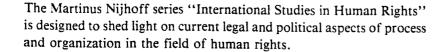
Humanitarian good offices in international law: the good offices of the United Nations Secretary-Ge

by B. G. Ramcharan.

International Studies in Human Rights

Also in this series:

Ramcharan, B.G. (ed.): International Law and Fact-finding in the Field of Human Rights. 1982. ISBN 90-247-3042-2.



HUMANITARIAN GOOD OFFICES IN INTERNATIONAL LAW

The Good Offices of the United Nations Secretary-General in the Field of Human Rights

by

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MARTINUS NIJHOFF PUBLISHERS
THE HAGUE / BOSTON / LC

Distributors:

for the United States and Canada

Kluwer Boston Inc. 190 Old Derby Street Hingham, MA 02043 USA

for all other countries

Kluwer Academic Publishers Group Distribution Center P.O. Box 322 3300 AH Dordrecht The Netherlands

Library of Congress Cataloging in Publication Data

Ramcharan, B. G.
Humanitarian good offices in international law.

(International studies in human rights) (The 1981
Reid lectures delivered at Acadia University,
Wolfville, Nova Scotia, Canada)
Bibliography: p.
Includes index.
1. Civil rights (International law)
2. United Nations. Secretary-General. I. Title.
II. Series. III. Series: Reid lectures; 1981.
K3240.4.R35 1983 341.4'81 82-24564
ISBN 90-247-2805-3

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PRINTED IN THE NETHERLANDS

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FOREWORD

While there is increasing reference to and reliance upon, the practice of good offices in connection with humanitarian issues in international relations, little scholarly work has so far been done to review and analyze the law and practice of humanitarian good offices. It is the great merit of this pioneering work by Professor B.G. Ramcharan that it presents a comprehensive insight into the practical dimensions and potentialities of the good-offices function in humanitarian matters, in particular in connection with the role of the United Nations Secretary-General. Human rights organs of the United Nations and other international organizations have developed legal and political devices to deal with pressing and important humanitarian concerns but there is an increasing awareness that legal and formalized procedures do not always provide an adequate and expeditious response to these concerns. The study by Professor Ramcharan can be seen as a convincing argument in favour of putting greater reliance upon less formal and complementary approaches to humanitarian and human rights issues. In this respect the office of the Secretary-General of the United Nations carries many potentialities which need to be further developed. Imagination, humanitarian commitment and political will on the part of the Secretary-General are indispensable preconditions for constructive developments in this direction. At the same time the United Nations is seized with important proposals to establish a High Commissioner for Human Rights and a Special Representative for Humanitarian Affairs whose functions would also have a strong good-offices component. In my view these proposals are not meant to weaken the role of the Secretary-General or of any other humanitarian or human rights organs but rather to strengthen the capacity of the international community to deal effectively with pressing humanitarian concerns.

A number of important conclusions emerge from this book which may be of considerable interest to all those who as policy makers or scholars are involved in humanitarian concerns:

First, the legal competence for the exercise of humanitarian good offices by the United Nations Secretary-General finds increasing acceptance in international law and praceice.

Second, the methods for the exercise of humanitarian good offices which have been developed are rich and varied and can be applied or adapted as the case or situation may require.

Third, a crucial issue regarding the exercise of humanitarian good offices is one of will and judgement.

Fourth, much attention should be given to the question whether the exercise of humanitarian good offices can be better organized through the designation of one or more focal points within the structure of the United Nations and whether good offices can be rendered in a less ad hoc manner.

Fifth, pending decisions to establish such offices as those of a United Nations High Commissioner for Human Rights and/or of a Special Representative for Humanitarian Affairs, greater use should be made of existing competences and potentialities of the United Nations Secretary-General to render humanitarian good offices.

For helping to re-inforce these conclusions, Professor B.G. Ramcharan must be congratulated for what is, on any account, an important contribution to the study of the actual and potential role of humanitarian good offices in international law and practice.

Theo C. Van Boven Former Director, United Nations Division of Human Rights

ABBREVIATIONS

AJIL	American Journal of International Law
ASEAN	Association of South-East Asian Nations
BYIL	British Yearbook of International Law
CYIL	Canadian Yearbook of International Law
ECOSOC	Economic and Social Council
GA	General Assembly
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ILA	International Law Association
ILO	International Labour Organization
OAS	Organization of American States
OAU	Organization of African Unity
RCADI	Recueil des Cours de l'Académie de droit international de
	la Haye
UN	United Nations
UNDP	United Nations Development Programme
UNEPRO	
UNESCO	United Nations Educational, Scientific and Cultural Or-
	ganization
UNFICYP	
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Fund
UNITAR	United Nations Institute for Training and Research

"As the Preparatory Commission foresaw, the Secretary-General in certain circumstances must speak for the Organization as a whole."

Secretary-General Trygvie Lie, in his first Annual Report to the General Assembly, 26 June 1946.

"The Secretary-General... has to act for the Organization as a whole, independent of the special interests of any single member nation."

Secretary-General Dag Hammarskjöld, Annual Report to the General Assembly, 21 July 1954.

"The Secretary-General's obligations under the Charter must include any humanitarian action that he can take to save the lives of large numbers of human beings."

Secretary-General U Thant, "The Role of the Secretary-General", UN Monthly Chronicle, No. 9, October 1971.

"I have always regarded it as my duty to exercise my good offices in human rights matters and I shall continue to assist in any way I can."

Secretary-General Kurt Waldheim, Annual Report to the General Assembly, 1980.

