

As delivered

UN REFORM and WORLD DISARMAMENT
Where do we go?

Hammar skjöld lecture at Uppsala University, 19 September 2005
by
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It is a great honour for me to deliver the Hammar skjöld Lecture this year, when we are celebrating the 100th anniversary of the birth of Dag Hammar skjöld.

It is also a special joy to speak in Uppsala, not far from the castle, where his father resided as Governor and where Dag Hammar skjöld grew up. In this part of Uppsala I also lived as a child and youth. The path I and my sister and brother walked to our school and university lectures was near the path he took from Uppsala Castle.

In the last piece that Dag Hammar skjöld wrote, 'Castle Hill', he sketched some charming memories of the hill: the swifts, the tolling of the Gunilla bell at six in the morning and nine in the evening, the eve of May Day with the students' songs and the sight of bonfires around Uppsala. He tells of the 'rousing tones from the revivalist meeting in the English Park'. I heard the same tones through the windows of the Old Chemistry Building, from across the Park. He describes the tobogganers' enjoying the icy slope through the Sture Arch. I remember the boy's joy of skiing down the snowy slopes on the other side of the hill. As a nature lover and poet he remembers the *sedum rupestre*, that used to grow near the castle. I remember a little more prosaically the *calocybe gambosa*, the delicious white mushroom that my father used to pick on his walks around the castle in the spring... Reading 'Castle Hill' made me feel closer to Hammar skjöld, whom I never met. I arrived for my first General Assembly session in New York on the same day he perished in Africa.

I am pleased to be invited by the Hammar skjöld Foundation, which over so many years has worked for one of the main goals Hammar skjöld saw for the United Nations: economic and social development reducing the inequality between the states of the world. I had the honour of being a member of the Board of the Foundation for several years and I was glad to be engaged twice by the Foundation to lead courses in which young lawyers from developing countries were trained in the law of treaties and

prepared for the professional task of drafting and concluding international agreements on behalf of their countries.

Last but not least, I am happy that Uppsala University has invited me to lecture in this aula, which I have visited on many solemn occasions. Like Dag Hammarskjöld much earlier I learnt a good deal at the Faculty of Law about the function of law in society. It was useful to come to understand that concepts like 'sovereignty' and 'ownership' do not describe something mystic and absolute but are labels given to 'bundles of rights', which can be expanded or reduced by decision of society or, voluntarily, by the beneficiary. For instance, the 'sovereign' right of a state to exclusive control of its territorial sea is limited by the rule of customary international law giving right of others to innocent passage. Or: a state may limit its 'sovereign' right freely to use nuclear energy by accepting a treaty commitment not to develop nuclear weapons.

The subjects of this lecture

In this lecture I propose to speak about the *role and reform of the UN and world disarmament*. Clearly 2005 is not the time for forward leaps in either subject. However, if I may use a term from the stock market, perhaps we can begin to hope that we are bottoming out. I will discuss the direction in which Hammarskjöld thought the UN should and might develop but I would like to begin by describing where I think we are now.

For a few years after the end of the Cold War a lot of *defrosting* took place with positive results both for an effective use of the UN and for disarmament and arms control. In 1990 and 1991 consensus in the Security Council enabled the Council to function as foreseen in 1945: to take collective *enforcement action against Iraq's* occupation of Kuwait. In the following years the same consensus allowed numerous peace-keeping operations to be launched by the Council and helped to maintain or restore security in many conflict ridden areas. A global *convention* outlawed the use, stockpiling and production of *chemical weapons* and many thousands of nuclear weapons have been dismantled by the United States and Russia – from some 50.000 to perhaps now some 30.000.

Regrettably, *as of the middle of the 1990s there is no further agreement on global arms control and disarmament*. In the last few years we have rather been backsliding. There has not been agreement on an agenda for the UN Disarmament Conference for a long time. In the spring of 2005 the review conference of the Non-Proliferation Treaty deadlocked – essentially on the question whether the aim of the treaty is only to prevent

a *spread* of nuclear weapons to states, which do not have them and non-state actors, or equally to achieve a reduction and eventual *elimination of the existing nuclear weapons*.

