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# Without Fear or Favour?

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## Without Fear or Favour?

*'I will advocate for the civil, political, economic, social and cultural rights that are the inherent entitlements of all people. I will strive to be their voice and their strong defender, in complete objectivity, without fear or favour, and to urge all States to protect and promote all human rights, without distinction.'*

Michelle Bachelet,  
UN High Commissioner for Human Rights  
as she took up her post in September 2018

The world over, civil servants are commissioned to provide advice 'without fear or favour'. Civil servants pledge official oaths to do so and governments across the world claim to require it. However, the 'without fear or favour' expectations for the international civil servant are far more equivocal -- specifically, where 'without fear' is concerned.

Article 100 of the United Nations Charter explicitly bars the seeking or receiving of instructions from States or other external authority -- including, one presumes, incentives and disincentives. The Standards of Conduct for the International Civil Service and the UN Staff Regulations and Rules apply this by covering conflicts of interest and banning receipt of gifts. Yet, their provisions deal only with the 'without favour' element. The 'without fear' aspects are comparatively neglected. Elsewhere, of course, the UN has taken a clear stand on reprisals<sup>1</sup> by Member States against those who avail themselves of its human rights mechanisms -- thus some effort of protection is offered for those who speak **to** the UN. The Secretary-General has issued a policy on 'whistleblowing'<sup>2</sup> -- so some protection is offered for those who speak **within** the UN **about** the UN. But the assurance of protection for those who speak **for** the UN? That is a less certain story.

How so? In 1985, when the *Right Livelihood Award* was given to the former Director of the UN Division for Human Rights, Theo van Boven, the citation celebrating him explained that *'he spoke without fear or favor in the international community'*. This honour was all the more poignant because -- perhaps due to Van Boven's outspokenness for human rights -- his contract with the UN had not been renewed: a decision of the brand-new Secretary-General Juan Perez de Cuellar.<sup>3</sup> It was not the first time, nor would it be the last, that the UN's chief human rights officers would find themselves in disapproval's hot water. In his diary, John Humphrey (lead drafter of the Universal Declaration of Human Rights itself and inaugural UN human rights director) details his struggles with then Secretary-General

Dag Hammarskjöld to win the space and resources to undertake effective human rights work. The climate of the time required that he protect *'...the (human rights) division from a number of threats, including investigation by the staff for un-American activities and Secretary General Dag Hammarskjöld's attempts to bring the human rights program to a standstill ...'*<sup>4</sup>

So far exactly none of Humphrey's and van Boven's modern successors as UN High Commissioners for Human Rights (a title created in 1993) has seen out a second term. Many other Under-Secretaries-General and Secretaries-General too (with the exception of Boutros Boutros-Ghali) have all been elected to second terms. But to date, no High Commissioner for Human Rights has ever seen their contract renewed for a full second term.

Alongside the cruel loss too of other colleagues, the awful loss in the Canal Hotel bombing of Sérgio Vieira de Mello, the UN Special Representative for Iraq who was on leave from his post of High Commissioner for Human Rights, underscores that to serve 'without fear' can exact the most awful price. But to examine potential sources of fear, we need not speak here of threats to life -- which, although rare for the UN civil servant, have been all too real, nonetheless. Far less grave as isolated incidents themselves -- but ubiquitous -- are dynamics within the UN system at large that cause many international civil servants to doubt the wisdom of serving 'without fear'.

Expressions of displeasure that turn into disapproval, deepening then into humiliation escalating into intimidation target the 'without fear' individual. Threats to funding, withholding of income and campaigns against reputation, target the institution that dares too much. Which is why actions designed to engender *fear* in international civil servants should be recognised as distorting influences, just as are those that are deemed to entice *favour*. More concrete steps should be taken to better guard against a working culture in which a metaphorical 'shooting of the messenger' is automatically anticipated with self-censure, whose consequence then is erosion of service 'without fear'.