PREFACE

Good offices are a valuable part of any system for the promotion and protection of human rights. We live in a world of nation-States co-operating within the framework of international organizations established on the premises of respect for national sovereignty and non-interference in the internal affairs of States. As a result, arrangements for the promotion and protection of human rights often fall short of what is needed to ensure protection of human rights. When cases or situations arise outside of the sessions of human rights organs and where inter-sessional arrangements are either non-existent or inadequate, is the plight of human beings to be ignored? If the international organs concerned cannot agree, or decide, on a course of action because of political differences. is human suffering or human need to go by unheeded? Even if human rights organs do take up a case or situation, should not a reputable and respected international personality such as the head of an international organization or secretariat with competence in the field, do whatever he or she can in order to assist in providing humanitarian relief? In most systems of law it has been found necessary to develop forms of equitable relief in order to render justice to those who are not covered by the specific terms of the law, or who would suffer injustice if the law were to be applied rigidly. Are good offices not a useful medium for this purpose?

While the exercise of good offices for the maintenance of international peace and security has been the subject of some scholarly investigations, the exercise of good offices in the field of human rights has so far been the subject of little study. However, interest in the subject is growing, as is indicated by various resolutions recently adopted in the United Nations on, or related to, the topic. There is also much interest among Member States in utilizing more fully the possibilities open to the Secretary-General under the Charter of the United Nations. It has been suggested for example "that the Secretary-General could maintain a

watch-list of potential crisis areas to be reviewed at periodic Security Council meetings, possibly closed, or informal consultations."² A related suggestion is that "A body attached to the office of the Secretary-General could be created which could involve itself in research and projection into the future about the potential crisis areas."³

In the present work it is proposed to analyze the concept and characteristics of humanitarian good offices in international law with particular reference to the good offices of the United Nations Secretary-General in the field of human rights. As a serving United Nations official I am fully aware of the delicacy involved in entering into an area which is at once sensitive and also close to the Secretary-General himself. I have felt enabled to do so on account of the following factors: (a) The examination will be based exclusively on materials which are in the public domain; (b) I shall confine myself purely to conceptual matters. Examples taken from specific cases or situations will be used merely to illustrate the conceputal discussion; (c) I shall assume a purely academic mantle and therefore all views expressed, even on conceptual questions, will be entirely my own, solely in my personal capacity, and should in no way be associated with the organization I have the great honour of serving, or its Secretary-General, or any of my other colleagues; (d) International officials need to investigate conscientiously the conceptual and substantive issues affecting their work and also need in this regard, to profit from exchanges with their academic colleagues. The Reid Lectures of Acadia University provide a splendid forum for such an exchange on the concept of humanitarian good offices, particularly since Acadia, one of the oldest of the distinguished universities of Canada, is an example of the finest humanitarian tradition and also because Canada has displayed so much interest in the humanitarian good offices of the United Nations Secretary-General, as will become manifest in the ensuing pages; (e) Only materials before 1 January 1982 will be used. In this way there is no possibility of inadvertently touching on matters affecting the current Secretary-General.

NOTES

- See, e.g., the Report of the Special Committee on the Charter of the United Nations and on the Strenghtening of the Role of the Organization (1980), A/35/33, pp. 61-62.
- 2. Ibid., para. 28.
- 3. Ibid., para. 29.

INTRODUCTION

Article 7 of the United Nations Charter established the Secretariat as a principal organ of the United Nations. The purposes of the Organization, according to Article 1, include the achievement of international co-operation in solving international problems of an economic, social and cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. Article 2 adds that the Organization and its members shall act in accordance with the principles contained therein "in pursuit of the purposes stated in Article 1." Therefore, the Secretariat, as a principal organ of the United Nations, is enjoined to foster international co-operation for the promotion and encouragement of respect for human rights and fundamental freedoms.

Article 97 of the Charter provides that the Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Article also provides that the Secretary-General "shall be the chief administrative officer of the organization," while Article 98 adds that the Secretary-General "shall perform such other functions as are entrusted to him" by United Nations organs. Article 99 states that the Secretary-General "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

The good offices functions of the Secretary-General are not expressly mentioned in the Charter. However, successive office-holders have developed them as an inherent element of the office and this has been acknowledged by the General Assembly, the Security Council and other organs, which have on various occasions mandated the Secretary-General to utilize his "good offices". In recent years United Nations human rights organs have expressly recognized and appreciated the good offices of the Secretary-General in the field of human rights. In resolution

1979/36, the Economic and Social Council expressed its appreciation to the Secretary-General for his efforts in rendering good offices, as envisaged in the Charter of the United Nations, in the field of human rights. In resolution 34/175 adopted on 17 December 1979, the General Assembly "stressed the important role that the Secretary-General can play in situations of mass and flagrant violations of human rights." At its thirty-sixth session in 1980, the Commission on Human Rights by resolution 27 (XXXVI) welcomed the statement of the Secretary-General, in his Report of 1979 on the work of the Organization, that he is continuing to exert his best endeavours on behalf of human rights whenever he considers that his actions may be of assistance to the persons or groups concerned, and "requested the Secretary-General to continue and intensify the good offices envisaged in the Charter of the United Nations in the field of human rights." In resolution 30 (XXXVI), the Commission requested the Secretary-General, in cases where large-scale exoduses of persons become a matter of international concern and solidarity, to consider establishing direct contacts with appropriate governments, to assess the relationships between the situation and full enjoyment of human rights and to make concrete recommendations for ameliorating such situations. The resolution also requested the Secretary-General, where warranted, to submit to the Commission or to the General Assembly, as appropriate, at its next sitting a summary of his findings and recommendations to assist governments in restoring full enjoyment of human rights.1

It may thus be seen that the exercise by the Secretary-General, of good offices in the field of human rights, either on his own initiative, or at the request of United Nations organs, is an established part of the efforts of the United Nations for the promotion and protection of human rights.

