are still being upheld.

“There is this myth propagated which says that Human Rights Up Front is dead,” said Türk, the official in the secretary-general’s office to whom Gilmour sent his exit email.

On the contrary, he said, the principles embedded in the initiative have been “mainstreamed” into the secretariat’s daily work. The secretary-general, he said, has placed human rights at the center of all that he does.

The difference, he said, is that Guterres has established a cabinet-style system of regular principals and deputy principals meetings, which includes a representative from the Office of the High Commissioner for Human Rights, that incorporate human rights into every decision.

“We go through a rigorous process that this secretary-general has created,” Türk said. And “we have to use all the tools available, and they are not purely public advocacy.”

Colum Lynch is a senior staff writer at *Foreign Policy*. Twitter: @columlynch