Here is but a sample of dynamics that across the UN can contribute to a climate of fear, where there should be confidence:

## 1. Cast as losers in a false contest

The tensions between the UN's human rights functions and the UN's more 'diplomatic' roles are as old as the UN itself.<sup>5</sup> From the UN's outset those tensions were in evidence. For example, the tension between Secretary-General Hammarskjöld and John Humphrey as UN Human Rights Division Director is described as that between a lawyer and a diplomat.<sup>7</sup> Humphrey *'felt the (human rights) covenants were a vital component...but Hammarskjöld felt that peace could best be assured through the Secretary-General engaging in high level shuttle diplomacy'*.<sup>8</sup>

Was it a classic case of 'once you have a hammer, everything looks like a nail'? Perhaps human rights staff will always act as if human rights matter most, while a Secretary-General, and others too no doubt, will always favour diplomacy? Yet, conceptually it's a false juxtaposition. Human rights are the UN's purpose; they are not a tactic. Diplomacy, on the other hand, is not a higher end: it is a valued means. At least, that's how the UN Charter sees it – the organisation being created not for diplomatic refinements but *'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom'*.<sup>9</sup>

In fact, things can go gravely awry, if, in a false battle between human rights evidence and diplomacy's arts, diplomacy alone wins. We need only glance at the findings of reports assessing the UN's response to the human rights crises that led to murderous tragedies in Rwanda, Sri Lanka and Myanmar.

It is true that thoughtless speaking without tactical sensitivity satisfies perhaps only the speaker themselves. No matter how pressing is the need for a more complete public account to be told, when processes of verification of evidence, corroboration and impartial documentation are cast aside; if there is carelessness in how the facts are presented whether privately or publicly; when focus in pursuit of human rights drifts away from the rights-holders themselves to the megaphone instead – then human rights advocacy fails.

Still, as van Boven came to exemplify – and as generations of UN human rights-civil servants have since too – the courage to speak at risk of disfavor with Member States or other authorities is a core element of effective human rights work. And, arguably, it is more generally, a quality essential for impartial and fact-driven civil service.

It was a point on which Van Boven himself was pressed. Asked by a journalist *'Don't you think quiet diplomacy is sometimes more effective than frank, direct accusation – the method you practiced?'*, he replied in terms that likely every High Commissioner for Human Rights since would recognise: *'Contrary to the popular impression, I too practiced quiet diplomacy. It is necessary when you are defending an individual – for example, a detainee being mistreated in his homeland – for governments can then make concessions without losing face. On the other hand, when a case arises of flagrant violation of human rights, the UN must denounce it publicly.'*<sup>10</sup>

Who after all is the UN's primary concern? We the peoples or we the powers? Quality human rights work will always demand and require the space to speak up and to speak out. Intimidation to keep quiet should find no place at the UN.

## 2. Blamed for the shame of the named

The UN must denounce human rights violations. Whether it does so in private and also in public too, that is a judgment call; but denounce violations it must and not merely when diplomatically convenient to do so but when gravity, scale, repetition, denials and deliberate cover-ups so demand.

Yet, pointing out who is responsible for human rights abuses is often characterised – even lampooned – as only 'naming and shaming'. The accountability emphasis in the UN's human rights work, by which those Member States responsible for violations and crimes are confronted as such, is often criticised, including within the UN itself, as if merely an unsophisticated tactic on which knee-jerk human rights work is overly dependent. Those who so assert have argued further that in pursuing accountability, human rights approaches may even impede sustainable development and political progress.

But human rights are not mere opinions, any more than their advocates are only self-appointed moralisers on subjective perceptions of wrongs. Instead, human rights enable a more robust distinction of the unacceptable from the acceptable. For they are matters of law and its due application; questions of international standards and compliance. They are internationally negotiated promises, freely made – whose intentional breaking cannot be left to slip quietly into obscurity. Because, and this is most important, rights are about those whom Governments serve – their people; people first and foremost, not only as 'the needy', 'the vulnerable', or 'beneficiaries' but as rights-holders to whom duty bearers have obligations.

The now elaborate international human rights framework, codifies – in norms, standards, and law – the agreed thresholds by which we can recognise if States and, more recently, non-State actors too, are exercising their powers legitimately towards rights-holders and when they are not. The UN must see the world through the lens of these standards – its own standards. And the human rights functions that result from this require, among other things, noticing, appraising and reporting on what those standards reveal: the experiences of those suffering at the hands of illegitimate exercise of power; of those fallen casualty to cruel exercise of power; of those silenced in the interests of power; of those who, on grounds of their identity, are wrongly excluded from power – be that power political, economic, social or cultural.

