

*The Rule of Law as a Strategic Priority in the European Union's  
External Action*

**International Conference organized by the Leuven Centre  
for Global Governance Studies**

*The Promotion of the Rule of Law in the 21st Century:  
Prospects and Challenges*

Lecture

by

**Dr Hans Corell  
Former Under-Secretary-General for Legal Affairs  
and the Legal Counsel of the United Nations**

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Professor Wouters,  
Distinguished colleagues and friends,

First of all, thank you so much for inviting me to give a lecture on a topic that I believe is highly relevant and important: *The Promotion of the Rule of Law in the 21st Century: Prospects and Challenges*.

The focus of the conference is on “the European Union's strategic prioritization of the rule of law towards emerging powers.” At that, the purpose of the conference is to bring together scholars from various disciplines (such as law, economics, international relations and political science), high-level officials from European Union institutions and European Union partner countries, and representatives from civil society. I have kept this in mind in preparing my lecture; the responsibility for establishing societies under the rule of law varies depending on the roles and the functions of the different actors.

The natural point of departure is Article 2 of the Treaty on European Union. According to this provision the Union is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” The provision notes that these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The conference aims to assess the importance of the rule of law as a strategic priority of the European Union's external action as mandated by Article 21 of the Treaty on European Union.

According to this provision the action of the European Union on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and, not least, respect for the principles of the United Nations Charter and international law.

The provision also prescribes that the European Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles just referred to. And it shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

The Union shall also define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to, among other things, consolidate and support democracy, the rule of law, human rights and the principles of international law.

Based on my experiences from more than 50 years in the legal profession both at the national and international level, I am firmly convinced that the rule of law is an indispensable prerequisite for proper global governance. In addition, and most importantly, the rule of law is not only a legal matter. It is much more comprehensive. It encompasses ethical elements that must be supported by all. And it has to come from the grassroots.

It is true that lawyers have a special responsibility to promote and defend the rule of law. But the majority of the individuals who make decisions about people's rights and obligations in a society probably do not belong to the legal profession.

One category that has a very special responsibility for establishing and maintaining the rule of law in a society is politicians. I will revert to the politicians at the end of my lecture.

In my lecture I intend to address the topic in five parts:

- rule of law at the national and international levels;
- prospects for establishing the rule of law;
- challenges in implementing the rule of law;
- the responsibility of international organisations; and
- the responsibility of politicians.

#### 1. Rule of law at the national and international levels

With respect to the rule of law at the national and international levels, the first question that presents itself is: what do we mean by the rule of law? The concept has been defined in different ways by many. One point of departure is the definition suggested by UN Secretary-General Kofi Annan in his 2004 report: *The rule of law and transitional justice in conflict and post-conflict societies*:

The “rule of law” is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>1</sup>

There are also other institutions to look to, among them the Venice Commission. I refer in this context, in particular to its *Report on the Rule of Law* of March 2011 with its interesting analyses and valuable references.<sup>2</sup> The report also contains a definition of the rule of law, drawing on a consensus that in the Commission’s view can now be found for the necessary elements for the concept. These are:

- (1) Legality, including a transparent, accountable, and democratic process for enacting law;
- (2) Legal certainty;
- (3) Prohibition of arbitrariness;
- (4) Access to justice before independent and impartial courts, including judicial review of administrative acts;
- (5) Respect for human rights;
- (6) Non-discrimination and equality before the law.

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<sup>1</sup> UN Doc. S/2004/616 of 23 August 2004, available at <http://www.unrol.org/files/you/2004%20report.pdf>.

<sup>2</sup> See [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e).

I would in this context also like to refer to the World Justice Project (WJP). This project is an independent, multidisciplinary organisation working to advance the rule of law around the world. It has three complementary and mutually reinforcing programs: Research and Scholarship; the WJP Rule of Law Index; and Engagement.<sup>3</sup>

May I suggest that you study the latest edition (2014) of the WJP Rule of Law Index which measures how the rule of law is experienced in everyday life in 99 countries and jurisdictions that account for more than 90 percent of the world's population. It is based on over 100,000 household and 2,400 expert surveys worldwide.<sup>4</sup> A look at the spider diagrams in the Index is very telling.

