



*Report of*  
the Dag Hammarskjöld  
Symposium on  
Respecting International Law  
and International Institutions

*13-15 June 2005; Uppsala, Sweden*

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## Executive Summary

The Dag Hammarskjöld Symposium on Respecting International Law and International Institutions was held at Uppsala Castle, Sweden, on June 13–15, 2005. It was a joint undertaking of the Department of Peace and Conflict Research, Uppsala University, and the Dag Hammarskjöld Foundation as part of the centenary celebrations of the second Secretary-General of the United Nations, Dag Hammarskjöld.

The purpose of the Symposium was to contribute to the present discussions on UN reform. More precisely, the *aim was to generate a set of practically do-able, substantially solid and logically coherent proposals* that could serve to enhance respect for international law and international institutions. The Symposium benefited from the fact that the High-Level Panel on Threats, Challenges and Changes as well as the UN Secretary-General a couple of months earlier had put forward a number of bold ideas on changing the United Nations in the field of international peace and security.

The Symposium assembled a distinguished group of about 50 participants, particularly involved with UN reform issues as practitioners, academics or in other roles, some in government service, others associated with civil society organizations, the media or international institutions. The list of participants is included in this publication.

There were four themes for the deliberations – preventive diplomacy, the rule of law, the use of force, and human rights – each with separate presenters and rapporteurs. The program is also included.

At the first plenary session, opened by Professor *Bo Sundqvist*, the Vice-Chancellor of Uppsala University, Professor *Manuel Fröhlich* gave an introduction to the relevance of Dag Hammarskjöld's ideas to the reform issues of today. His contribution forms part of this publication.

At the final plenary session, Professor *Richard Falk* summarized the deliberations, based on his own participation in the discussions of the four themes, but also on the reports from the sessions and on the general discussion that followed these reports. Dr Falk's contribution constitutes the main report of the Symposium.

As organizers, we would like to bring attention to a number of points, which in our view provide important contributions to the deliberations. As customary in such symposia, no attempts at measuring consensus or general support concerning different suggestions were made. The selection remains our responsibility only.

There is a close link between the four themes of preventive diplomacy, the rule of law, the use of force, and human rights. They all feed into the issues of reforming the United Nations in the field of international peace and security as well as the task of developing significant proposals for future political measures.

*On preventive diplomacy* there was general support for the creation of a 'robust' (Falk's term) Peacebuilding Commission under the UN Security Council. Many participants expressed concern that the Commission's mandate was gradually watered down in the ongoing debate and felt it was important to remain true to the original intentions regarding this idea (a background paper on this issue is included in the publication).

It was also clear that the experiences of post-conflict reconstruction for the prevention of the recurrence of war were highly diverse and that it is important both to learn from other experiences and to be able to adapt to the particular circumstances of each case.

*On the rule of law* there is a need to think both in terms of international and national aspects. At the international level, it

was frequently demonstrated that the claim of the rule of law 'to treat equals equally' (Falk's expression) did not correspond to the realities of the international system.

At the national level, it was interesting to observe the support for efforts towards the mapping of fragile states from the rule of law perspective, in order to have early indications of problems as well as incentives for action. This is an example where the perspectives of preventive diplomacy and the rule of law come together.

*On the use of force*, a fruitful discussion took place on the theme of responsibility to protect, as suggested in the recent reports as well as in the report of the Commission on State Sovereignty and Intervention in 2001. The notion of such a responsibility has made considerable headway. At the same time it is important to find means of preventing this from becoming another way of legitimizing intervention. Many participants expressed suspicion and pointed to increased interventionist tactics in the 'war on terror'. Others felt that criteria could be set up to avoid an undue exploitation of legitimate reasons.

Again, there was support for the idea of preventive measures for state building and reconstruction as a way of reducing the need for any external action, whether for protection of people or against possible terrorist threats.

*On human rights*, there was discussion on the suggested re-organization of the UN Human Rights Commission as well as on its way of operation. In the latter regard, it was suggested that positive experiences in the European setting could be valuable for the work of the UN.

To many of the participants, it was important that the human rights aspects should involve an equal scrutiny of all states so as to avoid selectivity and bias. It was also felt to be particularly important that human rights violations by Per-

manent Members of the Security Council should be brought forward, notably in cases such as Chechnya and Tibet.

On the whole, there was a richness of ideas presented to the Symposium. The concluding comments in Richard Falk's synthesis should be born in mind: *For reforming the UN it is important to consider issues that are demand-driven and take a listening approach. Some universal standards have to be insisted upon, but there is also a need to learn from positive experiences.* In our view, this means that the Symposium managed to generate what had been hoped for. There are ideas for improving the respect for international law and international institutions. This booklet includes some of them. It is now important to make sure that they are implemented, for instance during the present session of the UN General Assembly. It is time for determined action!

★ ★ ★

We would like to thank all the participants for their contributions to the Symposium. Particularly, we wish to mention the members of the planning committee: Ian Cameron, Hans Corell, Elinor Hammarskjöld, Christer Jönsson, Anders Rönquist and Inger Österdahl.

A vote of thanks also goes to the Secretariat for the Dag Hammarskjöld Centenary at the Swedish Ministry for Foreign Affairs and to Uppsala University, which financed the Symposium.

Uppsala, October 2005

Peter Wallensteen	Olle Nordberg
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## *Report of* the Dag Hammarskjöld Symposium on Respecting International Law and International Institutions

*By Richard Falk*

### *Introduction*

The Symposium was convened with the deliberate intention of encouraging the formulation of *practical* and *feasible* proposals that had some realistic prospect of enhancing respect for international law and international institutions, especially the United Nations, in the near term. The ability to fulfill this objective was both helped and obstructed by the issuance of two extremely important reports on UN reform that were published under official UN auspices: first, *A More Secure World: Our Shared Responsibility*, the report of the High Level Panel on Threats, Challenges and Changes, influentially offering ideas on UN reform in the domain of peace and security, taking special account of the global setting after the September 11, 2001 attacks in the United States; secondly, *In Larger Freedom: Toward Development, Security and Human Rights*, a comprehensive report of the Secretary General on UN reform, issued in March 2005, which responded to a request from Member States to report on progress toward attaining the goals of the UN Millennium Declaration that had been adopted in 2000 and would be the focus of the Summit of world leaders scheduled for September of this year.

These reports, which were not anticipated at the time the Symposium was planned, certainly helped focus the participants on ideas about UN reform that had already been well-crafted, especially in *A More Secure World*. This help was reinforced by the presence of the staff director of the High Level Panel and of a Panel member. Both of these were extremely knowledgeable about reform prospects bearing on the use of force and global security, two areas that are vitally associated with prospects for increasing the respect for international law and international institutions, especially given the recent non-defensive uses of force, without Security Council authorization, in Kosovo (1999) and Iraq (2003). At the same time, the existence of the reports made it difficult to make significantly original contributions associated with the theme of the Symposium as the main lines of feasible response had already been laid out in considerable detail. The Symposium, to avoid reinventing the wheel, worked on the issues with the benefit of the reports as a foundation for commentary, further development and additional ideas.

The work of the Symposium proceeded in parallel seminars. The discussion ranged widely, reflecting the diverse points of views and priorities of the participants. They were summarized by four rapporteurs. Conclusions were drawn by the general rapporteur and commented upon by two discussants.

The Symposium began with a presentation by Manuel Fröhlich under the title ‘Dag Hammarskjöld Revisited: International Law and Institutions in a Constitutional Perspective’, which called attention to the emphasis given by Dag Hammarskjöld to strengthening the rule of law and thereby heightening respect for international institutions. The initial plenary session also included an expert overview panel entitled ‘Routes to Enhanced Respect – Reflections on Recent Experiences and Realistic Alternatives’, in which the panelists discussed some areas of very specific engagement by the

UN in peacekeeping, democracy promotion and sanctions, seeking lessons learned that could be applied in the future. The Symposium also had the benefit of a major address by the Swedish Foreign Minister, Ms Laila Freivalds, with the title ‘UN at Sixty – Opportunities for Change’.

