Dag Hammarskjöld, the United Nations and the Rule of Law in Today's World

Lecture

by

Dr Hans Corell

Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations

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Allow me first to express my warmest thanks for the kind invitation to deliver this lecture at an institution recently named after Dag Hammarskjöld – the Dag Hammarskjöld University College of International Relations and Diplomacy.

The title of my presentation is “Dag Hammarskjöld, the United Nations and the Rule of Law in Today's World”. My main focus must of course be on the rule of law in today's world. However, out of consideration for the many students present in the auditorium, who may not be so familiar with the second Secretary-General of the United Nations, I have been asked to focus also on Dag Hammarskjöld’s person.

Dag Hammarskjöld was born in 1905. His father was a judge and later governor. Between 1914 and 1917 his father was Prime of Minister Sweden. Dag took degrees in humanities, economics and law. In 1934, he took a doctoral degree in economics. He had a distinguished career in the Swedish civil service and government office, culminating in 1951, when he became the Deputy Foreign Minister. He took up his position as the Secretary-General of the United Nations in April 1953 and served in this position until his death in a plane crash outside Ndola in Northern Rhodesia (today's Zambia) on 18 September 1961.

There are many books written about Dag Hammarskjöld, including, in particular by persons who served with him during his tenure at the UN. One of the most renowned biographers is Brian Urquhart, who served in the United Nations Secretariat from 1945 until his retirement in 1986, the last 14 years as Under-Secretary-General for Special Political Affairs.¹

Personally, I never met Dag Hammarskjöld in spite of the fact that I was a student at his hometown Uppsala in the late 1950s and early 1960s. However, I was present as a steward in Uppsala Cathedral at his funeral in September 1961. Since then, I have often reflected on Dag Hammarskjöld and his life. As so many others, I read his book Markings when it was published shortly after his death.²

Let me on this occasion quote one of the senior lawyers in the United Nations Office of Legal Affairs with whom Dag Hammarskjöld worked very closely, namely Oscar Schachter. In an article, published in the American Journal of International Law in January 1962, Schachter wrote:³

“In the tributes paid him there was universal recognition of his extraordinary personal qualities: the depth and brilliance of his intellect, his strength of

spirit, dedication, courage, and incredible stamina. He was that rare, indeed almost incomparable, combination of a man who could act with energy, boldness and consummate skill in meeting the harsh conflicts of our time, and at the same time could lead a life of inner contemplation and aesthetic experience. For those privileged to work closely with him, he had a contagious vitality and zest which, even in the most discouraging moments, inspired renewed effort. He brought to these personal qualities a tough-minded awareness of political realities and a talent for creative political innovation. The result was an era of international action in which the United Nations moved from the plane of words to that of deeds in facing some of the most perilous crises of this generation. It may well be that, with the death of Mr. Hammarskjöld, this era has come to a close, but it is not likely that its example will be forgotten.”

Schachter then goes on to discuss Dag Hammarskjöld and the relation of law to politics. It should provide interesting reading to the students.4

The Preamble of the Charter of the United Nations states that the responsibility of the Organization is “to save succeeding generations from the scourge of war”. In his final Annual Report to the General Assembly in 1961, Dag Hammarskjöld argued that this objective was to be progressively achieved via the international community’s realization of four fundamental principles, namely:5

(i) equal political rights, both in terms of sovereign equality and individual respect for human rights and fundamental freedoms;
(ii) equal economic opportunities, thereby promoting higher standards of living through the creation of conditions conducive to development and economic and social advancement;
(iii) a firm rule of law framework underlying the actions and activities of the international community; and
(iv) the prohibition of the use of force contrary to the common interest of the international community.

In my short lecture today – I have been asked to speak for some 30 minutes to give ample room for questions and answers – I intend to touch briefly on the first, second and fourth principles while the main focus will be on the third element – the rule of law in which I include also peaceful settlement of disputes6 – without which in my view the other three will not be attainable.

But let me start by setting the scene, as it has changed dramatically since the UN was established in 1945 and since Dag Hammarskjöld passed away 50 years ago.

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4 In this context I would also like to recommend to the students a brief essay by Ove Bring, *The Hammarskjöld Approach to International Law*. In: *Dag Hammarskjöld and Global Governance*. Ed. Henning Melber. The Dag Hammarskjöld Foundation (2011). Also available at [www.dhf.uu.se](http://www.dhf.uu.se).
6 Cf. Article 33 of the UN Charter.
Originally, the UN had 51 Members. In 1953, when Dag Hammarskjöld took up his position, there were 60 members. When he died in 1961, there were 104 members. Today, the Organization has 193 members.  

This increase in membership has been accompanied by a tremendous development in many fields, not least in the fields of science and technology.

In addition, there has been a dramatic rise in the world population. In 1945, we were about 2 billion. We are now 7 billion. By mid-century the world population is expected to be 9.3 billion.