The recent discussions about the issue of weapons of mass destruction before the UN summit were a replay with the US reportedly objecting to the mere reference to ‘disarmament’. As a result the declarations of the largest ever meeting of heads of states and governments has nothing to say about the subjects of disarmament and non-proliferation. Meanwhile, the comprehensive test ban treaty (CTBT), which was rejected by the US Senate, continues to be in limbo and discussion goes on in the US about nuclear weapons with new missions, notably earth penetrating ‘bunker busters’.

As to the role and reform of the UN, a collective determination led at the *millennium conference in 2000* to the acceptance by consensus of bold goals, for instance a reduction by 2015 of 2/3 in infant mortality and a halving of extreme poverty. The hopes pinned on these goals and on the UN to be used as a vital tool for achieving the goals have been dimmed. The recent UN summit meeting reaffirmed by consensus the millennium declaration and the central role of the United Nations. It also endorsed some significant organizational innovations as well as the management reforms initiated by the Secretary-General. However, although joining the consensus the current US administration’s attitude to the UN has been skeptical or ambivalent. Its focus has been on the management and administration of the organization.

A recent article by one of the co-chairmen of a bipartisan US congressional task force on UN reform carried a title that might succinctly express the position of a dominant wing of the current administration. I quote:

‘A limited UN is best for America’ [IHT 13 Sept. 2005].

While the article was highly articulate about shortcomings in the UN and even suggested that the world could do without the organization, it said little about alternatives. For the important field of international security, however, the *US National Defense Strategy* published earlier this year by the Department of Defense, had this to say, I quote:

“The end of the cold war and our capacity to influence global events open the prospect for a new and peaceful state system in the world”.

This sounds benign but one is left in doubt as to whether there is even a limited role for the UN in this new peaceful system for the world. The strategy contains only two references to international organizations, both negative. The first reads:

“Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.”

The esteem for international organizations – including, one would assume, the UN – and judicial processes is evidently not very high, when they are lumped together with terrorism and seen mainly as obstacles.

I do not jump to the conclusion that some big disaster must take place to bring the world to strengthen and make better use of the United Nations and to move on to disarmament. Rather, I am convinced that *globalization* – the accelerating interdependence of states, economies, environments and peoples – will force all to better use and to *strengthen our global institutions*.

The UN is not and will not be the only multilateral church in the global village and there is every reason to examine it critically. On the other hand there is no doubt that the UN and the many specialized agencies will remain the most important network through which nations can cooperate to stop epidemics, organize telecommunications, ensure nuclear safety, protect the global environment and attain and implement global disarmament measures.

Disarmament, I believe, will be forced upon the world by doubts about the cost benefit of missile defenses and new supersonic fighter planes when there are no significant territorial or ideological conflicts between states. The Oder-Neisse once marked a line of death between a Communist empire and the democratic world. Today it is an internal waterway within a European Union.

Terrorism has inflicted much pain and continues to do so. Although a world wide scope is needed for the efforts against terrorist movements, it is misleading and hyping to name these a ‘world war’. It is also misleading to claim that the occupation of Iraq was a way to fight terrorism. It would be more correct to say that it has stimulated terrorism. What then is a way to fight terrorism? A demonstration of a united stand of nations is valuable to de-legitimize terrorism and the United Nations offers a good forum for such action. It also offers a number of mechanisms through which joint practical action can be and is pursued. Cooperation between police, intelligence and financial institutions will be

more useful than the development of nuclear ‘bunker busters’. It must also be understood that countering terrorism calls for efforts to remove humiliation and discrimination of specific groups and – long term – to reduce the gap between rich and poor nations.