Considerations of proposals and issues occurred in two Working Groups that divided the membership of the Symposium roughly in half. Working Group I addressed the themes of ‘Preventive Diplomacy’ and ‘The Use of Force’, while Working Group II dealt with ‘The Rule of Law’ and ‘Human Rights’. Each of these groups reported to the full membership in a concluding plenary session, which provided further opportunity for clarification of recommendations and identification of the contours of consensus.

As befits the 100th anniversary of Dag Hammarskjöld’s birth, the Symposium was guided in plan and execution by the spirit and substance of this great international civil servant’s vision of the United Nations:

- first, by the selection of the theme, appreciating the centrality of enhancing respect for international law and the UN as essential for peace and justice in the world;
- secondly, by the approach taken to the topic of UN reform: exploring creative ways to strengthen the capacity of the UN to meet challenges of an evolving world order, especially in the area of peace and security, while remaining sensitive to the political and constitutional limits of what was *possible* and *necessary* at a given historical moment. As the UN approaches its 60th anniversary summit with UN reform at the top of the agenda, this constructive spirit of Hammarskjöld needs to be reaffirmed so as to keep the UN responsive to changing circumstances by concrete steps of a practical nature and

to avoid being diverted by grandiose schemes for fundamental reform that are outside the realm of the feasible;

- thirdly, by the sentiment articulated by Jan Eliasson, the new president of the General Assembly, reminding the world that the UN while not a panacea able to solve the world's problems is 'the best available means' to promote a multilateral and cooperative approach to the global challenges of the day.

The four themes of the Symposium were also guided by the central message of *In Larger Freedom*: that issues of security, development and human rights need to be understood as mutually dependent, requiring coordinated treatment, and should not be addressed as if they were distinct or autonomous topics. More specifically, that progress depends on establishing a *virtuous* circle such that reform in one area reinforces and engenders reforms in other areas in a continuous process. That is, for instance, to practice preventive diplomacy effectively means attentiveness to the rule of law, to human rights, and to restraints on the use of force. This coordinated, interlinked approach to UN reform pervaded the Symposium's discussions and informs the recommendations made by each of the four Working Groups.

### *Preventive diplomacy*

The most ambitious and sensitive topic of UN reform considered at the Symposium related to undertaking concrete steps associated with conflict prevention. Discussion in the Working Group was facilitated by the availability of a background paper, 'How to organize conflict prevention?', by Peter Wallensteen (see below). Such an interest had long been discussed by those with a commitment to enhancing respect for international law and international institutions.

It was based on the essential insight, generally accepted, that it would be a more *efficient* use of peacekeeping capabilities to *prevent* conflict rather than to *react* to it. But moving from the insight to its implementation has proved difficult. The rhetoric of prevention is unproblematic, but as soon as action is proposed concerns arise. These concerns are part of the general debate about 'humanitarian intervention' and 'the responsibility to protect', namely, that strong states will use the rationale of preventive diplomacy to conceal interventionary goals that threaten the sovereign rights of states. It is even contended by some governmental representatives that 'early warning' mechanisms and signals can have the effect of inducing conflicts rather than contributing to their abatement or prevention.

The High Level Panel put forward a proposal to establish a Peacebuilding Commission (PC) with the specific purpose of addressing state failure in an anticipatory manner. The report *In Larger Freedom* retains the idea of such a commission, but scales back the scope of its competence, by downgrading its role to that of providing 'advice' in the pre-conflict setting and concentrating its role on post-conflict reconstruction so as to avoid the impression that the sovereignty of weak states could be manipulated, if not overridden. It was argued at the Symposium that even post-conflict settings can be conceived of as arenas of 'prevention'. It was pointed out that in the recent past 44 per cent of civil wars have led to a recurrence of sustained political violence within five years. If such a recurrence can be diminished, then it would be appropriate to regard peacebuilding as a mode of conflict prevention. It was pointed out that pre-conflict and post-conflict are not and should not be sharply distinguished, especially in the setting of a society threatened with or recovering from severe internal strife or humanitarian catastrophe.

It was also agreed that a structural approach based on prevention was to be the goal of peacebuilding, and a necessary alternative to crisis management. In concrete terms this means attention to internal disarmament, diversification of trade, development of profit-generating enterprise and resource development, and public works to diminish unemployment and alienation, especially among youth.

In part, the creative use of a Peacebuilding Commission, even if its mandate is limited to post-conflict settings, would focus on establishing the conditions for what was described as long-term, sustainable peace and the recovery of civic normalcy. To achieve such results depends on concerted efforts at institution-building for governance (especially, judiciary and police), encouragement of the rule of law and human rights, internal disarmament of dissident elements, public and private investment in infrastructure and overall economic development. In short, what is being favored, amounts to a new multi-dimensional paradigm as to the achievement of a peaceful society in the aftermath of severe rupture. To make such an undertaking work, the Peacebuilding Commission needs adequate funding over a long enough period, and this requires credible monitoring and evaluative procedures to ensure that funds are being used as directed and corruption is minimized. It also requires a major effort to achieve donor coordination so that economic assistance takes full advantage of synergistic possibilities, and a great deal of respect for assessments from the field, with the role of offices at UN headquarters focused on coordination. These include making positive use of relevant non-state actors, especially regional institutions and a range of NGOs. The Symposium endorsed an approach to a Peacebuilding Commission that was based on inclusive efforts to engage a diversity of stakeholders within a framework of ‘both/and’ rather than relying on exclusion notions of ‘either/or’.

The Symposium consensus was strongly supportive of establishing a robust Peacebuilding Commission, which, especially at the outset of its activities, was respectful of sovereign rights and mindful of concerns about being a vehicle for great power intervention in a manner that would interfere with the exercise of the right of self-determination by the peoples of the world. In this spirit it was agreed by participants that to make the Peacebuilding Commission a success in concept and practice would depend on exhibiting attentiveness to local and national traditions and priorities, as well as avoiding giving the impression that paternalistic donors were imposing their views on the reconstruction of disrupted states. Positive and negative lessons from such ongoing experiences with post-conflict reconstruction in Afghanistan, Bosnia and Cambodia suggest two overriding conclusions: each situation is different, calling for a distinctive approach, and no template can be relied upon; the dynamics, complexities and frailties of post-conflict reconstruction depend on a longer time for healing, institution building, and investor confidence than is the usual attention span of governments and media. It was agreed that it was important to get the Peacebuilding Commission established, even if modestly at first, and that its functions and mandates could expand as confidence grew on the basis of its contributions.

### *The rule of law*

The Rule of Law Working Group was more concerned with *ideas* than *proposals*, specifically with the conceptual challenge of thinking more constructively about how it is best possible to achieve an increased emphasis on legal dimensions of conflict and peacebuilding without claiming too much. In this respect, it was acknowledged that it is easy to achieve abstract support for the rule of law, but often difficult to

implement this support in concrete circumstances, especially in settings where there are no strong professional traditions associated with law or in global settings where great powers have relied on diplomacy to pursue their goals.

