world community. Furthermore, it should be recalled that the states that voted for the 1970 Declaration of Principles did not differ to any significant degree over the ideas of distributive justice and equity as formulated in Articles 2–15, namely, the principles of shared benefits,[77] cooperative research, conservation, environmental protection and special benefits for developing countries. A claim to the use and the fruits only may not, per se, be tantamount to a vow of poverty; but since it does acknowledge other, parallel, claims and coexisting rights, it calls for restraint and abstention arising from a necessary acquiescence in other uses and in paramount titles.

L. F. E. GOLDIE*

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters should be published and to edit any letters printed.

TO THE EDITOR IN CHIEF:

February 20, 1985

The article *Of Gnats and Camels: Is There a Double Standard at the United Nations?* by Professor Thomas M. Franck in the October 1984 issue (at p. 811) constitutes an enlightening analysis of the criticism currently leveled against the United Nations that the Organization practices double standards. I fully agree with Professor Franck that a close examination of UN proceedings and decisions produces a picture which is more complex and more nuanced than is generally portrayed by the constant criticizers of the United Nations. The article also brings out quite aptly that most of the UN fora are political bodies and that these fora cannot be judged by standards of equal justice. All the same Professor Franck argues that particularly in human rights matters, there is a great deal of substance in the charge that the United Nations is applying selective and unequal criteria. It would appear that pronouncements and actions tend to be harsher when human rights violators belong to the capitalist camp, while violators who are members or associates of the Soviet-dominated group are treated with more benevolence. To this end, Professor Franck relies quite heavily on the cases of Chile and Poland.

The evidence cited by Professor Franck on Chile and Poland produces quite a convincing picture. Both the General Assembly and the Commission on Human Rights have taken over the years a strong stand against the Chilean military dictatorship and against the gross violations of human

[77] For example, the principle of "shared benefits" is reflected in sec. 403 of the Deep Seabed Hard Mineral Resources Act, 94 Stat. 584 (1980), 30 U.S.C. §1472 (1982), which provides for the "establishment" of a "Deep Seabed Revenue Sharing Trust Fund."

* Professor of Law and Director, International Legal Studies Program, Syracuse University College of Law. This paper was presented as a lecture at the Instituto di Diritto Internazionale, "D. Anzilotti," University of Pisa.

rights perpetrated by that regime. Detailed and strongly worded reports have provided the basis for UN actions. This firm attitude regarding Chile contrasts with the handling of the serious human rights situation in Poland following the proclamation of martial law in that country in December 1981. UN reports on Poland were cautious and timid and resulted in 1984 in the adoption of a motion by the Commission on Human Rights to take no decision on the matter.

However, leaving aside for practical purposes the question whether from a human rights perspective the Chilean and Polish cases are fully comparable and assuming for the sake of argument that both situations are very similar, some facts which were not highlighted by Professor Franck deserve further attention. These facts present a more complete and complex picture of the handling of the two cases than the article would suggest.

It is historically not fully correct to assume that UN organs jumped on the Chilean situation immediately after the overthrow of the Allende Government in September 1973. The General Assembly, meeting in the fall of that year, did not take any action regarding the Chilean situation and it was only in the course of 1974 that UN organs, such as the Commission on Human Rights and its Sub-Commission, the Economic and Social Council and the General Assembly, became seized with the matter. The initial action taken by the Commission on Human Rights in 1974 was rather limited and modest. The Commission authorized its Chairman to address a cable to the Chilean military authorities as mentioned in Professor Franck's article. Although suggestions were put forward at the 1974 session of the Commission to take the more far-reaching action of establishing fact-finding machinery, the Commission was not yet ready to follow that course and it was only in 1975 that the Commission decided to create a working group to investigate the Chilean situation. The Soviet Union and its allies at the time went along with this decision after lengthy negotiations and with the greatest reluctance. Fact-finding procedures are generally not favored by the USSR and, perhaps more importantly, the decision looked at variance with a long-standing Soviet position to the effect that the competence of the United Nations to deal substantively with violations of human rights should be restricted to situations which affect international peace and security. In fact, the situations in southern Africa and in the Israeli occupied territories fell within that category, but the Chilean situation was never qualified in terms of affecting international peace and security. The Soviet Union might well have realized that in its agreeing to a UN investigation into Chile and thus abandoning in the Chilean case its thesis that UN investigative action in human rights matters should be limited to situations involving international peace and security, the door might be opened for UN investigations into a whole range of other situations. And, indeed, that gradually and progressively has happened since 1975. Professor Franck gives a review of those situations in relation to the 1983 session of the Commission on Human Rights. A full analysis of UN human rights proceedings in the years prior to 1983 would reveal that since the Chilean case was taken up, an increasing number of other situations in various continents became the subject of UN public scrutiny and monitoring, albeit in a less forceful manner than in the Chilean case. I would submit that the Chilean case served as a breakthrough inasmuch as it triggered off, wittingly or unwittingly, a development towards a broader and less selective UN public involvement in human rights violations.

