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A CHALLENGE FOR THE FUTURE
THE UNITED NATIONS - STRENGTHS AND WEAKNESSES

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A PARTICULAR EXPERIENCE

Because of the nature of my work and the course that my life has taken, I have not, as many of the participants in this conference have done, taken a direct part in the central political organs of the United Nations. I do not know my way about the great building beside the river in New York. I am still confused to understand all of the committees, the lines of communication and channels of power. But, in a different sphere, I have had the privilege of working with the United Nations and of seeing it from the inside. Mine has been principally an experience in the agencies of the United Nations.

- For UNESCO, I attended the General Conference in Paris and have taken part in a succession of specialist committees designed to study the concept of "self-determination", promised in the *Charter* but the source of so many of the bitter conflicts in the world today;
- For ILO, I proceeded to South Africa, just before the democratic elections, to investigate the labour laws and to propose reforms of

920
industrial relations law which are, at this very time, substantially before the South African Parliament for adoption;

In WHO, I have had the privilege of serving on the Global Commission on AIDS - truly a vital challenge to humanity which requires the concerted response of the international community, organised through WHO. The recent establishment of UNAIDS indicates the understanding, at the highest level of the United Nations, that this is a challenge of the greatest urgency and importance;

For UNDP, I was privileged to chair the Constitutional Conference of Malawi which helped the transition of that country from the one party regime of Dr Hastings Banda to the present multi-party democratic government. UNDP has also invited me to serve in a number of other African countries, struggling towards democracy and the protection of basic human rights; and

Most recently, in November 1994, I was appointed by the Secretary-General as his Special Representative for Human Rights in Cambodia. This is an important challenge which I pursue in the spirit of the dedication to the practical ideals of the United Nations which have motivated so many people called to its service.

SPECIAL REPRESENTATIVE IN CAMBODIA

The Special Representative of the Secretary-General for Cambodia is one of about thirty such appointments. Some are thematic (such as the

Special Rapporteur on the Status of Women and the Special Rapporteur on the Independence of the Judiciary and of Lawyers). Most are dedicated to scrutinising and reporting upon human rights in particular countries. The Special Representatives and Rapporteurs meet together annually to exchange ideas on methodology and procedures. They report, in the case of most of them, twice yearly - to the Commission on Human Rights in February/March¹ and to the General Assembly in November.² I am now in my second year of service as Special Representative for Cambodia. In November 1995 I shall be presenting my second report to the General Assembly in New York. For that purpose I have just returned from my sixth mission to Cambodia. It occupied two weeks in August 1995. It took me to a number of provincial districts of the country, including Kampot, Kampong Cham and the capital, Phnom Penh. My work in Cambodia cannot be performed from luxury hotels in the capital. It takes me, and those who work with me, into the country regions. I travelled to Sihanoukville shortly before the capture and murder of the three foreign tourists, including the Australian David Wilson, who were on a peaceful, youthful journey on a train in pursuit of knowledge about Cambodia. So this is a task not without risk. But it is one of importance for the building of human rights in Cambodia and fulfilment of the mission of the United Nations.

My function as Special Representative is to be informed, to encourage and to warn. My task is to visit Cambodia and to report to the Secretary-General and the organs of the United Nations. My obligation is

to do so with complete fidelity to the truth but with sensitivity to the great problems faced by the Government of Cambodia of rebuilding human rights in a country shattered by almost three decades of revolution, war, genocide, invasion and international isolation. In Cambodia there are many difficulties. I do not plan to become one of them. Whilst my duty is to report with candour, it is also to avoid the sensationalised treatment of the problems of the country that seem to have attracted most international media attention.

Some observers assert that human rights is a Western concept, concerned wholly or mainly with civil and political rights. The provision of an "Asian exception" for human rights has been rejected by the United Nations, most recently by speeches at the Beijing conference on Women's rights. By definition, universal human rights are just that: a common heritage of all humanity. Human rights provide one of the three pillars upon which the United Nations has been established - securing peace and disarmament; attaining economic and social development; and building the new world order upon the foundation of individual human rights and the rights of peoples.

