

The Fifth Hilding Eek Memorial Lecture

The UN Security Council and the Rule of Law

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Abstract

The rule of law can be defined as having four elements: (1) democracy; (2) proper legislation respecting international human rights standards; (3) the institutions to administer this law, including independent and impartial courts; and (4) the individuals with the integrity and the knowledge necessary to administer these institutions. The UN has come to an understanding that the rule of law is indispensable for international peace and security, for example in the resolution adopted by the General Assembly in 2012 entitled “Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels”. The Security Council with its primary responsibility for the maintenance of international peace and security is the most powerful UN organ. A special responsibility weighs heavily upon high-level politicians in states members of the Council to contribute to establishing the rule of law at the national and international levels.

Keywords

UN Security Council – rule of law – Security Council reform – veto – United Nations – international law

This was the fifth Hilding Eek Memorial Lecture, organised by the Stockholm Centre for International Law and Justice and held in the Law Students' House at Stockholm University on 25 October, 2021 (the first weekday after the United Nations day).

Hans Corell has a very long history of civil service, in Swedish Courts and as a Director-General for legal affairs at the Ministry of Justice and at the Ministry for Foreign Affairs, and from 1994 as the counsel, head of the legal department and under-secretary general at the United Nations under Boutros Boutros-Ghali and Kofi Annan. After having retired in 2004 after a momentous decade at the UN, Hans Corell has continued to serve in a number of positions, including in the International Bar Association and the Raoul Wallenberg Institute in Lund. He also has an honorary doctorate at Stockholm University from 1997 and at Lund from 2007.

Hans Corell embodies two positions that are essential in any thriving democracy: On the one hand, he is the archetypical civil servant, who impartially serves the public interest in accordance with the given mandate. On the other hand, he is sincerely committed to important ideals and deeply concerned about the future of this planet. For Hans, impartiality and commitment are anchored in a pledge to the rule of law.

Hans was the outgoing Chair of SCILJ at the time of the presentation. However, the invitation that he should hold the Hilding Eek lecture in 2021 was the result of a "conspiracy" among the other six board members, which he had no choice but to accept.



The late Hilding Eek was Professor of International Law at Stockholm University between 1956 and 1974. His most significant academic publication in public international law – *Folkrätten* –¹ has influenced and inspired many Swedish international lawyers. Eek had a strong faith in international law and its possibilities to achieve peace and justice in the world. In 1959, he founded the Institute of International Law at Stockholm University. The Stockholm Centre for International Law and Justice, inaugurated in 2012, continues this tradition, and therefore the board decided at its first meeting to establish the Hilding Eek Memorial Lecture. The Lecture is given every other year. Previous

¹ H. Eek, *Folkrätten* (P.A. Norstedts & Söners Förlag, Stockholm, 1975).

Hilding Eek lectures have been held by Peter Tomka,² Hans Blix,³ Christine Chinkin⁴ and Rüdiger Wolfrum.⁵

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1 Introduction

First, let me thank the Stockholm Centre for International Law and Justice for inviting me to deliver the Fifth Hilding Eek Memorial Lecture. The topic of my lecture is *The UN Security Council and the Rule of Law*. The reason that I have chosen this topic is that it deals with something which is of crucial importance for building a world in which all people can live in peace and dignity with their human rights protected.

Ever since I, in March 2004, left my position as Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, I have concentrated on working for the rule of law at the national and international levels. In this context, I have sometimes focused specifically on the role of the UN Security Council.

My latest article of this nature was published in November 2019 and deals with the need for reforming the Council and that the Council must lead by example.⁶ In that article, I focused on specific elements that the Security Council must take into consideration in today's world, among them the need for the rule of law and human rights; the growth of the world population;

2 Peter Tomka, 'The Rule of Law and the Role of the International Court of Justice in World Affairs', Inaugural Hilding Eek Memorial Lecture, Stockholm Center for International Law and Justice, December 2, 2013, not published.

3 Hans Blix, 'The Second Hilding Eek Memorial Lecture: UN Security Council vs. Weapons of Mass Destruction', 85 *Nordic Journal of International Law* (2016) 147–161.

4 Christine Chinkin, 'The Third Hilding Eek Memorial Lecture: Violence against Women: International Human Rights Law, Criminal Law and Security', 87 *Nordic Journal of International Law* (2018) 229–248.