Two settings were seen as crucial, and raised different issues with respect to the rule of law: international efforts to increase respect for limits on the use of force by states in international conflicts, and international undertakings to rebuild collapsed states that are in the process of recovering from political traumas of various kinds. In this regard, the Working Group believed that it was essential to distinguish sharply between promoting the rule of law *internationally* and *nationally*. There was relative pessimism as to whether much could be done at the present time to strengthen the rule of law in the relations between states on issues of war and peace. It was accepted that world politics remained subject to a logic of violence and power that could not be transformed by the rule of law at this stage of history. The relationship of power to law was made manifest with respect to the claims of some states to exemption from accountability or to their upholding norms selectively in a manner that invites perceptions of double standards. A prime example relates to nuclear weapons where the attitude of the nuclear powers in defiance of the Nuclear Nonproliferation Treaty (1968) is 'nuclear weapons are bad for you, good for us'. It should be generally accepted that the prime claim of the rule of law is to treat equals equally, but the reality of international life is such that equals are treated unequally, and that this continues quite openly to be the case in a number of crucial areas of international life, suggesting the lack of expectations with respect to the existence of a legal regime. In these regards, the UN is not currently able to contribute much to the enhancement of respect for international law, or able to promote the legal ethos of equality of treatment in controversial, geopolitically salient issues such as sorting out responsibility between Israel and Palestine, or attributing responsibility to the United

States and the United Kingdom for violations of the law of occupation in Iraq. This skeptical attitude toward the international rule of law contrasted with the belief of the Working Group that much could be done at this time to establish more firmly and effectively the rule of law *within* states, and to a somewhat lesser extent within regions.

In part, discussions and recommendations emphasized connections and priorities within states that were threatened with breakdown or were recovering from civil strife or other forms of state failure. Several participants suggested that promoting the rule of law could best be approached *indirectly* in post-conflict situations, especially by way of economic policy. For instance, if acute and massive poverty is not addressed effectively, it is difficult to gain respect for property rights. Similarly, if civil servants are paid less than subsistence salaries, corruption is almost inevitably going to be wide and deep. Others argued that there is no contradiction between fighting poverty and promoting the rule of law, as the poor are inevitably those who suffer most from the absence of law. It was generally accepted within the Working Group that combating poverty must not be conceived in exclusively materialist terms, but that it can be better understood as the empowerment of the poor. As it was expressed, poverty is not only a lack of income, but also the feeling of humiliation that arises from disempowerment, and this includes the failure to respect legal and human rights.

Thus, to build the rule of law in a post-conflict setting depends on using available resources in a more beneficial manner as well as knowledge of and sensitivity to specific national circumstances. Among examples discussed, it was argued that in Haiti the effort to establish tribunals to deal with the crimes of former rulers was diverting resources that would be better used for anti-poverty projects, such as water purification. In Cambodia, in contrast, it seemed important

to use resources to address the crimes of the Khmer Rouge regime as a necessary means of restoring the confidence of ordinary Cambodians in the relationship between a sense of justice and the governing process of the country. In recent years, Cambodia has suffered from a disconnection between a culture of impunity for mass murderers and the sending of bicycle thieves to prison. For Cambodia to move ahead, and overcome the trauma of its past, there is a need for a trustworthy mechanism to address the crimes of the past while some of the criminals are still alive. More support needs to be given to rule of law budgets in Africa for building the institutions and practices of good governance, and less on showy projects of interest to the international community. The Working Group consensus was that it would be possible to reconcile the need for achieving some sense of justice with respect to past wrongdoing and the imperatives associated with economic and social reconstruction, especially addressing the needs of the poor.

Along these lines were related recommendations that the priorities given to rule of law and governance issues be formulated on the ground, in the field, and not by donor governments and organizations far from the local scene. It was suggested that a balance should be struck between the universal norms associated with the rule of law and respect for local, national and regional values, and that greater reliance be placed on local and regional associations of lawyers and judges. Again, the discussion called attention to the detrimental and myopic competition among donors that promotes their own views of the rule of law without deference to local attitudes and conditions. An example given was the American versus the French view as to how to sell their national approaches to the rule of law, with respect to legal education and training, rather than fitting their contributions into local circumstances. One further example based on experience was put forward: that by and large too great an emphasis was

being placed by donors on the police rather than on training magistrates capable of administering local law in a fair manner. Such considerations reflected the general view that resources were scarce, and needed to be allocated toward achieving the goals of the rule of law in a more bottom-up process than had been the case in the past.

Positive support was also expressed in the Working Group for efforts to map countries that were fragile from a rule of law perspective, identifying benchmarks and early warning indicators that called attention to legal systems that appear to be edging toward collapse.

Several conclusions and recommendations emerged from the Working Group:

- upgrade the rule of law in peacebuilding missions by shifting donor focus from lip service to implementing tactics and practices (making resources available, monitoring the effects of different uses of funds, adapting in response to feedback especially with respect to budgetary decisions);
- adapt the role of international presence so that it maintains an 'advisory' mode and avoids impressions of reestablishing hierarchical 'viceroy' relationships with national and local government officials;
- include rule of law components in peace agreements as prominent features, and in the arrangements negotiated with a future Peacebuilding Commission, and specifically urge cooperation with existing national and regional associations of lawyers; encourage networking with and among these civil society actors;

- provide pre-crisis identification of problem countries by establishing some form of ‘early warning’; there was some interest in mapping countries at risk from a rule of law perspective (but this interest needs to be set off against concern in the other working group about intervening in sovereign states in the guise of conflict prevention);
- appreciate the cross-cutting relevance of the rule of law for success with respect to governance generally, but also in relation to development and security; without an independent judiciary, magistrates in place throughout the country, other goals of peacebuilding are likely to be nullified.

### *The use of force*

More than was the case with other topics at the Symposium, the discussion of the use of force was very much shaped by its treatment in the report, *A More Secure World*. In a sense this was inevitable as the consideration given to the use of force reflected a rather broad consensus of views that had taken hold in light of the debates sparked by the 1999 Kosovo War and by the American response to the 9/11 attacks.

In the Kosovo context, humanitarian intervention was undertaken under NATO auspices in a context in which a positive Security Council mandate was not available due to the Russian indication that it would veto any such initiative, an initiative that thus lacked *legality*, but enjoyed widespread moral and political support, lending the rescue operation a quality of *legitimacy*. A lingering question is how to evaluate uses of force that are illegal, yet legitimate. One solution that would apply to situations of humanitarian emergencies would be an informal pledge by permanent members of the Security Council to refrain from using the veto in such situations. Because the contours of what is humanitarian and

what is strategic or geopolitical are fuzzy, as Kosovo itself illustrates, it would seem difficult to obtain such a pledge.

Another possibility following the recommendation of the Independent International Commission on Kosovo would be to encourage the General Assembly and the Security Council to pass a resolution containing guidelines for such a use of force based on emergency conditions of imminent danger, regional consensus, respect for international humanitarian law, deference to the right of self-determination, priority to protection of civilian population, and commitment to withdrawal of foreign forces as soon as possible. A further development favored by the Symposium was to follow the recommendation of the Commission on State Sovereignty and Intervention to substitute the language of ‘responsibility to protect’ for that of ‘humanitarian intervention’. It was agreed that such language shifted attention to protecting vulnerable people, and avoided directly confronting delicate issues of political independence and sovereign rights.

Can we report a consensus on these matters? It seems accurate to suggest that there did exist general support for the view that with the rise of human rights abuses in an era of globalization it was no longer reasonable to expect regional and global actors to remain spectators in circumstances of imminent genocide or ethnic cleansing. And that a legalistic deference to sovereignty and domestic jurisdiction was under contemporary conditions imprudent and unacceptable. Such a consensus might be described as the lessons of Rwanda (1994) and Srebrenica (1995).

At the same time, there were serious concerns expressed that a revival of interventionary diplomacy, at the expense of the previously colonized world, could occur under such a legitimating pretext. This concern has been widely heightened by

the reliance of the US Government on a humanitarian rationale for its invasion of Iraq, a war undertaken without Security Council authorization and in defiance of unprecedented opposition in civil society. These concerns have intensified as a result of the brutality and ferocity of the Iraqi resistance to the occupation of their country by foreign military forces that invaded the country on what has turned out to be false factual premises.