At the thirty-fourth session of the United Nations General Assembly, in 1979, the Canadian Secretary for External Affairs, Miss Flora Mac-Donald, urged the United Nations to find better, more certain ways to deal with gross violations of human rights, no matter where they happen and proposed that "the General Assembly should agree to establish a position of Under-Secretary-General for Human Rights, and . . . should appoint an individual of undisputed stature in the international community to that office. This person would exercise the mandate the Secretary-General has under the Charter to use his good offices in the human rights field."

At the same session of the General Assembly, the Canadian Permanent Representative elaborated further upon this proposal as follows: "We are calling for the establishment of a post, at the level of Under-Secretary-General, of a special representative of the Secretary-General for human rights and humanitarian affairs . . . We would view the special representative as concerning himself primarily with the promotion of human rights and with the exercise of good office functions as assigned by the Secretary-General. He would be the Secretary-General's point of liaison with governments on these matters, and would act in a low-key and unpublicized manner in the expectation that a reconciliation between local conditions and international expectations could encourage some improvement in actual conditions."

Eventually, a draft resolution⁴ tabled by Canada and proposing the establishment of such a post was not pressed to a vote because it was considered preferable that such a proposal should be adopted by consensus. The following year, however, the new Secretary for External Affairs, Mr. MacGuigan returned to the subject in an address to the plenary during the general debate when he urged "that greater use should be made of the Secretary-General's Charter responsibilities in acting within the authority of his office in situations arising from violations of human rights . . . I urge the Secretary-General to use his good offices where the evidence of human rights violation is sufficiently serious. All States should extend their co-operation to him in order to alleviate difficulties in a non-confrontational manner and to further the interests of international co-operation." Canada therefore tabled in the Third Committee of the Assembly a draft resolution on the good offices of the Secretary-General in the field of human rights. 6

Speaking on this proposal, the Canadian representative in the Third Committee explained that while the search continued for mutually agreed solutions for improving the effective enjoyment of human rights and fundamental freedoms, the United Nations must concentrate on ensuring that the machinery and procedures already available within the United Nations system are put to the best and most effective use possible. One such procedure, she felt, was the good offices role of the Secretary-General in the field of human rights, as envisaged in the Charter, which had been gradually developed over the years by successive Secretaries-General in response to changing circumstances in the world. It had come to be universally accepted by all Member States of the United Nations as an integral and essential part of the Secretary-

General's functions and had been employed on many occasions. All the Secretaries-General had effectively resorted to their good-offices role in the human rights field and they had all viewed that aspect of their function as constituting an integral part of their mandate. They had all approached it from a strictly humanitarian point of view and the goodoffices function had therefore consistently been regarded as nonpolitical. The role had always been performed with the express consent of the countries concerned and had consequently never been regarded as interference in internal affairs. Interesting parallels, she added, could be drawn between the Secretary-General's role in the human rights field and his activities in the area of humanitarian assistance and relief, to which all the considerations she had set forth applied. Her delegation believed that the protection of innocent individuals from flagrant abuses of their human rights was as important a function of the United Nations as the assistance that it provided to persons in distress who were the victims of man-made or natural disasters.

She noted that a similar good-offices role had developed in humanitarian matters or the human rights field over the years in other international organizations such as UNHCR, ILO, UNESCO and ICRC, confirming that it responded to a need of the times. The ILO practice was especially illustrative of the effective use to which resort to the goodoffices function could be put: she had in mind such instances as the procedures whereby, subject to the consent of the government concerned, a representative of the Director-General studied directly with the competent government authorities the practical or legal difficulties encountered in the application of a ratified convention or, in cooperation with the country concerned, considered problems raised by complaints concerning infringements of the principle of freedom of association. The results so far achieved in the ILO through that process had amply demonstrated that "quiet diplomacy" in the human rights field could be made to work in practice in resolving a number of situations which would otherwise have developed into unproductive confrontations.

Experience had shown, the Canadian representative continued, that it was appropriate to leave to the discretion of the Secretary-General the precise manner in which he would elect to intercede in any given circumstances. His decision would always be predicated on the assumptions which had prompted the action of Secretaries-General in the past, namely: a determination that a resort to his good-offices function was

likely to have beneficial results in improving a given situation; a willingness to provide any assistance which might appear useful from a strictly humanitarian point of view; the consent of the country concerned; and a clear understanding that the Secretary-General's concern related to humanitarian and non-political considerations. Her delegation firmly believed that the informality of the procedure was conducive to the rapid improvement of situations of gross violations of human rights and the alleviation of the sufferings of victims of such situations. It was to be hoped, she said, that the Secretary-General's expression of concern and offers of assistance would receive the most serious consideration on the part of all parties concerned.

With those considerations in mind, she explained, her delegation had submitted the above mentioned draft resolution which aimed at the full development of the good-offices role of the Secretary-General to enable the United Nations system to cope more adequately with the all too frequent situations of mass and flagrant violations of human rights which persisted throughout the world.