5 Rüdiger Wolfrum, 'The Fourth Hilding Eek Memorial Lecture: Who Is Responsible for the Protection of the Ocean Floor?', 89 *Nordic Journal of International Law* (2020) 155–167.

6 H. Corell, 'UN Security Council Reform – The Council Must Lead by Example', 22 *Max Planck Yearbook of United Nations Law* (2018) pp 3–33. Available at <<https://www.havc.se/res/SelectedMaterial/20191128corellunsecuritycouncilreform.pdf>>, visited on 3 November 2021.

climate change; responsibility to protect; empowerment of women; and nuclear disarmament. Time does not allow that I go into detail with respect to all these elements today.

This means that my focus will now be on the need for the rule of law, of which protection of human rights is a central element, and on the use of the veto, which must be in conformity with the mandate of the Security Council.

The reason that I am now focusing on this again is that I am extremely concerned because of the latest events in the world. Democracy and the rule of law are under attack, even in Western countries. On 14 October, a few days ago, the World Justice Project published its Rule of Law Index 2021.⁷ This index shows that more countries declined than improved in overall rule of law performance for the fourth consecutive year.⁸ We can also note that journalists, lawyers, and human rights defenders are being persecuted for doing their work. Twenty years of peace efforts in Afghanistan have gone overboard. And the latest IPCC report is a very serious warning with respect to climate change.⁹ The need for a well-functioning world organisation is greater than ever. It is therefore important that we respect the heritage that we received from a generation that had experienced two world wars in the past century: the United Nations with its purpose of saving succeeding generations from the scourge of war.

On 9 September, I had the honour of welcoming the participants at the 2021 European Society of International Law Conference here in Stockholm.¹⁰ In so doing, I referred to a very important part of this heritage, namely the Universal Declaration of Human Rights from 1948, today recognised as customary international law.¹¹ I quoted its third preambular paragraph. Let me quote this paragraph again:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

7 See *WJP Rule of Law Index 2021*, <<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021>>, visited on 3 November 2021.

8 See *Highlights and data trends from the WJP Rule of Law Index® 2021* at <<https://worldjusticeproject.org/sites/default/files/documents/Insights-2021-final-revised.pdf>>, visited on 3 November 2021.

9 Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis*, available at <https://www.ipcc.ch/report/ar6/wgi/downloads/report/IPCC_AR6_WGI_Full_Report_smaller.pdf>, visited on 3 November 2021.

10 See <<https://esil2021.se/>>, visited on 3 November 2021.

11 Universal Declaration of Human Rights, UN Doc, UNGA RES 217 A, 10 December 1948, <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>, visited on 3 November 2021.

Among the six main organs of the UN, the Security Council with its primary responsibility for the maintenance of international peace and security is the most powerful.¹² It is therefore a disaster if this organ does not function when the need is the greatest. And what signal does it send to the world, if members of the Council sometimes flagrantly violate the law that the Council is under the obligation to enforce, as happened in Iraq in 2003, in Georgia in 2008 and in Ukraine in 2014?

2 Definition of the Rule of Law

With respect to the definition of the rule of law, I often refer to the one that appears in Secretary-General Kofi Annan's report to the General Assembly in 2004, entitled "The rule of law and transitional justice in conflict and post-conflict societies":¹³

The rule of law - - - 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.

For my part, I often use a very straightforward and brief definition, consisting of four elements: (1) democracy; (2) proper legislation respecting international human rights standards; (3) the institutions to administer this law, including independent and impartial courts; and (4) the individuals with the integrity and the knowledge necessary to administer these institutions.¹⁴

¹² Article 24 (1) of the UN Charter.

¹³ Paragraph 6 in UN Doc. S/2004/616*, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616>, visited on 3 November 2021.

¹⁴ See the comprehensive anthology Morten Bergsmo and Viviane E. Dittrich (eds), *Integrity in International Justice* (Torkel Opsahl Academic EPublisher, Brussels, 2020), available at <<https://www.toaep.org/nas-pdf/4-bergsmo-dittrich>>, visited on 3 November 2021.

