
Dag Hammarskjöld, the United Nations and the rule of law in today's world

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This chapter will focus, first, on Dag Hammarskjöld as a person and, second, the relevance of the principles outlined in his final Annual Report to the General Assembly for the United Nations and the rule of law in today's world. It will then discuss briefly the ethics of an international civil servant in light of Hammarskjöld's thinking, ending with some brief conclusions.

5.1 Dag Hammarskjöld

Dag Hammarskjöld was born in 1905. His father was a judge and later governor. Between 1914 and 1917 his father was Prime Minister of 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 his most renowned biographers is Brian Urquhart, who served in the United Nations Secretariat from 1945 until his retirement in 1986,

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the last fourteen 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

Of particular interest in this context is the following quote from Oscar Schachter, one of the senior lawyers in the United Nations Office of Legal Affairs with whom Dag Hammarskjöld worked very closely:

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.³

Schachter then goes on to discuss Dag Hammarskjöld and the relation of law to politics.⁴

The Preamble of the Charter of the United Nations states that the responsibility of the organisation 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 realisation of four fundamental principles, namely:

¹ B. Urquhart, *Hammarskjöld* (1972, reprint 1994). See also Chapter 3, this volume.

² Dag Hammarskjöld, *Markings*. Translated by L. Sjöberg and W.H. Auden (1964); 1983 edition.

³ O. Schachter, 'Dag Hammarskjöld and the Relation of Law to Politics' (1962) 56 *AJIL* 1–8.

⁴ *Ibid.* On Hammarskjöld's approach to international law, see Chapter 9, this volume.

- (1) equal political rights, both in terms of sovereign equality and individual respect for human rights and fundamental freedoms;
- (2) equal economic opportunities, thereby promoting higher standards of living through the creation of conditions conducive to development and economic and social advancement;
- (3) a firm rule of law framework underlying the actions and activities of the international community; and
- (4) the prohibition of the use of force contrary to the common interest of the international community.⁵

5.2 Reflections on Dag Hammarskjöld's principles

In the following, I 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 more than fifty years ago. Originally, the UN had fifty-one members. In 1953, when Dag Hammarskjöld took up his position, there were sixty members. When he died in 1961, there were 104 members. Today, the organisation has 193 members.⁷ 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 two billion. We are now ~~billion~~ billion. By mid-century the world population is expected to be 9.3 billion.⁸ Undoubtedly, today's world is literally a world of difference when it comes to administering the United Nations and its members. However, Dag Hammarskjöld's four fundamental principles are just as relevant today as they were when he framed them. Let us now reflect on them.

⁵ Introduction to the Annual Report of the Secretary-General on the Work of the Organization 16 June 1960–15 June 1961, New York, 17 August 1961, UN Doc. A/4800/Add. 1, see Annex 1, this volume.

⁶ See Article 33 of the UN Charter. ⁷ See www.un.org/en/members/growth.shtml.

⁸ See www.un.org/esa/population/unpop.htm.

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5.2.1 *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 fifty 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: 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 2006.⁹ 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 there is 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.

5.2.2 *Equal economic opportunities*

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.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

⁹ See the United Nations Treaty Collection at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

¹⁰ See www.un.org/millenniumgoals/reports.shtml.

who live under less fortunate circumstances, and Official Development Assistance is taken very seriously in many capitals.

In this context it should also be emphasised that the business community can contribute. If business observes the standards that are now expected from this community in accordance with the Global Compact,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.¹² An important factor here is foreign direct investment, which by far surpasses the Official Development Assistance.

In this field 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 Plan¹³ 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, in Cancún in 2010, and in Durban in 2011. 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 CO₂ per capita in the world.¹⁴

5.2.3 *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 here. In the news, the reports of use of force in violation of this principle are constant companions. The difference in relation to the 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.

Since 2011 we have all followed intensely the development in northern Africa and the Middle East. The so-called ‘Arab Spring’ has brought about

¹¹ See www.unglobalcompact.org/.

¹² See in particular ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, Human Rights Council, Doc. A/HRC/17/31 of 21 March 2011, adopted by the UN Human Rights Council, at www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf. See also www.unglobalcompact.org/news/130-06-17-2011.

¹³ See UN Framework Convention on Climate Change, FCCC/CP/2007/L.7/Rev.1, under 1/CP.13, at http://unfccc.int/meetings/bali_dec_2007/meeting/6319.php.