Turning now to the Polish case as it came up after the events of December 1981 and the ensuing serious violations of human rights, it is true that the membership of the Commission on Human Rights was sharply divided, and that the General Assembly was never seized with the case. However, within a few months after the events (on 10 March 1982 and not as late as 1983) the Commission did express its deep concern at widespread violations of human rights in Poland and decided to request the Secretary-General or a person designated by him to undertake a thorough study of the human rights situation in Poland and to present a comprehensive report to the Commission at its 1983 session.

I fully agree with Professor Franck that the reports presented on behalf of the Secretary-General by the Under-Secretaries-General Gobbi and Ruedas to the 1983 and 1984 sessions of the Commission on Human Rights largely contrast in tone and contents with most of the reports prepared by rapporteurs and working groups on other human rights situations and notably on Chile. In this connection it needs to be stressed that, insofar as the Chilean and Polish cases provide evidence of a "double standard," the respective investigators had a completely different perception of their role. While the investigators into the Chilean situation were mainly mindful of their function and the objective to present the hard human rights facts on the basis of all available and reliable evidence, the UN Secretary-General in approaching any human rights situation, including that of Poland, would tend to take other considerations into account than those exclusively related to human rights. A straightforward public stand by the Secretary-General on a particular human rights situation may very well jeopardize his other functions vis-à-vis the country concerned and his role as a negotiator and conciliator. This may partly explain the timidity of the two reports on Poland which were, in the appreciation of some interested observers, no less than a whitewash. In a way, the Secretary-General was caught in a dilemma between a particular human rights function entrusted to him by the Commission on Human Rights and the general diplomatic and political functions inherent in his office. The two UN reports on Poland clearly demonstrate that the Secretary-General had to make compromises in the face of that dilemma. But even if one duly recognizes the Secretary-General's dilemma, this cannot confuse the clear impression that the human rights mandate entrusted to the Secretary-General by the Commission on Human Rights was not carried out expeditiously and properly. Already some procedural facts may speak for themselves. The Commission adopted the relevant resolution concerning Poland on 10 March 1982 (later confirmed by the Economic and Social Council on 7 May 1982), but it was with great delay, not earlier than on 21 December 1982 when the next session of the Commission was imminent, that the Secretary-General announced that he had designated Under-Secretary-General Gobbi as his representative (UN Doc. E/CN.4/1983/16, para. 4). This is certainly no proof of an active and urgent interest of the Secretary-General in the Polish case. Leaving the Gobbi report for what it was, the report presented in 1984 by Under-Secretary-General Ruedas was in many respects highly amazing. It squarely stated that the Secretary-General had not found it possible to give full effect to the mandate entrusted to him, viz., to update and complete the thorough study of the human rights situation in Poland and to present a comprehensive report to the Commission (UN Doc. E/CN.4/1984/26, para. 13). The reason adduced for the failure to give full effect to the mandate was

the separation of Under-Secretary-General Gobbi from UN services and the subsequent need for his replacement. In my view this argument is neither valid nor convincing. The Secretary-General has the primary and ultimate responsibility that tasks entrusted to him be carried out effectively. He cannot help it if governments fail to cooperate, but changes within his own staff may not be legitimately adduced as a reason for inadequate performance of duties.

While it cannot be denied that many member states of the United Nations practiced a "double standard" in their appreciation of the cases of Chile and Poland, the Secretary-General's role in the Polish case was a dubious one inasmuch as he prepared in his reports a suitable ground for virtually dropping the matter. It is not difficult to understand the delicate position of the Secretary-General but, taking into account the particular human rights mandate he had received, I would not go so far as Professor Franck to attribute to the Secretary-General a certain degree of resourcefulness and courage in the Polish case.

It is significant and revealing that the current "double standard" debate in which the United States plays such a vocal role, serves essentially political and ideological purposes in the context and the ramification of East-West rivalries. That debate scarcely focuses on other apparent discrepancies and inconsistencies in the handling of human rights situations. A glaring and troubling case in point was the situation in Argentina under the military dictatorship after 1976. While forceful UN action was largely targeted on Chile, neighboring Argentina with a degree of terror and a level of gross violations of human rights going well beyond Chilean proportions, never figured explicitly on the human rights agendas of the United Nations. It was only by way of indirect action, through the adoption of resolutions on the general issue of enforced or involuntary disappearances and the creation of a working group with a global mandate for "disappeared" persons, that the Argentinean situation could be tackled. For an in-depth analysis of the "double standard" issue, a comparison between the Chilean and Argentinean cases seems to be at least as pertinent as a comparison between the Chilean and Polish cases.

As a final remark I would submit that, even if it is true that the United States has within its own constitutional domain a strong sense for and commitment to equal protection and fair standards of justice, the standards practiced by the present United States administration in assessing human rights violations in other nations are by no means less political and less biased than the standards applied by the majority of the UN membership.

THEO C. VAN BOVEN
University of Limburg, the Netherlands

Act of State and the Restatement

TO THE EDITOR IN CHIEF:

Professor Halberstam does not like the act of state doctrine, and thinks the reporters of the *Restatement* shouldn't either.[1] She thinks the present

[1] Halberstam, *Sabbatino Resurrected: The Act of State Doctrine in the Revised Restatement of U.S. Foreign Relations Law*, 79 AJIL 68 (1985).