The legacy of Dag Hammarskjöld

Making these optimistic points at the present gloomy time I am inspired by what Dag Hammarskjöld, as Secretary-General *achieved* by way of development of the UN. I also feel inspired by what he *retained* as his vision for the UN during a very difficult time for the organization. Kofi Annan, I think, is in a similar situation today.

Despite the efforts of the Soviet Union during the Cold War to reduce the role of the UN and to paralyze it, Hammarskjöld continued to see a future dynamic role for the organization. Today, the Soviet Union is no more and Russia has come to support a more dynamic UN. With this example of change of attitude it does not seem naïve to share Hammarskjöld’s vision despite the efforts of to-day’s only superpower to ignore or reduce the role of the United Nations. I, for one, do share his long term vision.

No single person has done more than Hammarskjöld to demonstrate that the United Nations is *a living organization* that can assume and perform important tasks, which the authors of the Charter had not foreseen and which they could not do individually.

I shall first point to four specific areas, in which Hammarskjöld’s constructive reading of the Charter left a lasting legacy and thereafter discuss his larger vision of the organization.

- Article 99 gives the Secretary-General a right to bring matters before the Security Council. In Hammarskjöld’s view this independent political role implied a right for the Secretary-General to take political initiatives and to function as an honest broker. The ‘*quiet diplomacy*’ has remained an important part of the office of the Secretary-General;
- The mission of quiet diplomacy should *not*, in Hammarskjöld’s view lead to *a quiet Secretary-General*. He was the only actor at the political level who owed allegiance exclusively to the UN Charter. He had a duty *to react and speak up against violations of it*. As both he and Kofi Annan have experienced the exercise

of this duty may sometimes provoke angry reactions, especially when great powers were criticized.

- Article 100 requires of the Secretary-General and his staff to “refrain from any action which might reflect on their position as international officials responsible only to the Organization.” Hammarskjöld understood that *the international civil service* must remain independent of the interests of individual states and strive for objectivity. He became, himself, a role model. Not surprisingly, this independence was not appreciated by the Soviet and other Communist governments during the Cold War. It is more surprising – and disconcerting – to see it reported that the currently highest ranking US citizen in the UN Secretariat, the Undersecretary for the Department of Management, has said that his “primary loyalty is to the United States of America.” (A *Washington Post.com* article dated 20 July 2005.
- Hammarskjöld initiated UN *peace-keeping operations*. These operations, not foreseen in the Charter, have become an often successful part of UN efforts to stop or prevent conflicts. Today there are reported to be 17 UN led peacekeeping missions with some 70.000 peacekeepers. The cost for this year is around \$ 4 billion. (K. Inderfurth in *Baltimore Sun* 13 Sept. 2005), a fraction of the cost of shooting conflicts – apart from the cost in lives and suffering. The UN Undersecretary for Peace Keeping recently noted that most armed conflicts in the world today are *civil wars* and that such UN assistance as disarming former combatants and preventing the international sale of stolen valuables like diamonds, are important to contain conflicts. He further noted that there are today about 25 armed conflicts in the world, down from more than 50 in the early 1990s. He noted, finally, that there is less war than there used to be and that the number of people killed in battle in the world is at present at a hundred year low. (Jean-Marie Guehenno in *The International Herald Tribune*, 12 September 2005). Encouraging! It is also encouraging that the recent New York summit endorsed the idea of a *Peace Building Commission* to follow up and supplement peace-keeping.

Hammarskjöld's vision for the world organization

I turn now to Hammarskjöld's vision of the larger role of the UN as it is reflected in the introduction to the Secretary-General's Annual Report to the General Assembly in 1961, dated about one month before his death.

Hammarskjöld's saw the Charter as a '*dynamic instrument*' through which members could jointly develop "forms of executive action" to forestall conflicts or resolving them. This vision was very different from another that he described – undoubtedly that advocated by the Soviet Union – which conceived the organization as "*a static conference machinery*" to resolve conflicts. He found support for his vision in the Charter and its Preamble. He noted that

" 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..."