The WJP defines the rule of law in four points:

- (1) The government and its officials and agents as well as individuals and private entities are accountable under the law;
- (2) The laws are clear, publicized, stable, and just; are applied evenly; 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) Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

Personally, and to put it simple, I use a very tight definition in four points:

- (1) Democracy;
- (2) Proper legislation respecting international human rights standards;
- (3) The institutions to administer this law, including independent and impartial courts;
- (4) The persons with the integrity and the knowledge to administer these institutions.

To sum up with respect to the national level: all citizens must have a general understanding about the rule of law and its role in modern society. Therefore, it is extremely important that education about this topic is given in schools as early as possible. As a matter of fact, I am identifying this as one of the major challenges for the future.

Looking at the rule of law at the international level there are two main sources of international law: customary law and treaty law.

Customary law consists of state practices recognized by the state community at large as laying down rules of conduct that have to be complied with. Customary law thus depends on what states are willing to accept as rules; a rule will not become, or cease to be, part of customary law, if states generally object to it.

Treaty law rests on the principle that agreements must be honoured, expressed in the Latin sentence *pacta sunt servanda*. Hence, treaty law consists of agreements between two states (bilateral treaties) or several states (multilateral treaties) on different subject matters. States

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<sup>3</sup> See <http://worldjusticeproject.org/>.

<sup>4</sup> See <http://worldjusticeproject.org/rule-of-law-index>.

are not bound by treaties to which they are not party or by treaty rules to which they have made reservations unless the treaty in question has developed into customary international law.

The reference to the United Nations in Article 21 of the Treaty on European Union prompts me to refer here specifically to Article 103 of the Charter of the United Nations:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

This provision should always be borne in mind. It is also important to emphasise that international law is actually superior to national law. All states are obliged to act in conformity with international law. If they do not, they are responsible for breaches of this law, irrespective of whether they are committed by the legislative, executive or judicial branches. This also means that states cannot invoke national law, basically not even a national constitution, as a defence of violations of obligations under international law.

What about the definition of the rule of law at the international level?

The rule of law has been developed at the national level. It is not, traditionally, a common and widely-used term in international law. Over the few past decades, however, it has become widely accepted that the international legal and political system too must respect the rule of law.

There is no difference between the core meaning of the rule of law at the national and international level. In both situations rule of law means that the law should be respected. In other words: the rule of law at the international level means that international law must be respected by its subjects, in other words by states and international organisations. In many instances this also applies to individuals and other private entities.

Finally in this context, it is of the essence to stress that there is an increasing interdependence between national rule of law and international rule of law. I will revert to this in relation to the challenges.

## 2. Prospects for establishing the rule of law

With respect to the prospects for establishing the rule of law there are many positive elements. One point of departure is the general support for the rule of law, expressed in resolutions by the General Assembly and the Security Council of the United Nations. I will revert to this when I get to the responsibility of international organisations.

There is also a trend within the state community towards more democracy, even if there is a long way to go before all states are democratically governed.

Another positive trend is the fact that many non-governmental organisations are deeply committed to the rule of law. Just to refer to some of the more prominent organisations in this field, I would like to mention the Inter-Parliamentary Union,<sup>5</sup> Parliamentarians for Global

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<sup>5</sup> See [www.ipu.org/](http://www.ipu.org/).

Action,<sup>6</sup> the International Bar Association with its Rule of Law Action Group,<sup>7</sup> the American Bar Association with its Rule of Law Initiative,<sup>8</sup> the International Commission of Jurists,<sup>9</sup> and the International Legal Assistance Consortium.<sup>10</sup> In this context should also be mentioned the Rhodes Academy of Oceans Law and Policy with its basic objective to promote the rule of law in the world's oceans.<sup>11</sup> The efforts by Amnesty International,<sup>12</sup> Human Rights Watch<sup>13</sup> and Transparency International<sup>14</sup> could also be seen in this perspective. But there are many others.

