IN THE FOOTSTEPS OF HAMMARSKJÖLD: THE UNITED NATIONS AND INTERVENTIONS FOR SECURITY AND DEVELOPMENT

Dr Henning Melber
Senior Advisor/Director emeritus: Dag Hammarskjöld Foundation, Uppsala, Sweden
and
Extraordinary Professor: Department of Political Sciences, University of Pretoria

"You try to save a drowning man without prior authorization."
(Dag Hammarskjöld)[1]

ABSTRACT

The League of Nations, established after the first World War as an institution of global governance, already included in principle forms of intervention into affairs of member states (not least through the institutionalisation of trusteeships and the establishment of the International Court in The Hague) as a mechanism to contribute to international peace and security.

This article reviews the development of this interventionist role, its practical forms and the normative justifications of the United Nations. It explores the ambiguities of such interventions since Dag Hammarskjöld as second Secretary-General shaped some of the principles and values underlying a global responsibility to protect people from being killed by those occupying state power.

The understanding and insights of four prominent mediators and seasoned diplomats are used as a particular point of reference, while the changing concepts within the United Nations system with

regard to humanitarian relief missions, the responsibility to protect and the rule of law are the general notions explored and analysed with a focus on and perspective from Africa.

1. INTRODUCTION

Dag Hammarskjöld, the second Secretary-General of the United Nations (UN), gave up his life in pursuit of a peaceful solution to the civil strife in the former Belgian colony of the Congo. He was on his way to meet Moise Tshombe, the leader of the Katangese secessionist movement. His death, on the night from 17 to 18 September 1961, shocked the world and left Sweden in mourning. Fifteen others were aboard the plane, which crashed while approaching the airport of the Northern Rhodesian mining town of Ndola. The only survivor died in a local hospital without being able to offer an account of what happened. Ever since then speculations were rife, if the plane-crash was more than just a tragic accident (Williams, 2011).

During his terms in office since 1953, Dag Hammarskjöld not only institutionalised the UN peacekeeping operations to solve the Suez crisis, but also created the special representatives. He appointed them to act in specific missions on his behalf in sensible matters on the ground. He thereby created a UN presence, which at times was able to find solutions maybe not at hand without the involvement of the world body. Not least, his concept of humanitarian intervention pre-empted the later norm of a Responsibility to Protect. His response to the inter-ethnic violence erupting in the Congo, which for him was bearing characteristics of an incipient genocide, resembled features of a humanitarian intervention (Bring, 2011: 58f).

Under Hammarskjöld, the UN's executive rule

> developed through the systematisation of practice rather than through the development of detailed doctrines or norms. (…) The terms in which the practices of international rule were rationalised remained remarkably stable for almost forty years. The UN and other humanitarian internationalists understood themselves to be impartial and neutral actors, intervening to maintain peace and protect life with the consent of those they governed (Orford, 2011: 6).[2]

Throughout the period of the Cold War the UN were able to claim a

role of a more or less neutral actor in interventions, despite being contested and challenged ever since Hammarskjöld pursued a policy of foremost and exclusive loyalty to the UN Charter and not to national interests. Being criticised at different times by all big powers holding veto rights in the Security Council during his terms in office (and even in confrontation with all of them on the UN's role in the singular case of the Congo) could be seen as ultimate proof of such independence *vis-à-vis* the dominant interests at play.

This article has been developed from a summary based on the work of four prominent international civil servants, who since the 1970s served the UN in various missions. Through their special assignments they lived up to the legacy of Dag Hammarskjöld in different ways.[3] They are either from the African continent (the Algerian Lakhdar Brahimi and the Sudanese Francis Deng) or from the Nordic countries, but during their career with missions on the continent (Martti Ahtisaari from Finland in Namibia and Jan Eliasson from Sweden in Darfur). They also have in common, that all of them have been presenting the annual Dag Hammarskjöld Lecture during the last ten years (Brahimi in 2002, Ahtisaari in 2008, Deng in 2010 and Eliasson in 2011). Former Finnish President Martti Ahtisaari, who presented the Lecture on 18 September 2008 — some two weeks before the announcement that he was to be awarded the Nobel Peace Prize for the same year — then stated:

> (T)he United Nations is still globally the most present 'peace-making' body — there is no real alternative. It can combine 'influence' and 'persuasion and pressure' from a large number of member states. It also has the ability to support and further legitimize the engagement of regional actors and organisations (Ahtisaari, 2009a: 12f).

In line with this view, the focus of this article is on the essential role the world body — established after the scourge of two world wars — should and can play in enhancing peace, justice and development not least in African conflict and post-conflict constellations. But it also alerts to the potential risks of too uncritically accepting the notions as free of interest by those who promote them and seek their application in certain cases (while not in others). Paraphrasing Winston Churchill's quip on democracy, MacQueen (2011: 225) concluded his critical approach to intervention theory and the manifest weaknesses

of the UN's role with the sober but realistic observation that it is the "worst possible option — apart from all the others".

In the absence of better, institutionalised alternatives, the following considerations explore the limitations but also opportunities provided by a world body, which had arguably the greatest pioneering role and credibility more than half a century ago. Its Secretary-General then was more general than secretary. His understanding of his office and that of an international civil service could best be characterised as anti-hegemonic, not least with regard to his role in the decolonisation process of Africa (Melber, 2012a).

2.   FROM NON-INTERVENTION TO COLLECTIVE RESPONSIBILITY

Ten years ago, at the end of 2001, the International Commission on Intervention and State Sovereignty (ICISS) presented a pioneering report. For the first time it coined the concept Responsibility to Protect (RtoP) in a semi-official way.[4] The report was strongly endorsed by Secretary-General Kofi Annan in light of the traumatic experiences of genocide and other forms of organised mass violence committed in Rwanda, Kosovo, Bosnia and Somalia, and stressed the indivisibility of the concept of human security, including human rights and human dignity, as a fundamental objective of modern international institutions. It also defined sovereignty as responsibility (International Commission on Intervention and State Sovereignty, 2001: 5, 6 and 8). As Kofi Annan emphasised at the Stockholm Forum on genocide prevention in January 2004: "the issue is not one of a right to intervention, but rather of a responsibility — in the first instance, a responsibility of all States to protect their own populations, but ultimately a responsibility of the whole human race to protect our fellow human beings from extreme abuse wherever and whenever it occurs" (Annan, 2004).