Yes. Shame be on those who are named among those who seek and would retain power but who lack the integrity to meet its standards or keep its promises. As former High Commissioner for Human rights Zeid Ra'ad Al Hussein pointed out, their shame is of their own making: *'The shame comes not from the naming: it comes from the actions themselves, the conduct or violations, alleged with supporting evidence or proven. The greatest factory of shame is the blanket denial of human rights. The denial of the right to life shames unreservedly. Killing on a massive scale, shames stunningly, and inexhaustibly. The denial of the right to development also shames. The denial of human dignity shames. Torture shames. Arbitrary arrests shame. Rape shames.'*<sup>11</sup>

### 3. The popularity of the more silent

Secretary-General Hammarskjöld did stress that: *'the international civil servant, also in executive tasks with political implications, must remain wholly uninfluenced by national or group interests or ideologies'*.<sup>12</sup> The onus to be so uninfluenced is relevant not only to what is to be said but to what is not said. Remaining silent readily becomes a civil servant's preferred go-to-place if as the messenger of an unwanted message, she is then left wide open to attack.

Yet, of course, silence is not impartial: like speech, it too can be deployed along political lines and it too can readily become toxic. It is why so many human rights defenders speak of the 'breaking of silence' as essential to the exposure of human rights violations.

Hammarskjöld explained, *'...the international civil servant cannot be accused of lack of neutrality simply for taking a stand on a controversial issue when this is his duty and cannot be avoided.'*<sup>13</sup> The genre-defying author Ursula Le Guinn shed her splendid literary light on this more often painful obligation to speak unwanted truths:

*'I don't want to tell that a child sees her grandmother burned to death or her mother raped by the soldiers by the guerrillas by the patriots by the believers by the infidels by the faithful by the terrorists ... by the executives by the leaders by the followers by the contras by the pros'* (emphasis added).<sup>14</sup> But tell she must.

Delivering tents, life-saving medicine, water; offering wanted technical advice aligned to Governments' plans. Sharing goals, measuring targets, speaking with compassion for those left behind, rather than of justice for them. What's not to like? Who wants, instead, to have to speak about the human rights defender slaughtered; the journalist silenced forever by state sponsored violence; the young man shot down for the color of his skin; the soldiers who weaponized rape; the disproportionate force used by police against protestors; of the ways impunity aids the powerful at grave cost to those who have the least? And of those who ordered it, tolerated it, turned a blind eye to it?

But speak of it, the UN must.

What's more, forging a fuller and more inclusive public record of the realities for people as rights holders – of the voices left out of official records of rights and wrongs – is profoundly necessary for the defense and advance of our common humanity. History has already taught us far too often that silencing truth-telling imperils more than truth's preservation; it seeds regression, recurrence and repetition. There will be no effective prevention built on truth prevention.

That 'We, the peoples of the United Nations' have an inalienable right to the truths that human rights analysis illuminate is established in international, regional and national human rights standards and laws. The functions of bearing witness to, documenting, verifying and reporting (speaking out) publicly on those realities for rights-holders the world over part, are part of the UN's very DNA. They are not an error of diplomatic judgement on the part of the human rights zealot. They are functions of an effective and impartial international civil service and they should be protected as such.

## Conclusion

It can be tough to take risks with your professional future, but we are all worse off if international civil servants are not able and willing to speak ‘without fear’. Protection when they do so should be unequivocal. Elaboration of what that means: of what service ‘without fear’ requires and how it should be protected, might be challenging. However, a first step would be for the UN Staff Rules and Regulations to spell out clearly both the requirement to speak the truth without fear – and the institution’s commitment to protecting staff who do so.

Hammarskjöld emphasised that a UN Secretary-General is not some kind Delphic oracle.<sup>15</sup> Nor is the international civil servant. Yet, the provision of evidence-based, fact-loyal, standards-upholding advice without fear or favour, including in the public domain as required, is essential. It was a point that Hammarskjöld underscored in his last ever speech to the staff of the UN Secretariat, ‘*To build for man a world without fear, we must be without fear.*’ Without fear that is, not merely without favour.