¹⁴ See, for example, <http://data.worldbank.org/indicator/EN.ATM.CO2E.PC>.

dramatic changes, and we are all hoping that peoples 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.¹⁵

5.2.4 *The rule of law*

In the past, I have focused extensively on the need for a firm rule of law framework both at the national and international levels. A case in point is my farewell lecture to the United Nations on 24 February 2004, entitled 'Prospects for the Rule of Law among Nations'.¹⁶

An important point of departure in discussing the rule of law 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 one can define the concept and there is ample literature available.¹⁷ The World Justice Project 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;

¹⁵ See paragraphs 138 and 139 in the 2005 World Summit Outcome, General Assembly Resolution A/RES/60/1.

¹⁶ Available at http://untreaty.un.org/ola/media/info_from_lc/Vienna_24_2_04final.doc. For a discussion, see also H. Corell, 'A Challenge to the United Nations and the World: Developing the Rule of Law' (2004) 18 *Temple International & Comparative Law Journal* 391–402, at www.havc.se/res/SelectedMaterial/20040331achallengetotheuntemple1.pdf.

¹⁷ See, for example The Hague Institute for the Internationalisation of Law, Rule of Law Bibliography, at www.hiil.org/assets/288/1-8645-Microsoft_Word_-_HIIL_n8604_v4_Rule_of_Law_bibliography.pdf.

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.¹⁸

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.

The mission of the World Justice Project, just mentioned, 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.¹⁹

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

¹⁸ See www.worldjusticeproject.org/about/.

¹⁹ Within the World Justice Project, a Rule of Law Index has been developed. It is a new quantitative assessment tool designed by the Project to offer a detailed and comprehensive picture of the extent to which countries adhere to the rule of law in practice. It can be accessed at www.worldjusticeproject.org/rule-of-law-index/. Reference should in this context also be made to 'Innovations In Rule of Law', published by the Project and others on 26 June 2012 and accessible at [www.hiil.org/data/sitemanagement/media/WJP&HiiL%20UN%20Report-UNGA%20Event\(1\).pdf](http://www.hiil.org/data/sitemanagement/media/WJP&HiiL%20UN%20Report-UNGA%20Event(1).pdf).

to as '9/11' – is a turning point. In the wake of this horrible crime, which I witnessed from my office on the thirty-fourth floor of 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:

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.²⁰

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 their 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 United States (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*).²¹ 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.²²

²⁰ See <http://summit.clubmadrid.org/agenda/the-madrid-agenda.html>.

²¹ Decision of the Committee against Torture (CAT/C/34//D/233/2003), Thirty-fourth session, 24 May 2005, at www.unhchr.ch/tbs/doc.nsf/MasterFrameView/4dec90a558d30573c1257020005225b9?Opendocument.

²² Communication No 1416/2005: Sweden. 2006–11–10. CCPR/C/88/1416/2005, at www.unhchr.ch/tbs/doc.nsf/0/13fac9ce4f35d66dc12572220049e394?Opendocument.

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 is an obvious need to reform both the members of the United Nations and the organisation itself. In the past, I have argued that it is the members who need reforming the most.²³ This is still the situation. A more active and systematic approach is needed at the national level. The following should be clear to anyone who gives thought to world governance:

- Rule of law is necessary to create a society in which human beings can live in dignity with their human rights protected.
- Rule of law as it is (or must be) understood today can only exist in a democracy.
- There is a direct correlation between the rule of law and a state's ability to attract foreign and domestic investments, to address poverty, and to protect the environment.
- There is a need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation in order to achieve a sustainable peace.
- To enhance the rule of law in post-conflict societies, it is necessary to assist countries emerging from conflict.

An examination of the present situation demonstrates that much is being done in this field today. The question is, however, if there should not be a more active and systematic engagement to enhance the rule of law. This applies, in particular, to countries that need assistance before a conflict erupts; every country falling short in this respect is a potential source of conflict that eventually could threaten international peace and security. When UN peacekeepers have to be sent to a country or region it is in a sense addressing the symptoms of what is wrong. Conflicts invariably are caused by the absence of the rule of law and lack of protection of human rights.