Yet another positive development is the system of treaties adopted to protect human rights, ranging from the International Covenant on Economic, Social and Cultural Rights<sup>15</sup> and the International Covenant on Civil and Political Rights<sup>16</sup> to some additional ten conventions adopted under the auspices of the United Nations.<sup>17</sup> There are also the regional conventions in Africa, the Americas and Europe. All these systems are supported by supervisory organs and in some cases also human rights courts. In this context the important contributions by the Council of Europe should be mentioned in particular.<sup>18</sup>

It is in this perspective we should also view the actions of the European Union on the international scene.

To this could be added the wealth of educational and reference material that is available to facilitate the spreading of knowledge about the rule of law.

There are also representatives of different professions who understand that they can make a contribution to establishing the rule of law. The interdisciplinary approach taken by the World Justice Project just referred to should be seen in this perspective.

The role of the non-governmental organisations in a more general sense should also be emphasised. These organisations play a very important role in the societies where they are active. By raising the different questions on which they focus and by engaging in advocacy and the spreading of information they influence the development and often make a real difference. Ultimately, their activities may result in decisions at the political level, sometimes crystallising into legislative acts by national legislative organs.

### 3. Challenges in implementing the rule of law

Among the challenges in implementing the rule of law allow me to mention first one particular challenge that applies to every state, namely *the manner in which the state itself*

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<sup>6</sup> See [www.pgaction.org/](http://www.pgaction.org/).

<sup>7</sup> See [www.ibanet.org/](http://www.ibanet.org/).

<sup>8</sup> See [www.americanbar.org/](http://www.americanbar.org/).

<sup>9</sup> See [www.icj.org/](http://www.icj.org/).

<sup>10</sup> See [www.icj.org/](http://www.icj.org/).

<sup>11</sup> See <http://www.virginia.edu/colp/rhodes-academy.html>.

<sup>12</sup> See <http://www.amnesty.org/>.

<sup>13</sup> See [www.hrw.org/](http://www.hrw.org/).

<sup>14</sup> See <http://www.transparency.org/>.

<sup>15</sup> Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>16</sup> Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>17</sup> See <https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>.

<sup>18</sup> See <http://hub.coe.int/>.

*abides by the rule of law.* In my farewell address to the United Nations on 24 February 2004, entitled “Prospects for the Rule of Law among Nations”, I noted that there is a tendency among some states to criticise others for not respecting international rules on human rights.<sup>19</sup> Unfortunately, such criticism is often too well founded. But in order to for a state to criticise others with legitimacy, that state must pay attention to its own observance of human rights.

As a matter of fact, I took Matthew 7:3 in the Holy Bible as a point of departure for my address: *And why beholdest thou the mote that is in thy brother's eye but considerst not the beam that is in thine own eye?*

As UN Legal Counsel I could of course not limit myself to quoting the Bible. So I asked my colleagues in the Office of Legal Affairs, who were of many different creeds, to assist me in finding a similar message in other religious or philosophical sources. This produced quotes from seven additional sources ranging from the Holy Quran, via Talmud to a Chinese proverb.<sup>20</sup>

What I would like to say by referring to this is that the values upon which international law is based are often similar to the values expressed in different religious sources. At the same time it is important that we do not mix religion and the secular here. International law should be acceptable to all people and this is precisely why the United Nations as one of its first measures adopted the Universal Declaration of Human Rights.<sup>21</sup>

In my view, governance in the future must be secular. This is for the simple reason that we will soon have all races, colours, languages, and religions present in the territory of all the states of the world. It is necessary that people with these differences can live and act together. It is also against this perspective that states should look to themselves before they start preaching to others. This, however, does not mean that states should not provide assistance to other states in the work to establish the rule of law. When they do, they should always be sensitive to the local needs and listen carefully before they start giving advice.