Less agreement exists on the borders of these issues, especially the far-ranging implications of the American-led war on terror, which was accompanied by the articulation of a doctrine of anticipatory self-defense (described by the Bush administration as ‘preemption’), and a claim that it could be unilaterally implemented. Or, as in the case of Iraq, ‘legitimated’ by ‘a coalition of the willing’. Both *A More Secure World* and *In Larger Freedom* recognize the new circumstances requiring a more flexible and proactive understanding of conditions warranting recourse to war and force, but also the dangers of allowing a state or group of states to decide when to act on such a basis. The guidelines proposed by the High Level Panel, resembling the pre-legal approach to restrictions on the use of force embodied in the religiously evolved Just War Doctrine, amount to a canon of reasonableness with respect to the use of force in international affairs: seriousness of threat, last resort, proper purposes, proportional means, and balance of consequences. As the debate prior to the Iraq War confirmed, such guidelines are of little assistance in settings where there exist strong divergences with respect to the factual conditions or where suspicions abound about the undisclosed motives (for example, oil, military bases, regional domination) of the state or states having recourse to force.

The discussion in the Symposium on the use of force overlapped to a degree with the consideration of the rule of law in international relations. In both settings there was skepticism

about whether major political actors in world conflict would, under current conditions, regulate their conduct by reference either to international law as generally understood or accept the authority of the Security Council as placing constraints on their foreign policy choices bearing on fundamental security issues. On the one side was the leading state insisting that it define the requirements of its national security on an essentially unilateral basis, and on the other side, non-state political actors were ignoring any limits on the use of force and carrying on violent struggles by relying on terrorism. It is difficult to be optimistic about the control of force, the prevention of aggression, in circumstances of this sort. At the same time, a majority of states, including some leading states, seem prepared to entrust the Security Council with its intended constitutional role of deciding when uses of force that are not responses to armed attacks (in the sense meant by Article 51 of the Charter) should be authorized. Despite this encouraging trend, the central antagonists in the war on terror seem unwilling to accept the discipline of international law or defer to Security Council decisions when it comes to the use of force.

The best hope at present, then, is to proceed in an indirect way. To emphasize *prevention* in national circumstances where state failure in one form or another appears imminent. The focus on prevention emphasizes foreign assistance to accelerate development, especially with respect to anti-poverty and anti-corruption programs, as well as police training and good governance practices. It reinforces the call for the protection of human rights, especially for religious and ethnic minorities.

## *Human rights*

The Working Group took notice of the advocacy of institutional reform in *A More Secure World* and *In Larger Freedom*, as well as in recommendations of the UN High Commissioner for Human Rights. The direction of reform involves the replacement of the existing 54-member Human Rights Commission that meets annually for a limited time with a smaller Human Rights Council that is in continuous session. The Human Rights Commission has been subjected to severe criticism in recent years because it has included members with dreadful human rights records, and has even elected such governments to lead the work of the organization. But there was concern expressed that a smaller body would lack credibility, and tend to be dominated by G-8 states.

Alternative models for reform were also discussed including, especially, the idea of expanding the Human Rights Commission to include all UN members, and establishing an Executive Council that was smaller, and in continuous session. This would have the double advantage of universal participation with respect to human rights, and creating more efficiency and continuity by way of the smaller body. It was also agreed that it was important to increase the role and competence of professional experts with respect to fact-finding and recommendation, and to avoiding creating an impression that such activities were being influenced by political pressures. Respect for the professionalism (objectivity, neutrality, competence) of human rights experts and bureaucrats was closely related to strengthening the UN role in relation to the implementation of human rights norms. It was also agreed in the Working Group to adopt the Council of Europe approach with respect to formulating policy positions. In this regard, it was recommended that the UN Human Rights Commission make use of the sequence of investigation, debate, and decision that has worked so well in the European regional setting.

There was also much consideration of substantive aspects of human rights. It was agreed that the most important UN contribution has been to create a normative architecture consisting of widely ratified international treaties that have been generally accepted throughout the world. This norm-setting function, although substantially completed, needs to be continued to the extent helpful in setting standards with respect to some areas of behavior. Caution was urged and criticism expressed about recent tendencies to encroach upon human rights standards and practices due to heightened concerns about security in a post-September 11 world. The Working Group agreed that protection of human rights was generally consistent with protection against terrorism, and the burden of persuasion for diminished adherence to human rights should be imposed on governments.

At the same time, the abstractness of the norms may conceal continuing differences of approach and interpretation. Such diversity, if not antagonism, exists most notably with respect to the treatment of women and in relation to matters of sexual identity and lifestyle.

The main stress was placed on improving the implementation of human rights norms, and specifically on how to understand the 'value added' contribution of the United Nations, especially if regional systems for human rights are functioning adequately. This contribution needed to be assessed in relation to a basic recognition that implementation is overwhelmingly dependent on *national* conditions, and that is where the focus of effort should be. In this sense, the *international* emphasis, both regional and global, should be on building national capacities, including rule of law and security, for good governance. But it was also emphasized that as far as possible no state should be exempt from scrutiny and assessment with respect to its behavior on the level of *fact*, even if the *political implications* needed to take account

of practical considerations such as the size and hostility of a government in relation to the violations of human rights (e.g. Chechnya, Tibet).

Part of the challenge of national implementation is to acquire a better grasp of why states in general, and a given state in particular, fails to uphold human rights norms. Among the reasons considered are the following: lack of knowledge of human rights norms; deficiencies of capacity in relation to trained personnel and funding; variations in cultural attitude and degrees of commitment; perceived relations between respecting human rights and maintaining internal security; absence or weakness of NGOs and civil society activists, independent media, exposing violations and exerting pressures for implementation; absence or weakness of an independent judiciary; the non-justiciability of most issues pertaining to economic, social, and cultural rights; the failure to educate police and military to respect human rights of citizens.

Further suggestions involved the encouragement of human rights in the context of peacebuilding: funding education in human rights; appointing an ombudsman for human rights; establishing a national commission for human rights to monitor and issue reports. It was also emphasized that there are ways to promote national implementation that take account of the specific constituencies and issues: for instance, reliance on the leadership of women, and their associations, to gain respect for human rights norms of particular concern to women and children. Use of pressure and action by regional actors, so as to reduce the impression of intervention by former colonial powers, was favored by the Working Group.

As far as more coercive forms of implementation are concerned, the main consensus was in line with support for the responsibility-to-protect approach discussed by the working group on the use of force. It was argued that the avoidance

of the language of ‘humanitarian intervention’ was helpful in making such undertakings less susceptible to sovereignty-oriented objections, especially if the case for international action was strong factually, force was kept as a last resort, the prospect of severe abuse of the population was occurring or imminent, and there were no strategic goals being pursued by the main advocates of protective action. It was acknowledged that at this stage there was no ‘hard’ international law that underpinned the responsibility to protect, but that a moral norm had definitely emerged, which in the face of the threat or actuality of genocide qualified as ‘soft’ international law, i.e. practice generally agreed upon, but lacking the formal consent of governments and without an obligatory character with respect to states or the United Nations. In effect, the UN is *morally* obliged to authorize the responsibility to protect in appropriate instances but not yet *legally* obliged.

As in other working groups, the human rights working group emphasized the peacebuilding context, and the interrelation of rule of law, security and development, in promoting respect for human rights in post- and pre-conflict situations. Moreover, enhancing a climate of respect for human rights is itself empowering of the population, generating a more participatory citizenry, and contributes thereby to other aspects of a sustainable peace, and especially its political development in a democratic direction.

## Conclusion

The Symposium was mindful of the difficulties associated with UN reform at this time, given the strong inter-governmental tensions that exist, which include considerable variation of approach to the main agenda items and unresolved disagreements about the scope of unilateral and multilateral responses to world order challenges. The Symposium did not

discuss the hot-button topic of Security Council expansion, but the disagreements associated with this high profile issue are indicative of wider problems. At the same time, subtle changes in approach and understanding, even in the way language and budgets are allocated, may produce changes on the ground that bring greater security, development and freedom to the people of a given country.