²³ See H. Corell 'Who Needs Reforming the Most – the UN or its Members?' (2007) 76 *Nordic Journal of International Law* 265–279, also available at www.havc.se/res/SelectedMaterial/20071108corellwhoneedsreforming.pdf.

Obviously, the responsibility to make advances in the field of the rule of law rests with the states themselves and their governments. Member states of the United Nations should make a determined effort to systematically address the rule of law deficiency in today's world. But everybody should be encouraged to participate in this work, in particular, civil society and non-governmental organisations. These efforts should also be supported by intergovernmental organisations.

This brings me to the United Nations and the need to reform the organisation from a rule of law perspective. This can be done only with the full support of its members and in particular of its most powerful member. In addressing this dilemma in the past, I made reference to Dag Hammarskjöld's famous quote from a statement before the Security Council on 31 October 1956:

The principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people.²⁴

It should, however, be recognised that the rule of law has gradually become part of the day-to-day activities of the United Nations. The Brahimi Report focused on it.²⁵ In 2003, at the initiative of the United Kingdom, the rule of law was introduced as a distinct item on the agenda of the Security Council. In September 2004, the Secretary-General devoted his address to the General Assembly to the rule of law.²⁶ The Secretariat has also focused on these issues. The annual treaty event initiated by the Treaty Section of the UN Office of Legal Affairs is now a traditional ingredient in the high level meetings of the General Assembly in September every year, now also with the support of the 2005 Summit.²⁷ In this context should also be mentioned the 'Strategy for an Era of Application of International Law', which was adopted by the UN Senior Management Group and approved by the Secretary-General in June 2000.²⁸ Among

²⁴ See H. Corell, 'Reforming the United Nations'. (2005) 2 *International Organizations Law Review* 373–390, also available at www.havc.se/res/SelectedMaterial/2005iolrreformingtheun.pdf.

²⁵ See Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305 – S/2000/809, 21 August 2000, at www.un.org/peace/reports/peace_operations/.

²⁶ See 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies', UN Doc. S. 2004/616, 23 August 2004, at www.unrol.org/files/2004%20report.pdf.

²⁷ See 2005 World Summit Outcome Resolution, A/RES/60/1, ~~14 October~~ ^{16 September} 2005, para. 134(b). See also http://treaties.un.org/Pages/Publications.aspx?pathpub=Publication/TE/Page1_en.xml.

²⁸ See 'Strategy for an Era of Application of International Law: Action Plan', at http://untreaty.un.org/ola/action_planA.aspx.

other things, the programme recommended an increase in the assistance provided by the United Nations system to needy countries to enable them to participate in the international treaty framework.

Recognising the difficulties involved in domestic jurisdictions in realising this goal, the Secretary-General observed that, all too often, individuals and corporations find that they are denied the rights and benefits that international law and treaties provide. Sometimes national authorities refuse to recognise and respect their obligations under international law, even where the state has voluntarily subscribed to the relevant treaties. More often though, such authorities simply lack the necessary expertise or resources to ensure that their obligations are properly implemented and applied.²⁹

Against this background, every office, department, programme, fund and agency of the United Nations was requested to review its current activities and to consider what else it might do, within its existing mandate and given existing resources, to promote the application of international law. The focus should be on building national capacities to implement treaties more effectively by providing technical assistance to help governments implement their commitments under the treaties to which they are or might wish to become parties. A special effort was made to map all legal technical assistance provided by the United Nations system. A designated website was established for this purpose.³⁰

An important development within the United Nations was the adoption by the General Assembly of the 2005 Summit Resolution.³¹ In this resolution Member States recommitted themselves to actively protect and promote all human rights, the rule of law and democracy.³²

The 2005 Summit Resolution also contained a decision to establish a Peacebuilding Commission, and expressed support for the idea of establishing a rule of law assistance unit within the Secretariat.³³ Both of these entities are now established, the latter working under the Rule of Law Coordination and Resource Group.³⁴

²⁹ See Report of the Secretary-General on the work of the Organization, Supplement No. 1 (A/55/1) (2000), para. 278.

³⁰ See United Nations' Legal Technical Assistance Website, at www.un.org/law/technical/technical.htm.

³¹ See GA/RES/60/1, *supra* note 27.

³² Reference is made to paragraphs 11, 16, 21, 24 (b), 25 (a), 119 and 134 of the resolution.

³³ See GA/RES/60/1, paras. 97 and 134 (e).

