

Article by former UN Legal Counsel Hans Corell in the Swedish daily Svenska Dagbladet on 12 November 2006

Translation from Swedish

Weapons Do Not Create Democracy

Sweden has a new government. In its Statement of Government Policy it is emphasised that the foreign policy should combine a commitment to international cooperation with a clear advocacy of democracy and human rights and that Sweden shall better contribute to freedom, security, democracy, prosperity and sustainable development in the world. International law and respect for human rights must be cornerstones of Swedish foreign policy. Action to strengthen democracy will be given higher priority.

Sweden shall be a proactive force in the European Union and the strong support for the United Nations shall continue. Swedish aid will remain at a high level and will be combined with a comprehensive policy for global development.

Against this background it is important to point to the close connection between work for democracy and the rule of law, the preconditions for international peace and security and the direction of aid.

This connection can be illustrated by taking as a point of departure another passage in the Government's Policy Statement, namely that Sweden should work for the strengthening of the transatlantic link.

The importance of good relations across the Atlantic cannot be overemphasised. But the question is under what conditions this link should be strengthened. The present US administration has shown a negative attitude to multilateral solutions and has in part turned its back on the United Nations. In violation of the rules on collective security of the UN Charter, the US has acted on its own when it suited its interests. The most obvious example is the attack on Iraq in March 2003.

Nobody can defend Saddam Hussein's regime. But precisely because of its contempt for democracy and international law it was important that the members of the Security Council scrupulously followed the rules of the UN Charter when they dealt with the situation in Iraq. At the time of the armed attack it was absolutely clear that the Security Council had not sanctioned the same. And it was definitely not a case of self-defence. Consequently, the attack was illegal and incompatible with the rule of law at the international level.

Another phenomenon that has given rise to extremely serious consequences for the work to strengthen the rule of law at the national and international level is the US "war" against terrorism. One cannot conduct a war against a phenomenon. This newspeak has created legal confusion and has resulted in that fundamental rights have been trampled under the feet.

Guantánamo is a stain on the Star Spangled Banner. The legislation just adopted to meet the criticism by the US Supreme Court against the earlier military commissions

is according to American experts not fulfilling the demands that must be put on a state under the rule of law.

It is therefore of greatest importance that Sweden acts so that the European Union makes a clear and forceful indication that a condition for good relations across the Atlantic is that the US administration changes its attitude. The UN Charter, other basic rules of international law, in particular the rules on human rights, must be respected by all – also the strong and powerful.

But why this criticism of the US when there are so many others that flagrantly violate international law? The reason is that the US – the world's most powerful state that also wishes to call itself a democracy and a state under the rule of law – has behaved in a manner that shakes the credibility of the work for democracy and rule of law, in other words elements that the Swedish Government has specifically emphasised in its Policy Statement.

What does this have to do with the direction of international aid? The explanation can be sought in the following words of the Policy Statement: "The threats from international terrorism, growing organised crime, the spread of weapons of mass destruction, disintegrating states and national conflicts can only be met by stronger international cooperation."

This is so. But the question is where to begin. On close examination of the reasons for the threats mentioned, one will always find one and the same thing: there is no democracy and no rule of law. At present, the UN and other actors are for the most part forced to deal with the symptoms of the problems: peacekeeping operations have become the usual method. In the long run this will be unsustainable.

Against this background new strategies must be developed. Greater attention must be paid to the causes of the problems. It is here that the direction of international aid comes into the foreground.

In principle, four elements are necessary to create a modern state under the rule of law: (1) democracy, (2) a satisfactory legislation, (3) institutions – administrative agencies and courts – to apply this law, and (4) individuals with the necessary education and integrity to make these institutions function.

Obviously, all this cannot be achieved in an instant. In many countries it will take time for democracy to develop; it cannot be created through the use of weapons. In order to bring about the other elements one must proceed with determination and in accordance with a well structured plan. Not least important is to develop an incorruptible judiciary and civil service.

Consequently, for strategic reasons States should give priority to the rule of law in their international aid activity. If the legal environment is improved, private interests – domestic as well as foreign – will venture into the market. Another effect will be that possibilities will open for increased commerce. All this is necessary for a country to reach a reasonable level of development. Such a boost can never be accomplished through official development assistance.

Many can assist in the legal field. The United Nations and the World Bank have programmes for legal technical assistance. But States, including Sweden, should give even greater priority to legal assistance.

In the European Union, Sweden should raise the question of how to prioritise the development aid for a more profound discussion. But this discussion should not be limited to the development area – it should also be conducted in a broader perspective. Among other things, a comparison should be made between the cost effectiveness of investments in the legal field and defence investments. Consequently, the analysis should be made from a security policy viewpoint. Would an improvement in the legal field even lead to disarmament? Perhaps there would be a breakthrough in the standstill in the disarmament negotiations?

In the work to improve the legal environment, new and radical methods should be tested. One step in this direction would be to make a systematic analysis of the countries of the world from a legal perspective. Based on this analysis, it would be possible for individual States (and consequently not only for developing countries) to determine in which field the need for assistance is the greatest and what priorities to make.

The transatlantic link must be forged strong. The world's leading democracies must jointly and with credibility bring forward their manifesto on democracy and the rule of law. But if one does not live as one preaches, other countries will doubt the intention. Then the work to ascertain international peace and security and to solve all the other important questions mentioned in the Government's Policy Statement would be undermined.

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