During the ensuing debate in the Third Committee, different assessments were expressed as to the need for the proposed resolution. The view was expressed that since good offices in the field of human rights had become traditional, the resolution was not really necessary. To this it was replied that there was merit in the Member States indicating that they valued the use of good offices in the field of human rights and wished to see it enhanced, while leaving it up to the Secretary-General how to go about its implementation, in his discretion. It was also said that the resolution would lend support to the activities of the Secretary-General without in any way dictating to him. Eventually, the Third Committee decided, on a procedural motion, not to vote on the draft resolution. The general view of the Committee was that the Secretary-General should be left free to decide on the manner and modalities of the exercise of good offices and that the function should not be restricted or regulated in any way.⁸

While different views were expressed on some matters of detail, and there was a certain degree of political reluctance to the adoption of the draft resolution, there was no real disagreement of substance on the appropriateness of the Secretary-General interceding at his discretion, on humanitarian grounds, in matters involving violations of human rights. Substantive questions were raised mainly by the Brazilian delegation. However, it stated expressly that "it would not deny the Secretary-

General the possibility of contacting Governments in an attempt to ameliorate human suffering" but cautioned that that would be on his own initiative and at his own risk, subject to the acceptance of the governments concerned. The Brazilian delegation was insistent, however, that in making such humanitarian intercessions the Secretary-General should act in accordance with Article 2(7) of the Charter of the United Nations dealing with the principle of non-intervention in the internal affairs of States. To this the United States delegate replied that the Secretary-General as the head of the Secretariat, a principal organ of the Charter, could do nothing outside of the Charter.

Another point raised by the Brazilian delegate was that good offices were properly used by the Secretary-General "only when his action had a bearing on international peace and security" and that "good offices constituted a means for the settlement of disputes and presupposed at least two parties agreeing to their use." The delegate of the USSR expressed similar views. (These delegates did not deal with the considerable practice of good offices in the humanitarian field which has developed since the establishment of the League of Nations and which has resulted in the evolution and refinement of the concept.) The Brazilian delegate nevertheless admitted the propriety of the Secretary-General's use of "direct contacts" with regard to human rights questions and sought to draw a distinction between "good offices" and "direct contacts" with governments. The relevance and significance of this distinction were not explained. The Brazilian delegate added that his delegation did not share the interpretation that under the Charter the Secretary-General was entitled to assume a good-offices role in the field of human rights and that the Charter in no way instructed the Secretary-General to exercise good offices in the field of human rights.

Essentially, this point involved more semantics than substance. For the Brazilian delegate recognized the propriety of intercessions by the Secretary-General on humanitarian grounds but did not wish to see this labelled "good offices". The practical reasons for his difficulties were not explained and they are hard to discern, for there are no characteristics or attributes of the exercise of good offices, even in their traditional sense, which involve anything more than intercession on humanitarian grounds or could be objectionable in the field of human rights.

Many other delegations, however, supported the enhancement of the good-offices role of the Secretary-General in the field of human rights. The United States delegate believed that the use of the good offices of

the Secretary-General was most useful and could be employed more frequently and consistently. He suggested that in the future the General Assembly, or the Commission on Human Rights, should evolve detailed and objective criteria for employing the good offices of the Secretary-General. Such a role could, for example, serve to

- "(a) ascertain the facts in a case of gross violation of human rights;
- (b) maintain communications and contacts with the government concerned:
- (c) send routinely a special representative or working group to the government concerned;
- (d) bring to the attention of the government the report of the special representative;
- (e) attempt to influence the government to restore respect for human rights:
- (f) make available technical assistance or advisory services to help accomplish the task;
- (g) raise and report on the issue before the Commission on Human Rights or its Sub-Commission;
- (h) convene international conferences to consider the situation, if necessary;
 - (i) make public comment on the situation; and
- (j) refer the matter to appropriate United Nations bodies for public consideration."

The Dutch delegate pointed out that while the good-offices function of the Secretary-General was not specified in so many words in the Charter of the United Nations, the Secretary-General had exercised a good-offices function almost from the inception of his office. For example, on 5 November 1980, a statement by the President of the Security Council had made it clear that members of the Council fully supported the use of good offices by the Secretary-General in seeking to bring about peaceful negotiations between Iran and Iraq. In the field of human rights, the good-offices role of the Secretary-General had generally been recognized for a long time. A United Nations press release issued on 29 April 1967 had stated that the Permanent Representatives of Poland and Czechoslovakia, on behalf of a group of socialist countries, had met with the Secretary-General on 28 April 1967 and had requested him to use his good offices with a view to ending persecutions in Greece

and to preventing the possible execution of political leaders who had been detained; in particular, they had requested the Secretary-General to intercede to save the life of Mr. Manolis Glezos.

As far as gross violations of human rights were concerned, the Dutch delegate added, the good-offices role of the Secretary-General had not been as fully developed as it had been in connection with individual cases. However, in 1979 the General Assembly had adopted resolution 34/175 which had not only reaffirmed that mass and flagrant violations of human rights were a special concern of the United Nations but had also stressed the important role that the Secretary-General could play in such situations. The importance of the good-offices role of the Secretary-General had also been recognized in Economic and Social Council resolution 1979/36. He emphasized that all those resolutions had been adopted by consensus. His delegation therefore considered that significant progress could be made if the General Assembly adopted a resolution which would request the Secretary-General, when urgent situations of mass and flagrant violations of human rights arose, to consider establishing direct contacts with the governments concerned. The resolution might also request the Secretary-General, in so far as he might deem it appropriate, to keep the President of the General Assembly, the Chairman of the Commission on Human Rights or the President of the Security Council informed of developments regarding such situations as well as any action which was to be undertaken in relation thereto.¹⁰