This reasoning definitely applies to the members of the European Union and to the Union itself, in particular in view of the impressive work that has been performed by the Council of Europe and its Venice Commission.

One document that I found very interesting in this context is an Advisory Report of 24 January 2014, prepared by the Advisory Council on International Affairs of the Netherlands. The report is entitled “The rule of law: Safeguard for European Citizens and Foundation for European Cooperation”. The report discusses perspectives on the importance of strengthening the rule of law in member states; the concept of the rule of law; utilising existing instruments and the desirability of supplementary initiatives; and a proposal for a supplementary initiative.

With respect to the latter, the Advisory Council suggests that a peer-review should be introduced within the European Union, consisting of three steps. First, a committee of experts should draw up a report on the functioning of the rule of law in each member state. Second, there should be a discussion of this report by representatives of the member states at official level, constituting the actual peer review. This discussion should lead to draft operational

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<sup>19</sup> The address is available at [http://legal.un.org/ola/media/info\\_from\\_lc/Vienna\\_24\\_2\\_04final.doc](http://legal.un.org/ola/media/info_from_lc/Vienna_24_2_04final.doc).

<sup>20</sup> See [http://legal.un.org/ola/media/info\\_from\\_lc/Vienna\\_24\\_2\\_04final.doc](http://legal.un.org/ola/media/info_from_lc/Vienna_24_2_04final.doc).

<sup>21</sup> See <http://www.un.org/en/documents/udhr/>.

conclusions. The third step would be for the Council of the European Union to discuss and adopt the operational conclusions in the form of Council Conclusions.<sup>22</sup>

Another challenge that comes to mind is that *international organisations should live up to their own proud declarations*.

Let me now focus on the challenges in a more general perspective.

One challenge that simply cannot be overlooked is *the growing world population*. We were hardly 2 billion people on the globe when the United Nations was established in 1945. Today, we are some 7 billion, and in 2050 we will be 9.6 billion.<sup>23</sup> It goes without saying that this can create tensions that may have negative effects. This may be exacerbated if combined with *climate change that may have serious effects on the human habitat*. If this leads to rising sea levels and desertification we may experience unprecedented movements of people around the globe – a new category of refugees.

Yet another challenge is *armed conflicts*, in particular conflicts generated by religious extremists.<sup>24</sup> This represents one of the most serious challenges, in particular in cases where the extremism is directed against efforts to empower women – even oppression that takes the most disgusting expressions, like female mutilation.

Another challenge is *terrorism*, which has to be vigorously combated, not through a “war on terror” – this very dangerous misnomer – but through law enforcement. Of particular importance is that democracies do this with full respect for the rule of law and human rights. The practice of identifying suspected terrorists and subjecting them to so-called “targeted killings” is particularly worrisome. I fear that in many cases this is actually committing murder, in particular if the killings take place outside the battlefield. I refer in this context to the *Madrid Agenda Against Terrorism*, adopted by The Madrid Club on 11 March 2005:

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.<sup>25</sup>

Another major challenge is *transnational organized crime*, which has extremely serious effects even on the proper governance of states. There is also an inherent risk that the territories of states that do not have proper defence and police forces may become platforms for such criminal activity.<sup>26</sup>

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<sup>22</sup> See No. 87 in a series available at <http://www.aiv-advice.nl/>.

<sup>23</sup> World Population Prospects: The 2012 Revision by the UN Population Division, available at <http://esa.un.org/wpp/>.

<sup>24</sup> Reference is made here to the Vienna Declaration *Putting Global Ethical Standards into Practice in a Dangerous and Divided World* adopted by the InterAction Council of Former Heads of State and Government on 28 March 2014, available at <http://www.interactioncouncil.org/vienna-declaration>.

<sup>25</sup> See <http://summit.clubmadrid.org/agenda/the-madrid-agenda.html>.