³⁴ See www.un.org/en/peacebuilding/ and www.unrol.org/article.aspx?article_id=2.

Furthermore, a practice has now been established, according to which the Secretary-General submits Annual Reports on the UN rule of law activities. According to the Third Annual Report of the Secretary-General, the UN is providing rule of law assistance in over 150 Member States spanning every region of the world.³⁵ These activities take place in all contexts, including development, fragility, conflict and peacebuilding.³⁶ Reference should in this context also be made to the work performed by the United Nations Development Programme (UNDP).³⁷ In the wake of the Brahimi Report, it is now also being recognised that rule of law assistance is an essential tool to help maintain peace and security around the world.³⁸ As it appears from the Secretary-General's rule of law report just referred to, this activity has become a prominent feature in all peace operations.

The General Assembly has decided to convene a high-level meeting on the topic 'The rule of law at the national and international levels'³⁹ during the high-level segment of its 67th Session, i.e. in September 2012.⁴⁰ On this occasion, representatives of non-governmental organisations active in the field of the rule of law were invited to speak at the plenary. The high-level meeting resulted in a Declaration on the 'Rule of Law at the National and International Levels' which recognises that 'the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs', and 'all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law'.⁴¹

³⁵ See 'Third Annual Report on Strengthening and Coordinating United Nations Rule of Law Activities', Report of the Secretary-General (A/66/133), 8 August 2011, para. 2, at www.unrol.org/files/Third%20Annual%20Report%20of%20the%20Secretary-General.pdf.

³⁶ *Ibid.*, para. 2.

³⁷ See the UNDP Rule of Law Global Programme Annual Report 2011, entitled 'Strengthening the Rule of Law in Crisis-affected and Fragile Situations', at www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP%20Rule%20of%20Law,%20Annual%20Report_web%202011.pdf.

³⁸ See United Nations Peacekeeping, 'Rule of Law', at www.un.org/en/peacekeeping/issues/ruleoflaw.shtml.

³⁹ See also 'Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels', Report of the Secretary-General, UN Doc. A/66/749, 16 March 2012, at www.unrol.org/files/SGreport%20eng%20A_66_749.pdf.

⁴⁰ See GA Res. 66/102, 'The Rule of Law at the National and International Levels', UN Doc. A/RES/66/102, ~~13 January 2012~~, at www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/102.

⁴¹ See GA Res. 67/1, 'Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels', ~~30 November~~ 2012, para. 2, at http://unrol.org/files/Declaration%20HLM_A%20RES%2067%201.pdf.

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The Declaration emphasises 'the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding'. It stresses 'that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations'.⁴² Of particular interest is the commitment to ensure:

that impunity is not tolerated for genocide, war crimes and crimes against humanity or for violations of international humanitarian law and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice.⁴³

A closely related problem is corruption. It is like a poison that destroys many efforts to establish the rule of law and to assist developing countries in enhancing government and achieving better living conditions for their populations.⁴⁴ This is an area which requires attention in all countries. In this context, the Corruption Perceptions Index provided by Transparency International may be of use.⁴⁵

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, in particular 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'.⁴⁶ In this letter, I suggested that the permanent five members, who, because of their veto power, can block any amendment to the UN Charter, rather than considering at the present stage additional members of the Council, should adopt a binding declaration containing the following four elements:

⁴² *Ibid.*, para. 18. ⁴³ *Ibid.*, para. 22. ⁴⁴ See also para. 25 of GA Res. 67/1.

⁴⁵ Available at www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

⁴⁶ The text of this letter is available at www.havc.se/res/SelectedMaterial/20081210corellettertounmembers.pdf.

- To scrupulously adhere to the obligations under international law that they have undertaken and in particular those laid down in the Charter of the United Nations.
- To make use of their veto power in the Security Council only if their most serious and direct national interests are affected and to explain, in case they do use this power, the reasons for doing so.
- To refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state unless in self-defence in accordance with Article 51 of the Charter of the United Nations or in accordance with a clear and unambiguous mandate by the Security Council under Chapter VII.
- To take forceful action to intervene in situations when international peace and security are threatened by governments that seriously violate human rights or fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity or when otherwise the responsibility to protect is engaged.