The New Zealand delegate noted that several countries facing human rights problems had received visits from special representatives of the Secretary-General. The precedents for such actions, and their firm basis in terms of the Charter, should, she felt, remove any doubts a government might have of interference in its domestic affairs. 11 The Italian delegate said that there was no doubt that the exercise of good offices in cases of gross human rights violations enabled the United Nations to be speedily informed about the facts of any situation creating international concern, so that it might take timely and effective action on its humanitarian aspects.¹² The Norwegian delegate remarked that the good offices machinery of the United Nations Secretariat and the Commission on Human Rights had been considerably refined over the years and had been used with good results. He therefore felt that further efforts should be made to strengthen that machinery and to make it more efficient in the field of human rights within the entire United Nations system.13

The delegate of the United Kingdom recalled that increasing attention had been drawn in recent years by the Secretary-General and various United Nations bodies concerned with human rights to the good-offices role of the Secretary-General in that field. The Commission on Human Rights at its thirty-sixth session had unanimously adopted resolution 27 (XXXVI) requesting the Secretary-General to continue and intensify his good-offices role. The United Kingdom delegation fully supported that call and was appreciative of the Secretary-General's efforts. 14 The Irish delegate also recalled that every Secretary-General of the United Nations had regarded the question of good offices as one of the most important aspects of his role and had emphasized the importance of discretion in its exercise. Secretary-General Waldheim had stated that because of the very nature of the problem of good offices, in many cases little or nothing could be said publicly about the efforts made if those efforts were to have any hope of succeeding. The Secretary-General had also stated that governments were prepared to respond positively to a discreet approach, based on humanitarian grounds, if their own problems and responsibilities were sufficiently understood. It was clear, he added. that the essence of the exercise of good offices was discretion, informality and personal contact. There could be no rigid rules or restrictions for that role.15

The French delegate expressed the view that the ruling bodies of the United Nations should use the good offices of the Secretary-General only if there was a sound reason to do so. It was clearly not desirable to expose the Secretary-General to failure in his task. When an individual or an organization acted without legal competence, it must do so with certainty of success, since its influence, credibility, prestige and moral authority were at stake. If the Secretary-General acted in such cases, he would be committing his moral authority, which was that of the United Nations itself. It would therefore be difficult *a priori* to define situations in which his action would be required, and it would be better to request such action on a case-by-case basis.¹⁶

The following conclusions may be drawn from the consideration of this question by the Third Committee at the thirty-fifth session of the General Assembly:

(1) While the utility of humanitarian intercessions by the United Nations Secretary-General in the field of human rights was widely recognized, there was some political resistance to what was perceived as an attempt to codify or regulate the function.

- (2) While a few delegations raised questions regarding the use of the terms "good offices" where were more of a semantic rather than a substantive character, the term has become so widely used in international practice, including the field of human rights that it has become a term of art and serves as an appropriate label for the kind of activity being discussed.
- (3) Earlier resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights which recognized and appreciated the Secretary-General's exercise of good offices in the field of human rights and requested him to continue doing so, retain full relevance and validity. Indeed, a few days after the Third Committee's consideration of this question, it adopted another draft resolution which as subsequently endorsed by the General Assembly, requested the Secretary-General "to use his best endeavours" in cases where minimum legal safeguards applicable to persons accused of capital offences appear not to have been respected. This provides ample evidence that the debates of the Committee on the Canadian draft resolution, in part, involved more questions of semantics than of substance.
- (4) The overwhelming majority of delegations which spoke, wished to see the potential of the good-offices function of the Secretary-General in the field of human rights utilized to even greater advantage.
- (5) However, the consensus was that the good-offices function of the Secretary-General in the field of human rights should not be regulated or restricted; that the Secretary-General should not be dictated to as regards the manner or modalities of the exercise of his good offices.
- (6) All delegations felt that the Secretary-General should act in accordance with the principles of the Charter in exercising good offices in the field of human rights.
- (7) In view of the reluctance of some States to "legislate" on the subject, it follows necessarily that the nature and characteristics of the concept of good offices in the field of human rights must be determined by reference to the relevant international practice and to such rules of international customary law as may have emerged from it. An examination of the relevant rules and practice will be offered in the following pages.

NOTES

- 1. See on this, Chapter X below.
- 2. A/34/PV.8, p. 33.

- Address to the Third Committee by His Excellency Mr. William H. Barton, Ambassador and Permanent Representative of Canada to the United Nations. Taken from text of address provided by the Permanent Mission of Canada to the United Nations.
- 4. A/C.3/34/L.18.
- 5. A/35/PV.4, pp. 61-62.
- 6. A/C.3/35/L.78. See Annex X below.
- 7. A/C.3/35/SR.62, paras. 27-31.
- 8. For the records of the discussion, see A/C.3/35/SR.56-62.
- 9. A/C.3/35/SR.60, para. 12.
- 10. A/C.3/35/SR.56, paras. 64-65.
- 11. A/C.3/35/SR.59, para. 4.
- 12. A/C.3/35/SR.59, para. 34.
- 13. A/C.3/35/SR.60, para. 28.
- 14. A/C.3/35/SR.58, para. 24.
- 15. A/C.3/35/SR.59. paras. 13-14.
- 16. A/C.3/35/SR.60, para. 39.
- 17. GA resolution 35/172, para. 2.

