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The Advent of Universal Protection of Human Rights

Theo van Boven and the
Transformation of the UN Role

BERTRAND RAMCHARAN



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From left to right: Antoine van Dongen, Dutch Human Rights Delegate; Nigel Rodley, Legal Advisor of Amnesty International; Theo van Boven, Professor of International Law (Maastricht University); Judge Jakob Moller, Head of the Petitions Branch in the UN Centre for Human Rights. Photo Taken in Oslo (1987) by Bertrand Ramcharan

Theo van Boven's Plea for Justice

The Commission on Human Rights should be the repository of the conscience of the United Nations as well as of its moral authority. Herein lies its potential in the United Nations system. It is the Commission's responsibility to work for justice in international and national society and to give guidance in directions conducive to respect for human rights and human dignity. It is also its responsibility to strive to bring back into line recalcitrant members of the international community who may depart from the international standards of conduct laid down in the human rights code. It is against these tests of its responsibilities that the Commission should be measured.

Address at the opening meeting of the thirty-fifth session of the Commission on Human Rights. Geneva, 12 February, 1979

Questions of survival affect the vulnerable, the disadvantaged, the dispossessed, the deprived and many weak groups of society. Today's world is one which often demonstrates a lack of solidarity. Ideologies and practices

proliferate which are based on, and propagate, unbounded freedom for the powerful and the strong. The free play of the activities of the powerful and the strong as well as of naked market forces may, and often do, lead to the marginalization of the weak, the destruction of their rights and, often threaten their very survival. 'Survival of the fittest' is an anti-human rights notion. Freedom is not only for the strong, but for the weak also, and any society which is incapable of demonstrating the will and the solidarity that is necessary to provide and guarantee human rights for the weak also is a society which is far removed from the realization of human rights.

One sees daily, as one comes into contact with concrete human rights problems, or in discussions in human rights organs that many problems of human rights have economic root causes. It has been convincingly demonstrated that most situations of racial discrimination are associated with economic exploitation. The discriminated, the disadvantaged, the deprived or the down-trodden in many parts of the world, are often kept in suppression because powerful, dominant groups or interests benefit from their exploitation.

Address in Managua, Nicaragua,
14 December, 1981

Foreword

First of all, I wish to express my appreciation to the author, who was my Special Assistant when I served as Director of the *Division of Human Rights* when we worked closely, and with whom I have enjoyed a deep friendship now over almost five decades. I should also like to express my appreciation to the staff of the *Division of Human Rights* during my tenure as Director. I value all of their contributions greatly, and this book attests to our work together.

As a United Nations (UN) staff member engaged with my colleagues in common endeavours to promote and protect human rights, I continued to be mindful of Article 100 of the *United Nations Charter*. This provision articulates the duty that as international officials responsible only to the Organization they shall not seek or receive instructions from any government or from any other authority external to the Organization. This principle was highly valued by the sadly perished former *Secretary-General* Dag Hammarskjöld. It is counted as an integral part of his moral and political code.

The publisher's anonymous reader of the manuscript of this book, after positively assessing its 'important contributions', suggested that '... the reader wishes to know something about the UN reaction concerning nowadays' human rights violations worldwide. Many people miss an adequate reaction by the UN. ... Therefore [one] should give an assessment of today's situation. What are the tasks for the successors of Theo van Boven to give the UN a voice again? What are the next steps concerning the stronger involvement of the UN?' This is an important comment and, with the concurrence of the book's author, I shall try to devote a good deal of this foreword to responding it.

It is good to recall that my period as Director coincided with the human rights leadership of President Jimmy Carter in the USA and which helped provide a positive environment in seeking to develop the protection capacity of the UN in the field of human rights. It may also be recalled that President Carter articulated a Foreign Policy giving priority to respect human rights worldwide. Many friends in the world of human rights NGOs joined in this endeavour, and I am grateful to all of them for their support for the efforts recounted in this book.

Since this book presents at some length the various initiatives I undertook to help develop a protection capacity at the UN, I will leave it to the reader to acquaint herself or himself with my efforts. I will concentrate on addressing the issue of the contemporary voice and protection capacity of the United Nations in an era when, unfortunately, gross violations of human rights are rampant all over the world.

It will be seen from the pages of this book that I sought to plead and act throughout my tenure as Director that the UN should do its utmost to help prevent and stop violations of human rights and should strive for justice, redress and reparation for the victims. I must therefore say that it troubles me deeply to see the continuing and shocking violations of human rights that are taking place in so many parts of the world and to see the absence of justice for the victims.