Is this realistic? Does anyone believe that the permanent five members of the Security Council are prepared to take such a step? My response today would be: look at the pledges suggested in the letter and repeated here and compare them to the declaration on the rule of law adopted by the General Assembly on 24 September 2012.⁴⁷ Do the first three pledges not fall squarely within the framework of an international society under the rule of law? Is it too much to ask that the body entrusted with the primary responsibility for the maintenance of international peace and security bow to the very law they are set to supervise and apply? The fourth pledge may be a little more complex.

Let us take the situation in Syria as an example. 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. One of the points made in the letter just quoted is that the Council is actually in a formidable position to make a difference in the world if its members, and notably the permanent members, joined hands and agreed to adhere strictly to international law and in particular the UN Charter.

The inability of the Council to unite in the case of Syria is a painful illustration of its shortcomings. The fact that, on 16 February 2012, the General Assembly with overwhelming majority (137 votes in favour to 12 against,

⁴⁷ See *supra* note 41.

with 17 abstentions) adopted a resolution strongly condemning widespread and systematic human rights violations by the Syrian authorities,⁴⁸ demonstrates that there is a disconnect between the vast majority of the UN membership and the permanent members of the Security Council, in this particular case, China and the Russian Federation. A united stand by the Security Council would have sent a very powerful signal to the regime in Damascus – and to the allied forces and armed groups.

What is lacking is a determined effort by the Council to send, already at the outset, a strong unanimous message to the parties that what is happening in Syria is unacceptable in modern day society. The message should also have included an indication that further measures would be considered in case the violence did not stop. And why did the Council hesitate in sending the signal that those responsible for the international crimes committed in Syria will be brought to justice?⁴⁹ Compare this with the very clear contents of the 24 September 2012 Declaration on the Rule of Law.⁵⁰

To a long-time observer of the Council it is incomprehensible that the permanent five members seem to be unable to unite when people are being abused by their own governments. To maintain, in today's world, that such situations are internal matters is simply not acceptable. Irrespective of the reasons underlying the position by the two vetoing states, they could never excuse the fact that innocent people suffer. To be fair, the double standards applied by certain Western states, e.g. in relation to the ongoing conflict between Israel and Palestine, should be mentioned here too.

This short-sighted and shameful attitude actually breeds conflict instead of promoting an atmosphere where more and more people around the world will be allowed to participate in their governance in a meaningful way. The Security Council, and in particular the permanent five members, not only have the primary responsibility for the maintenance of international peace and security – they actually hold the key to international peace and security.

An interesting question is what Dag Hammarskjöld would have said, had he observed this situation while at the same time reading the 24 September Declaration of the General Assembly or the following

⁴⁸ See para. 2 of GA Res. 66/253 'The Situation in the Syrian Arab Republic', 16 February 2012. See also GA Res. 66/253 B, 'The Situation in the Syrian Arab Republic', 1 August 2012.

⁴⁹ In the 6849th Meeting of the Security Council Security Council on 17 October 2012, many speakers urged the Council to act on the crisis in Syria. See Press Release available at www.un.org/News/Press/docs/2012/sc10793.doc.htm.

⁵⁰ See paras. 22 and 23 of Res. 67/1.

paragraphs from the Preamble to GA Resolution 66/102 on ‘The rule of law at the national and international levels’:

Reaffirming its commitment to the purposes and principles of the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world, and reiterating its determination to foster strict respect for them and to establish a just and lasting peace all over the world,

Reaffirming that human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal ~~and~~ *by al and* indivisible core values and principles of the United Nations,

Reaffirming also the need for universal adherence to and implementation of the rule of law at both the national and international levels and its solemn commitment to an international order based on the rule of law and international law, which, together with the principles of justice, is essential for peaceful coexistence and cooperation among States,

...

Convinced that the promotion of and respect for the rule of law at the national and international levels, as well as justice and good governance, should guide the activities of the United Nations, and of its Member States.⁵¹

5.3 The ethics of an international civil servant in light of Dag Hammarskjöld’s thinking

Let us now focus on the question of what Dag Hammarskjöld would have said and done if he had been confronted with the issues that the UN is facing today. It would of course be presumptuous 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, I reflected on his famous address at Oxford University on 30 May 1961, entitled ‘The International Civil Service in Law and in Fact’.⁵² I attempted to highlight the most salient elements in Dag Hammarskjöld’s reasoning.⁵³ Among the most important conclusions in his address is that the responsibilities of the

⁵¹ See preamble, GA Res. 66/102, *supra* note 40.