Chapter I

THE HUMAN RIGHTS POLICY OF THE UNITED NATIONS SECRETARY-GENERAL

I. Human rights, peace and security

The promotion and protection of human rights are the essential and ultimate raison d'être of the United Nations. The reaffirmation of faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women is in the forefront of the goals of the United Nations in the Charter. It is significant that among the "ends" enumerated in the Charter's Preamble, the following is placed first, even before the maintenance of international peace and security: "To practice tolerance and live together in peace with one another as good neighbours" (emphasis added). In Article 1 of the Charter, the purposes of the Organization are enumerated as being: 1. To maintain international peace and security; 2. To develop friendly relations among nations; 3. To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; 4. To be a centre for harmonizing the actions of nations in the attainment of these ends.

According to some leading commentators on the Charter, "The order of listing, together with the content of subsequent Charter provisions, gives support to the view that the maintenance of peace and security is the prmary purpose of the Organization and takes priority over other purposes." However, as Judge Sir Gerald Fitzmaurice cautioned in the Expenses Case "the humanitarian . . . functions of the Organization are . . . hardly less important than its political functions, and may well contribute materially, or even be essential, to the success of the latter." At the San Francisco Conference, the view of the drafters of the Charter was that all provisions of the Charter, being indivisible are equally valid and operative and each therefore is to be construed and ap-

plied in function of the others.³ This intention is fittingly demonstrated in Article 55, which states that: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- "(a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."⁴

At its session of 1947 held in Lausanne, the Institute of International Law, after considering a thoughtful report by the late Professor Charles de Visscher, adopted a resolution entitled "The fundamental rights of man as the basis for a restoration of international law", in which it declared that recognition and respect of the inherent rights of human beings, are closely bound up with the development of international law, and that an effective system of international law is inseparably bound up with respect for the individual within the State. The declaration had been drafted by Professor Charles de Visscher who, in his report to the Institute, pleaded eloquently that "the battle which has . . . been joined over the issue of human freedoms is intimately connected with the establishment of an international order. In making human values the final meeting point of all law and constituting them an autonomous province beyond the reach of political action by the state, the proposed declaration has in view the regeneration of international law on a moral and legal basis acceptable to all civilized states. Put in this way the problem assumes an absolutely fundamental character . . . "5

The human dignity or human rights theory of international law has not been given the attention it deserves from international lawyers. However, there have been a few voices cyring in the wilderness. Thus, Professor Myres McDougall has, for a long time, called for the establishment of an international law of human dignity. Judge Haim Cohn of Israel has suggested that efforts be made to develop an overall human rights theory of law. More recently, Professors MacDonald, Morris

and Johnston, in the useful introduction to the book which they edited on International Law and Policy of Human Welfare⁸ argued the case for an international legal system of human welfare conducive to the satisfaction of the needs (material as well as spiritual) of every human being.

Article 28 of the Universal Declaration of Human Rights proclaims that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. In addition to adding a dimension of universality to the concept of international concern for human rights, this Article reflects the basic goal of the international order envisaged in the Charter: a life of dignity and well-being for everyone everywhere, and at all times, in a world where human rights and fundamental freedoms prevail and are enjoyed by all without restraint. Serving the interests of mankind by promoting and protecting economic, social, cultural, civil and political rights, and the inalienable rights of peoples and groups, is the raison d'être of all human societies and social organizations, whether national, regional, or international. Human rights represent the highest embodiment of the human factor: the respect and welfare of all human beings as subjects and not objects of all human endeavours. They represent mandatory objectives for all societies and social organizations.

The practical implications of the centrality of human rights in the international order envisaged in the Charter of the United Nations were referred to in the current United Nations Medium-Term Plan in the field of human rights, which states that: ". . . in the conception of the Charter, the promotion and encouragement of respect for human rights and fundamental freedoms for all was placed in direct relationship with the maintenance of international peace and security and the creation of conditions for economic and social progress and development. The interdependence between human rights, peace and development means that freedom from fear and freedom from want belong as much to the heart of the concept of human rights as political freedoms. This same interdependence assumes and requires that the wider recognition and acceptance of the human factor be made the central theme in all human endeavours. One of the most important challenges for the United Nations is the elaboration and implementation of approaches to problems and strategies for solving them, which are based on respect for human rights. Along with the new international economic order, the United Nations has to work for a new social and human order enabling peoples and individuals to enjoy the rights which are basic to their existence and development."9

The question may be asked, to what extent has the human rights approach been applied in practice to the solution of international problems arising out of present international conditions? This question, and the answer given to it, have deep practical significance. If, for example, international order is perceived purely, or overwhelmingly, in terms of security, this could result in patterns of inter-State behaviour in which security, as the dominant and overriding concern, minimizes the human factor. If, on the other hand, it is perceived in human terms, as aiming first and foremost at realization of the basic rights of all persons and all peoples, the result could be that the promotion and protection of those rights would become the dominant goal and that human rights considerations would become a guiding and integrated factor in the conduct of inter-State relations and policies relating thereto. Such a conception of international order would also influence the approach to security questions, for if we start from the premise that all persons and all peoples are entitled to live in peace, for example, this could lead to intensified efforts to realize this right through consistent steps aimed at putting a halt to the arms race and at disarmament. Moreover, arguments favouring security at all costs would then lose much of their force and it would become increasingly difficult to use security concerns to restrict, limit, or violate human rights and fundamental freedoms.