## Endnotes

<sup>1</sup> See for example, UN Human Rights Office, Acts of intimidation and reprisal for cooperation with the treaty bodies [website], <https://www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx>, (accessed 16 November 2019)

<sup>2</sup> UN News, ‘Secretary-General Guterres approves updated UN whistleblower protection policy’, 23 January 2017, <https://news.un.org/en/story/2017/01/550032-secretary-general-guterres-approves-updated-un-whistleblower-protection-policy> (accessed 16 November 2019)

<sup>3</sup> I. Guest; ‘UN human-rights body points finger at violators just as its chief is sacked’, *The Christian Science Monitor*, 19 February 1982

<sup>4</sup> Canada’s Human Rights History, ‘John Humphrey Biography’, <https://historyofrights.ca/encyclopaedia/biographies/john-humphrey/> (accessed 16 November 2019)

<sup>5</sup> F. Carver, ‘Why no High Commissioner for Human Rights has ever served a full second term’, *UNA-UK Blog*, 12 July 2018, <https://www.una.org.uk/news/why-no-high-commissioner-human-rights-has-ever-served-full-second-term> (accessed 16 November 2019)

<sup>6</sup> G. Troy, ‘The One-Armed Orphan Who Brought Human Rights To The World’, *Daily Beast*, 15 September 2017, <https://www.thedailybeast.com/the-one-armed-orphan-who-brought-human-rights-to-the-world> (accessed 16 November 2019)

<sup>7</sup> Dag Hammarskjöld was a lawyer by education and training.

<sup>8</sup> A.J. Hobbins, *Human Rights inside the United Nations: The Humphrey Diaries, 1948– 1959*. p. 164, Fontanus IV, 1991, McGill University.

<sup>9</sup> United Nations, ‘Charter of the United Nations’, 24 October 1945, 1 UNTS XVI, <https://www.un.org/en/sections/un-charter/un-charter-full-text/>

<sup>10</sup> Interview by P. Ruetschi, ‘You must Refuse to be Muzzled’, *Tribune De Geneve*, 10 December 1986, [https://www.cia.gov/library/readingroom/docs/WALDHEIM,%20KURT%20\(DI\)%20%20VOL.%203\\_0013.pd](https://www.cia.gov/library/readingroom/docs/WALDHEIM,%20KURT%20(DI)%20%20VOL.%203_0013.pd) (accessed 19 November 2019)

<sup>11</sup> Z.R. Al Hussein, ‘Opening Statement to the 29th Session of the Human Rights Council by the High Commissioner for Human Rights’, speech <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16074&LangID=E> (accessed 19 November 2019)

<sup>12</sup> D. Hammarskjöld, ‘The International Civil Servant in Law and in Fact, Lecture delivered by Dag Hammarskjöld, Oxford, 30 May 1961’; Reproduced by Dag Hammarskjöld Foundation in *100 years of International Civil Service – no.4*, p 8, <https://daghammarskjold.se/publication/the-international-civil-servant-in-law-and-in-fact/> 2019;

<sup>13</sup> As immediately above, p. 7

<sup>14</sup> U.K. Le Guin, *The Found and the Lost: The Collected Novellas of Ursula K. Le Guin*, New York: Saga Press, 2017.

<sup>15</sup> As in the Oxford Lecture delivered by Dag Hammarskjöld, cited above, p. 12

## About this publication

This publication is part of a series issued by the Dag Hammarskjöld Foundation commemorating 100 years of international civil service, which originated in 1919 with the birth of the League of Nations.

The series features inspirational and reflective think pieces on the concept of the international civil service by former and present United Nations' officials, as well as representatives from civil society and academia.

It relates to the Foundation's work on leadership, which strives to kindle a constructive dialogue on how to foster and secure visionary and principled leadership in the UN.

## The Author

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**Kate Gilmore** was appointed United Nations Deputy High Commissioner for Human Rights (OHCHR) on 1<sup>st</sup> December 2015. She has diverse and longstanding experience in strategic leadership and human rights advocacy with the United Nations, government and non-government organisations.

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