The human rights with which the United Nations is concerned are stated in the *Universal Declaration of Human Rights* and in the *International Covenants on Civil and Political Rights* and on *Economic, Social and Cultural Rights*. There are now many other international instruments which express the dedication of the United Nations to fundamental human rights and peoples' rights. But if you look at these

treaties, whilst civil and political rights find their place amongst them, the priorities reflected in their language are typically, those which I hear voiced to me in Cambodia. As well as consideration of the issues of civil rights come the assertions of the right to equal dignity, of the right to conscience and freedom from discrimination of any kind. The United Nations statements of human rights include insistence on rights to free choice of employment, to adequate rest and leisure, to a proper standard of living with adequate protection for health and well being, to food, clothing, housing and medical care. The right to education is part of the fabric of fundamental human rights. So is the right freely to participate in cultural life and the entitlement to a social and international order where the rights and freedoms stated by the United Nations are fully realised.

In addition to these, there are the familiar civil rights which are of equal importance: Not to be held in slavery or servitude. Not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. To be equal before the law. To have effective remedies for legal rights. To be free from arbitrary arrest, detention or exile. To have fair access to the courts. To have particular rights when charged with criminal offences. To enjoy rights to privacy, to freedom of movement and to asylum from persecution.

In my tasks as Special Representative of the Secretary-General I am not the follower of my own idiosyncratic opinions on human rights. My function is to examine the laws and practices of Cambodia against the criteria of the United Nations' principles of human rights. It is then to

report on any apparent departures from these standards, first to the Royal Government of Cambodia itself and then to the Secretary-General and the United Nations as well. The United Nations has earned its part in this reportage and scrutiny. It has done so by the remarkable work of UNTAC and the investment, not just of funds but of dedicated interest and concern for the well-being of the people of Cambodia and their good government. It has been invited by the Government of Cambodia to offer its aid. Its role is supported by the participants in the *Paris Agreements*.

Of course, human rights present many extremely sensitive questions. Some governments, unused to being criticised at home, do not take readily to being criticised in the councils of humanity. I well remember the report of the Special Rapporteur on Sudan at the Commission on Human Rights. His report engendered great anger on the part of the Government of Sudan. He was denounced and even, reportedly, threatened. But he had the support of his colleagues and of the Organisation. It is important that the United Nations should stand up for honest and fearless reporting by its Special Rapporteurs and Representatives. Otherwise, the result will be pusillanimous reports which whitewash great wrongs and ignore or hide - and thereby condone - departures from fundamentals.

In all of my missions to Cambodia - and all of my reports to the United Nations - I have collected and reported both the good and the bad news. I endeavour to do this with complete fairness and dispassion. Above all, with honesty. Frankly, I do not find this a difficult task. For more than twenty years, in various posts in Australia, I have been walking the judicial

path. After a while, the habit of neutrality enters the soul. So, I trust, it is in my work in Cambodia.

It is from this background of experience and participation that I turn to identify what I see as some of the main weaknesses and strength of the United Nations in its fiftieth year.

THE MAIN WEAKNESSES

1. A different world: The world in which the United Nations was established in 1945 is radically different from the world in which it must operate today. At that time, the big issues facing the Organisation were the achievement of peace and security in a world of great powers from whom the vanquished nations of Germany and Japan had lately been banished. The world was arrested by the nuclear explosions which had terminated the Second World War. It was facing the insistence of the United States that the European powers should grant independence and self-government to their colonies. The Soviet Union joined in this demand, whilst clinging relentlessly to its own lately acquired colonies.

Economic development and education were high priorities of the time. Their purpose was to combat ignorance and poverty in which most of humanity lived. And human rights was an insistent demand borne of the sufferings of the Second World War and of the Holocaust and oppression which it revealed.

In 1995, some of these imperatives remain. But many have been changed. All now have a new emphasis. Unfortunately, the structures of

the United Nations have remained substantially unchanged. They have failed to keep pace with the new demands which the Organisation must address today. These demands include:

- The assertion of the right of peoples to self-determination in the face of the almost universal opposition against separatism voiced by the nation states which are the members of the United Nations;
- Peace-keeping has grown rapidly. However, its effectiveness is limited. It imposes demands which the United Nations itself cannot meet upon nations (such as the United States in Haiti) and organisations (such as NATO in the former Yugoslavia);
- Economic development remains a major priority. But in many of the economies of Asia there has been a remarkable lift-off which illustrates the huge potential for economic progress in the non-Western communities of the world;
- Over-population is a pressing problem of the world. Birth spacing and the connected problem of the empowerment of women present great challenges in the face of which the United Nations has only been partly successful;
- Disease, and in particular the rapid spread of HIV/AIDS, presents great challenges to the Organisation and its capacity to respond for the effective protection of humanity;
- The global environment is endangered and the power of the United Nations to respond is limited;