While the maintenance of international peace and security is, and must remain, a primary objective of the international community and of the United Nations, it should nevertheless be recognized that peace is indivisible in its universal, regional or national dimensions, and that events occurring within a single country – be they internal conflicts or gross violations of human rights – may result in human suffering of as great a magnitude as those stemming from inter-State conflicts. While mindful at all times of the principle of respect for the sovereignty and independence of States, the international order nevertheless should afford enough flexibility to provide ways and means of dealing with situations involving gross violations of human rights which entail great human suffering, for the very notion of international order may be negated, or called into question, when such violations occur without adequate attention from the international community.

There is a great need, at the international as well as at the regional, national and local levels, to follow more deliberate human rights ap-

proaches to political, economic, social and cultural questions and to integrate the human rights dimension into policies and programmes pursued in these areas so as to make the basic rights of all persons and all peoples the central objective of such policies. It may be asked whether adequate attention is being given to the human rights dimension in the consideration of national, regional or international questions. To what extent is there an approach which starts from the premise that all human beings are entitled to enjoy their inalienable human rights and fundamental freedoms and that, in all areas, policies at the national, regional or international levels should be inspired in their conception as well as in their execution by the need to promote and protect those rights and freedoms? Often the human rights factor - though present in a broad, general sense - is markedly absent in practical terms. Unless the human rights dimension is taken as the essential starting point, international co-operation in any area may be found wanting. The current international deliberations on questions of peace, disarmament, and development have to be oriented towards the human rights dimensions of the issues which are being discussed. If, for example, deliberations on development questions proceed without adequate consideration of the human rights factor, this could lead to the deleterious result that the consequences of development policies for human beings and their rights and freedoms might be overlooked.

In his Annual Report on the work of the United Nations Organization during 1980-81, former Secretary-General Kurt Waldheim pointed out that: "In the contemporary world, the interrelationship between human rights and questions of peace and security is emerging into sharper focus. The purposes and principles of the Charter are mutually supporting and interdependent. Thus, it is increasingly clear that peace and development are necessary for the full realization of human rights. At the same time, in the absence of respect for human rights, peace and development lose much of their meaning. It is essential therefore that the efforts of the United Nations and its Member States to promote and protect civil and political, as well as economic, social and cultural rights should be accorded the highest importance." Human rights, peace and development are interrelated and interdependent and the fostering of one promotes the enhancement of the other.

Peace is not merely the absence of war. It is also the promotion of a state of harmonious relations within a State, or between States. The promotion of peace at the international level is linked to the achieve-

ment of peace within each State. Mass and flagrant violations of human rights are flagrant breaches of international peace and security. Peace has not merely a negative connotation of an absence of war, but is also a positive concept which includes peaceful good-neighbourly and cooperative relations both within a country and among countries. It is basically an attitude of mind which involves both the desire to co-operate for mutual benefit and the desire to solve such problems as might exist in a peaceful spirit free of external influence and without bitterness or acrimony.

Peace is not merely an absence of violence and it requires harmony and should be a just peace. Respect for human rights is a precondition of a just peace. International peace is the creation of a just world order, and national peace the creation of a society where human rights are safeguarded for everyone. This notion is sometimes described as "positive peace" distinct from "negative peace", which is defined as the absence of violence.

If peace is understood as the elimination of threats and the means of facilitating the possibility for societies to live in peace, it can lead to the rebirth of trust, to gradual disarmament and creativity can be unleashed and greater openness emerge. Consequently, a better realization of human rights would become possible. But peace based on deterrence and on the threat to maintain stability by superior force does not allow the realization of human rights. If peaceful coexistence is understood as the right of every nation to live in peace, and to choose its own social and economic system without fear of intimidation from any corner of the world, this would be constructive to global peace.

Let us enumerate rapidly some concrete practical questions requiring attention insofar as the human rights aspects of peace and security questions are concerned:

- (i) What do the international human rights standards involve for the content of peace?
- (ii) How do violations of human rights affect peace and security? In many instances since the end of the Second World War, violations of human rights occurring within countries have resulted in levels of human suffering far greater than those ensuing from many disputes or conflicts between two or more States. In one country, for example, the United Nations Commission on Human Rights was informed by one of its rapporteurs that over a millon persons had

- been killed. Reports pertaining to human rights situations in many other countries reveal terrible human suffering, on massive scales.
- (iii) Would policies and strategies with human rights orientations speed up the realization of global peace and security?
- (iv) How do current patterns of violence and violence-related phenomena affect the realization of human rights? Reference could be made here, for example, to nuclear weapons, the arms race, militarization and the "national security state".
- (v) What is the relevance of international human rights standards to situations of armed conflict?
- (vi) How are war propaganda and the propagation of doctrines of racial or national superiority or other doctrines which may incite hatred to be combatted?
- (vii) How are individuals who object to the use of all of or certain means of arms, usually referred to as "conscientious objectors" to be granted recognition?
- (viii) How can resources released through disarmament contribute to the realization of human rights, particularly basic rights such as the rights to food, to work, to health and to education?
- (ix) How do the International Covenant on Economic, Social and Cultural Rights and the Declaration on Social Progress and Development feature in global strategies for development and for the realization of a new international economic order?
- (x) To what extent have the three United Nations international development strategies elaborated so far taken account of human rights considerations? Is the human rights factor adequately reflected in the latest international development strategy, and, if not, how can the situation be rectified?