It goes without saying that, in comparison, today's world is literally a world of difference when it comes to administering the United Nations and its members.

Let us now look at Dag Hammarskjöld’s four fundamental principles.

**Equal Political Rights**

With respect to the first principle – equal political rights, both in terms of sovereign equality and individual respect for human rights and fundamental freedoms – there has been a tremendous development over the last 50 years. Dag Hammarskjöld could make reference to the 1948 Universal Declaration of Human Rights, and he was certainly fully aware of the European Convention on Human Rights, adopted by the Council of Europe in 1950.

However, today there are numerous human rights treaties, most prominently the two Covenants from 1966, namely the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. In the wake of the two Covenants a great number of treaties for the protection of human rights have been adopted, the latest being the International Convention for the Protection of All Persons from Enforced Disappearance from 2006.

In addition, there are regional conventions and, most importantly, regional courts, that can adjudicate disputes with respect to how states honour their obligations under some of these treaties. In Europe we have the European Court of Human Rights with its seat in Strasbourg.

Certainly, much remains to be done for the protection of human rights, and, sadly, violations are committed also by states from which we have reason to expect a better performance. However, all in all, there has been a remarkable development in this field and if states respected the commitments they have already made, the world would certainly be a different place.

**Equal Economic Opportunities**

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With respect to the second principle – equal economic opportunities, thereby promoting higher standards of living through the creation of conditions conducive to development and economic and social advancement – much remains to be done. Addressing poverty is one of the Millennium Development Goals.\(^\text{10}\) In spite of positive trends, too many people in the world still live under very poor conditions. There is still famine in many places, and the access to water is increasingly becoming a major issue.

It is true that many states do make efforts to assist people who live under less fortunate circumstances, and Official Development Assistance is taken very seriously in many capitals.

In this context we should also be aware that the business community can contribute. If business observes the standards that are now expected from this community in accordance with the Global Compact,\(^\text{11}\) and the standards of Corporate Social Responsibility that are now gradually being implemented by serious actors in this field, business could make a great contribution to a positive development.\(^\text{12}\)

An important factor here is foreign direct investment, which by far surpasses the Official Development Assistance.

In this area there is also a connection with the idea of transferring financial resources in order to assist developing countries in addressing issues connected to climate change. In the Bali Action Plan\(^\text{13}\) it was foreseen that major transfers of financial resources would be made to these countries. However, very little has happened after the meetings in Copenhagen in 2009 and Cancún in 2010. Let us see what will be the outcome of the 17th Conference of the Parties to the United Nations Framework Convention on Climate Change, which opened yesterday in Durban.

This whole issue also has an ethical component, related to the way in which we lead our lives around the globe. One indicator is the release of CO\(_2\) per capita in the world. May I suggest that you study this question and discuss it in a physical, political and legal perspective at your University.

*The Prohibition of the Use of Force*

With respect to the fourth principle – the prohibition of the use of force contrary to the common interest of the international community – we have seen a positive development, but much remains to be done. In the news, the reports of use of force in violation of this principle are constant companions. The difference in relation to the

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\(^{11}\) See [http://www.unglobalcompact.org/](http://www.unglobalcompact.org/).


time when Dag Hammarskjöld was Secretary-General of the United Nations may be that conflicts between states are less common, while intrastate use of force is a tragic fact.

Over the last few months we have all followed intensely the development in northern Africa and the Middle East. The so-called “Arab Spring” has brought about dramatic changes, and we are all hoping that people in these regions will gain their freedom and will be allowed to live in dignity in their respective countries.

The two main elements under this heading that need attention at the highest political level are disarmament, in particular in the field of nuclear arms, and responsibility to protect. A determined action is needed, in particular by the UN Security Council, when people are subjected to genocide, war crimes, ethnic cleansing and crimes against humanity.  

The Rule of Law

This brings me to the third and main part of my presentation – a firm rule of law framework underlying the actions and activities of the international community.

Here, I must confess that I was in a bit of a quandary. As I mentioned, I was asked to give a fairly short address. The question I put to myself was whether I should reiterate what I have said so many times in the past about the need for the rule of law or whether I should refer to those addresses, which are easily available on the web, and rather use this moment to challenge the audience to take a closer look at the performance of states on this important point. I decided on the latter approach.


