

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"*

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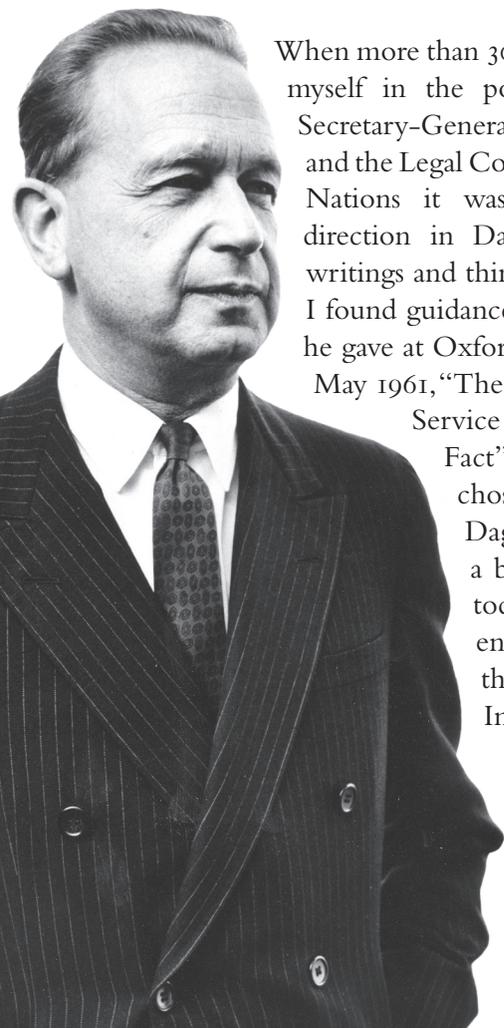
Thank you for inviting me to speak at this commemorative event. I consider it a great honour. As a student of Uppsala at the time, I followed with keen interest the work of Dag Hammarskjöld, the second Secretary-General of the United Nations. And I will never forget that September day in 1961 when the news of his tragic death at Ndola in Africa reached us. A few days later, I was one of the stewards at his funeral in Uppsala Cathedral.

When more than 30 years later I found myself in the position of Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations it was natural to seek direction in Dag Hammarskjöld's writings and thinking. In particular, I found guidance in an address that he gave at Oxford University on 30 May 1961, "The International Civil Service in Law and in Fact". I have therefore chosen this address by Dag Hammarskjöld as a basis for my speech today, which I have entitled *The Need for the Rule of Law in International Affairs*.

However, before we dwell upon the subject that Dag Hammarskjöld focused on in his address, let me first set the scene: Looking at the situation in the world today, I believe that it is fair to say that the need for the rule of law in international affairs has never been greater. The challenges that humankind faces in our days of globalization are tremendous.

The first challenge that comes to mind is the same as the overriding challenge in 1945 when the UN Charter was adopted: international peace and security. The purpose of the United Nations is to "save succeeding generations from the scourge of war". And yet, there are so many conflicts going on in our days.

Soon a worldwide survey of conflicts will be published. It was performed by the International Institute of Higher Studies in Criminal Sciences (ISIS). The research and data amassed shows that between 1945 and 2008, some 310 conflicts took place. Depending on the estimates, the victimization of these conflicts fluctuates between 92 and 101 million casualties. This is twice the cumulative casualties of World Wars I and II. According to Professor Peter Wallensteen, who is present among us today, this corresponds roughly to the information from the Uppsala Conflict Data Program.



Another challenge is poverty. Millions of people are suffering, living on less than a dollar a day. Many do not have access to clean drinking water. The Millennium Development Goals, set for 2015, seem too distant when only six years remain of the time set for their fulfilment.

Yet another challenge is the world population, which now stands at 6.7 billion people with a predicted increase of 40 per cent by 2050; the forecast is that we will be 9.2 billion by then. Diseases like malaria and HIV/AIDS are other challenges that mankind faces. And then, of course, there is the environment: the changing climate, problems with access to clean water, desertification, melting glaciers and rising sea levels. In addition we have to fight crimes that threaten all societies around the world: terrorism, trans-boundary crimes and corruption.

The combination of all this constitutes a tremendous threat to humankind and to international peace and security.

