

*Article by former UN Legal Counsel Hans Corell in the Swedish daily Dagens Nyheter on 10 May 2013 Translation from the Swedish by the author*

## **"Human rights under threat after 9/11" <sup>1</sup>**

**Sad turn of events. It is wrong to think that one can "make war" on terrorism. Torture and terrorism are crimes that like other crimes must be fought through law enforcement. But after 11 September 2001, the question of protection of human rights has taken a sad turn, writes Hans Corell, former Legal Counsel of the United Nations.**

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On 24 September 2012, the General Assembly of the United Nations, with the participation of attending Heads of State and Government, adopted a resolution on the rule of law at the national and international levels. In the resolution, they affirm their solemn commitment to the purposes and principles of the Charter of the United Nations, international law and justice, and to an international order based on the rule of law – “which are indispensable foundations for a more peaceful, prosperous and just world.”

They further declare that the rule of law applies to all states equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions.

The resolution represents a powerful confirmation of what the members of the UN are already obliged to observe in accordance with applicable international law. But what about in real life?

In February, we heard President Obama's fifth State of the Union address. For the fifth time he avoided even mentioning the UN in the speech. Certainly not because he would not want to. But he has no doubt been dissuaded because in the U.S. today the UN is so slandered that a mention could have political consequences.

And, certainly, the UN could be criticized. But who bears the main responsibility: the secretariat or the member states? The answer is obvious: the member states!

The situation in Syria is today the most frightening example of the UN's inability to act. If the declaration just mentioned is put in practice, one realizes that the Security Council from the start should have made a unanimous and clear indication that there will be consequences if abuses against the civilian population do not stop immediately. In this case, the main responsibility for this failure rests with China and Russia – two states that are far from the rule of law and its indispensable component democracy.

In applying the UN Charter, it is imperative that states use the same yardstick. In other situations, such as in the case of Israel and Palestine, the responsibility for the UN's inability to act rests with Western democracies, especially the United States.

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<sup>1</sup> As is customary, the title was set by the paper.

In the United States there is presently an intense discussion about the use of so-called drones and “targeted killings.” It is not the use of drones that is the problem but how they are used. According to the laws of war it is permitted in combat to attack and kill combatants on the battlefield or in a combat zone. But to make an administrative decision that a particular or certain suspected terrorists anywhere in the world be killed, and then perform the act with a drone operated from the other side of the world makes one think of something completely different: murder!

And Guantánamo is still in use – the detention camp in Cuba, established by President Bush, where the most fundamental rules of human rights are systematically violated.

It is sad that the advances made in the field of human rights after World War II are now under serious threat. After the attack on the World Trade Center on 11 September 2001, the matter has taken a different turn.

On 5 February this year, the Open Society Foundations published the report “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition.” The report is a frightening account of how 54 countries, including Sweden, assisted the American CIA with extraordinary renditions and secret detention of terrorist suspects. The common denominator in the 136 cases described in the report (the total number is not known) is that those affected were subjected to torture or other inhuman or degrading treatment.

Among other things there is reference to the fact that Sweden in May 2005 was criticized by the UN Committee against Torture for having in December 2001 handed over Ahmed Agiza to the CIA that brought him to Egypt where he was tortured. And in November 2006, the UN Human Rights Committee concluded that Sweden's involvement when the CIA at the same time sent Mohammed al-Zari to Egypt was a breach of the absolute ban on torture.

At its annual meeting in June 2008, the InterAction Council of Former Heads of State and Government addressed the issue of "restoring international law." The Council is an independent international organization of former heads of state and government. President this year was Sweden's former Prime Minister Ingvar Carlsson.

In the Final Communiqué of the meeting, the 30 participants from all parts of the world underlined that the challenges mankind faces must be addressed through multilateral solutions within a rule-based international system. It also called on all states to devote resources to education on global ethics, the foundations of international law and the meaning of the rule of law at the national and international level.

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund and the Hague Institute for the Internationalisation of Law in the Netherlands took note of this appeal. The Inter-Parliamentary Union also got involved.

The initiative resulted in that there is now a short guide to assist busy politicians to quickly orient themselves in the field: “Rule of Law – A guide for politicians.” Its focus is on the politicians' own role – how they can help to promote the rule of law. Translations into Arabic, Bahasa (Indonesia), Chinese, Farsi, Japanese, Portuguese and Spanish are underway. The Romanian is complete. More translations will follow in the near future.

A Swedish translation was published in January this year: “Rättsstaten – En handledning för politiker.” It has been sent to the Speaker and to the leaders of all parties in the Riksdag (Parliament) in the hope that it will be read and studied by politicians at all levels in our country.

The idea is that the link to the Guide be disseminated via the Internet so that individual politicians – but also others, for example journalists – around the world on their own can print it out and read it in a language that he or she understands.

In fact, the link should be sent to every member of the political parties and published in the media that the parties and other organizations use.

In this context it should be noted that one of the worst enemies of the rule of law is corruption. There are many links here – not just to the impacts of corruption on business but also on the protection of human rights.

The importance of the principles of the rule of law permeating the states of the world cannot be overemphasized. Sweden, like other Western democracies, especially the great powers, must lead by example here.

A prerequisite for the principle of the rule of law, which is based on democracy and respect for human rights, to be realized is that individual politicians at different levels around the world have insight into what is required and are clear about the relationship between the rule of law at the national and international levels. Politicians who serve in their country's government or legislature have a very special responsibility here.

Another important insight – a matter of course one would think – is that one must not engage in torture or believe that one can "make war" on terrorism. Torture and terrorism are crimes that, like other crimes, must be fought through law enforcement.

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#### **Additional reading.**

- **The UN General Assembly resolution of 24 September 2012:** search A/RES/67/1. Direct link to the English version: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/478/66/PDF/N1247866.pdf?OpenElement>
- **Rule of Law – A guide for politicians:** webpage of the Raoul Wallenberg Institute <http://rwi.lu.se> under “Publications”.
- **The Final Communiqué of the 2008 annual meeting of the InterAction Council:** <http://www.interactioncouncil.org/final-communiqu-29>

This article is available at <http://www.havc.se/res/SelectedMaterial/20130510humanrightsonderthreat.pdf>