Fundamental human rights questions are also raised with respect to the arms race. A primary consequence of the arms race is to divert resources which could otherwise be used for the realization of human rights. In addition, the arms race has a number of direct consequences for human rights. An intensified arms race inevitably leads to a maximization of security concerns and to resulting limitations upon human rights; military alliances and block rivalries often lead to interference in the internal affairs of States, particularly of small States, and denials of their right to self-determination; a concomitant of the arms race and of

regional or hemispheric security concerns is the increasing rise of the "national security state", in which security concerns are given the highest priority and individual freedoms are consequently accorded little importance. There is also the question of the right of the people to information about military policies and programmes of their governments and their implications. The updated report of the Secretary-General, entitled "Economic and Social Consequences of the Arms Race and of Military Expenditures" states that the people "have an obvious right to information about the military policies and programmes of Governments and their implications. Much of the secrecy in this field is not justified by military requirements. In some cases, it results from mere tradition, in others it serves such purposes as shielding questionable or unnecessary armaments programmes from public scrutiny and public criticism. Without endangering the security of any country much greater openness of information could and should be applied in this field."11 Another aspect which is assuming more and more importance is the production of repressive apparatus as a by-product of modern technology in armaments. It has been documented that repressive apparatus produced by the military-industrial complex in certain countries is made available to oppressors in other parts of the world. There is also the question of the human rights and humanitarian aspects of particularly inhumane weapons, including biological chemical weapons.

The environment resulting from the arms race and group rivalries often leads, also, to the strengthening of the role of the army, the police and other administrative powers and to the extension of the possibilities of State interference in the public sphere, thereby hampering the realization of political and civil rights. Militarization as a process whereby military values supersede other political, economic, social and cultural values, poses grave dangers for human rights.

In his address during the general debate at the thirty-sixth session of the General Assembly, Crown Prince Hassan of Jordan stated: "If the human race is to maintain its claim of being civilized, then it is imperative that humanitarian principles be the cornerstone of this claim. An internationally recognized framework of comprehensive humanitarian principles should govern relations among peoples and nations in times of war and of peace. It should have an in-built monitoring system and should become the basis for the solution of problems of refugees and displaced persons, poverty, illiteracy, terrorism and other issues that are detrimental to the progress of mankind.

I should like to propose to this Assembly the promotion of a new international humanitarian order parallel to the efforts being made in the economic and other fields. Before dealing with economics and politics, let man learn to be more human. I believe that just as the 1948 United Nations Declaration on Human Rights became the springboard for a number of international covenants and legal principles, this comprehensive international humanitarian order may offer a new impetus for a code of conduct in human and international relations of which we are so desperately in need."12

II. The Secretary-General's human rights policy

In his departure statement to the Commission on Human Rights in February 1982, after five years of distinguished service as Director of the United Nations Division of Human Rights, Theodoor C. van Boven told the Commission that: "The humanitarian policies of the United Nations, particularly in the area of human rights, still offer much room for development, and the role of the Secretariat under the Charter remains to be fully exploited."13 Earlier, in a statement to the Commission on 2 February 1981, Dr. van Boven had posed the following key issue to the Commission: "In many instances since the end of the Second World War, violations of human rights occurring within countries have resulted in levels of human suffering far greater than those ensuing from many disputes or conflicts between two or more States. In one country, for example, the Commission on Human Rights was informed by an expert rapporteur that over a million persons had been killed. Reports pertaining to human rights situations in many other countries reveal terrible human sufferings on massive scales. When such events occur, without adequate response by the United Nations, can there be any pretence that there is a functioning world order, or that the universal peace which it is one of the purposes of the United Nations to strengthen, still exists? Do not serious violations of human rights, even more than threatening world peace, also violate it manifestly? In its modern concept, peace is a dynamic and indivisible concept and it is impossible to separate the internal, international or universal components."14

How have past Secretaries-General of the United Nations seen the human rights component within their overall strategies in leading the Organization? In particular, how have they perceived the interrelation-

ships between human rights questions and questions of international peace and security. In the rest of this chapter we shall look at these issues, using principally the Annual Reports of Secretaries-General Lie, Hammarskjöld, U Thant and Waldheim.

(a) Trygve Lie

Secretary-General Lie provided the first broad insights into his thinking in his Annual Report for the period 1948-49. His view was that the main reason for the existence of the United Nations was to prevent a new world war from breaking out, but he recognized that other developments were adding to the importance of the United Nations. He referred in this regard to the rise of many peoples in Asia and Africa from a position of dependency towards one of equality and the growing strength of the movement to extend the observance of human rights everywhere in the world. "I believe", he said, "that the rise of dependent peoples and the human rights movement will, in the long run, have far more significance and give rise to greater events in the second half of the twentieth century . . . "15 Referring to the Universal Declaration of Human Rights which had recently been adopted on 10 December 1948, Secretary-General Lie observed that "the Declaration . . . is only the first, although the most important of the steps being taken by the United Nations to extend respect for human rights more widely in the world. The essential role of the United Nations in these great developments is now becoming more clearly defined. On the one hand, the United Nations is assisting the movements towards greater equality of opportunity between the peoples of Asia and Africa and the peoples of the Western world, and between the more highly developed countries and those which are less developed. It is also giving a powerful impetus to winning human rights for all peoples, wherever they live. On the other hand, the United Nations is making it possible for these fundamental changes to be carried out with far less violence than would otherwise be the case."16

The following year, Secretary-General Lie added to this picture: "The interdependence of all continents and areas does, in fact, require a series of bold acts, beginning at the earliest possible moment and extending over many years, to replace the widespread misery and poverty of the under-developed areas by a steadily increasing prosperity and im-