3 **Positions Taken by the General Assembly and the Security Council with Respect to the Need for the Rule of Law**

Of particular importance in this context is that the members of the United Nations have come to an understanding that the rule of law is an indispensable prerequisite for international peace and security. By way of example, I would like to refer to the resolution adopted by the UN General Assembly on 24 September 2012 entitled “Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels”.¹⁵ The following two paragraphs in this Declaration are of particular relevance here:

1. We reaffirm our solemn commitment to the purposes and principles of the Charter of the United Nations, 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.
5. We reaffirm that human rights, the rule of law and democracy are inter-linked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.

On 21 February 2014, the Security Council recalled this declaration in a Presidential Statement in which the Council recognized the need for universal adherence to and implementation of the rule of law, the vital importance it attaches to promoting justice and the rule of law as an indispensable element for peaceful coexistence and the prevention of armed conflict.¹⁶ In the same statement the Security Council also reaffirmed its commitment to international law and the Charter of the United Nations and to an international order based on the rule of law and international law.

Among resolutions expressing the same commitment to the rule of law in later years could be mentioned the General Assembly resolution on education for justice and the rule of law in the context of sustainable development of 18 December 2016,¹⁷ and the Security Council resolution on peacekeeping operations of 13 December 2018.¹⁸

15 UN Doc A/RES/67/1* available at <<https://undocs.org/en/A/RES/67/1>>, visited on 3 November 2021.

16 UN Doc S/PRST/2014/5 available at <<https://undocs.org/S/PRST/2014/5>>, visited on 3 November 2021.

17 UN Doc A/RES/74/172 <<https://undocs.org/en/A/RES/74/172>>, visited on 3 November 2021.

18 UN Doc S/RES/2447 (2018) <[https://undocs.org/S/RES/2447\(2018\)](https://undocs.org/S/RES/2447(2018))>, visited on 3 November 2021.

The conclusion here is that there are very firm commitments both by the General Assembly and the Security Council with respect to the need for observing the rule of law. The question is why those commitments are not respected by the Security Council in certain situations.

4 Is the Use of the Veto Legal in the Face of Atrocity Crimes?

This brings to the forefront the question if the use of the veto in the Security Council is always legal. In 2020, Professor Jennifer Trahan of New York University published a book entitled “Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes”.¹⁹ I read the book with great interest, in particular since her reasoning was different from the one that I had applied in an appeal on 10 December 2008 to the permanent members of the Security Council not to use the veto unless their most serious and direct national interests are affected.²⁰

In Professor Trahan’s view, there are legal limits to the use of the veto in the face of genocide, crimes against humanity or war crimes because of *jus cogens*, or because the veto may violate the purposes and principles of the UN Charter or binding treaty obligations.

First, she points to the fact that the veto derives from the UN Charter. However, in her view the Charter is subsidiary to *jus cogens* norms. Then she points to Article 24 of the UN Charter under which the Security Council has the primary responsibility for the maintenance of international peace and security and that, in discharging these duties, the Council shall act in accordance with the purposes and principles of the United Nations. In her view the use of the veto in the face of a draft resolution responding to genocide, crimes against humanity or war crimes does not accord with the Charter’s purposes and principles. Finally, she points to the fact that a permanent member of the Council that utilises the veto may also have other binding treaty obligations, such as those under the Genocide Convention, which contains a legal obligation to prevent genocide. If a permanent member uses the veto in a manner that would enable genocide or allow its continued commission, this would violate that state’s legal obligation to prevent genocide. In her view, a similar argument can be made as to at least certain war crimes, such as grave breaches and violations of Common Article 3 of the 1949 Geneva Conventions.

19 J. Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (Cambridge University Press, Cambridge, 2020), doi:10.1017/9781108765251.

20 See the Annex to the article referred to in note 6.

I have participated in several events on the web at which this book has been presented. And the idea is that efforts should be made to convince the General Assembly to request the International Court of Justice to give an advisory opinion on the question: “Does existing international law contain limitations on the use of the veto power by permanent members of the UN Security Council in situations where there is ongoing genocide, crimes against humanity, and/or war crimes?”

Professor Trahan has now developed her thinking in this matter in two articles. The first article is based on her many interactions with representatives of states.²¹ The second article is focusing on the question why the veto power is not unlimited.²² This material will be of great assistance since the question is complex. It is very important that the General Assembly now engages in a serious discussion about a decision to request the International Court of Justice for an advisory opinion.