Long-time observers of and actors inside the UN system described the ICISS report as "perhaps the most dramatic innovation of the UN in the last few years" (Jolly, Emmerij and Weiss, 2009: 174). The notion of RtoP was finally accepted in principle at the UN World Summit in 2005 by the largest gathering of heads of state to date.[5] The subsequent report of Secretary-General Ban Ki-Moon on "Imple-

menting the responsibility to protect" was presented on 21 July 2009 and debated by the UN General Assembly on 23, 24 and 28 July. With only a few dissenting voices, the principles adopted in the 2005 document were endorsed. During the debate, the visible and pioneering role of African states in the norm-setting process was acknowledged, in particular their contribution to the evolution of the idea of "sovereignty as responsibility". This in turn was in large measure the result of the earlier work of a team inspired by Francis Deng (see Deng, 2009).

The shift from non-interference to non-indifference was considered a crucial contribution to matters of global concern, in that it touched upon fundamental principles of state sovereignty that had been firmly entrenched, though never undisputed, since the establishment of the Westphalian order (1648) and the genesis of the modern state as a Protestant project (Orford, 2008). By confirming this shift, the overwhelming majority of member states were responding to the appeal of Secretary-General Ban Ki-Moon, who in his speech of 21 July 2009 had called upon them to "resist those who try to change the subject or turn our common effort to curb the worst atrocities in human history into a struggle over ideology, geography or economics" (quoted in Global Centre for the Responsibility to Protect, 2009: 3).

Indeed, the advocates of the doctrine would agree that while "normative change does not necessarily mean action", the notion of RtoP does indeed represent a "momentous normative change", which accepts that "sovereignty does not imply a license to kill" (Jolly, Emmerij and Weiss, 2009: 176 and 177). The former Australian foreign minister, Gareth Evans, president of the International Crisis Group and one of the co-chairs of the ICISS, underlines the honest motives inherent in a position that is in principle willing to accept external intervention in extreme cases of human suffering: "But at the end of the day", he maintains,

> the case for R2P rests simply on our common humanity: the impossibility of ignoring the cries of pain and distress of our fellow human beings. For any of us in and around the international community — from individuals to NGOs to national governments to international organizations — to yet again ignore that distress and agony, and to once again make "never again" a cry that rings

totally empty, is to diminish that common humanity to the point of despair. We should be united in our determination to not let that happen, and there is no greater or nobler cause on which any of us could be embarked (Evans, 2008).

This, however, does not resolve the core problem of the most appropriate forms of solidarity. Nor does it shift the decision-making power from individual states to the global governance institution the UN maintains to be. Orford (2008: 9) reminds us that the state remains the central agency also to international law, which "presents a particular paradox in those areas of international law concerned to constrain the will of the state in its treatment of individuals". The decision about when and how to express empathy with the suffering, if necessary through intervention free of (counter-) hegemonic interests, remains a difficult one. Unfortunately, all too often doubts remain about the intentions of those arguing for or against specific cases of intervention (and the form it should take), as several recent examples clearly and sadly illustrate. Not surprisingly, the most common concern expressed by member states during the General Assembly debate in late July 2009 was the danger of double standards and selectivity. As some states pointed out, however, "it would be wrong to conclude that because the international community might not act everywhere, it should therefore act nowhere" (Global Centre for the Responsibility to Protect, 2009: 2).

What makes the hard choices even harder is the crisis of legitimacy relating to criteria for or against specific forms of interference. Double standards reign supreme. We should, however, be careful not to explicitly equate the RtoP doctrine with military intervention. This would ignore the fact that interventions can take many different forms, such as sanctions and selective boycotts, naming and shaming or even creating incentives for better behaviour. RtoP, as we should not forget, also means the obligation to protect responsibly. As already mentioned, Francis Deng pioneered the whole RtoP debate through ideas he has been articulating since the mid-1990s on "sovereignty as responsibility". Others have meanwhile offered as a variation the notion of "responsibility while protecting". This has been suggested so as to make interveners more accountable to those who endorsed the mandate for intervention.

3. HUMANITARIANISM AS INTERVENTION

Estimates for 2011 suggest that there were more than ten million refugees in transnational settings and close to 30 million internally displaced people due to conflict and other catastrophes. Civilians, and in particular women and children, are the principal victims of warfare and other emergencies that put lives at risk and result in large-scale human suffering. The scale and dimensions of such challenges, demanding a collective response to provide relief, have reached proportions that affect more than ever before both global governance institutions and public awareness. In 2010, almost US$17 billion was allocated to specific humanitarian aid missions and purposes. But beyond the ordinary relief efforts, responses have taken new forms and have changed in quality, responding also to new challenges (cf Oxfam, 2012). Disaster relief has to a large extent been replaced by a broader notion of humanitarian intervention, dealing with many more forms of assistance to alleviate the plight of people in need. The most recent cases of Libya and Syria, in which efforts to reduce the suffering through humanitarian relief measures in situations of civil war were made in parallel with other forms of intervention to influence and change internal dynamics, are prominent cases in point.

Since the late 20th century the hitherto isolated approaches of humanitarian relief missions have been gradually replaced by a new logic of combined interventions, in which development assistance and humanitarian aid go hand in hand with other action — at times even with military intervention. As a result, the institutionalised orders and forms, as well as the concept of humanitarianism, are in flux. Those acting on the basis of normative frameworks — guided by principles such as humanity, impartiality and non-military means — to protect civilians no longer share a common doctrine as they did before: "While the practices of international rule introduced under Hammarskjöld were characterised in terms of technical expertise and political impartiality, by the end of the 1990s that framework for understanding international practice was increasingly unable to address pressing questions about the legitimacy, authority and credibility of international action" (Orford, 2011: 7).

