

Hans Corell
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of the United Nations

Stockholm, 22 November 2012

[Text of a letter of 22 November 2012 sent to the Permanent Representatives of the members of the United Nations Security Council and to the Permanent Representatives of the five States elected members of the Council as of 1 January 2013]

Excellency,

Security Council Reform and the Rule of Law

This letter is sent by me in my personal capacity to the Permanent Representatives of the members of the United Nations Security Council and to the Permanent Representatives of the five States elected members of the Council as of 1 January 2013: Argentina, Australia, Luxembourg, the Republic of Korea, and Rwanda.

Attached to this letter is a keynote address that I delivered on 12 November 2012 at a symposium to celebrate the International Criminal Court at Ten: *Reflections on International Criminal Justice: Past, Present and Future*. At the centre in this address is the rule of law and the way in which the Security Council deals with situations where people are victims of grave international crimes as is presently the case in Syria.

In the address, reference is made to a letter that I wrote to the Governments of the Members of the United Nations on 10 December 2008 under the title *Security Council Reform: Rule of Law More Important Than Additional Members*. The line of reasoning in that letter is that international peace and security will be under serious threat in the future unless the rule of law is established both at the national and international level. The way in which the members of the Security Council, and in particular the permanent members of the Council, conduct themselves will be the determining factor in this global effort to establish the rule of law. The permanent members must lead the way by fully respecting their obligations and bow to the law and in particular to the Charter of the United Nations.

One question put in the address is: could the tragedy in Syria have been avoided if the permanent members of the Security Council had taken the steps suggested in the letter of 2008?

The thinking in the letter and the address is fully in line with the *Declaration on the Rule of Law at the National and International Levels*, adopted by the High-level Meeting of the UN General Assembly on 24 September 2012 (A/RES/67/1).

I am aware that my reasoning as regards the Security Council might cause strong reactions, in particular among the five permanent members of the Council and among States that aspire to a more permanent presence in the Council. The position of these latter States is fully understandable and must be respected, in particular since the geo-

political situation today is very different, as compared to the time when the UN Charter was negotiated back in 1945. However, the fundamental question is: what comes first – the rule of law or an extension of the membership of the Council?

An enlargement of the Council is problematic mainly for two reasons. First, there is a clear risk that an enlarged Council will make the UN Charter system of collective security inoperable. It is crucial that the Council remains an executive organ. It is said that a reformed Council might have a size in the mid-twenties. As a matter of fact, already the present membership may exceed the limit for an effective and efficient executive body.

Second, an extension of the membership of the Council cannot be more important than that the present members fully respect the Charter that they are set to supervise. What is needed is a firm and credible commitment by these members, and in particular the permanent members, to respect the Charter. If the membership of the Council is enlarged and the members continue to be unable to address effectively situations like the one in Syria, this will have extremely serious consequences for the United Nations as a credible organization in the future.

I therefore reiterate my proposal that the five permanent members adopt and abide by a declaration along the lines suggested in the letter of 2008 and now repeated in the address. The draft declaration is attached for ease of reference.

The question of the composition of the Security Council can be revisited at any time, preferably when there are more democracies in the world. In such a situation, a more radical reform of the Council than presently contemplated may be possible within the limits of its present size. In the meantime, the five permanent members must realize that they have an *obligation* under Article 39 of the UN Charter to act when international peace and security are threatened. Furthermore, they must realise that the rule of law at the international level requires that they use the same yardstick when they apply the Charter.

One way of achieving this would be for the permanent members to make a declaration along the lines suggested. This way of demonstrating that they are prepared to fully shoulder the responsibility conferred on them by the Members of the United Nations under Article 24 of the Charter does not require an amendment to the Charter and a lengthy ratification process. It could be done within a few weeks. What is needed is political will and statesmanship.

Respectfully,

[Signed]

Hans Corell
Under-Secretary-General for Legal Affairs
and the Legal Counsel of United Nations
from March 1994 to March 2004

Annex to a letter of 10 December 2008 from former Legal Counsel of the United Nations Hans Corell to the Governments of the Members of the United Nations

Draft Declaration by the Permanent Members of the Security Council¹

We, the permanent members of the Security Council,

Mindful of the responsibility of the Security Council under the Charter of the United Nations for the maintenance of international peace and security;

Realizing that the ever present threats to international peace and security are now exacerbated by the effects of climate change in combination with a rapidly growing world population;

Aware of the fact that failure on the part of the Security Council to act in situations where action is obviously required may cause unnecessary human suffering and may tempt others to intervene, including by the use of force, without the required authorization of the of the Council;

Realizing that such actions by others will undermine the respect for the Charter of the United Nations and may in themselves pose a direct threat to international peace and security;

Conscious of the fact that a failure by the members of Security Council to set the example by scrupulously adhering to international law and the Charter of the United Nations will have devastating effects on the efforts to establish the rule of law at the national and international level,

Have agreed to make the following solemn undertaking: [new paragraph] We pledge

- To scrupulously adhere to the obligations under international law that we have undertaken and in particular those laid down in the Charter of the United Nations;
- To make use of our veto power in the Security Council only if our most serious and direct national interests are affected and to explain, in case we do use this power, the reasons for doing so;
- To refrain in our 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. [end]

¹ I would like to emphasize that the intention behind this proposal is to inspire a serious discussion of the issue and that the text should be regarded as food for thought rather than an attempt to propose the exact wording of such a declaration.