I think he read in the Charter provisions and preamble an aspiration for the international community to attain some features deemed essential in national communities:

- the rule of law; where
- each subject is equal before the law; and
- deserving economic and social opportunity; and where
- the power of legislation can be exercised through majority votes *as in a parliament*; and where
- force can be used only by the community – except in the case of self-defense.

Let me discuss these features and their present and potential relevance to a better organized the world.

The principle of sovereign equality

Hammarskjöld quotes the Preamble of the UN, which speaks of "*the equal rights of men and women and of nations large and small*

What he wanted to stress, I think, was the rights of the small states in a world dominated by great powers and the need to strive for greater economic equality. No one could claim that these aspects of the principle of equality has lost relevance and actuality after 1961. He further sees in the majority voting of the Assembly *a hopeful parliamentary feature* that sets it apart from an international conference that adopts a treaty, which becomes binding on states only through ratification. Hammarskjöld notes that the resolutions of the Assembly are, for the most part, non-binding

recommendations but he sees the possibility of a gradual development through practice. I quote:

“...to the extent that more respect, in fact, is shown to General Assembly recommendations to Member states, they may come more and more close to being recognized as decisions having a binding effect on those concerned.”

This has not happened. During the 1960s the membership of the UN doubled. A large number of very small states were admitted. Each member has one vote, whether it has 1 billion inhabitants or only 100.000. Resolutions can be adopted by a majority of members representing a small minority of the world's population. Seen in this way *the General Assembly has a democratic deficit*. As presently constituted it will not move in the direction of becoming a parliament and a legislature for the world, nor will it be able to use its power to decide on the budget of the UN and the size of members' contributions to introduce a world tax system.

This is not to deny that the political or moral – and sometimes even the legal – weight of resolutions of the Assembly can be considerable, when they are adopted with very large majorities or consensus. Moreover, *a common forum* is needed, where all governments of the world can voice their views and where initiatives can be taken in questions of global concern, like world poverty, fresh water resources, human rights and terrorism, the common use of the high seas, HIV, global warming, etc. The current reform proposals maintain this role for the General Assembly.

The UN is not an organization of democratic states

In the last few years the composition of the UN and its various organs has been criticized by some, not so much for comprising many mini-states but for consisting of so many *undemocratic states*.

The debate has been caused in part by the specific case of the *Commission on Human Rights*, which has been elected by the ECOSOC and which has comprised a number of countries with poor human rights records. Through one of the current proposals on UN reform this particular problem might go away by the Commission *being replaced by a smaller Human Rights Council*. This is undoubtedly an improvement though it may prove harder to determine at any given time what are

adequate human rights credentials than to identify states that have decidedly poor credentials.

The idea has been advanced of replacing the UN by an organization of “*democratic states*”. The UN was originally formed, as we know, by the alliance of states that won the Second World War and the organization was declared open to “*other peace-loving states*” which were deemed to be “*able and willing to carry out the obligations*” of the Charter. This looked like a filter and, indeed, Spain under Franco was not accepted for a long time. However, over time the *principle of universality* has prevailed for rather simple reasons. On matters like natural catastrophes, virus and wave-lengths the world needs mechanisms through which all states, regardless of their political systems, can cooperate. This does not, of course, preclude that special caucuses can be created for states, which identify each other as democratic and seek to pursue common goals.

The Security Council

While many have criticized the veto of the five permanent members of the Security Council, Hammarskjöld rightly focuses on the remarkable feature that unanimity is not required for Council decisions, which may be binding for Members, whether or not they consent, for instance, decisions on economic sanctions. In the power given to the Security Council he sees a hopeful step in the direction of the “*parliamentary concept*.”

During the Cold War the veto frequently led to paralysis of the Council. It is easy to see that it does not fit with the principle of equality but it seeks to preclude decisions, which would authorize enforcement actions against great powers – at least the five who have seats in the Council.