Let me just summarise. An important point of departure is the preamble to the 1948 United Nations Universal Declaration of Human Rights. A famous paragraph in this preamble reads:

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”

The meaning of the English expression “rule of law” can always be discussed. There are several ways in which you can define the concept and there is ample literature

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14 See paragraphs 138 and 139 in the 2005 World Summit Outcome, General Assembly resolution A/RES/60/1.
15 Available at http://untreaty.un.org/ola/media/info_from_lc/Vienna_24_2_04final.doc.
available. The World Justice Project, which I will come to in a moment, applies the following definition:

1. The government and its officials and agents are accountable under the law;
2. The laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property;
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient;
4. Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

For my part, I always maintain that four elements are needed to establish the rule of law, namely: (1) democracy; (2) proper legislation meeting relevant international standards; (3) institutions – administrative as well as judicial – to administer the law; and, most importantly, (4) individual civil servants and other officials, including judges, with the necessary knowledge and integrity to handle this administration.

I just mentioned the World Justice Project. Let me refer you to this Project and its Rule of Law Index.

The mission of the World Justice Project is to lead a global, multidisciplinary effort to strengthen the rule of law for the development of communities of opportunity and equity. It is based on two complementary premises: (1) the rule of law is the foundation for communities of opportunity and equity; and (2) multidisciplinary collaboration is the most effective way to advance the rule of law.

I should of course disclose that I am one of the Honorary Chairs of the Project. Within the Project, a Rule of Law Index has been developed.

The Rule of Law Index 2011 report is the second in an annual series and includes a total of 66 countries and jurisdictions, as well as methodological updates. Among the countries indexed are Croatia and Sweden.

As it appears from the results, it is necessary for Croatia take action in several respects. The same goes for my country, even if Sweden came out fairly positively in the analysis. However, in an op-ed in the leading Swedish daily I have challenged the government and other actors in my country to carefully analyse the results in the Index and address the issues that need to be attended to. Maybe a similar approach should be taken in Croatia?

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18 See http://www.worldjusticeproject.org/about/.
19 See http://www.worldjusticeproject.org/sites/default/files/Croatia_CP.pdf.
It is important to be aware of the fact that developing the rule of law is not a one-time exercise. In reality, it is a major effort that will never be completed. It cannot be completed, and it must not be said to be completed for the simple reason that it has to reflect the current needs and circumstances at any time. And most importantly: the rule of law must be applied both at the national level and the international level.

Having said this, there is a very serious aspect that I must highlight. It is a sad fact that the protection of human rights and thus the rule of law has backtracked in several respects in later years. If we analyse the situation, it is clear that what happened on 9 September 2001 – commonly referred to as “9/11” – is a turning point.

In the wake of this horrible crime, which I witnessed from my office on the 34th floor in the UN building, actions were taken, both legislative and administrative, that are not in conformity with international human rights standards. The misnomer “war on terror” has caused great damage by confusing the distinction between human rights law and humanitarian law. To quote the Madrid Agenda Against Terrorism, adopted on 11 March 2005 by the Club de Madrid, an organisation of former heads of state and government:21

“Any successful strategy for dealing with terrorism requires terrorists to be isolated. Consequently, the preference must be to treat terrorism as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law.”

The fight against terrorism has entailed serious violations of human rights standards that flow from the international agreements referred to in the foregoing and the case law of the institutions established to monitor and implement the human rights standards. Unfortunately, my own country is among those that have failed to stand the ground with determination here.

A most regrettable occurrence is a case of so called rendition, where Swedish officials handed over two Egyptian asylum seekers, Ahmed Agiza and Mohammed al-Zari, to representatives of the U.S. (n.b. the CIA) at a Swedish airport from where they were flown to Cairo, where both of them were tortured.

In May 2005, the Committee against Torture (CAT) concluded that Sweden was in breach of both substantive and procedural provisions of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in respect of the summary expulsion of Ahmed Agiza. Article 3 deals with the prohibition on expelling, returning or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being tortured or otherwise ill-treated (refoulement).22

In a decision of 10 November 2006, the UN Human Rights Committee found that Sweden’s involvement in the transfer by the CIA of Mohammed al-Zari to Egypt breached the absolute ban on torture, despite assurances of humane treatment provided by Egyptian authorities prior to the rendition.²³

In exemplifying violations of human rights standards, I felt obliged to mention these cases, which should be thoroughly investigated, since I often criticise other states for violating human rights standards and have to be objective.

The same objectivity should be applied by states. As I said in my farewell address to the UN, in order for a state to criticise others with legitimacy, that state must pay attention to its own observance of human rights. I suspect that no state is above criticism in this field.

Looking to the future, there are certain developments that I note with disbelief. By way of example, I was extremely concerned when I read New York Times on 14 November 2011. According to the paper, three of the contenders for one of the political parties’ nomination for president have come out in favour of authorising waterboarding in order to extract information – in other words torture.²⁴ In my view, this development should be followed closely by governments in Europe. What if they have to interact with a U.S. President with this attitude? There are also other situations where Europe has to come together and speak up as it should have done after “9/11”. As a European, I was ashamed – and not only because of the way in which European countries collaborated in the cases of rendition.

At the same time, we should never forget that the Americans came to our rescue in Europe twice during the last century – during the two world wars.