<sup>26</sup> Reference is made to the United Nations Convention against Transnational Organized Crime, available at <http://www.unodc.org/unodc/en/treaties/CTOC/>.

And, finally in this context, one of the most serious challenges in implementing the rule of law is *corruption*. Corruption is an extremely harmful feature, which causes great damage to the efforts of establishing the rule of law. As Secretary-General Kofi Annan said in his message at the opening of the High-Level Political Conference for the Purpose of Signing the United Nations Convention against Corruption in Merida, Mexico, on 9 December 2003:

It is now widely understood that corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organized crime, terrorism, and other threats to human security to flourish.

No country – rich or poor – is immune to this evil phenomenon. Both public and private sectors are involved. And it is always the public good that suffers.

But corruption hurts poor people in developing countries disproportionately. It affects their daily life in many different ways, and tends to make them even poorer, by denying them their rightful share of economic resources or life-saving aid.

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Our only hope of removing this obstacle is through the effective application of the rule of law.<sup>27</sup>

As I mentioned earlier, one particular challenge is the *increasing inter-connection between national and international law*. One example often referred to is constitutional law, which, as far as citizens' rights are concerned, overlaps considerably with international human rights law. Today it is difficult to imagine that a new constitution of a country is developed without clear references to and even quotes from international human rights instruments. Other examples of this increased inter-connection can be found in environmental law and investment law with more subjects to come.

An additional challenge in this context is the growing amount of treaties in various fields, which means that the national legislator's freedom of action will be limited. One of the most important elements in legislating at the national level today is that the legislator ascertains that the law to be enacted is in conformity with treaties to which the state is a party.

From personal experience I know that this element is particularly important in the field of human rights. Therefore, in the obligatory process of ascertaining that proposed legislation is in conformity with the constitution of the country, in parallel a corresponding examination must be performed with respect to international human rights treaties. This system was applied also in the United Nations when the UN governed Kosovo and East Timor.

A further challenge is the need to monitor and oversee the implementation of international human rights norms. This applies in particular if an international human rights court has come to the conclusion that international human rights norms have been violated in a particular case. This often means that the state in question will have to amend its national legislation in order to avoid that the same violation is repeated.

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<sup>27</sup> See [http://legal.un.org/ola/media/info\\_from\\_lc/corruption\\_message.pdf](http://legal.un.org/ola/media/info_from_lc/corruption_message.pdf).

Finally, with respect to the challenges: as I have already pointed out, *education about the rule of law should be given in schools as early as possible*. Here, a considered effort should be made by pedagogues who know how the education should be structured at different levels in schools. I reiterate that this is one of the major challenges for the future. Maybe this is something that the European Union should focus on in particular.

#### 4. The responsibility of international organisations

With respect to the responsibility of international organisations, there are a great number of important actors. Many belong to the United Nations system or the United Nations family, as it is often referred to.<sup>28</sup> First, we have the six principal organs of the United Nations: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. But the United Nations family is much larger, encompassing 15 agencies and several programmes and bodies. Among them are organisations such as the World Bank, the International Monetary Fund, and the International Finance Corporation (IFC).

And then there are of course regional organisations or organisations for specific purposes. Among them is the European Union. Enhancing the rule of law should be seen as a common responsibility for all international organisations. For the European Union this is, as we noted at the outset, specifically regulated in the Treaty on European Union.

My focus now will be on the United Nations, in particular since Edric Selous, the Director of the Rule of Law Unit in the Executive Office of the Secretary-General, was unable to participate in the conference. The intention was that he should have addressed the topic *The Rule of Law and the United Nations*.<sup>29</sup>

I should therefore like to start by referring to the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General.<sup>30</sup> The Group is responsible, under the ultimate authority and direction of the Secretary-General, for the overall coordination and coherence of rule of law within the United Nations system. The Group is supported by its secretariat, which is the Rule of Law Unit.

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<sup>28</sup> See <http://www.un.org/en/aboutun/structure/#ECOSOC>.