In the past I have referred to an interesting study made by a campaign started by students at Uppsala University here in Sweden, called “Stop Illegitimate Vetoes”. They have just updated their study. As it appears from their website, they have analyzed the 59 vetoes cast between 1991 and 2020: none by France and the United Kingdom, 15 by China, 27 by the Russian Federation, and 17 by the United States of America.²³ Their conclusion is that 57 of these vetoes are illegitimate since they do not concern the security of the members themselves.

5 The Duty of the Permanent Members of the Security Council

With respect to the duty of the permanent members of the Security Council, I also refer to what I said in my 2019 article. Now, I will focus on the very worrisome development thereafter, in particular the behaviour of three of the permanent five members of the Council, namely China, the Russian Federation, and the United States of America. This will be followed by some brief remarks about France and the United Kingdom.

21 J. Trahan, ‘Why the Veto Power is Not Unlimited: A Response to Critiques of, and Questions about, Raising the Issue of Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes’, 54 *Case Western Res. J. of Int’l Law* (2022) pp. 109–140.

22 J. Trahan, ‘Vetoes and the UN Charter: the Obligation to Act in Accordance with the “Purposes and Principles” of the United Nations’, *Journal on the Use of Force and International Law* (published online 2022), DOI: 10.1080/20531702.2022.2059882.

23 See <<http://stopillegitimatevetoes.org/thereport/>> (visited on 3 November 2021) where the reports *Legitimate Concerns* and *Legitimate Concerns – the Report Companion* can be downloaded.

5.1 *China*

With respect to China, it is extremely worrisome to see how this permanent member behaves. The way in which China behaves in the South China Sea is not in conformity with the UN Convention on the Law of the Sea. Furthermore, the way in which China is treating Hong Kong is a clear violation of the 1984 agreement between the governments of the United Kingdom and China setting out the conditions under which Hong Kong was transferred to Chinese control and for the governance of the territory after 1 July 1997. Another matter that causes deep concern is the treatment of the Uighurs in the province of Xinjiang. The increasing threats against Taiwan are unacceptable.

In addition, President Xi Jinping has decided that a system for the rule of law shall be developed in China. Looking at documentation issued for this process, there is not a single reference to the fundamental rule of law documents adopted at the international level, like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights from 1966 and the International Covenant on Economic, Social and Cultural Rights from the same year, or the numerous other treaties concluded in the field of human rights.²⁴ Instead there are references to 'socialist rule of law' and 'rule of law with Chinese characteristics'. There are no references to the independence of the judiciary. On the contrary, there are words to the effect that the courts are subject to the supervision of the Chinese Communist Party. This has nothing to do with the rule of law as the concept is understood under international law. To call this 'rule of law' is a very serious misnomer.

5.2 *The Russian Federation*

With respect to the Russian Federation, the situation is very sad. There was great hope after the fall of the Berlin Wall in 1989 and the development in Russia under Michael Gorbachev. Unfortunately, this positive development has now transformed into its opposite. We just observed the so-called election, which has been widely criticised by experts. Meaningful political opposition is not permitted in Russia. Candidates representing organisations critical of the present administration are arrested, and one of them was subjected to attempted murder. The people of Russia must be permitted to freely decide about their future and the manner in which they would like to be governed.

24 See e.g. Xinhua News Agency, *The Central Committee of the Communist Party of China issued the Plan for the Construction of a China under the Rule of Law (2020–2025)* 2021-01-10 19:44, available at <http://www.gov.cn/zhengce/2021-01/10/content_5578659.htm>, visited on 3 November 2021.

On 6 July 2007, at a symposium on the rule of law sponsored by the International Bar Association together with the Constitutional Court of the Russian Federation, the Federal Chamber of Lawyers of the Russian Federation and others, the President of the Constitutional Court of the Russian Federation Valery Zorkin delivered an important speech entitled “Rule of Law and Legal Awareness”. In so doing, he referred to the European Convention on Human Rights. Let me quote the following from his speech:

Since the Convention is a[n] integral component of national legal systems of its member states, any legal protection methods accessible at a national level should be efficient and known to the citizens of each specific country. These methods form a «first line of defence» for protection of the rule of law and basic human rights and freedoms. The first task of every national judiciary is to protect human rights by using all domestically available mechanisms, while assuring strict observance of the Convention provisions. Our common task is to render these mechanisms really efficient from the standpoint of civil rights protection.²⁵