⁵² Dag Hammarskjöld’s 30 May 1961 address is available at www.un.org/Depts/dhl/dag/docs/internationalcivilservant.pdf. See also www.un.org/Depts/dhl/events/lectures/civil_servant.htm.

⁵³ Lecture delivered at Uppsala on 18 September 2009 at a Commemorative Event organised by the Dag Hammarskjöld Foundation on the 48th Anniversary of Dag Hammarskjöld’s

Secretary-General under the Charter cannot be laid aside merely because the execution of decisions by him is likely to be politically controversial. The Secretary-General remains under the obligation to check out the policies as adopted by the organs. The essential requirement according to Dag Hammarskjöld is that the Secretary-General does this on the basis of his exclusively international responsibility and not in the interest of any particular state or group of states.

He then draws attention to the ambiguity of the word 'neutrality' in such a context:

It is obvious from what I have said that 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. But there remains a serious intellectual and moral problem as we move within an area inside which personal judgement must come into play. Finally, we have to deal with the question of integrity or with, if you please, a question of conscience.⁵⁴

Against this background, Dag Hammarskjöld maintains that the international civil servant must keep himself under the strictest observation. He is not requested to be neutral in the sense that he has to have no sympathies or antipathies, that there are to be no interests which are close to him in his personal capacity or that he is to have no ideas or ideals that matter for him. However, says Dag Hammarskjöld, he is requested to be fully aware of those human reactions and meticulously check himself so that they are not permitted to influence his actions. This is nothing unique, he says, and ends with the rhetorical question: is not every judge professionally under the same obligation?

The very essence of Dag Hammarskjöld's thinking in this matter appears in the penultimate paragraph of his address:

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

Death, available at www.havc.se/res/SelectedMaterial/20090918hammarskjold.pdf, also published as H. Corell, 'The Need for the Rule of Law in International Affairs – Reflections on Dag Hammarskjöld's Address at Oxford University on 30 May 1961, The International Civil Service in Law and in Fact', in H. Corell, Inge Lønning and H. Melber, 'The Ethics of Dag Hammarskjöld', Dag Hammarskjöld Foundation 2010, at www.dhf.uu.se/publications/other-publications/the-ethics-of-dag-hammarskjold/.

⁵⁴ See Dag Hammarskjöld, 30 May 1961 address, *supra* note 52.

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.⁵⁵

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 ten 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.⁵⁶

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.⁵⁷

5.4 Conclusions

The obvious conclusion to be drawn from Dag Hammarskjöld's thinking is that international civil servants, with the Secretary-General of the United Nations in the lead, could make a difference by applying the standards that Dag Hammarskjöld promoted. This is something that should be borne in mind by all within in the international civil service. The question is, however, if the fundamental ethical principles that he applied in his reasoning could not be a lodestar also to other actors and in particular when it comes to respecting the law.

All too often, international civil servants observe that UN Member States are lacking in loyalty to the aims, principles and purposes of the

⁵⁵ *Ibid.*

⁵⁶ See H. Corell, 'The Ethics of an International Civil Servant' (2011) 16 *New Routes* 12–16, at www.dhf.uu.se/wordpress/wp-content/uploads/2011/06/NR112.pdf.

⁵⁷ *Ibid.*

United Nations. It is sometimes said that the questions that the UN organs deal with are more political than legal. This is certainly true in many instances. But this argument is not acceptable when it comes to applying clear and unambiguous rules, such as the core provisions of the UN Charter and fundamental human rights standards. Here the law is clear and there should be no room for political manoeuvring based on reasons that in many cases probably would not bear the light of day. In a state under the rule of law, political bodies must also bow to the law. The same must apply at the international level.

In the present discussions relating to the Middle East, there is talk of the use of force against Iran as if the UN Charter did not even exist. It is therefore important to remind the most aggressive participants in the discussion, that the UN Charter is legally binding and that the obligations flowing from it actually trump national law, including national constitutions. If a state has concluded an international agreement, the state in question is bound by that agreement in relation to other parties to the treaty. This is the concept upon which the whole international system is based. It is a matter of law, but equally a matter of ethics. Another way of describing the concept is to do it in a way that Dag Hammarskjöld might have done if he had observed today's world: it is a matter of civilisation.