Forms and instruments of coordinated humanitarianism have

changed, resulting in shifting roles for different actors such as the state, the international community and international NGOs. The translation of the core principles of humanity, impartiality, neutrality and non-violence into practical measures is giving rise to a process of re-definition, which introduces new understandings. Humanitarian missions increasingly serve as entry points for intervention from the outside to contribute to social if not political change. Humanitarian intervention is not confined any longer to relief missions. Not surprisingly, practitioners and scholars alike are re-thinking and debating the fundamentals of humanitarian intervention and its role (Barnett and Weiss, 2008; Barnett, 2011). A new logic of interventionism has gained currency in response not only to so-called natural disasters but also to political conflict, resulting in a combination of military initiatives with other forms of intervention both as humanitarian emergency relief measures and forms of development assistance. As the contributions to Fassin and Pandolfi (2010) make clear, these interventions combine military action and humanitarian aid, conflate moral imperatives and political arguments, and confuse the concepts of legitimacy and legality.

Amnéus (2012) suggests, that efforts for regulating the 'gap' between legitimacy and legality of humanitarian intervention have despite the evolution of the RtoP doctrine so far failed. She, however, welcomes this missing link since, as she argues,

> The 'gap' should in fact not be regulated by *lex specialis* establishing a right to unauthorised humanitarian intervention. The so-called 'gap' is actually not an unregulated gap in international law but governed by the prohibition on the use of force. The international community must continue to uphold and safeguard the respect of this vital principle in international relations as a priority (Amnéus, 2012: 274; see also Amnéus, 2008: 533-536).

The processes of re-orientation were reflected in the shift of emphasis towards a 'culture of protection' that permeated the UN structure and discourses since UN Secretary-General Boutros-Ghali as from 1992 promoted the 'Agenda for Peace' and Kofi Annan succeeded him in the office as Secretary-General (cf MacQueen, 2011). A series of reforms underlined the prominence of the issue. The UN Office for Coordination of Humanitarian Affairs (OCHA) was established in 1998 as the coordinating body for humanitarian action in

collaboration with national and international agencies and actors to alleviate suffering, advocate rights for people in need, take preventative action, facilitate relief and explore other solutions. OCHA seeks to lay the foundations upon which "a truly inclusive humanitarian response system" can be built to meet the challenges (OCHA, undated: 2). Peacebuilding and humanitarian relief measures are increasingly linked (Holt and Taylor, 2009; OCHA, 2011). But results have been mixed. At times, humanitarian interventions do more harm than good. In this, they have similarities with the dilemma accompanying the practices of the RtoP, which have been shaped and applied in parallel since the turn of the century.

Humanitarian space — or rather, the arena for humanitarian interventions — underwent a re-demarcation after the end of the bi-polar world and even more so after 9/11 and the emerging 'war against terror'. The nature of interventions shifted considerably, as did the role of the military and international agencies. Pringle and Lam-brechts (2011: 59) observe, like many others, an "increasingly explicit linkage of the security/military agenda and the humanitarian agenda". Along with this comes increased exposure of international agencies to risk and insecurity as well as the militarisation of civilian relief measures: "the blurring of the distinction between combatants and civilians and the active targeting of civilians that characterises contemporary conflict zones means that international agencies, as supporters of the victims of conflicts, are no longer regarded as neutral parties" (Pringle and Lambrechts, 2011: 59). Not surprisingly, the last decade saw a shrinking of humanitarian space and, in parallel, the further politicisation and militarisation of aid.

Not that humanitarian intervention had ever been entirely non-political. But the overlapping nature of emergency and disaster relief as well as other humanitarian interventions made within a pre-dominantly political-military environment have assumed hitherto unknown dimensions and seem to be increasingly linked to a new concept (cf Söderbaum and Sörensen, 2012). The growing eagerness to see humanitarian interventions as a kind of moral obligation (if only in the interest of own foreign and even domestic policy) in the name of Western civilisation (once considered by Mahatma Gandhi as "a good idea") through the unfolding US hegemonic policy towards the end of the 1990s has been critically analysed and questioned as "a solution from hell" (Wertheim, 2010), and a result of

"hollow hegemony" (Chandler, 2007), in which "power is no longer projected as an act of territorial hegemony but as a global ethical or values-led act" (Chandler, 2009: 186). The question remains, as Chandler implies, whose ethics or values for which purpose.

> Where once the projection of force by the Great Powers was treated as the expression of national interests, today we are told that it is an expression of universal values. Yet how is it possible to determine the 'real' intention of States in a particular situation, or to differentiate between the interests and values as motivations for actions? (Orford, 2010: 240).

4. PROTECTION WITH RESPONSIBILITY

Gareth Evans, who through his own relentless advocacy had been one of the midwives to bring about and apply a new understanding of a global responsibility not accepting national sovereignty as a firewall separating the inside from the outside summarises with regard to the translation of the RtoP doctrine into action:

> For centuries, right up to the beginning of our own, mass atrocity crimes perpetrated behind state borders were seen essentially as nobody else's business. Now, at least in principle, they are regarded as everyone's business (Evans, 2012: 375).

The global community in search of more justice requires efforts seeking to come to terms with the inherent difficulties to find measured and justified responses to injustice exceeding the tolerable limits (what ever 'tolerable limits' in the case of injustices and violence might mean). Far too long despotic regimes were protected by the principle of state sovereignty and non-interference into matters of domestic affairs and could literally get away with murder. Since the turn of the century this has changed. The Westphalian order had been critically challenged with regard to its exclusive emphasis on the dogma of national sovereignty since its early days by concerned advocates of a responsible, humanitarian oriented international law — albeit with inconclusive evidence as to the primacy of either state sovereignty or internationally codified moral values (cf Havercroft, 2012).