In the context of UN reform at the 2005 summit, expectations should not be too high given these factors, especially with respect to institutional innovation. At the same time, there is a broad consensus on subtle shifts in emphasis that can make important practical contributions to a better life for affected peoples. The Symposium was successful, despite its short duration, in bringing such a spirit of modest and feasible reform to the surface of its deliberations.

Two other overall conclusions emerged: first, in all settings it was agreed that it was beneficial to be more responsive to a 'demand-driven' and 'bottom-up' approach based on 'listening' to the affected population, and less dependent on a 'supply-driven' and 'headquarters' approach to assistance and prescription. Of course, on some matters, including the treatment of women, universal standards should be insisted upon. Secondly, that success stories should be studied for lessons, and recounted so as to build confidence in various facets of peacemaking and peacebuilding.

## How to Organize Conflict Prevention?

*By Peter Wallensteen*

### *Background*

July 11 is the tenth commemoration of the fall of Srebrenica, Bosnia. The tragedy of Srebrenica and other human calamities in the early 1990s (the Iraq-Kuwait war, the crises in Somalia, the wars in former Yugoslavia and the former Soviet Union, the genocide in Rwanda) together provide good opportunities for collective learning. A consensus has developed among leading UN member states, international organizations and civil society organizations that conflicts need to be addressed at an early stage and prevented from growing in scale and severity. In all these cases the international community had reacted too late and with too limited means. Since then, matters of preventive diplomacy, broadly defined, have been on the international agenda. Preventive action is among the themes given high priority by the UN Secretary General, the European Union has a special program where conflict prevention is a major concern, and regional organizations have taken up the topic. One of the institutions for this is the OSCE High Commissioner on National Minorities (HCNM), which concentrates on one particular aspect: the prevention of ethnic conflicts.

There have also been examples of preventive action. The measures taken by the EU in Ukraine in late 2004 exemplify the ambition of simultaneously preventing the escalation of a serious situation and furthering the goals of democratic

development. Conflict prevention has moved forward and seen some successes; an example is the way the Macedonian crisis of 2001 was dealt with. Still, it has been difficult to give this high priority, for instance in the deliberations of the UN Security Council. Thus, the situation raises the issue of how to organize conflict prevention: as a systematic approach within international organizations (regional or global) or in other, more ad hoc, ways, through informal coalitions for preventive action? It also raised the question of what resources are available for such action and how they can be generated, if and when necessary? This background note discusses these two issues.

## *Institutions for Conflict Prevention*

### *The Peacebuilding Commission*

There is a recent illustration of the problematique of building intergovernmental institutions for conflict prevention. The report of the High Level Panel on Threats, Challenges and Changes, *A more secure world: Our shared responsibility*, suggested the creation of a new body, the Peacebuilding Commission, as a subsidiary organ to the Security Council.<sup>1</sup> Such a Commission is needed, according to the High Level Panel's proposal, to deal with state failure and to act proactively. It would, thus, be a body with a broader assignment than, for instance, the HCNM. During the preparations for the following report, a number of member states expressed their objections to this proposal, probably fearing that it would give too much external influence over internal affairs. The sovereignty of failing states also needed to be safeguarded. Consequently, the Secretary-General's Report to the General Assembly of March 2005 (*In Larger Freedom:*

*Towards Development, Security and Human Rights for All*) suggested a different direction for the proposed Commission.<sup>2</sup> It was to deal with post-conflict, post-peace agreement situations. As this report constitutes the basis of the present deliberations in the General Assembly the proposal needs to be further explored. In fact, the Secretary-General's report contains the following six (verbatim) recommendations:<sup>3</sup>

- in the immediate aftermath of war, improve UN planning for sustained recovery, particularly efforts to establish necessary institutions;
- help to ensure predictable financing for early recovery activities;
- improve the coordination of post-conflict activities of UN measures;
- provide a forum where donors, troop contributors and financial institutions can share information about recovery strategies, for greater coherence;
- periodically review progress; and in effect extend the period of political attention to post-conflict recovery.

That the Peacebuilding Commission, in this form, will be a significant addition to the institutional resources of the UN is not to be doubted. A number of the most relevant situations will be covered, *particularly if this mandate can be defined to include regional dimensions* of the issue (there is today a danger of regional failures, not just the collapse of individual states). However, the changing of wording from that in the earlier document tells us about the difficulties involved in creating special organs or mechanisms in international organizations dealing with the prevention of conflicts within and among member states well before a conflict has reached crisis point.

### *Non-UN actors in conflict prevention*

This problem is not unexpected, of course, and not specific to the UN. Regional organizations often face similar, or even greater, difficulties in dealing with conflicts among or within member states. An example is that most of the ASEAN member states are unhappy about the developments in Burma/Myanmar. The original idea of contributing to change in the country through 'constructive engagement' through its inclusion in the organization clearly did not achieve what was expected, even after eight years of membership. The dialogue that was initiated, for instance the Bangkok Forum in 2003, seems to have come to an abrupt halt. ASEAN faced the prospect of being chaired by a country that does not have smooth working relations with a number of the leading states and bodies in the world. To prevent this, Burma/Myanmar relinquished its turn to chair the organization. The EU had similar problems in dealing with the Austrian Government when the right-wing Freedom Party was part of the ruling coalition. The Southern African Development Community, SADC, has not been able explicitly and effectively to deal with the failure of democracy in Zimbabwe.

In situations such as these, attempts at preventive diplomacy typically move from the explicit and formal agenda of an organization and are instead placed within the office of the President of the organization or its Secretariat. At least in the case of the UN, this may work as a way of furthering 'quiet diplomacy'. Still, it is unsatisfactory, and will affect the general public and its attitude to the international bodies. If they are not able to tackle the disasters that are brewing in an effective and observable way, these organizations will suffer a loss of respect.

Research on preventive action shows that such initiatives are not only taken by international and regional organizations,

however institutionally organized. A recent study of international preventive action shows a total of 706 preventive measures in 67 cases of ethnic challenges were.<sup>4</sup> These were concentrated in less than half of the challenging situations. It still means that preventive action – often not labeled as such – is taking place. There is a need for the international community to react when it sees particular situations deteriorate. Furthermore, it was observed that individual major powers (the permanent five members of the UN Security Council acting alone or in some combination with others) were the category of actors which had taken the greatest number of actions (in all 203 measures were taken). This can be compared with international organizations (the UN and regional bodies) which showed a total of 293 measures. Thus, if the organizations, with their higher degree of transparency and representation, cannot act, others will. This may be more effective, at least in the short run, but it also means a retreat for the international bodies. Their respect is again affected negatively. Furthermore, the study showed that neighboring and distant states as well as prominent personalities were very frequently involved. This means that if international bodies are barred from action, under the guise of protecting sovereignty, others are likely to move in. *In a globally integrated world the choice is seldom between inaction and action, but rather: who will act for what purpose.*

Third parties taking initiatives can be a broad array of actors. When a particular situation is raising fears of (renewed) violence, many may see their interest threatened and thus take initiatives that combine universalist concerns with the particularist ones of the initiator. Certainly, no state or actor will take action if that seriously contradicts its own interest, but successful and credible action will require that self-interest is not the only criterion for action. The more a particular measure is and can be seen as an expression of international concern for general principles and common interest, the

more it is likely to be recognized as such by different parties in the conflict. This is an argument in favor of international bodies taking preventive action, rather than leaving the field open to individual states. However, if the membership of an international (regional or global) organization is preventing that body from acting, it will, in fact, open the door to other actors whose motives may be less universalistic and actions less transparent, leading to less acceptable outcomes. There may be a danger that conflicts will become less easy to resolve as the 'third parties' may turn into 'secondary' or even 'primary' parties with their own interests in the outcomes. When, in the end, an international body finally has to enter the arena, many opportunities will have been lost and the situation may be more difficult to resolve. Furthermore, the international organization risks being blamed for the failure created by its member states.