Where did this wisdom go? The latest development here is amendments to the 1993 Russian Constitution. These amendments were approved by the Duma in March 2020. On 16 March 2020, the Constitution in its new format was published in *Rossiyskaya Gazeta*, the Russian government’s official publication of officially approved legislation. However, the entry into force depended on a nationwide vote, initially set for 22 April 2020. But because of the covid-19 pandemic the vote was postponed and took place between 25 June and 1 July 2020. In the referendum, which was legally referred to as an ‘All-Russian vote’, the amendments were approved.²⁶

25 See page 50 (print 51) in Francis Neate and Holly Nielsen (eds), *The World Rule of Law Movement and Russian Legal Reform* (Justitsinform, Moscow 2007), ISBN 978-5-7205-0883-8, Available at <<https://www.stetson.edu/artsci/political-science/media/worldruleoflaw.pdf>>, visited on 3 November 2021.

26 See Central Election Commission of the Russian Federation, *Ella Pamfilova: Changes to the Constitution of the Russian Federation are considered to be approved*, 3 July 2020, <<http://www.cikrf.ru/eng/>>, visited on 3 November 2021. But independent experts said that the plebiscite violated domestic and international standards. Meduza, *Nothing more than a PR campaign’ Independent experts say Russia’s constitutional plebiscite violated domestic and international standards*, 2 July 2020, <<https://meduza.io/en/feature/2020/07/02/nothing-more-than-a-pr-campaign>>, visited on 3 November 2021. See also the article referred to in note 22.

According to analysts, the problem with the amendments is that they probably violate Chapters 1, 2 and 9 of the 1993 Constitution.²⁷ These three chapters are foundational and can only be amended by a Constitutional Assembly. Under all circumstances the amendments violate the existing rules applying to respect for international treaties, human rights, and the independence of the judiciary. The positive development that we saw some 30 years ago is backtracking.

5.3 *The United States of America*

With respect to the United States of America, we have experienced the deterioration of respect for the rule of law during the Trump administration, culminating in the events on Capitol Hill on 6 January this year. This is a very dangerous development deviating from the course that the U.S. has held for many years.

We must now hope that the Biden administration can restore the U.S. standing in the international community. The U.S. withdrawal from Afghanistan without proper consultations with allied states is problematic. This situation also illustrates that it is not possible to establish a proper administration in a country just by sending troops. Such assistance must be combined with support in building a society under the rule of law and fighting corruption.

Another important matter that needs attention is to restore the comprehensive, long-term solution to the Iranian nuclear issue, regulated by the Joint Comprehensive Plan of Action of 14 July 2015, the so called JCPOA. In 2018, President Trump irresponsibly withdrew from this agreement. As I said in 2019, even if a state that is a party to the JCPOA could withdraw from the agreement as such, this state is still bound by the obligations on all states laid down in Security Council resolution 2231 (2015) and its Annexes A and B, through which the Council endorsed the JCPOA.²⁸

In Europe we should be very grateful to the Americans who in the past century came across the Atlantic to assist us when we had completely lost track and caused the First and the Second World War. As a great friend of the U.S., it is with both sadness and fear that I noted that the people in the U.S. could elect

27 See e.g., E. Teague, 'Russia's Constitutional Reforms of 2020', *Russian Politics*, 5(3), 301–328. doi: <<https://doi.org/10.30965/24518921-00503003> or <https://brill.com/view/journals/rupo/5/3/article-p301_3.xml?language=en&ebody=full%20html-copy1>, visited on 3 November 2021. In Swedish, see FOI MEMO 7091 "Rysk utrikes-, försvars- och säkerhetspolitik" of 4 May 2020, available for downloading at <<https://www.foi.se/rest-api/report/FOI%20Memo%207091>>, visited on 3 November 2021.

28 See Security Council resolution 2231 (2015) and its Annexes A and B available at <[https://undocs.org/S/RES/2231\(2015\)](https://undocs.org/S/RES/2231(2015))>, visited on 3 November 2021.

a person like Donald Trump as their president. This was yet another example of a weakness also in democracies: there is no guarantee that a statesman or stateswoman is elected head of state.

5.4 *France*

With respect to France, the latest event that may influence the permanent membership in the Security Council is the trilateral security pact between Australia, the United Kingdom, and the United States for the Indo-Pacific region, called 'AUKUS', announced on 15 September 2021.²⁹ Under this pact, the U.S. and the UK will help Australia to acquire nuclear-powered submarines, which led Australia to cancel an earlier French – Australian submarine agreement without notice. This has caused great concern in France. It is important that this does not disturb the relationship among the three Western permanent members of the Security Council.