<sup>29</sup> Reference is made to <http://www.un.org/en/ruleoflaw/>.

<sup>30</sup> Members of the Group are the principals of the Department of Economic and Social Affairs (DESA), the Department of Political Affairs (DPA), the Department of Peacekeeping Operations (DPKO), the Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA), the Office of the Special Representative of the Secretary-General for Children and Armed Conflict (OSRSG for Children and Armed Conflict), the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSG on Sexual Violence in Conflict), the United Nations Peacebuilding Support Office (PBSO), the United Nations Democracy Fund (UNDEF), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the United Nations Office for Project Services (UNOPS), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the World Bank (World Bank). The Group serves an important coordination function, while the operational role remains squarely with the individual UN entities.

The Unit was established by the Secretary-General in 2006 in his report *Uniting our strengths: Enhancing United Nations support for the rule of law*.<sup>31</sup> The General Assembly has expressed full support for the Rule of Law Coordination and Resource Group and the Rule of Law Unit in several resolutions.<sup>32</sup>

The Unit's substantive support falls into three broad areas of activity: ensuring coordination and coherence among the many United Nations entities engaged in rule of law activities; developing system-wide strategies, policy direction and guidance for the Organization's activities in promoting the rule of law; and enhancing partnerships between the United Nations and other rule of law actors.

The Unit supports the Rule of Law Coordination and Resource Group in its task of acting as a repository for the Organization's rule of law materials and best practices, and in establishing and managing web resources. The Unit has developed and maintains the United Nations Rule of Law Website and Document Repository, to which I refer.<sup>33</sup>

As I already mentioned, the General Assembly has adopted numerous resolutions on the rule of law. One of the most important among them is the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted on 24 September 2012.<sup>34</sup>

In the declaration, the members of the United Nations reaffirm their solemn commitment to the purposes and principles of the UN Charter, 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 recognize that the rule of law applies to all states equally, and that 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.

They also reaffirm that human rights, the rule of law, and democracy are interlinked and mutually reinforcing. They emphasise the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution, and peacebuilding and stress that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations.

Finally in this context, they reaffirm that states shall abide by all their obligations under international law.

The latest General Assembly resolution on the rule of law was adopted on 16 December 2013. In this resolution, the Assembly reaffirms that human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations. The Assembly is also convinced that the

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<sup>31</sup> UN Doc. A/61/636-S/2006/980, available at <http://unrol.org/files/2006%20Report.pdf>.

<sup>32</sup> The latest resolution is A/RES/38/116 of 16 December 2013, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/116](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/116).

<sup>33</sup> See <http://www.unrol.org/>.

<sup>34</sup> UN Doc. A/RES/67/1, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/1).

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 its Member States.<sup>35</sup>

Let me now focus on the Security Council. The point of departure here is the UN Charter and its Articles 24, 25 and 39.

Article 24 (1): In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Article 25: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 39: The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 [non use of force] and 42 [use of force], to maintain or restore international peace and security.

Note in particular the imperatives in Article 39. Against this background, we must ask: is the Security Council performing as it should do?

In the early 1990s, when the Cold War had ended, the Security Council started functioning as it should. Agreements were reached; international criminal tribunals were established, etc. However relations soon started souring, notably among the five permanent members of the Council, culminating in the attack on Iraq in 2003 and the attack on Georgia 2008. And now we have the very serious development in Ukraine in addition to the situations in Syria and Iraq.

The composition of the Council reflects the geopolitical situation in 1945. Negotiations on the composition of the Council have been going on for 20 years.

For a long time I have maintained that the behaviour of the five permanent members of the Council will have a determining effect on the prospects of instituting the rule of law in the future. I raised this matter in a letter to the Governments of the Members of the United Nations dated 10 December 2008 and entitled "Security Council Reform: Rule of Law More Important Than Additional Members". In this letter I suggested that the five permanent members of the Council should adopt a voluntary declaration containing four undertakings, binding under international law. I never miss an opportunity to repeat these undertakings expressed in the draft resolution attached to the letter:

- 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;

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<sup>35</sup> UN Doc. A/RES/68/116, see note 32 *supra*.