Nowadays global policy institutions no longer turn a blind eye

on gross human rights violations, though there is still no even-handed approach to terrorist regimes. But there is no longer an unquestioned protection of ruthless perpetrators ordering destruction of their own people while hiding behind the shield of state authority. The firewall has cracks. Significantly enough, the new Constitution of the African Union (AU) documented already a fundamental paradigm change leaving behind the strict principle of non-intervention into internal affairs of member states as adhered to by the Organisation for African Unity (OAU). When adopted a decade ago at the Durban Summit in 2002 the collective responsibility and obligation of the body to intervene in member states in cases of war crimes, crimes against humanity and genocide was pioneering and — noteworthy as it is — a result of shared African concerns.

South Africa's President Jacob Zuma (2012) reiterated on occasion of his farewell speech to the new chairperson of the AU Commission, Nkosazana Dlamini-Zuma: "We will step up our efforts, working with sister nations within the AU to prevent wars, genocides and crimes against humanity in this continent". It will therefore be noted how South Africa and the South African chairperson of the AU Commission (who should be more than a South African office holder but will remain also a South African representative, not least since the campaign was driven by the element and argument of being the Southern African Development Community [SADC] candidate) will position the body towards the International Criminal Court (ICC) and the demands for international jurisprudence, especially when government representatives of its member countries are implicated, as in the controversial cases of the Sudan and Kenya (cf Odora, 2011; Hansungule, 2011; Heinrich Böll Stiftung, 2012).

But advocates of the RtoP need to remain aware and constantly alert that they walk a tight rope — the line between legitimate and undue interference is thin. Self-righteous claims to the moral high ground are misplaced, given the almost endless history of hegemonic policies setting — and thereby constantly eroding — the standards in the interaction between states and people more guided by selfish geostrategic interests than true concerns for suffering people. That foreign intervention is neither a guarantee to protect humans from further atrocities, nor a secure point of departure for peaceful sustainable nation building was illustrated not only in the cases of Afghanistan and Iraq but also by the current developments

in Libya. The messy aftermath of the overthrow of the Gaddafi regime only testifies to the notorious saying "damned if you do, damned if you don't". It illustrates the dilemma a concerned international community is so often confronted with — not least in the case of Syria. The sobering Libyan experiences, leading to an intervention resulting in an unauthorised regime change, were reasons for being reluctant with regard to assuming new responsibility for the endorsement of interventions. Former South African President Thabo Mbeki's damning statements on the abuse of the Security Council resolution 1973 by the hegemonic Western powers and the North Atlantic Treaty Organisation (NATO) (Mbeki, 2011, 2012) was a strong signal, given his own continuous involvement in mediation efforts.

Moral condemnations of violations of the fundamental principles of the protection of people, which we hear on a daily basis, sound hollow and hypocritical in light of the geostrategic and other politically opportunistic deliberations that all too often guide both the rhetoric and the decisions. Was there a sufficient response to the violence against the civilian population by regimes in Bahrain or Yemen? Or when tens of thousands of civilians were butchered in Sri Lanka at the end of its civil war in 2009? Did the world respond adequately to the atrocities committed by the junta in Burma? Are we speaking out as we should about the continued plight of the Palestinian people? Who cares really about the scale of human suffering under autocratic leaders in countries like Zimbabwe and Swaziland, Eritrea, Gambia, or in 'failed states' such as Somalia, the Congo or elsewhere on this earth, as long as own interests are not at stake? Are we doing everything possible to minimise human suffering in these and similar instances without creating yet more victims?

There are other serious moral and political considerations when balancing the various possible reactions and consequences as part of RtoP. Security Council Resolution 1973, resulting in massive, large-scale military intervention in Libya and triggering regime change, was a controversial instance of what the protection of civilian population might mean. The evidence of continued violence in the shadow of the efforts to establish legitimate new structures of government in post-Gaddafi Libya is of little comfort.

The case of Libya exposes a fundamental moral dilemma: in the absence of a standard measure not purely based on speculation to contrast the 'what if' with the 'what if not' scenarios, we are unable

to reach a factually based conclusion about whether an intervention reduced bloodshed or increased the number of victims. If saving lives is the ultimate motive for how we respond, then the result can be either initiatives for concerted — even military — action, or the opposite, a high degree of restraint and negotiation. This approach could even translate into all kinds of deals that are a far cry from justice. Justice at all costs, by contrast, might be too high a price in particular circumstances. Is it really the case that the achievement of justice invariably saves more lives than are lost in pursuing it? Luis Moreno Ocampo, the first prosecutor of the ICC, stated at a conference in The Hague in November 2011 that his mandate is not to seek political compromises but to pursue justice.[6] Others have another task, which might even include agreements at the expense of justice, if only to avoid further bloodshed.

Francis Deng, in his sensible treatment of the implications of his mandate as the Special Advisor for the Prevention of Genocide, urged the audience attending his Dag Hammarskjöld Lecture on 10 September 2010 to accept efforts seeking a "delicate balance between asserting the need for international protection for the vulnerable and the need for constructive engagement on the part of governments". He acknowledged

> that this is not the approach favoured by those who believe that on these matters we should cry out loud, stand on the mountaintop and preach what is right and condemn what is wrong. However, when we do that, we might satisfy our conscience, but how much can we help the people who need to be helped in a practical way? (Deng, 2010: 19 and 20).

Wertheim (2010: 167) seconded in a similar way by arguing that,

> the dream of harmony among peoples is too precious to be subverted by the masked bigotry of empty moralism. True idealists harbor no particular fear of standing idly by. They ask not whether to do something but what is best to do, and they act, or forbear, accordingly.

Such perspectives shift the emphasis from externally determined processes to the need to give priority to the assessment of domestic factors and power structures as well as the entry points for a lasting contribution towards stability and a reduction of violence. This also

reminds us that peace is more than the absence of war and that social reconstruction needs to be home grown if it should be able to provide a lasting common ground.