One might question whether retention of the right to a veto can be a vital interest in case of other resolutions than those adopted concerning enforcement under Chapter VII. However, it is not the extent of the veto right, but rather the *expansion of the Council* that has been the focus of attention in the recent reform discussions. How important is it?

Regrettably much of the discussion has been driven and dominated by the interest of specific states and groups of states to be given seats in the Council. In my view the starting point in the discussion should be Article 25 of the Charter under which all members agree to carry out decisions of the Council, including decisions on sanctions. This delegation of power to a small group of states sitting in the Council would justify a demand

that the Council should be broadly representative of the whole membership and that Council members should act as trustees of the membership.

The aim should not be just to reward some big states with a better platform from which they can pursue their own foreign policy but rather to make the Council more representative of the states and peoples, who may become bound by its decisions. The current composition reflects the wish in 1945 that the military power in the world should be represented. Today, this appears as too narrow a consideration. Both economic power and population need to be reflected, while the total number needs to be kept low for operative viability. I would suggest that the European Union could help keep the Council small by accepting only one seat! A new incentive for a common European foreign policy might be a positive spin-off.

Although no revision has come out of the current reform work, the Council and its Members have in their power to make themselves more representative of the UN membership for whom it acts. They could simply pay more attention to their constituents – the membership. In practice, they could consult more closely, especially before important Council decisions, with the members of geographical groups in which they participate. Such a practice would reduce the feeling that especially the permanent five are simply a somewhat disharmonious power cartel.

The rule of law

One of the purposes and principles of the UN is “*to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained*”. Hammarskjöld rightly saw this principle as another feature in which the Charter reflected standards accepted within states.

He would have been delighted to see the tremendous development that the rule of law has had in the international community in the last 45 years. Large areas of customary international law have been codified under the auspices of the General Assembly – just as the customary law of different parts of Sweden were codified in the early Middle Ages. He would have seen how conventions, declarations and a variety of mechanisms have extended and strengthened human rights and how international criminal law has developed and been applied by a number of

tribunals. He would have noticed that international law now covers new subjects, such as space, cyberspace, aviation and nuclear power..

As we have seen, his speculation that increasing respect for General Assembly resolutions might make the Assembly more akin to a parliament has not been borne out in reality. With some exceptions in special fields the world still lacks the institutions, which exist in the national sphere and which can adopt *rules* binding for all regardless of individual consent.

Treaties, conventions, agreements is the international surrogate for national legislation. Here, states do not become bound unless they have given their consent. It is not surprising that this method of adopting rules is often slow and difficult. Our national legislatures would be reduced to very slow motion, indeed, if they were obliged to adopt rules by consensus.

Non use of force. Self-defense. Disarmament.

Hammar skjöld notes that the UN Charter *outlaws the use of armed force* ‘save in the common interest’ and in the exercise of a nation’s inherent right to resist armed attack. He comments that the UN had several times faced situations in which the rights and wrongs were not clarified. He concludes that it would be vitally important to reach agreement on ‘criteria to be applied in order to distinguish between legitimate and illegitimate use of force.’ He adds that ‘history is only too rich in examples of armed aggression claimed as action in self-defence.’ Indeed.

In what appears to be a direct renunciation of the restrictions laid down in the Charter the United States has been claiming for itself a right to take armed action whenever it perceives *a growing threat to itself*. The repeated assertions made with addresses to Iran and the DPRK that ‘all options are on the table’, implying notably the option of military attack, are clearly meant to ignore any Charter restrictions.

The *High Level Panel* appointed by Kofi Annan rejected a right to so called ‘*anticipatory self-defense*’ on the ground that the world is full of perceived potential threats and the risk to global order too great for conferring legality on unilateral preventive action. By contrast, it accepted that where states had failed to exercise their *responsibility to protect their citizens* and humanitarian disasters are arising – as in Somalia, Bosnia. Rwanda and Darfur – the Council would be justified in

the last resort to authorize military action, if it is prepared to declare the situation ‘a threat to international peace and security.’