There is a realisation that the only way ahead is a multilateral international rules-based society. The need for the rule of law was emphatically underlined in the World Summit Outcome, adopted by the UN General Assembly in September 2005. This need has also been recognised by the Security Council. There are constant references to the rule of law in documents emanating from the World Bank and the International Monetary Fund. It is also referred to in statements from G-20 meetings at different levels.

In civil society more and more attention is given to the need for assistance to States in order to establish societies under the rule of law. This has been on the agenda of the human rights organisations for many years. It is now also a prominent feature in the work of organisations like the International Bar Association and the American Bar Association. A World Justice Project has been launched to assist States, and a world Rule of Law Index is under preparation.

Of particular interest in this context is the position taken by the InterAction Council of Former Heads of State and Government. During their annual meeting last year, the Council addressed the topic "Restoring International Law: Legal, Political and

Human Dimensions". On 27 June 2008, the Council issued a Communiqué that among other things contains the following four recommendations:

- Acknowledging that the challenges mankind faces must be addressed through multilateral solutions within a rule-based international system;
- Insisting that states observe scrupulously their obligations under international law, in particular the Charter of the United Nations and encouraging the leading powers to set an example by working within the law and abiding by it, realising that this is also in their interest;
- Underlining the importance of the Security Council exercising its mandate effectively and decisively in accordance with the responsibility granted to it by the UN Charter;
- Acknowledging that there are situations which require the Security Council to act with authority and consequence in accordance with the principle of the responsibility to protect;

The obvious conclusion is that we need effective international organisations and in particular an effective United Nations.

The United Nations is often criticised and it is repeatedly said that it is in need of reform. This topic was the focus of an address that I delivered in November 2006 under the title "Who Needs Reforming the Most – the UN or its Members?" I reiterate what I said then, namely that the United Nations must be subject to constant reform as any other organisation. It can always be argued that the United Nations could do better. But it is important to keep in mind that the Organisation consists of six main bodies. Four of those are composed of Member States that consequently are accountable for their performance. The two others are the International Court of Justice and the Secretariat with the Secretary-General at its head as the Organisation's chief administrative officer.

The point that I made in my address in 2006 was that the United Nations could certainly do better, but that much of the criticism of the Organisation should be directed at its Members. Furthermore, in

criticising the UN one must be clear about where the criticism should be directed. Should one criticize the Secretariat, the General Assembly, the Security Council, or another UN body?

Since I focused on the Member States in 2006, allow me now to concentrate on the United Nations Secretariat and the international civil service based on the views expressed by Dag Hammarskjöld in his 1961 address. His address opens with the following lines:

In a recent article Mr. Walter Lippmann tells about an interview in Moscow with Mr. Khrushchev. According to the article, Chairman Khrushchev stated that “while there are neutral countries, there are no neutral men”, and the author draws the conclusion that it is now the view of the Soviet Government “that there can be no such thing as an impartial civil servant in this deeply divided world, and that the kind of political celibacy which the British theory of the civil servant calls for, is in international affairs a fiction”.

For the sake of clarity, I am now going to quote Articles 97 and 98 of the UN Charter:

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

In his address Dag Hammarskjöld concentrates on Article 98 and concludes that this Article has sub-

stantial significance in the Charter, for it entitles the General Assembly and the Security Council to entrust the Secretary-General with tasks involving the execution of political decisions, even when this would bring him – and with him the Secretariat and its members – into the arena of possible political conflict.

He then focuses on Article 99, which entitles the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, and states:

It is Article 99 more than any other which was considered by the drafters of the Charter to have transformed the Secretary-General of the United Nations from a purely administrative official to one with an explicit political responsibility.

After further analysis Dag Hammarskjöld makes the following summary:

To sum up, the Charter laid down these essential legal principles for an international civil service:

It was to be an international body, recruited primarily for efficiency, competence and integrity, but on as wide a geographical basis as possible;

It was to be headed by a Secretary-General who carried constitutionally the responsibility to the other principal organs for the Secretariat's work;

And finally, Article 98 entitled the General Assembly and the Security Council to entrust the Secretary-General with tasks going beyond the verba formalia of Article 97 – with its emphasis on the administrative function – thus opening the door to a measure of political responsibility which is distinct from the authority explicitly accorded to the Secretary-General under Article 99 but in keeping with the spirit of that Article.