5.   TOWARDS A RULE OF LAW

The need for international assistance has to be carefully balanced with the need for domestic capacity building in a bottom up instead of a trickle down approach to anchor a less violent, maybe even democratic and fair legal system in local institutions and minds after a period of war-torn decay. Law reform and constitutional frameworks as constituent parts of local and international crisis management are important elements. The establishment of post-conflict societies seeking new stability requires institutions and norms serving the members of a society in transition towards relative security.

But justice needs a rule of law that is more than the law of the rulers. When Lakhdar Brahimi presented the Dag Hammarskjöld Lecture in 2002, he placed the Rule of Law (RoL) at the core of his reflections. As he emphasised, that law must also have human beings as its focus:

> The Rule of Law was originally a narrow, legalistic concept, meaning that no man is punishable except for a distinct breach of the law, established in the ordinary courts of the land. Over the decades, this concept acquired a much wider meaning, requiring the existence of just laws and the respect of human rights (Brahimi, 2002: 10).

Emerging during the era of the Enlightenment, such concept of law ultimately embraced all societies in a global order:

> Today, Human Rights Law and Humanitarian Law are important branches of international law, based on the view that the human dimension had to be considered, that people mattered, that they had rights as human beings, and that they needed legal protection. They represent an acknowledgment that laws should be just and that the Rule of Law should have a strong human rights component (Brahimi, 2002: 14).

Almost prophetically with regard to what is often referred to as the 'Arab Spring', he then continued: "The question of human rights has

14

also mobilised people around the world to be vigilant and vociferous about their own rights, and show concern for the rights of people in other countries" (Brahimi, 2002: 14).

The shaping and implementation of normative frameworks since the Rome treaties during the late 1990s have added a new watchdog function to global governance institutions represented by the UN system. Dag Hammarskjöld would most likely have been much in favour of these recent tendencies, and of the paradigm shift they have helped achieve since the turn of the century whereby those holding power can no longer invariably get away with literal murder behind the holy cows of national sovereignty and non-interference in internal affairs of states. But as Francis Deng reflected at the end of his term as Special Representative, state sovereignty remains a cardinal principle in international relations. It is

> a formidable tool which states, whose record of gross mis-treatment of their own populations makes them vulnerable to outside scrutiny, assert in pre-emptive self-defence. As recent experiences have shown, unless a state has collapsed, is too weak to resist external intervention, or the national interests of the interveners make the risks of intervention worth taking, this is an adventure that is very costly in both material and human terms. The general response is to avoid it and strive to negotiate with national sovereignty on cooperative bases (Deng, 2012: 2).

Maybe the 'Special Procedures' (SP) might be among the already practised suitable institutionalised forms to strengthen the efforts of the UN in mediating and facilitation solutions avoiding further escalation of conflicts. These are independent experts, who have been tasked under criteria established by the Human Rights Council to promote human rights through either thematic or country-specific mandates. They could at times and according to their mission be considered as true advocates of human rights, often against all odds. Their role might also be useful in seeking to establish equality under just laws by deploying them with related mandates. Once praised by the former UN Secretary-General Kofi Annan as "the crown jewel of the system" (Piccone, 2011: 207), they might also be potential gems in the pursuance of other forms of justice and equality as significant elements in peace building efforts.

However, as is the case with the RtoP, the promotion of the

RoL is not taking place in isolation. It poses a noble challenge to the international community. In the aftermath of the foreign intervention in Libya as a result of the application of the RtoP doctrine the need for the anchoring of a post-conflict legally institutionalised culture had once again come to the fore. The difficulties to achieve a common platform among the UN member countries highlight not only the mixed responses to the way RtoP was used in this case, but also to the ongoing differences how justice and the RoL are understood, not least also in the case of Syria. It hence seems no coincidence that during these times the RoL has been the theme for the high-level debate, which opened the 67th General Assembly at the UN on 24 September 2012.

As a report by the Secretary-General in preparation for this meeting summarises: "Respect for the rule of law at the international and national levels is central to ensuring predictability and legitimacy to international relations, and for delivering just outcomes in the daily life of all individuals around the world" (United Nations, 2012: 1). The document defines the RoL as "a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are *consistent with international human rights norms and standards*" (United Nations, 2012: 2, para I.2; emphasis added). This means that laws have a normative framework and reference point rooted in the internationally adopted and ratified values concerning human dignity and protection from the abuse of law. Not every law passed in a parliament is therefore legitimate. It requires compliance with internationally enshrined norms. The international human rights framework is therefore the ultimate guiding principle against which the RoL is measured. The Secretary-General's report also stresses that the RoL ought to be at the heart of the social contract between a state and the individuals under its jurisdiction, to ensure that justice permeates society at every level. RoL ought to protect the full range of human rights.

At the international level, the RoL translates into "the ability of Member States to have recourse to international adjudicative mechanisms to settle their disputes peacefully, without the threat or use of force" (United Nations, 2012: 4/para. II.A.ii). Its credibility depends on the adherence to such standards by all state actors, which currently

is not the case and questions its legitimacy. As the report concedes, "international law is selectively applied" (United Nations, 2012: 4/ para. II.A.ii). This raises as with the RtoP the crucial question, as to who holds the power of definition when it comes to the application or non-application of such laws.

The document also indicates awareness of the need to connect the RoL paradigm with sustainable human development as well as linking it to economic development. It advocates a holistic human development agenda, reconciling growth with social protection and the environment. It stresses that such an agenda requires that "the rule of law must play a critical role in ensuring equal protection and access to opportunities" (United Nations, 2012: 8, para B.iii). This is an important complementing perspective to the debates surrounding Rio+20 and the (post-)MDGs era: an emphasis on the RoL must not loose sight of its inter-connectivity with the need to find future ways to reproduce societies based on a true notion of sustainability. At the same time, however, the claim for civil rights should not be abandoned while being in pursuance of socio-economic and cultural rights. Protagonists of both sides were never short of excuses why they cannot agree on the emphasis put on the other's priorities and seemed almost grateful for excuses to shelve the controversial debates instead of reconciling the complementing foci. After all, as mentioned earlier on, truly civil and human rights require socio-political as well as — economic justice for all people in all spheres of life.