In the report “*In larger Freedom*” the Secretary-General recommended cautiously that the *Security Council should adopt a resolution* setting out the principles for the use of force and expressing its intention to be guided by them – not very far from the view expressed by Hammarskjöld.

In the recent summit *declaration* the concept of a responsibility to protect is affirmed as is the power of the Security Council in the last resort to intervene by force to prevent or stop extreme violations of human rights. However, while there is recognition that an effective and efficient collective security system is needed and that no state can best protect itself by acting entirely alone, no comments are made on the preventive or pre-emptive use of force. It is, indeed, unlikely that such questions would get coherent written answers – whether in Security Council resolutions or amendments to the Charter. It is more likely that precedents will slowly show what use of armed force is deemed acceptable by the world community.

On disarmament, Hammarskjöld not surprisingly in 1961 writes that direct negotiations between a limited number of key countries were needed as a first step. The Big Powers with their security interests cannot, he says, ‘automatically’ accept a majority verdict, but the Big Powers should not ‘set themselves above, or disregard the views of, the majority of nations.’ There must be, he says, an effort to ‘balance’ the Big Power element, recognized in their Security Council status, and the majority element. The recent UN Summit declaration shows that 2005 is not the year of reaching the balance. .

As I noted, Hammarskjöld felt that in its search for a peaceful world order the authors of the UN Charter had sought inspiration in the principles which have led to peace within states, notably the equality of individuals and the rule of law. It would seem to me that the lessons to learn in the national sphere are even more telling in the fields of disarmament and the non-use of force.

A fundamental feature in a peaceful nation is that the possession and use of arms is a monopoly in the hands of a government, while in a primitive society there may be a widespread possession and use of arms by families, clans and tribes in self-defense, retaliation or for domination. Only when a central power – a chieftain, prince or king – succeeds in establishing himself and his supporters as the supreme lord of the land,

succeeds in depriving other individuals and groups of any significant armed power and in return extends protection to the disarmed, is the society on its way to a peaceful order – the King’s peace. Introducing the rule of law and democratic institutions was a welcome subsequent development.

Are we to see a world authority emerge that maintains peace globally by obtaining a monopoly on the possession and use of arms in the same manner as central authorities once did in many lands? For several reasons it seems unlikely.

Today some ask the question whether the US is consciously or unconsciously striving for a *Pax Americana* based not on a monopoly on the possession of arms but on a total military dominance in the world and the power and readiness to decide, if need be alone, on the deployment and use of its armed force.

While American action and cooperation may often be welcome and indispensable for the maintenance or restoration of international peace and security, I think a *Pax Americana* is improbable. First of all, because, on reflection, any US administration, however anxious it may be to exert influence, is unlikely to want to assume the role of *global sheriff* and unlikely to get NATO or other groups as vassals. If restoration of peace in Iraq today is problematic for the US maintaining order in the whole world, would be beyond the capability of any single state. Secondly, because economic power may be of increasing importance and it is much more evenly spread in the world.

It seems much more likely that, as in the European Union, which consists of states that have fought untold numbers of bitter bloody wars between each other, development will lead the world toward some federal global structure.

Needless to say movement will be very slow. As we can see, even small modifications and improvements in the structure and working of the UN, are hard to attain – let alone the world parliament that Hammarskjöld saw in the horizon.

Many of the reform efforts of the past years have aimed at modifying old or create new instruments in the UN. If we see the UN as an orchestra the replacement or repair of damaged or missing instruments is important and welcome. However, such action does not help if the first violinist does not want to play or the musicians cannot agree to play by the same notes.

I have no doubt that the greater problem today does not lie in the instruments but in the will of the musicians to use the full potential of their instruments – and to play by the same notes. I have also no doubt that they will come to feel a growing need for music.