- Arms sales remain a pestilence of the world. Anti-personnel mines have been sown in many countries. The effort to bring them under effective international law has enjoyed only qualified success;
- Drugs of addiction spread like an infection and take root in societies where widespread unemployment and despair give rise to widespread drug use; and
- Unemployment and despair also engender extremism, including in religious beliefs. The movement of extremist religions challenges the very notion of tolerance and diversity of opinion which lies at the heart of respect for the human rights of others.

Given such a radical change in the world and its problems, it is scarcely surprising that the United Nations now faces increasing demands for change both in its institutions and in the subject matters of its concern.

2. Personnel: The need for a radical change in the United Nations personnel policies is clear to all who work within it. It is not uncommon to find time-servers in any large organisation. They certainly exist in the United Nations. To some extent, they have been encouraged by personnel policies based upon geography rather than merit. Nor is the United Nations always vigilant in the defence and protection of its staff and their families. It is a year since the five year old daughter of an officer of the United Nations in Phnom Penh (Monica Oliveros) was shot by persons who have still not been brought to justice. The United Nations is not always insistent enough in the protection of its employees and officers. In the case of Monica Oliveros, her forced evacuation was necessary

because of her serious health condition following her wounding. But the United Nations has not even now attended to her needs, even though, in a real sense, evacuation was occasioned by her injuries because of her father's service in Cambodia.

3. Structures: There are others who can speak of the need to change the central organs of the United Nations, notably the constitution of the Security Council and the possession and use of the veto reserved by the *Charter*. In my own reports to the Centre for Human Rights, I see the need for structural and organisational reform. Sometimes in the business of human rights there is a tension between the political and human rights objectives of the Organisation. Governments are frequently suspicious of human rights and their advocates. Governments wield the votes that ultimately control the United Nations. In a changing world, where the role of sovereign states is submitting to technology, the global economy and international priorities, the need to rethink the structure, organisation and activities of the United Nations is more obvious than ever before.

4. Self-determination: If we look at the source of many of the security problems in the world today, it may be found connected with the demand of peoples for self-determination. This is a right guaranteed to peoples by international law. But it is a right that occasions great anxiety and ambivalence on the part of member states of the United Nations. Instead of confronting this problem, tackling and solving it with institutions that will provide a peaceful resolution to such disputes, such conflicts are all too often brought to the tragic chronicle that we have

witnessed of late in Bosnia, Rwanda, East Timor and Chechnya. If the United Nations were truly attending to the *causes* of international conflict, it would be working towards institutions and rules that could provide an alternative non-violent solution to this endemic problem.

5. *New challenges:* New challenges continue to present for the Organisation. They include the challenges of technology which, to a large extent, bypasses diplomacy and even reduces the significance of the nation state. They include fundamentalism. They also include the demand for special exceptions to the universal principle of human rights. Such demands are frequently voiced in Asia but are rejected by the United Nations which insists that universal human rights are just that: universal.

THE CHIEF STRENGTHS

1. *It exists:* The first strength of the United Nations is that it exists. If it did not exist it would have to be invented. It continues on a journey to improvement. The journey may be too slow but at least it has commenced. We should think of the United Nations as being at a point equivalent to Runnymede in the history of English constitutional development. Before 1215, England was a nation of powerful local barons. Gradually, after Runnymede, a covenant was struck which produced a new national order. So we are building a new international order. The existence of the United Nations provides us with a conception of ourselves as participants in a wider world community. The very fact that nations must answer for their human rights records before the international councils of the United Nations is a sign that the accountability of

governments to the people of the world is being accepted, thanks to the United Nations.

2. *Problem solved:* Many of the issues which the world faced in 1945 have been addressed and, however imperfectly, dealt with through the United Nations. We have avoided nuclear war. We have had many conflicts but there has been a high measure of general peace. Decolonisation was substantially achieved in the European colonies through the work of the United Nations. The example of that work spread the notion of national independence which ultimately helped to bring down the Soviet empire. Human rights conventions have been adopted under the aegis of the United Nations. Even if human rights are not universally respected, the principles are at least stated. They stand before oppressors as a rebuke, a stimulus and a warning. They stand before the people of the world as a beacon for the attainment of a higher level of human rights respect upon which all people are entitled to insist.