How should the UN deal with the contemporary crisis of protection? The fundamental problem for the UN is that the very governments that control it are the ones that commit severe violations of human rights. And nowadays, as was recently proposed in the UN Human Rights Council, powerful countries such as China and Russia insist on ‘cooperation and dialogue’ rather than principled denunciation of gross violations of human rights.

How can the UN overcome this? UN fact-finders, collectively known as ‘special procedures’, each year compile reports of gross violations by numerous countries all over the world. But their work is largely unknown to the general public. This is an urgent problem that needs to be tackled. The UN should do more to publicize the findings of its fact-finders.

One way of doing this would be for the *Office of High Commissioner for Human Rights* to compile each year a report summarizing the allegations against the various countries, together with, if available, reference to the responses of the countries concerned. Such a world report on gross violations of human rights could be disseminated widely and given high profile by the media.

High Commissioners for Human Rights do speak out often against allegations of gross violations of human rights. But in the future they should do more to help prevent such violations and to bring them to an end as swiftly as possible. Greater focus is called for on the preventive role of the High Commissioner.

The UN *Secretary-General* is, or should be, the moral leader of the world. The dynamic exercise of the good offices of the *Secretary-General* can make a useful contribution. For example, as we write, four million people, Muslims, are in danger of being expelled from the Indian State of Assam, where they have lived for a long time. If this happens it will be a blot on the image of the UN and its *Secretary-General*. The *Secretary-General* should use his good offices to the maximum to help prevent such an outcome.

The UN *Human Rights Council* does some good work, but it is also a politicized body. Its Universal Periodic Review system is uncommitted and many governments simply go through the process pro forma. Based on the documentation assembled for the periodic review, the *Office of the High Commissioner for Human Rights* (OHCHR) should publish every 5 years a World Report on National Protection Systems, outlining what each country is doing to prevent gross violations and to

protect human rights and identifying gaps in the national protection system of each country.

While the *Human Rights Council* criticizes some countries repeatedly, it fails to criticize numerous other countries that are committing gross violations of human rights. This makes the system inequitable. The UN *Secretary-General* should launch a World Court Against Gross Violations of Human Rights to which he could refer situations when the Human Rights Council fails to take action.

The *UN Security Council* can also play a stronger role. For example, when a Commission of Inquiry reported, with superb documentation and reasoning, on criminal violations of human rights being committed in North Korea, the *Security Council* should take action, which it declined to do in the North Korean case.

On the promotion side, the international community can help the United Nations to disseminate human rights and to promote human rights education worldwide in support of a universal culture of human rights. More is to be done by supporters of the United Nations to help disseminate human rights norms and to promote human rights education.

A concrete project that research institutions might help with would be to assemble and disseminate, especially in local languages, to every national court a 'Handbook of the Jurisprudence of United Nations expert bodies', such as the *Human Rights Committee*, on the jurisprudence of international human rights law. At the end of the day, we must look to national courts to protect human rights and providing them with the international jurisprudence would help in this regard.

There is thus much fresh thinking required to take forward the quest for protection that is summarized in this book. I hope that this book will help to stimulate such reflection.

University of Maastricht, Maastricht,
The Netherlands
4 August 2018

Theo van Boven

Preface

When the *United Nations Charter* was drafted at San Francisco in 1945, the major powers decided that the world body should be granted the competence only to promote international cooperation for the universal realization of human rights. They rejected the idea that the Organization should be given competence to protect human rights as well. The *Security Council*, which has mandatory powers under Chapter 7 of the Charter, was confined to dealing with issues of international peace and security, not human rights.

As thousands of petitions streamed in to the UN from victims of human rights violations in different parts of the world, especially from Eastern Europe, the Commission of Human Rights, again led by the major powers, and presided over by Mrs Eleanor Roosevelt of the USA, decided in 1947 that it lacked competence to deal with these petitions. Petitions received were filed without action.

As the *Commission on Human Rights* set about the task entrusted to it in the Charter to draft an International Bill of Rights, it decided that the Bill would consist of three parts: a declaration, one or more treaties and measures of implementation.¹ But a limited scope was given to implementation. Implementation would be mainly for national governments. Internationally, designated UN bodies would consider national reports, and optional petitions and fact-finding procedures were chosen, which, to this day, do not have universal acceptance. Protection was still not in sight.

As newly independent countries entered the United Nations in the 1960s, they initiated the establishment of Special Committees of the *General Assembly* dealing with apartheid and with decolonization. Petitions were considered and hearings organized. A limited measure of protection thus began at the UN, but it was confined to designated areas.

In the middle of the 1960s, the newly independent countries pressed for the Commission on Human Rights to start dealing with violations of human rights.² In consequence,

¹See Schwelb (1959), on the impact of the Universal Declaration.