The solution is that international bodies in general, and the UN in particular, need to be well equipped for preventive action, whether taken post-conflict, in order to prevent a later return of that particular conflict, or pre-conflict in those cases that can be defined in ways that meets reasonable demands for sovereignty.

*Suggested action:* Thus, there are good reasons for making sure the proposed Peacebuilding Commission will be an effective body and that its mandate is widened at least to include regional concerns, and situations without peace agreements, where violent conflicts have been brought to a standstill, for instance as a result of a ceasefire, a victory or the withdrawal of an actor. One may also ask if the Commission should be allowed to take up issues that are on the agenda of the General Assembly, not only that of the Security Council. Thus equipped, the Peacebuilding Commission would be a welcome addition to international politics.

## *Resources*

### *Information*

Preventive action requires resources. It is not just a matter of a particular actor or representative finding ingenious solutions to seemingly intractable situations. There is a need to be informed in advance and to have access to expertise on the local as well as the general character of particular crises. Such insight is often available from sources other than the member states of an international organization. Academic institutions, NGOs and others may be significant. Thus, for instance, the proposed Peacebuilding Commission should make sure it could operate such a network, for mutual benefit. It might even be useful to have annual meetings within such networks, to ensure continued contact and dialogue between practitioners, diplomats, academics and civil society organizations.

### *Finances*

Furthermore, there is some evidence in favor of having access to 'sticks' and 'carrots' for international action to be effective. In fact, mixtures of positive and negative sanctions have a logical appeal, and there are empirical examples that demonstrate the usefulness of such combinations. The successful disarming of Iraq in the early 1990s can probably be interpreted in this way: there was a promised reward in the removal of sanctions; there was a possible punishment of military action if this did not take place. The inspectors could use this to their advantage and, thus, achieve the unexpected. It is not clear, however, how far we can generalize from such an observation. For instance, the study of preventive action mentioned above showed no systematic correlations, but the number of instances was limited. This requires elaboration. It shows, however, that preventive action taken in the context

of a resource-rich international body may be effective, as such bodies should have access to both sticks and carrots.

What came out in the quoted study, however, was the value of facilitation. The different sides were invited to meetings and received high-level representatives in their own areas or capital(s). This meant that the primary parties and the outside actor (the third party) were able to engage on the issues of contention in other ways than through open, media-based exchanges. This may have a positive effect on a situation. The resources required for such actions are limited and often difficult to locate. Mostly, they are in the hands of particular governments, many of which are unwilling to offer finance unless doing so is clearly in their own interest.

As the Peacebuilding Commission is an important new institution responding to the new challenges it is important that it is equipped to act, which includes access to necessary resources. *In Larger Freedom* suggests that the Commission should in some way connect with the international financial institutions.<sup>5</sup> However, it also seems important that UN member states take particular action to give this new body a good beginning.

#### *Suggested action*

- The creation of networks – informal or formal – for conflict prevention that can be supportive of the Commission; these should hold annual meetings to identify critical situations and issues to be addressed in the immediate future.
- Expressed willingness on the part of the international financial institutions to engage in post-conflict preventive work and to give priority to such activities in their development programs.
- The setting-up of a special financial facility for the preventive work of the Peacebuilding Commission.

- 1 High Level Panel on Threats, Challenges and Changes, *A More Secure World: Our Shared Responsibility*, paras 261–265.
- 2 *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the UN Secretary-General to the General Assembly of March 2005, para 115.
- 3 *Ibid.*
- 4 Möller, F., Öberg, M. and Wallensteen, P., *Conflict Prevention in Ethnic Conflicts, 1990-1998*. Paper presented to the ISA Convention, Honolulu, March 1–15, 2005: [http://www.pcr.uu.se/research/UCDP/UCDP\\_toplevel1.htm](http://www.pcr.uu.se/research/UCDP/UCDP_toplevel1.htm) (pages on prevention of armed conflicts).
- 5 *In Larger Freedom*, *op. cit.*, para 119.

## Dag Hammarskjöld Revisited: International Law and Institutions in a Constitutional Perspective

*Manuel Fröhlich*



Even if there is a distance of 40 to 50 years in time, Dag Hammarskjöld's tenure as Secretary-General offers suggestions and elaborations that can still be fruitfully brought to bear on present-day challenges. This article seeks to approach Hammarskjöld's perspective in three steps, addressing first his general attitude towards international law, then elaborating on what he described as the constitutional aspect both of the United Nations as an institution and international law in general. Finally the question of the progress, reform and change of international law and institutions will be treated from a Hammarskjöld perspective.<sup>1</sup>

Dag Hammarskjöld came from a family background that had close connections not only with the law in general but specifically with international law. His father had broad experience in international law and diplomacy; his brother Åke held a crucial position at the International Court of Justice. In order to understand Hammarskjöld's approach to international law and institutions, it is necessary to consider this specific family tradition. The example of Dag Hammarskjöld's father, Hjalmar, is especially important. In an Address to the Swedish Academy in December 1954, upon taking over his father's seat, his son Dag spoke of his father's 'faith in a "supranational" justice, through which may be created an international *Civitas Legum*'.<sup>2</sup> He further explained: 'In attempting to interpret the internationalism represented by Hjalmar Hammarskjöld, this seems to me to be the key. *Civitas Dei* was a thing of the past. The present-day attempts to form an

international organization with common executive organs had not yet been begun. Instead, there is a glimpse here of a world society, where national states live under the protection of an internationalism which gains its strength from the very logic of justice itself, not from dictates of power, and in which, therefore, the only international organs needed are of a judicial nature.<sup>3</sup>

This provides a good starting point in analysing Dag Hammarskjöld's concept of international law: in a situation where you cannot automatically appeal to a framework of shared values and beliefs, where political authority and mutual respect can no longer be deduced from common religious bonds as (maybe) was the case for some time during the middle ages, justice could not be taken for granted but had to be created. Legal instruments thus emerged as the prime mechanism to peacefully settle conflicts that inevitably result from the pluralism and diversity of international actors and interests.

As both Hjalmar and Dag Hammarskjöld underlined, it was especially the small countries for whom 'international law, in the final analysis, is the only remaining argument, and [whose] defense is therefore worth sacrifices even in the egoistical interest of the country itself.'<sup>4</sup> Here there is an echo of the famous Melian dialogue that Thucydides reported some 400 years before Christ in his *History of the Peloponnesian War*.<sup>5</sup> In its conflict with Sparta, Athens decided to use its power against the small, neutral island of Melos, in order to ensure its military supply lines and to make sure that Melos did not (in the future) become an ally of Sparta. The Melians could not match the military power of Athens and resorted to a strong and passionate appeal on the grounds of the importance of international law. In one famous argument they suggested to Athens that even though they might not – at the peak of their own power – be inclined to respect in-

ternational law, they would be grateful for the existence of some kind of legal order if they were to find themselves in a serious situation in the future. The Melian appeal did not carry much weight with Athens, which ultimately defeated and destroyed the city of Melos. Since then, the Melian dialogue has been taken as the classic expression of might over right in international relations. But one should not forget that Thucydides places this episode of Melos just before the chapter on the expedition to Sicily, which Athens (in a further step to display its power as a means of precaution) undertook just after the conquest of Melos. This expedition to Sicily turned out to overstretch the capacity of Athens, heralding its decline and ultimate defeat. The citizens of Athens found themselves in a situation where there was less protection, less legal tradition and argument in favour of the defeated or enabling them to rely on international solidarity – and they may well have bitterly remembered the words of the Melians. In modern terms, a mixture of unilateral (one could even say pre-emptive) action and the reliance on self-help left a mighty country unguarded. This is not say that the current example one could think of, the unique position of the United States, can be easily summed up in relation to this experience. The argument is simply that – in the long run – it is in the interest of both small and large states to cooperate within a common legal framework.