Dag Hammarskjöld then says that it could perhaps be surmised that virtually no one at San Francisco, where the UN Charter was negotiated in 1945, envisaged the extent to which the Members of the Organisation would assign to the Secretary-General functions

which necessarily required him to take positions in highly controversial political matters. He then gives examples of such mandates in what was then recent years in order to demonstrate how wide had been the scope of authority delegated to the Secretary-General by the Security Council and the General Assembly in matters of peace and security.

He concludes that these examples demonstrate the extent to which the Member States have entrusted the Secretary-General with tasks that have required him to take action which unavoidably may have to run counter to the views of at least some Member States. He then formulates the problem:

The agreement reached in the general terms of a resolution, as we have seen, no longer need to obtain when more specific issues are presented. Even when the original resolution is fairly precise, subsequent developments, previously unforeseen, may render highly controversial the action called for under the resolution.

Dag Hammarskjöld refers to the unanimous resolution authorising assistance to the Central Government of the Congo which in his view offered little guidance to the Secretary-General when that Government split into competing centres of authority, each claiming to be the Central Government and each supported by different groups of Member States within and outside the Security Council.

Dag Hammarskjöld notes that serious problems arise precisely because it is so often not possible for the organs themselves to resolve the controversial issue faced by the Secretary-General. When brought down to specific cases involving a clash of interests and positions, the required majority in the Security Council or General Assembly may not be available for any particular solution. He then continues:

It might be said that in this situation the Secretary-General should refuse to implement the resolution, since implementation would offend one or another group of Member States and open him to the charge that he has abandoned the political neutrality and impartiality essential to his office. The only way to avoid such criticism, it is said, is for the Secretary-General to refrain from execu-

tion of the original resolution until the organs have decided the issue by the required majority (and, in the case of the Security Council, with the unanimous concurrence of the permanent members) or, maybe, has found another way to pass responsibility over on Governments.

But Dag Hammarskjöld takes a different position stating that the answers seemed clear enough in law. He concludes that the responsibilities of the 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 this 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.

Against this background, Dag Hammarskjöld maintains that the international civil servant must keep himself under the strictest observation. He is not requested to be a neuter 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 its 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 Organisation he serves and by recognised 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 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.

This is a powerful message both to the Member States and to the international civil service. It should serve as a reminder both to those who are already employed and to those who are involved with recruitment. What States and the Secretary-General should be looking for are individuals who can be deemed to observe the standards required and who do not give in to pressure. International civil servants who do not demonstrate the kind of integrity that Dag Hammarskjöld refers to will sooner or later put the functioning of the Organisation at risk.

What the Organisation needs are persons who can make assessments and decisions in accordance with the clear guidelines that follow from Dag Hammarskjöld's address. This also means that it is inevitable that the Secretary-General of the United Nations from time to time is likely to have an argument with one or more Member States, notably the major powers. This is certainly not something that he or she should be looking for, but it is the unavoidable result of the Secretary-General performing the duty that follows with the position.

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.

My own conclusion, based on serving two Secretaries-General from 1994 to 2004, Boutros Boutros-Ghali for three years and Kofi Annan for seven years, is that the Secretary-General needs critical advisers around him. In particular, it is important that difficult questions are discussed in depth and that different views are heard in the debate before the Secretary-General makes his or her decision. The discussions in the Senior Management Group established by Kofi Annan come to mind. From my own experience I also know that my most trusted advisers were those who assisted me by questioning my ideas thus forcing me to take another look at the issue before making a decision.

In conclusion, Dag Hammarskjöld's address carries an important message to the present and coming generations of United Nations Secretaries-General and to the international civil service. It is therefore important that this message does not fall into oblivion. What could be more pertinent than to recall it at a commemorative event on an anniversary of Dag Hammarskjöld's death? The message is just as relevant today as it was when it was delivered nearly 50 years ago.

Thank you for your attention!

Note: Dag Hammarskjöld's 30 May 1961 address is available at <http://www.un.org/Depts/dhl/dag/docs/internationalcivilservant.pdf>.
See also http://www.un.org/Depts/dhl/events/lectures/civil_servant.htm and

The present document is also electronically accessible on the web site of The Dag Hammarskjöld Foundation at http://www.dhf.uu.se/pdfiler/Corell_18_sept_09.pdf and at the web site of Hans Corell at <http://www.havc.se> under "Rule of Law" and "United Nations Secretariat".