²See Jensen (2016) and Burke (2013). Unfortunately, Jensen does not treat the developments in the 1960s concerning the handling of allegations of gross violations of human rights.

the Commission on Human Rights inscribed on its agenda in 1967 an item, 'Question of violations of human rights in any part of the world, particularly colonial and dependent territories.' The Commission began an annual debate on this item in which governments and NGOs could voice their concerns over alleged violations of human rights.

The *Commission on Human Rights* would sometimes adopt resolutions expressing concern and, in two instances, designated fact-finders to look into alleged violations of human rights in Southern Africa and in the Palestinian territories occupied by Israel during the Arab-Israel war of 1967. In 1975, the Commission established a fact-finding group to look into allegations of violations of human rights after the overthrow of the democratically elected government of Salvador Allende in Chile. In a few instances, the Commission sent a telegram to governments expressing concern over reported violations.³

In 1970, the *Economic and Social Council* (ECOSOC), the parent body of the Commission on Human Rights, established a confidential procedure under which the Commission could take limited action on petitions that appeared to reveal a consistent pattern of reliably attested gross violations of human rights. The Commission considered the first set of such situations in 1975.⁴

This was basically the situation when Theodoor Cornelis van Boven took over as Director of the *Division of Human Rights* in the spring of 1977. At this time, two treaty-based bodies, the *Committee on the Elimination of Racial Discrimination* and the *Human Rights Committee*, had just begun the process of considering national reports under their respective treaties.

During the 5 years he served as Director of the UN *Division of Human Rights* (1977), Theo van Boven led the transformation of the role of the UN in responding to allegations of gross violations of human rights and pioneered the advent of universal protection for the first time in the history of the world body. This book is an account of how he led this transformation. It shows him:

- Providing leadership in the quest for protection.
- Proposing idea after idea for UN protection of the victims of gross violations of human rights. These included the establishment of thematic and country rapporteurs and working groups and ideas that would come to be implemented later for the establishment of field offices and field representatives.
- Charting course towards the establishment of a UN forum for indigenous peoples the world over to bring their claims for justice.
- Giving voice to the victims of gross violations.
- Promoting international cooperation for more, and effective, national institutions for the protection of human rights.
- Leading initiatives for the establishment of regional institutions for the protection of human rights in Africa and in Asia and the Pacific.
- Practising partnership for the promotion and protection of human rights with NGOs, UN agencies and regional organizations.

³See Ramcharan (1988).

⁴See Schreiber (1975), on UN practice in the field of human rights protection at this time, and Moller (1979), on the UN petition system at that time.

- Engaging in good offices and diplomacy on behalf of victims.
- Urging that the UN must deal not only with the symptoms of gross violations, but with their root causes as well, notably lack of political, economic and social justice.
- Launching a World Information Campaign for the Protection of Human Rights.
- Spearheading the process that led to the upgrading of the *Division of Human Rights* to a *Centre for Human Rights*.

Without a doubt, van Boven led the advent of universal protection and transformed the role of the United Nations in dealing with human rights. To this day, the protection actors and procedures in use at the UN led, as from 1994, by a *High Commissioner for Human Rights* are largely those brought in by van Boven. It is a remarkable achievement, and the story is told in the pages that follow.

It took considerable courage and independence to bring these dynamic policies about. Writing in 1992 about the role of the UN Secretariat, van Boven recalled:

During the 1978 session of the Commission [on Human Rights] the representative of the USSR [Union of Soviet Socialist Republics] insisted repeatedly that, in view of relevant *General Assembly* resolutions, the *Division of Human Rights* had to comply with the principle of equitable geographical distribution of posts, and that this principle should apply not only with respect to the Secretariat as a whole but to each division or administrative unit. As Director of the Division [of Human Rights], I replied in essence that, in the light of the various criteria for the employment of staff laid down in Article 101 of the Charter and the wording of the relevant Assembly resolutions, the principle was applicable to the Secretariat as a whole but not automatically to each and every individual unit of the Secretariat. I also insisted that the distribution and utilization of staff in the various units of the Secretariat is a question of internal administration and efficiency and that the work of the Division had to be organized in the most efficient and rational manner. The real motivation of the USSR's complaint was their wish to see an East European staff member assigned to the Communications Unit which handles complaints from individuals and private groups, including, naturally, complaints pertaining to the USSR. The management of the Division never yielded to this desire of the USSR. At the following session of the Commission the Soviet delegate repeated the same criticism and also made other remarks critical of the leadership of the Division. These related to matters such as the *views expressed in opening statements and at press briefings, the circulation of NGO documents* critical of *General Assembly Resolutions*. . . etc. (Italics added).⁵

Alyth, UK

Bertrand Ramcharan

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