5.5 *The United Kingdom*

With respect to the United Kingdom, we have experienced the Brexit, which came into effect on 1 February 2020. This is a sad development that affects the European unity and may weaken the European Union at a time when the values of the union must be effectively defended by European states in firm unity.³⁰

6 The Need for Reforming the UN Security Council

This brings me back to the need for reforming the UN Security Council.

In the United Nations there is much talk about reforming the Security Council. However, the focus is almost entirely on adding more members to the Council. This is simply not acceptable for two reasons. First, the Council is an executive organ and already fifteen members is a high number for such an organ. Second, adding members to the Council will not solve the real problem

29 See *Joint Leaders Statement on AUKUS*, <<https://au.usembassy.gov/joint-leaders-statement-on-aukus/>>, visited on 3 November 2021.

30 See European Commission, *Consequences of Brexit*, <<https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/new-normal/consequences-brexiten>>, visited on 3 November 2021. and Cabinet Office, *Summary: The UK's new relationship with the EU*, updated 2 July 2021, <<https://www.gov.uk/government/publications/summary-the-uks-new-relationship-with-the-eu/summary-the-uks-new-relationship-with-the-eu>>, visited on 3 November 2021.

with the organ, namely the fact that permanent members do not always behave as they should in certain situations. This kind of behaviour is unforgivable.

Furthermore, the threats against peace and security will only increase in the future. In the Council there is often talk about 'conflict multipliers'. Such are now also the climate change and the growth of the world population. Other threats are, as I have already mentioned, the attacks on democracy and the rule of law in many states.

What we have learned over the past couple of years is also that there is a need for effective international cooperation when the world is afflicted by a pandemic. On 25 August 2021, the head of the World Health Organization said that WHO is progressing on plans to strengthen global defence against future epidemics and pandemics. He referred to the UN General Assembly in September, followed by the G20 Summit in October, and a special session of WHO's governing body set for November and said that these three months represent "a critical period for shaping the future of pandemic preparedness and response".³¹ It is obvious that the Security Council must consider also future pandemics as a threat multiplier.

Problems created by such events cannot be resolved by states through the use of force. At the same time, it is clear that all states must have a proper defence for the simple reason that they will otherwise attract criminal elements. This is what we saw when the United Nations had to govern Kosovo and East Timor some 20 years ago and we were not able to recruit police, prosecutors, and judges quickly enough, but had to rely on the military to avoid anarchy. Therefore, all states must have a proper defence. However, small states will not be able to afford a full-fledged army, navy, and air force for this purpose. Against this background I have argued in the past that defence alliances are a future necessity.³²

The question is then what the Security Council, and in particular its five permanent members, should do. In my view, what is needed here is statesmanship, in which concept I also of course include women. Empowerment of women is one of the most crucial elements for future world governance. It is unforgivable not to recognise the role of women at the local, regional, and

31 See World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 – 25 August 2021, 25 August 2021, <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---25-august-2021>>, visited on 3 November 2021.

32 H. Corell, 'Defence Alliances – A Future Necessity', in *Bevara alliansfriheten Nej till Nato-medlemskap!* Ed. Anders Björnsson & Sven Hirdman. (Lund: Celanders förlag, 2014), available at <<https://www.havc.se/res/SelectedMaterial/20141116defencealliances.pdf>>, visited on 3 November 2021.

global levels. It is true that the Council is discussing the role of women in peace operations. This is important. However, as I said in 2019, it is obvious that these efforts to empower and protect women must continue with determination since this is of great importance when the Council is exercising the mandate conferred to it under Article 24 of the UN Charter. The latest discussion on this item took place in the Council on 21 October 2021.³³

7 Future World Governance

With all this in mind we must reflect on the world governance in the future. For my part, I cannot see any alternative to the present system of sovereign nation states. The system of detailed rules that is necessary for regulating the daily life of people at the local level around the world is only possible by and within nation states. But this will not work properly unless the system is managed by parliaments and governments that are elected, approved, and accepted at the national level. The idea that all this could be managed by some kind of world government is unthinkable. However, a fundamental requirement for this system to work properly in the future is that the nation states are democratic. In addition, they must be based on the rule of law and interact with each other in full conformity with international law. A well-functioning United Nations System is indispensable here.³⁴

At the same time, we can see that other actors increasingly contribute to the development of a globalised world. Civil society organisations and the business community should be mentioned in particular here. They also contribute to the development of the international legal system. An interesting lesson from the 2021 ESIL Conference is that the development of international law through negotiations and treaty making among states will increasingly be supplemented by ideas and contributions from such organisations.³⁵ All this is of great importance.