The episode from Thucydides offers a clear link to the concept of international law that both Hjalmar and Dag Hammarskjöld pursued. Just a few months after the First World War broke out, the Scandinavian countries under the leadership of Hjalmar Hammarskjöld issued a note to the warring parties in which they appealed to the major powers that – even in the situation of war, but with a view to any end and reconciliation after it – they should respect and preserve some of the most fundamental rules of international law. These might in the end be vital for the defeated party and

to the task of rebuilding international relations. The note did not have much impact, but – as in the case of Melos – its argument was sound and its political analysis proved right as the major powers (in varying degrees) soon found out.

Coming back to Dag Hammarskjöld, there is a further element in his thinking on international law and institutions that should be underlined. In his speech to the Academy he said that ‘present day attempts to form an international organization with common executive organs’<sup>6</sup> were unknown to Hjalmar Hammarskjöld, but that as the new Secretary-General of the United Nations in 1954, he himself was deeply engaged in these ‘attempts’. It is no coincidence that Dag Hammarskjöld uses the term ‘executive organs’, which of course stems from the structures of power-sharing within national constitutions. It is in fact this analogy with national political structures that informs much of Hammarskjöld’s thinking about international law and institutions. In his famous speech at the University of Chicago Law School in May 1960, Hammarskjöld argues that political history at the national level shows that the self-consciousness of a people manifests itself in the form of a constitution. The constitution emerges as a legal expression of the decision by individuals that they feel themselves bound together as a ‘society’ and that they have decided to live together under common rules: they create specific institutions and procedures that – at least in the Western tradition – are arranged according to the separation of legislative, executive and judicial powers.<sup>7</sup>

For Hammarskjöld, the United Nations Charter represents a similar development, although of course the members of its society are states rather than individual people. Taking note of various difficulties in such an analogy, Hammarskjöld describes the United Nations Charter as being the manifestation of self-consciousness by the international society, a society of states. The UN Charter – in his terms – then logically

resembles something like a ‘constitution’ at the international level. Time and again, Hammarskjöld in his annual reports argues that the UN Charter does not in any way establish a ‘super-state’. The organization is dependent on the will of member states. Nonetheless, the Charter has introduced a new element into international affairs, as he stressed in his last annual report: ‘Together, [the purposes, principles and procedures] of the Charter lay down some basic rules of international ethics by which all Member States have committed themselves to be guided. To a large extent, the rules reflect standards accepted as binding for life within States. Thus, they appear, in the main, as a projection into the international arena and the international community of purposes and principles already accepted as being of national validity. In this sense, the Charter takes a first step in the direction of an organized international community (...).’<sup>8</sup>

Also parallel to the national setting, the Charter constitutes different organs with specific functions and a division of powers and responsibilities. The General Assembly is thus introduced as the organ with – albeit limited – legislative powers, the Security Council as a collective executive organ and the International Court of Justice as the organ resembling the judicial powers present at the national level. Supplementary to these organs, the Economic and Social Council as well as the Trusteeship Council both represent a mixture of legislative and executive powers confined to their respective fields of action. Last but not least, Hammarskjöld points to the office of the Secretary-General which ‘may be called a one-man “executive”’<sup>9</sup> due to its role in the administration of the organization but also with regard to the Secretary-General’s political rights under the Charter and the potential for action entrusted to him by the other organs. This rough sketch should not blur the differences with the institutions at the national level. The jurisdiction of the Court is not obligatory, the General Assembly can

only operate on the basis of recommendations, the whole system does not dispose of financial funds in its own right, etc. But embryonic as they may be, these elements, together with the ethical consensus of the UN Charter, account for the fact that since the founding of the UN, international law has definitely changed from a law of coexistence to a law of co-operation, to use Wolfgang Friedmann's famous juxtaposition,<sup>10</sup> which Hammarskjöld actually introduced some years earlier and highlighted in the political struggle with Nikita Khrushchev over the two competing and mutually exclusive concepts of the United Nations as a 'dynamic instrument' capable of executive action and co-operation on the one hand and as 'static conference machinery' aiming at mere co-existence on the other.<sup>11</sup>

But Hammarskjöld's equation of the UN Charter with a constitution had other, far-reaching implications. Already in August 1955, in an address to the American Bar Association in Philadelphia, Hammarskjöld compared the problem of liberty under the law in a national constitution with the problem of sovereignty under the law in the international context. In what one might see as a Kantian argument, Hammarskjöld argued that there is no use in the concept of absolute, unlimited or unrestricted individual liberty since the social existence of men needs to take into account the simultaneous exercise of equal liberties by their neighbors. What emerges as political freedom, the freedom that can coexist with and allows for the equal freedom of others, is also required at the international level: 'The familiar paradox that freedom can be preserved only by setting limits to it, is as true of the society of States as of societies of men.'<sup>12</sup> Hammarskjöld once again shows himself aware of the possibly misleading effects of such analogies, but then he goes on to say: '[I]n this case the analogy is sound; order is necessary for enjoyment of the fruits of liberty, and order requires surrender of the freedom to impair the freedom of others. The

truest safeguard of sovereignty in an interdependent world is therefore an effective international law.'<sup>13</sup> Hammarskjöld here ties in with what formed the impulse of theoretical debates in post-war Europe, where the concept of national sovereignty was held accountable for much of the fatal dynamics of two world wars. Sovereignty was being scrutinized and in fact re-formulated as a notion that not only can accept but is dependent on a certain amount of co-operation or even organization and integration with other states.<sup>14</sup>

This re-formulation and transformation of central legal, social and political concepts leads to the third and concluding observation with respect to the question of adaptation, change and evolution within international law and institutions. In an article after Hammarskjöld's death, Oscar Schachter, who was working in the legal office during Hammarskjöld's time and was well acquainted with his view of international law, wrote: 'Although Hammarskjöld often stressed the imperative quality of legal norms, this did not mean that he regarded law as an autonomous force which develops and is applied independently of political and social factors. He preferred to view law not as a "construction of legal patterns", but in an "organic sense". As an institution which grows in response to felt necessities and within the limits set by historical conditions and human attitudes.'<sup>15</sup> Here again, traces of the constitutional and social perspective that Hammarskjöld pursued, emerge. In his address to the University of California in June 1955 Hammarskjöld said: 'When a new social organism is created, we give it a constitution. Inside the framework of that constitution the first vital urges begin to stir, but as its life develops towards fullness the constitution is adjusted, so to say, from within, to new and changing needs which even the wisest legislator and statesman could only partly foresee.'<sup>16</sup>

Due to its fluid social structure, every constitution has to have the capacity to adjust and change. Again it is no coincidence that Dag Hammarskjöld used the metaphor of a social organism. The context of this metaphor is most explicitly elaborated in the already mentioned lecture at Chicago Law School, which is permeated by references to ‘theories of biological evolution’<sup>17</sup>. In blending social and political problems with explanatory patterns taken from biology, Hammarskjöld relies on the work of Henri Bergson and his concept of ‘creative evolution’.<sup>18</sup> The United Nations organization in this context does not represent a mere imitation of national government at the world level: its organs do not fit into any static system of powers and competencies, its constitutional elements have yet to be tested in concrete political action. In this situation there is no blueprint and no ‘construction of ideal patterns to be imposed upon society’<sup>19</sup> to help in understanding and promoting the development of the constitutional framework.

Bergson generally favored the incalculable vital force of life, the exploratory character of making choices within a range of different possibilities and the process of gaining experience on which one can build further action over supposedly deterministic mechanisms of progress. This dynamic concept of evolution certainly does not offer an easy explanation of social development. But in the final analysis it is exactly the openness of such a model that by way allowing for mistake and failure evades determinism while at the same time constituting freedom of decision and action. Improvisation thus emerges as an essential *modus operandi*. Hammarskjöld saw experiences such as his famous Mission to Beijing and the deployment of the first UN ‘emergency force’ in the light of this general pattern of creative evolution. There is no automatic mechanism for world organization and no guarantee of steady progress. The capacity to cope with setbacks and unpredictable impediments is the measure of success.