6. CONCLUSION: THE HAMMARSKJÖLD PRINCIPLES

With the increased debate over normative frameworks, universal values and not least the enforcement of fundamental human rights the claims for a collective responsibility have shifted and strengthened the notion of the UN being guided by solidarity, a key concept Dag Hammarskjöld so often emphasised. As a trained economist, he was also at all times aware that human rights, peace and social stability required fair economic relations and structures. He stressed the need to empower new states and their governments in the global South, in particular Africa, by recognising their legitimate economic interests. He displayed insights into often neglected or deliberately

ignored but substantial dimensions of lasting peace and stability. Not always spelt out as clearly, even 50 years later, is the material side of security and development. Put differently, without security there is hardly any chance of sustainable development. Security, on the other hand, requires lasting development. Security and development are mutually inclusive. In a presentation at an internal seminar at the Foundation preceding his Dag Hammarskjöld Lecture, President Ahtisaari emphasised this essential link:

> Social and economic aspects often tend to get too little attention in peacemaking as security and the rule of law are seen as first priorities — and often rightly so. However, everyday economic survival and a just society are the most effective guarantees of lasting peace (Ahtisaari, 2009b: 48).

While President Ahtisaari did not consider peace negotiations as a tool for socio-economic development, he stressed that

> agreeing on practical and concrete economic conditions during any peace negotiation is crucial. Peace talks need to create the framework where these issues can effectively be addressed after the peace accord. Maybe one could even say that finding a mutual understanding on money can really be seen as a manifestation of joint political will for peace (Ahtisaari, 2009b: 48).

The case of the two Sudans and their continued conflict over who benefits how from the natural resources seems to be a case in point.

Jan Eliasson was the president of the UN 60th General Assembly when the World Summit Outcome in 2005 was adopted. As a former foreign minister, he delivered the annual lecture in honour of the second Secretary-General on 18 September 2012, exactly 50 years after Hammarskjöld's untimely death in the wreckage of the plane. Jan Eliasson then declared as his main message:

> (L)asting solutions require that the pursuit of peace, development and human rights must take place in parallel. There is no peace without development; there is no development without peace; and there is no sustainable peace and development without respect for human rights. If one of these three pillars is weak in a nation or a region, the whole structure is weak. Therefore, walls and barriers between these areas must be taken down (Eliasson, 2011: 12).

To underline that this is not an insight without precedent, he quoted from Dag Hammarskjöld's speech to the American-Jewish Committee in New York on 10 April 1957:

> We know that the question of peace and the question of human rights are closely related. Without recognition of human rights we shall never have peace and it is only within the framework of peace that human rights can be fully developed (Falkman, 2005: 154).

In his own efforts at what has since been called preventive diplomacy, Hammarskjöld emphasised the need to keep an open mind. In his exchanges with the Jewish-German philosopher Martin Buber, he spoke of the need for dialogue in an age of mistrust. On 5 June 1958 he was awarded an honorary doctorate by Cambridge University. His address, with reference to the work of Buber, bore the title "The Walls of Distrust" and seems still very much to characterise our own world half a century later:

> We meet in a time of peace which is no peace, in a time of technical achievement which threatens its own masters with destruction. We meet in a time when the idea evoked in our minds by the term "humanity" has switched to a turbulent political reality from the hopeful dreams of our predecessors … The widening of our political horizons to embrace in a new sense the whole of the world, should have meant an approach to the ideal sung in Schiller's "Ode to Joy", but it has, paradoxically, led to new conflicts and to new difficulties to establish even simple human contact and communication (Cordier and Foote, 1974: 90f).

Jan Eliasson, in concluding his Dag Hammarskjöld Lecture, reiterated the necessary human dimensions guiding our actions if we are searching for solutions. Inspired by the example of his role model Dag Hammarskjöld, he ends with this insight:

> (T)hat the holistic approach to solving problems in a world of interdependence has an equivalent in how we as human beings approach these problems. Integrating different aspects, breaking down walls and recognising the mind-expanding and dynamic effects of crossing borders in all respects are relevant both on a policy and a personal level (Eliasson 2011: 22).

Dag Hammarskjöld's leadership as Secretary-General represented for Jan Eliasson a model for the future. Hammarskjöld also instituted

the function and role of special representatives in his efforts to ensure the UN fulfilled its task as envisaged in its Charter, namely contributing to a more peaceful world by seeking solutions to violent conflicts and reducing the risk of other latent conflicts escalating into violent forms. The special representatives appointed in the last half a century bear witness to the fact that international policy and diplomacy also relies on committed individuals. On 15 October 2007, the late Sture Linnér maintained, that Dag Hammarskjöld

> was a visionary, far ahead of his time. When I started to work under him, there were just two things that he impressed upon me. One was in critical situations never to feel hampered by the UN's bureaucratic practices, but always to act according to my own judgment (Linnér, 2008: 28).

Paraphrasing Henry Cabot Lodge Jr, Dag Hammarskjöld ended an address to the University of California's Convocation on 13 May 1954 with a much-quoted conclusion:

> It has been said that the United Nations was not created in order to bring us to heaven, but in order to save us from hell. … that sums up as well as anything I have heard both the essential role of the United Nations and the attitude of mind that we should bring to its support (Cordier and Foote, 1972: 301).

Hammarskjöld's legacy lives on, and continues to inspire many. His interpretation of the role of the UN as well as its secretariat and the Secretary-General has set standards for global governance and diplomacy in pursuance of justice (cf Stahn and Melber, 2013). Like few others in similar positions, Dag Hammarskjöld personified the spirit of justice, personal integrity and faith in humanity. He relentlessly promoted the principles of the UN Charter and his faith in the future (Melber, 2012b). As the transcript of his extemporaneous remarks at the UN Correspondents' Association luncheon in his honour on 9 April 1958 reveals, he maintained the

> … belief and the faith that the future will be all right because there will always be enough people to fight for a decent future … I do believe firmly that … there are enough people who are solidly engaged in this fight and who are strong enough and dedicated enough to guarantee its success (Falkman, 2005: 51f).