33 See Meeting Record of “Women and peace and security” at <<https://undocs.org/en/S/PV.8886>>, visited on 3 November 2021.

34 The United Nations is part of the UN system, which, in addition to the UN itself, comprises many funds, programmes and specialized agencies. See <<https://www.un.org/en/about-us/un-system>>, visited on 3 November 2021.

35 The material will be posted under “Events” and “ESIL2021” on the SCILJ website at <<https://www.scilj.se/>>, visited on 3 November 2021.

8 The Five Permanent Members of the Security Council Must Now Engage in a Serious Discussion about Their Obligations

Let us now look at the Security Council and its five permanent members again.

With respect to these members, it is absolutely crucial that they now engage in a serious discussion at the highest level about their behaviour and about the requirements that fall upon the Security Council in today's world. This requires that all the five permanent members bow to the law that they are set so supervise. The latest news about these states that I just referred to do not bode well here. This is unforgivable, in particular if we think of coming generations.

If we look at the younger generation today, we can note a growing frustration over the fact that the present world leadership does not engage actively enough in addressing the challenges that humankind is now facing. By way of example could be mentioned "Fridays For Future", focusing on the climate and the environment.³⁶ There are also youth organisations concentrating on the need for strengthening democracy and the rule of law. Among them could be mentioned "Democracy Moves",³⁷ "World Young Movement For Democracy"³⁸ and "International Young Democrat Union".³⁹

Imagine if the leaders of the five permanent members could meet and discuss in a statesmanlike manner the way in which they behave and treat each other and other members of the United Nations. Instead, they are sometimes at the brink in a manner that could result in a world war. Such a war today would be a complete disaster. And if nuclear arms are used, this will destroy the human habitat and sooner or later all human beings may lose their lives.

The question that these leaders must now discuss must be: How can we best cooperate to create a world in which all human beings can live in peace and security with their human rights protected? What a formidable team they would make, if they could clearly state to the world that from now on, they are prepared to act in accordance with the purposes and principles of the Charter of the United Nations and to resolve their differences in accordance with international law through cooperation, negotiation, and agreement.

36 See Fridays for Future, <<https://fridaysforfuture.org/what-we-do/who-we-are/>>, visited on 3 November 2021.

37 See Democracy Moves, <<https://www.democracymoves.org/>>, visited on 3 November 2021.

38 See World Youth Movement for Democracy, <<https://www.facebook.com/wymdnetwork/>>, visited on 3 November 2021.

39 See Wikipedia, 'International Young Democrat Union', <https://en.wikipedia.org/wiki/International_Young_Democrat_Union>, visited on 3 November 2021.

9 Conclusions

Against this background the five permanent members simply must demonstrate that they understand that the questions that humankind now faces must be resolved through cooperation, based on the rule of law and protection of human rights. The wisdom in the third preambular paragraph of the Universal Declaration of Human Rights with its reference to the rule of law is still highly relevant and of great importance, in particular to coming generations. Those who have studied in detail the drafting of the declaration in the commission led by Eleanor Roosevelt have found that one of the most active participants in the discussion about the provisions in the preambular paragraphs and Article 1 – and to the character of the document as a whole – was the Chinese member Peng Chun Chang.⁴⁰ (See *Annex* below.)

This brings to the forefront the declaration as a whole – a remarkable heritage from, as I said, a generation that had experienced two world wars. The history of the drafting of the declaration and its adoption bears witness to an understanding of the need to create a world in which all human beings should be able to live in peace and dignity with their human right protected. We should respect and honour this heritage. When we reflect on the spirit in which this declaration was created, is it not obvious that it conveys lodestars that all members of the Security Council should follow? If this spirit is transferred to the work of the Security Council in our time, surely the following lodestars crystallise:

- Think of coming generations.
- Bow to the law.
- Make your best efforts to prevent conflicts.
- Intervene to prevent or stop atrocity crimes.
- Join and fulfil your obligations under the Non-Proliferation of Nuclear Weapons Treaty.
- Address the conflict multipliers, not least the climate change.
- Contribute to the fulfilment of the Sustainable Development Goals.
- Dictatorships do not belong in a modern world.