In his annual report of 1959 Hammarskjöld explained: ‘The statement of objectives in the Charter is binding and so are the rules concerning the various organs and their competence, but it is not necessary to regard the working methods indicated in the Charter as limitative in purpose. Thus, they may be supplemented by others under the pressure of circumstances and in the light of experience if these additional procedures are not in conflict with what is prescribed. (...) In this respect, the United Nations, as a living organism, has the necessary scope for continuous adaption of its constitutional life to the needs.’<sup>20</sup>

And in the context of this adaption, the UN secretariat held a special position for Hammarskjöld. Not neglecting the crucial will of member states, Hammarskjöld in his address at the University of California in 1955 compared the work of the secretariat to the ‘pulsation of bloodstream through the living body’<sup>21</sup>: ‘It [the secretariat] has creative capacity. It can introduce new ideas. It can in proper form take initiatives. It can put before the Member Governments new findings which will influence their actions. Thus the secretariat, in its independence, represents an organ not only necessary for the life and proper functioning of the body, but of importance also for its growth.’<sup>22</sup> Far from seeing the secretariat as the prime catalyst for change, Hammarskjöld was aware of the special problems of law-making at the international level. In his Philadelphia speech he said: ‘[T]he kind of development that inside a State would find expression in a legislative reform sometimes tends on the international level to take the form of a departure in action from what is still considered to be the law.’<sup>23</sup>

The fact that the discussions at the Dag Hammarskjöld Symposium, ‘Respecting International Law and International Institutions’, concentrated on the two reform reports issued and initiated by the Secretary-General and induced by

member states' action and inaction in such diverse cases as Rwanda, Kosovo and Iraq is thus an apt illustration of the validity of Hammarskjöld's view of the manner in which reform of international law and institutions will take place.<sup>24</sup> Of course, some of the aspects of the current state of affairs in international and even global politics were not foreseen by Hammarskjöld. The establishment of various non-governmental organizations and their participation in various policy networks such as the Global Fund to Fight HIV/AIDS or the Kimberley process goes beyond a state-oriented understanding of international law as was common in the years of Hammarskjöld's tenure. Such developments may well call for international law to organise not only co-existence and co-operation but also various modes of coalition-building and compliance management among different actors involved with the problems. In this vein, Hammarskjöld's perspective would have to be protracted in order to allow for new challenges. A second new development, although not foreseen in Hammarskjöld's day, can just as well be integrated into (and taken as further illustration of) his constitutional perspective on international law and institutions: the International Criminal Court. This ties in with a quote from his Philadelphia speech: 'In our world of today, due to the influence of many factors, a new international consciousness is beginning to develop. Men increasingly realize that they have an allegiance to mankind as a whole as well as to their own sections of it. But it will take a considerable time before this feeling gains such strength as to influence fundamentally the present nature of international relations.'<sup>25</sup> A hundred years after Dag Hammarskjöld's birthday this observation still seems to be a crucial point in assessing the state of international affairs.

- 1 On the background see also Fröhlich, M., *Dag Hammarskjöld und die Vereinten Nationen. Die politische Ethik des UNO-Generalsekretärs*, Paderborn et al., Schöningh, 2002. See also the standard work by Urquhart, B., *Hammarskjöld (1972)*, Norton, New York, 1994, as well as Zacher, M. W., *Dag Hammarskjöld's United Nations*, Columbia University Press, New York and London, 1970, and, recently, Ask, S. and Mark-Jungkvist A. (eds.), *Freden som äventyr. Dag Hammarskjöld och FN:s framtid*, Atlantis, Stockholm, 2005; also in English: *The Adventure of Peace. Dag Hammarskjöld and the Future of the UN*, Palgrave Macmillan, New York, 2005.
- 2 Hammarskjöld, D., 'Inaugural Address Upon Taking His Seat as a Member of the Swedish Academy: Stockholm, December 20, 1954', in Cordier, A. W. and Foote W. (eds), *Public Papers of the Secretaries-General of the United Nations. Volume II: Dag Hammarskjöld 1953-1956*; Columbia University Press, New York and London, 1972, p. 405.
- 3 *Ibid.*
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*Programme*  
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on Respecting International Law and  
International Institutions  
13-15 June 2005, Uppsala, Sweden

*Careful Reflection,  
Ideas for Significant Reform  
and Determined Action*

*Monday 13 June – Careful Reflection*

15.00–17.00 Registration in hotel lobby

18.00 Opening Session

*Words of Welcome:* Professor Bo Sundqvist,  
Vice-Chancellor, Uppsala University

*Dag Hammarskjöld Revisited. International Law  
and Institutions in a Constitutional Perspective:*  
Professor Manuel Fröhlich

Performance by the Choir *Allmänna Sången*

*Introductory Panel:* ‘Routes to Enhanced Respect  
– Reflections on Recent Experiences and Re-  
alistic Alternatives’, Chaired by Professor Peter  
Wallensteen. Panellists: Professor Thomas J.  
Biersteker, Dr. Leonard Wantchekon, Dr. Mi-  
chael Fullilove

19.30 Refreshments and Buffet Dinner at the Castle

*Tuesday 14 June – Ideas for Significant Reform*

		16.00	Break
09.00	Introduction to the Symposium work	16.30	Plenary Session Address by Ms. Laila Freivalds, Swedish Minister for Foreign Affairs <i>'UN at Sixty – Opportunities for Change'</i> Questions and answers
09.15	Working Groups Session I		
	Group I <i>Preventive Diplomacy</i> Chair: Ingvar Carlsson Introduction: Peter Wallensteen Discussant: Jayantha Dhanapala Rapporteur: Anders Mellbourn	17.30	Visit to the Dag Hammarskjöld Centre and laying of wreath at the grave of Dag Hammarskjöld
	Group II <i>Rule of Law</i> Chair: Ramesh Thakur Introduction: Lakhdar Brahimi Discussant: W. Michael Reisman Rapporteur: Christian Åhlund	20.00	Dinner at the Orangery, the Botanical Garden
12.15	Lunch		
13.15–16.00	Session II		
	Group I <i>The Use of Force</i> Chair: David Hannay Introduction: Stephen Stedman Discussant: Bruce Russett Rapporteur: Michael Fullilove		Plenary Session <i>'Getting practical' – Measures to Increase the Respect for International Law and International Institutions</i>
	Group II <i>Human Rights</i> Chair: Birgitta Dahl Introduction: Asbjørn Eide Discussant: Sona Khan Rapporteur: Iain Cameron	10.30	Group Reports Chair: Winston Nagan <i>Preventive Diplomacy</i> Rapporteur: Anders Mellbourn <i>The Rule of Law</i> Rapporteur: Christian Åhlund  General Discussions  Coffee

*Wednesday 15 June – Determined Action*

11.00 Plenary Session continues  
Group Reports  
Chair: Mary B. Anderson  
*The Use of Force*  
Rapporteur: Michael Fullilove  
*Human Rights*  
Rapporteur: Iain Cameron

General Discussions

12.30 Lunch

13.30-15.00 Plenary Session

General Rapporteur: Richard Falk  
Comments: Adele Jinadu and Dan Smith  
Closing



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*Women, War and Peace: Mobilising for Peace and Security in the 21<sup>st</sup> Century*, by Noeleen Heyzer, UNIFEM, Uppsala 2004 (the 2004 Dag Hammarskjöld Lecture).

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*Fighting an Old Battle in a New World. How IBFAN Monitors the Baby Food Market*, Development Dialogue Special Issue, Uppsala 2005, ISSN 0345-2328

*UN Reform and World Disarmament. Where do we go?*, Hans Blix, 2005 (Dag Hammarskjöld Lecture 2005), ISBN 91 85214 43 4 (forthcoming),

*What Next? Volume 1*, Special issue of Development Dialogue, December 2005, ISSN 0345-2328. (forthcoming),

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