3. *Good works:* In my life I have seen the many good works which are done by the agencies of the United Nations. UNESCO working for preservation of the cultural treasures of the world and improving freedom of expression, education and access to science. The United Nations High Commissioner for Refugees who does such marvellous work in the defence of refugees and internally displaced persons. The World Health Organisation with its vital mission to fight disease and to promote health in every land. The ILO, working for improved labour standards. The United Nations Development Programme which supports so many vital activities,

particularly in the building of democracy and good government. The World Food Programme and the Food and Agriculture Organisation promoting better food production to feed the under-nourished. The Special Rapporteurs and Representatives who vigilantly report on human rights abuses. These are champions of human rights and of the proper functions of the United Nations. Their work may often be unheroic. It is largely uncelebrated and even unknown. But I have seen this work. It demands respect.

4. Personnel: The people who work in the organs of the United Nations are overwhelmingly committed to its ideals. They take risks. It is not only soldiers who wear notional blue helmets. Human rights workers and those in the agencies of the United Nations also do so. In Cambodia, the workers in the office of the Centre for Human Rights in Phnom Penh provide encouragement, inspiration and a degree of protection to the local human rights organisations which grew up during the UNTAC period. These people are deserving of our praise and support.

5. Domestic application: One of the valuable developments which occurred in recent times I see in my daily work in the courts. The United Nations' conventions on human rights, even if not directly incorporated into local law, can help influence the development of local common law. Where an ambiguity exists in a statute or a gap appears in the precedent law, it is now possible for judges to look to the jurisprudence which has collected around the conventions of the United Nations. This is a way in which we are building a truly global law of

human rights. Of course, it is imperfect and inadequately enforced. But the enterprise has begun. The United Nations must take a large part of the credit. It has provided the occasions and the opportunities to develop human rights principles. They continue to influence the shape of the societies of our world.

CONCLUSIONS

Doubtless others could talk of quite different strengths and weaknesses in the United Nations in its fiftieth year. Each one of us, who has had a connection with the United Nations in one way or another, brings his or her own perspective to the assessment. I have offered mine.

When I think of the United Nations, I am afraid I do not immediately call to mind the skyscraper in New York, the great political confrontations at the rostrums in New York and Geneva. -Instead, when I think of the United Nations, I travel in my mind's eye to:

- A prison in Kampong in Cambodia where, when my eyes adjust to the gloom, I see the eyes of fifty prisoners, locked in a single room for twenty-three hours a day who look to me with trust and hope to be their voice for better human rights;
- I think of the hospital in Brazzaville, Congo, where the United Nations workers are struggling to protect the blood supply and to afford basic health care to young children crying in their mother's arms;

- I think of the Union office in Johannesburg which I visited on my ILO mission just before the multi-racial democratic elections swept the apartheid regime from power;
- I think of that blue day in Pretoria when President Mandela was sworn into office and greeted as Commander in Chief by the Generals, their medals won in battles against ANC forces gleaming in the sunshine;
- I think of a conference hall in Lilongwe in Malawi where the United Nations through UNDP was patiently bringing together Government and Opposition in a quest for free and fair elections which would replace the One Party State; and
- I think of a courtroom in Budapest where international lawyers were struggling with the concept of who is a "people" for the peoples' right to self-determination whilst just down the road, in the former Yugoslavia, soldiers were asserting that right through the barrels of guns.

For me, the United Nations is an organisation of people. True, there are some time-servers and incompetents. But overwhelmingly, the people I have met are fired with the ideals that originally initiated this bold international institution. To quest for peace and security without which, in the nuclear age, all would be lost. To strive for social and economic development so that all people will share in a good life and the pursuit of happiness. To replace autocracy and oppression with fundamental human rights and the rights of peoples. These were worthy ideals in 1945. They remain worthy objectives today.

ENDNOTES

- * Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia; Chairman of the Executive Committee of the International Commission of Jurists. Personal views.
- 1. See United Nations, Economic and Social Council - Commission on Human Rights: *The Situation of Human Rights in Cambodia* (E/CN.4/1995/87, 24 January 1995).
- 2. See United Nations, General Assembly, *The Situation of Human Rights in Cambodia* - Report of the Secretary-General - Addendum (A/49/635/add .1, November 1994).