⁴⁰ Hans Ingvar Roth, *P. C. Chang and the Universal Declaration of Human Rights*. Philadelphia: University of Pennsylvania Press, 201. Pp. x, 298. See <<https://www.suits.su.se/about-us/press-media-news/suits-news/roth-s-book-on-pc-chang-listed-among-best-human-rights-books-of-all-time-1.491250>>, visited on 3 November 2021. With respect to the first issue of the book, which is in Swedish, reference is made to Ove Bring, *Mänskliga rättigheter i Konfucius anda* in Svenska Dagbladet on 10 January 2017, available at <<https://www.svd.se/manskliga-rattigheter-i-konfucius-anda/om/kultur:under-strecket>>, visited on 3 November 2021. Quotations from Professor Roth's book appear in the *Annex* hereafter.

A specific conclusion from all this is that there is actually a special responsibility that weighs heavily upon high-level politicians in states members of the UN Security Council. It is their duty to contribute to establishing the rule of law at the national and international levels. Let me therefore end with a reference to a guide for politicians on the rule of law. The guide was inspired by a discussion in the InterAction Council of Former Heads of State and Government in 2008.⁴¹ The title of this short publication is “Rule of Law – A guide for politicians”. It is available on the web free of charge in twenty-six languages, including the languages of the five permanent members of the Security Council.⁴²

Thank you for your attention!

Annex

Quotations from Professor Roth’s book
(Footnotes not included)

Page 122

Chang provided a good description of the climate of ideas and opinion that he regarded as characteristic of the various parties involved in the UDHR and that ultimately succeeded in achieving a surprisingly high degree of unity with regard to the contents of the articles. Chang claimed that humanity finally stood on the threshold to a new, more human era – “a new humanism” – after the myopia, or “shortsightedness,” over the past 150 years. According to Chang the purpose of the declaration was to set up a moral standard toward which mankind might aspire.

Page 128

Roosevelt, Chang, Cassin, Malik, and Humphrey appear to have been especially decisive figures in the committee work, on two counts in particular. First, they were more or less present at all of the critical deliberations as well as being involved in the writing process from the very start. Second, they were also very active with respect to the document as a whole, making a number of vital contributions to its key articles and pivotal characteristics.



⁴¹ See <<https://www.interactioncouncil.org/about-us>>, visited on 3 November 2021.

⁴² *Rule of Law – A guide for politicians*. A Guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiIL), the Netherlands <<https://rwi.lu.se/publications/rule-law-guide-politicians/>>, visited on 3 November 2021.

In the secondary literature, Roosevelt, Cassin, Chang, and Malik are often considered to be the principal “critical authors,” or drafters, of the document. Yet it should also be stressed that the committee secretary, John Humphrey, also played an important role in collating the historical materials that he submitted to the drafting committee.

Page 129

Malik and Chang, who were philosophically the most experienced and astute on the team, made substantial contributions to the key sections – such as the preamble and Article 1 – and to the character of the document as a whole.



As discussed in Part I, Chang was a highly multifaceted individual with a wide range of interests (literature, theatre, music, pedagogy, philosophy) and diverse professional experiences (director, author, teacher, researcher, school administrator, diplomat).

Page 136

Chang also strongly emphasized the fundamental rights and dignity of human beings in the same spirit as various European Enlightenment philosophers, and it was arguably he who most forcefully advocated that respect for human dignity should be included in the preamble of the UDHR.

Page 140

Chang especially – tried to achieve a consensus on fundamental freedoms and rights even though the delegates came from visibly different ethical and cultural traditions. One important area of unity that emerged during the discussions in the Human Rights Commission was that human rights should be able to be justified from several philosophical outlooks, not just one or two.



It may therefore be concluded that Chang was supportive and even a strong promoter of the UDHR’s core features, such as the document’s universal and intercultural nature, its religious neutrality, its inclusion of the concept of human dignity, and its broad understanding of the content of human rights as well as the document’s formal qualities and logical structure. He was also closely involved in the debate over the document’s implementation.