

Article by former UN Legal Counsel Hans Corell in the Swedish daily Svenska Dagbladet on 7 January 2009

Translation from the Swedish by the author

The Incapacity of the United Nations Affects Civilians¹

The Security Council risks becoming paralysed. The members of the Security Council – in particular the permanent members – are flagrantly violating the UN Charter. This happened when the US invaded Iraq and Russia Georgia. The experiences from the war against terrorism are terrifying. If these members do not respect the Charter, what remains of the UN system for collective security, asks Hans Corell, former UN Legal Counsel.

In an article in the Svenska Dagbladet on 1 December under the title “Stop the Furtive Accession to NATO” it is suggested that a civic commission ought to be nominated to map this process and its consequences for our security and democracy. The article has been followed by several contributions.

The questions raised in these contributions are important, and they deserve a comprehensive discussion. One question put is what our closer relation to NATO would mean for our ability to support UN operations in the future. During my years in the UN, I had particular reason to compare the UN Charter and the 1949 North Atlantic Treaty (NATO Treaty).

Such a comparison demonstrates that the parties to the NATO Treaty fully understood that it is the UN Charter that prevails. This follows already from Article 103 of the UN Charter.

But the NATO Treaty also makes clear that the rules of the UN Charter on peaceful settlement of disputes, on prohibition to use force except in self-defence or with the permission of the Security Council also apply in a NATO context. See in particular the preamble and Articles 1, 5, 7 and 12.

The UN Charter presupposes that there shall be standing UN troops at the disposal of the Organisation (Article 43). But no agreements on such troops have been concluded. I do not believe that we will see such agreements either, and there are many good reasons for this.

Instead, the Security Council has turned to individual Member States with requests for UN troops. How such troops shall be composed must be decided taking the prevailing circumstances into consideration. Already in the mid-90s, then Secretary-General Boutros Boutros-Ghali concluded that it was probably only NATO or the US alone who could master operations that demand forceful interventions, n.b. peace enforcement operations.

¹ Please note that the headline was formulated by the newspaper, not by the author.

At the same time, UN Members must loyally form ranks when peace operations are needed. This has entailed among other things that rapid reaction forces have been established in several countries. There is an obvious interest that these forces are well coordinated with similar forces in other countries. It is then necessary to have a standard, in Europe perhaps NATO standard.

The question is whether this is a "Furtive Accession to NATO" as argued in the article. I cannot see that this is so.

The situations where the UN is forced to intervene constitute serious threats against international peace and security. As a member of the UN, Sweden has an obligation to contribute in accordance with her capability to operations sanctioned by the UN.

Here I note that Anders Ferm and Thage G. Peterson in their article (Svenska Dagbladet 28 December) do not mention that the operations in Kosovo and Afghanistan are based on UN mandates, which consequently makes it wholly legitimate for Sweden to participate. See for example Security Council resolution 1833 (2008). This is however not to suggest that the operations are unproblematic.

Furthermore, Sweden cannot accede to international treaties like the NATO Treaty without this being approved by the Riksdag (the Swedish parliament). This requires a bill from the government, normally based on a report from a commission that has been transmitted to various institutions for observations. If the question would arise, it is consequently well provided for that the Swedish people and their representatives will be in a position to acquaint themselves with the question before the Riksdag makes the final decision.

An interesting topic in the debate ought to be whether it is a Swedish interest to be a member of the organisation with the possibility of influencing that goes with the membership or whether our country should remain outside.

But now to a considerably more serious matter which is intimately connected with the relation between the UN and NATO, namely the way in which the Security Council acts.

For several years there has been a debate about increasing the number of members of the Security Council. In September 2008, the General Assembly decided that negotiations on this issue are to commence in February 2009.

As is known, the Security Council now has 15 members. China, France, the Russian Federation, the United Kingdom and the United States are permanent members with veto power. (France, the UK and the US are also members of NATO.) From the material that constitutes the basis for the upcoming negotiations it appears that different solutions have been discussed. The lowest "bid" seems to be an increase to 22 members, the highest 26 members. Some of the proposals suggest that there will be additional members with veto power.

This is where I see the truly great danger both for the UN and also for NATO. The debate about the composition of the Security Council must simply concentrate on a far

more serious question: how do the current members of the Security Council – and in particular the permanent members – respect international law, in particular the UN Charter?

A reform without sufficient attention paid to this question of the “rule of law” risks creating a completely paralysed Security Council. And then what is left of the system for collective security?

In a letter dated 10 December 2008, I have drawn the attention of the governments of UN Member States to this problem. What must come to an end is that permanent members of the Council sometimes flagrantly violate the UN Charter – the very Charter whose observance they are set to supervise.

This happened when Iraq was attacked in March 2003 and when Georgia was attacked in August 2008. The experiences from the so-called “war against terrorism” are terrifying.

In my letter there is a proposal for how this question could be dealt with in the upcoming negotiations. The readers are welcome to take part of it on my homepage.

I know that the proposal will not be appreciated in all quarters, but I consider it my duty to draw attention to this threat against the effectiveness of the UN Charter.

At the same time we have the new doctrine of Responsibility to Protect.

Is it acceptable that people in Gaza, Burma, Darfur, and Zimbabwe have to suffer because an individual permanent member of the Security Council has an underlying interest of its own to prevent a UN intervention – an interest that is not directly related to this member’s own security?

In these days a particular concern up front is the inability of the Council for several years to deal with the situation in the Middle East in a balanced and forceful manner.

In the discussion of a Swedish NATO membership this problem cannot be disregarded. What would be particularly dangerous is if regional organisations, for example NATO, take the liberty of engaging in violation of the UN Charter (and in this case also the NATO Treaty) in military operations in situations where the UN Security Council is unable to agree.

We must concentrate on convincing the major powers that they have to follow the law and take their responsibility – and that this is really in their own interest.

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