According to Hammarskjöld, all of us are confronted with fundamental choices. His Cambridge University address on "The Walls of Distrust" only a few weeks later on 5 June 1958 highlighted the need for people to position themselves. In this vein, he continued:

> The conflict [over] different approaches to the liberty of man and mind or between different views of human dignity and the right of the individual is continuous. The dividing line goes within ourselves, within our own peoples, and also within other nations. It does not coincide with any political or geographical boundaries. The ultimate fight is one between the human and the subhuman. We are on dangerous ground if we believe that any individual, any nation, or any ideology has a monopoly on rightness, liberty, and human dignity (Cordier and Foote, 1974: 91f).

A year before his appointment as Secretary-General, Hammarskjöld penned the following words in his private notebook: "It is easy to be nice, even to an enemy — from lack of character" (Hammarskjöld, 1993: 70). One could have also added, from lack of empathy and solidarity with those who are victimised by those who abuse the power they seized or — worse — were entrusted with to serve the people. Hammarskjöld had a sense of justice. He was on the side of the oppressed and powerless. So should all those, who claim to act in his spirit.

ENDNOTES

1. Statement on UN Operations in Congo before the General Assembly, 17 October 1960 (Cordier and Foote, 1975: 154).
2. Orford's pioneering study contextualises and links in an unprecedented way the Hammarskjöld principles with the current formulation of normative frameworks as modified continuity instead of a fundamental shift. See also the thoughtful appraisal of her study by Ramesh Thakur in what is more than a book review in *European Journal of International Law,* Vol 23, No 1, 2012, pp 284-289. (Internet: http://ejil.oxfordjournals.org accessed on 30 September 2012.)
3. Martti Ahtisaari (former President of Finland and Nobel Peace Prize Laureate), Lakhdar Brahimi, Francis Deng and Jan Eliasson participated on occasion of the 50th anniversary of the Dag Hammarskjöld Foundation in a public round table debate on 2 March 2012 at the main hall of Uppsala University. The Swedish former Foreign Minister Jan Eliasson was appointed the same day as Deputy Secretary-General to the UN. Lakhdar

Brahimi has since then, at the end of August 2012, succeeded Kofi Annan as UN special envoy in the Syrian conflict, while Francis Deng has ended his term as the UN Secretary-General's Special Adviser on the Prevention of Genocide in July 2012 to become the first Permanent Representative to the UN of the South Sudan. The debate with the four distinguished career diplomats was video recorded and can be followed at http://www.dhf.uu.se/events/public-events/security-and-development-a-roundtable-debate/. This article is a considerably revised and expanded version of the introduction to this round table. Its earlier, much shorter version was published jointly with a transcription of the debate in *Development Dialogue* No 60 (August 2012), accessible on the Foundation's web site at http://www.dhf.uu.se/publications/development-dialogue/50-years-dag-hammarskjold-foundation/.

4. Originally launched as an initiative by then Canadian External Affairs Minister Lloyd Axworthy, the establishment of the Commission was announced by Canadian Prime Minister Chrétien in his address to the UN General Assembly on 7 September 2000, during the Millennium Summit in New York.

5. *2005 World Summit Outcome*. UN document A/60/L.1, 15 September 2005, paragraphs 138-139.

6. Keynote Address on 9 November 2011 at the Peace Palace, The Hague, during the opening of the 8th annual conference "From Peace to Justice", organised by The Hague Coalition on "Peace diplomacy, global justice and international agency — Rethinking human security and ethics in the spirit of Dag Hammarskjöld (1905-1961)".

BIBLIOGRAPHY

Ahtisaari, M. 2009a. *Can the International Community Meet the Challenges Ahead of Us?* The 2009 Dag Hammarskjöld Lecture. Uppsala: Dag Hammarskjöld Foundation.

Ahtisaari, M. 2009b. "What makes for successful conflict resolution?" In Melber, H (ed). *Responses to Mass Violence — Mediation, Protection, and Prosecution*. Uppsala: Dag Hammarskjöld Foundation (*Development Dialogue*, No 53), pp 41-49.

Amnéus, D. 2008. *Responsibility to Protect by Military Means — Emerging Norms on Humanitarian Interventions?* Stockholm: Stockholm University/Faculty of Law.

Amnéus, D. 2012. "Responsibility to Protect: Emerging Rules on Humanitarian Intervention?". *Global Society*, Vol 26, No 2, pp 241-276.

Annan, K. 2004. *Address to the Stockholm International Forum*. Stockholm,

26 January (Internet: http://www.un.org/News/ossg/sg/stories/statements_search_full.asp?statID=51.)

Barnett, M. 2011. *Empire of Humanity. A history of Humanitarianism*. Ithaca: Cornell University Press.

Barnett, M and T G Weiss. 2008. *Humanitarianism in Question. Politics, Power, Ethics*. Ithaca: Cornell University Press.

Brahimi, L. 2002. *The Rule of Law at Home and Abroad*. The 2002 Dag Hammarskjöld Lecture. Uppsala: Dag Hammarskjöld Foundation.

Bring, O. 2011. "The Hammarskjöld Approach to International Law". In Melber, H and M Schoeman (eds). *The United Nations and Regional Challenges in Africa — 50 Years After Dag Hammarskjöld*. Uppsala: The Dag Hammarskjöld Foundation (*Development Dialogue*, No 57), pp 51-60.

Chandler, D. 2007. "Hollow Hegemony: Theorising the Shift from Interest-Based to Value-Based International Policy Making". *Millenium: Journal of International Studies*, Vol 35, No 3, pp 703-723.

Chandler, D. 2009. *Hollow Hegemony: Rethinking Global Politics, Power and Resistance*. London: Pluto Press.