A closely related problem is corruption. It is like a poison that destroys so many of our efforts to establish the rule of law and to assist developing countries in enhancing government and achieving better living conditions for their populations.

I was invited to attend a conference on the rule of law, organised in St Petersburg in May at the invitation of President Medvedev. We were several hundred participants. It was an interesting experience, and it was a privilege to listen to the many interventions. At the conference, I was approached by young Russian lawyers who complained bitterly about the level of corruption in their country, including in the judiciary. They also told me that if they tried to do something about it, take concrete action, they risked becoming so unpopular that clients may not want to engage them.

Also here, we have an area where we must be observant in all countries. In this work we should use the Corruption Perceptions Index that Transparency International provides.²⁵

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The purpose of my highlighting these three occurrences – from Sweden, the United States of America and the Russian Federation – is just to exemplify what we must focus on in developing societies under the rule of law.

With respect to the international level, much remains to be done. In the past, I have in this context focused in particular on the members of the Security Council, n.b. the five permanent members. It is imperative that they bow to the UN Charter for the simple reason that they are entrusted with the primary responsibility for the maintenance of international peace and security.

When permanent members of the Security Council violate the Charter, the observance of which they are mandated to supervise, it sends a terrible message to the rest of the world. The situations that I have highlighted in the past are the armed attacks on Iraq in 2003 and Georgia in 2008. I refer in this context to a letter that I sent to the members of the United Nations on 10 December 2008, entitled “Security Council reform: Rule of Law More Important Than Additional Members”.

At present, the absence of a unanimous clear and firm condemnation by the Security Council of the violence applied by the Syrian regime against its own citizens is deplorable.

Dag Hammarskjöld

Let me now return to Dag Hammarskjöld and ask the question what he would have said and done if he had been confronted with the issues that the UN is facing today.

I think that it would be presumptuous on my part to suggest any particular manner in which he would have approached the situation. However, I am convinced that with the integrity and determination that he demonstrated during his tenure as UN Secretary-General, he would not have hesitated to take action.

On the occasion of a commemorative event on the 48th anniversary of Dag Hammarskjöld’s death at the Dag Hammarskjöld Foundation at Uppsala on 18 September 2009, I reflected on his famous address at Oxford University on 30 May 1961, entitled The International Civil Service in Law and in Fact.

In my reflections under the title The Need for the Rule of Law in International Affairs, I attempted to highlight the most salient elements in Dag Hammarskjöld’s reasoning. Allow me to quote the following:

“If the international civil servant knows himself to be free from such personal influences in his actions and guided solely by the common aims and rules laid down for, and by the Organization he serves and by recognized legal principles, then he has done his duty, and then he can face the criticism which, even so, will be unavoidable. As I said, at the final last, this is a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive him into positions of conflict with this or that interest, then that conflict is a sign of his neutrality and not of his failure to observe neutrality – then it is in line, not in conflict with, his duties as an international civil servant.”

In my reflections, I ventured to suggest that what the United Nations needs are persons who can make assessments and decisions in accordance with the clear guidelines that follow from Dag Hammarskjöld’s address. Based on my experiences during my 10 years as the Legal Counsel of the UN, I also believe that it is inevitable that the Secretary-General from time to time is likely to have an argument with one or more member states and notably the major powers.29

I am not suggesting that this is something that the Secretary-General should be looking for. But it is the unavoidable result of the Secretary-General performing the duty that follows with the position. In conclusion I maintained:

“If this situation should occur, the Member States should not simply jump into conclusions that produce confrontation but rather step back for a moment and reflect. Is this situation not rather a sign of health – that the Secretary-General is doing his or her job? On second thought, maybe the firm stand of the Secretary-General is in both the short and long term interest of the Member States, including those that may have been displeased in the particular situation.”

I would now like to close by making a reference to Dag Hammarskjöld’s Markings that I referred to in the beginning.

I had the honour of being invited to make a few remarks in commemoration of Dag Hammarskjöld at the opening of the 8th Annual Conference of the Hague Academic Coalition in the Peace Palace in The Hague on 9 November 2011.30 At the ceremony, I recalled the events in September 1961 and also my impressions from reading the Markings.

In my remarks, I quoted and commented on one of the poems in the Markings that had caught my attention in particular and which in fact became a lodestar to me. It also

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became part of my words of welcome to new staff members in the United Nations Office of Legal Affairs. Let me end by sharing this quote from the *Markings* with you:

“Openness to life grants a swift insight – like a flash of lightning – into the life situation of others. A must: to force the problem from its emotional sting into a clearly conceived intellectual form – and act accordingly.”

I invite all of you to read my short remarks at the Peace Palace in the hope that they will encourage the present and future generations of students at this University to read Dag Hammarskjöld’s *Markings* and study his other marks in history.

Thank you!