- 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; and
- 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.<sup>36</sup>

On two occasions recently, I have expressed serious concern at the negative effects that the Russian annexation of the Crimea peninsula will have on the political climate in the future. At the same time, I have criticised the Western powers for not having remembered the lessons from the two world wars in the last century, among them: never ever humiliate a former enemy.<sup>37</sup>

In my view these latest events are unforgivable. They could actually have been prevented if the Security Council had performed according to its obligations under the UN Charter. We need statesmanship. And we need leaders who realise that we live in the 21<sup>st</sup> century.

As I said in addressing the challenges, there are major issues that need our full attention, among them the growing world population; climate change; protecting the human habitat; dealing with religious extremists; empowerment of women; terrorism; transnational organized crime; and corruption. It is therefore crucial that international organisations take their responsibility for establishing the rule of law seriously. This applies in no uncertain terms specifically to the UN Security Council.

##### 5. The responsibility of politicians

I now come to my fifth and last point, namely the question what all this means in terms of the responsibility of politicians. As I already said: in any society it is important that people have a general understanding about the importance of the elements required for the rule of law, of which human rights is a core element.

Needless to say, rule of law must be combined with democracy. Democracy and the rule of law are the core ingredients in a future society where people can live in freedom and dignity with their human rights protected.

Lawyers, in particular, have a special responsibility to apply the rule of law standards judiciously, keeping a clear distance to corruption, one of the worst enemies of the rule of law.

Lawyers must also explain that the rule of law is not only something that lawyers apply. As a matter of fact, as I said at the outset, in a modern society most decisions taken concerning citizens' rights and obligations are probably taken by persons who do not belong to the legal

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<sup>36</sup> The letter is available at:

<http://www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>.

<sup>37</sup> See *Nuclear Disarmament and Security Council Reform*, available at <http://www.havc.se/res/SelectedMaterial/20140402addresstopeterweiss.pdf> and *The Arctic and the Present Geopolitical Situation*, available at <http://www.havc.se/res/SelectedMaterial/20140626thearcticgeopoliticalsituation.pdf>.

profession. I think that we can assume that they are taken by officers within the social services, the tax authorities, and similar.

However, one category that has a very special responsibility for the rule of law is politicians. I should therefore like to end with a reference to a publication that was released in August 2012, and which is now translated into 13 languages with additional translations forthcoming. The publication is entitled *Rule of Law – A guide for politicians*.<sup>38</sup>

The guide is the fruit of a discussion in a meeting of the InterAction Council of Former Heads of State and Government in 2008.<sup>39</sup> It was elaborated by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University in Sweden and the Hague Institute for Internationalisation of Law. It is only some 40 pages and freely available for downloading and printing from the web in all language versions.

In addition, the two supervisory Institutes have been granted a donation, which means that the printed original English version of the guide can be distributed in personal envelopes to all parliamentarians in English speaking parliaments in the world. Please spread the word – and use the guide!

May I suggest that the short guide be a common source of knowledge and inspiration both within the European Union and in the Union's external action, as mandated by Article 21 of the Treaty on European Union.

In conclusion: surely you all realise that it is impossible to make within the limits of a lecture a complete overview of such a multifaceted topic as I was asked to address. However, by structuring the lecture into five distinct parts I have attempted to provide food for thought and further reflection for all of you irrespective of your profession and particular field of activity. The common denominator is that the knowledge about the rule of law must be spread and that different actors understand what is required from them.

The overarching goal must be that all humans can live in freedom and dignity with their human rights protected.

Thank you for your attention!

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<sup>38</sup> Available at <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>.

<sup>39</sup> Reference is made to their Final Communiqué from their 26th Annual Plenary Meeting in June 2008, available at <http://www.interactioncouncil.org/final-communicu-29>.