Cordier, A W and W Foote (eds). 1972. *Public Papers of the Secretaries-General of the United Nations. Volume II: Dag Hammarskjöld 1953-1956*. New York and London: Columbia University Press.

Cordier, A W and W Foote (eds). 1974. *Public Papers of the Secretaries-General of the United Nations. Volume IV, Dag Hammarskjöld 1960-1961*. New York: Columbia University Press.

Cordier, A W and W Foote (eds). 1975. *Public Papers of the Secretaries-General of the United Nations. Volume V, Dag Hammarskjöld 1958-1960*. New York: Columbia University Press.

Deng, F M. 2009. "The evolution of the idea of 'sovereignty as responsibility'". In: Adebajo, A (ed). *From Global Apartheid to Global Village. Africa and the United Nations*. Scottsville: University of KwaZulu-Natal Press, pp 191-213.

Deng, F M. 2010. *Idealism and Realism. Negotiating Sovereignty in Divided Nations*. The 2010 Dag Hammarskjöld Lecture. Uppsala: Dag Hammarskjöld Foundation (also reprinted in *Development Dialogue*, No 55, March 2011).

Deng, F M. 2012. *Making an Impossible Mandate Possible: The Challenge of Preventing Genocide and Mass Atrocities: End of Assignment Note*. Undated (February).

Eliasson, J. 2011. *Peace, Development and Human Rights. The Indispensable*

Connection. The Dag Hammarskjöld Lecture 2011. Uppsala: Dag Hammarskjöld Foundation.

Evans, G. 2008. *The Responsibility to Protect: An Idea Whose Time Has Come … and Gone?* Lecture to David Davies Memorial Institute, University of Aberystwyth, 23 April. (Internet: http://www.crisisgroup.org/en/publication-type/speeches/2008/the-responsibility-to-protect-an-idea-whose-time-has-come-and-gone.aspx.)

Evans, G. 2012. "Lessons and Challenges". In: Genser, J and I Cotler (eds). *The Responsibility to Protect. The Promise of Stopping Mass Atrocities in Our Time*. Oxford and New York: Oxford University Press, pp 375-391.

Falkman, K (ed). 2005. *To Speak for the World. Speeches and Statements by Dag Hammarskjöld*. Stockholm: Atlantis.

Fassin, D and M Pandolfi (eds). 2010. *Contemporary States of Emergency. The Politics of Military and Humanitarian Intervention*. New York: Zone Books.

Holt, V K and G Taylor, with M Kelly. 2009. *Protecting Civilians in the Context of UN Peacekeeping Operations. Successes, Setbacks and Remaining Challenges*. New York: Department of Peacekeeping Operations (DPKO) and Office for the Coordination of Humanitarian Affairs (OCHA).

Global Centre for the Responsibility to Protect. 2009. *Implementing the Responsibility to Protect. The 2009 General Assembly Debate: An Assessment*. New York: Ralph Bunche Institute for International Studies/ CUNY Graduate Centre, GCR2P Report, August.

Hammarskjöld, D. 1993. *Markings*. New York: Ballantine (16th edition).

Hansungule, M. 2011. "How to Tackle Impunity — A Comment". In: Melber, H and M Schoeman (eds). *The United Nations and Regional Challenges in Africa – 50 Years After Dag Hammarskjöld*. Uppsala: The Dag Hammarskjöld Foundation (*Development Dialogue*, No 57), pp 108-122.

Heinrich Böll Stiftung. 2012. *A Fractious Relationship: Africa and the International Criminal Court*. Cape Town: Heinrich Böll Foundation (*Perspectives*, No 1.12).

Havercroft, J. 2012. "Was Westphalia 'all that'? Hobbes, Bellarmine, and the norm of non-intervention". *Global Constitutionalism*, Vol 1, No 1, pp 120-140.

International Commission on Intervention and State Sovereignty. 2001. *The Responsibility to Protect*. Ottawa: International Development Research Centre.

Jolly, Richard/Louis Emmerij/Thomas Weiss (2009), *UN Ideas That Changed the World*. Bloomington and Indianapolis: Indiana University Press.

Linnér, S. 2008. "Dag Hammarskjöld and the Congo crisis, 1960-61". In: Linnér, S and S Åström. *UN Secretary-General Hammarskjöld. Reflections and Personal Experiences*. The 2007 Dag Hammarskjöld Lecture. Uppsala: Dag Hammarskjöld Foundation.

MacQueen, N. 2011. *Humanitarian Intervention and the UN*. Edinburgh: Edinburgh University Press.

Mbeki, T. 2011. "A new kind of imperialism rears its head". *Sowetan*, 8 November.

Mbeki, T. 2012. *Reflections on Peacemaking, State Sovereignty and Democratic Governance in Africa.* Dullah Omar Eighth Memorial Lecture, University of the Western Cape, Bellville, 16 February.

Melber, H. 2012a. "Dag Hammarskjöld, the United Nations and Africa". *Review of African Political Economy*, Vol 39, No 131, pp 151-159.

Melber, H. 2012b. "'In a Time of Peace Which Is No Peace': Security and Development – Fifty Years After Dag Hammarskjöld". *Global Governance*, Vol 18, No 3, pp 267-272.

OCHA. 2011. *Peacebuilding and Linkages with Humanitarian Action: Key Emerging Trends and Challenges*. OCHA Occasional Policy Briefing Series, No 7, New York: Policy Development and Studies Branch (PDSP)/ UN Office for the Coordination of Humanitarian Affairs (OCHA).

OCHA. Undated, 2011 or 2012. *OCHA in 2012 and 2013: Plan and Budget*. New York: United Nations.

Odora, A O. 2011. "International Criminal Justice in the Shadow of Politics". In: Melber, H and M Schoeman (eds). *The United Nations and Regional Challenges in Africa — 50 Years After Dag Hammarskjöld*. Uppsala: The Dag Hammarskjöld Foundation (*Development Dialogue*, No 57), pp 77-107.

Orford, A. 2008. "International Law and the Making of the Modern State: Reflections on a Protestant Project". *In-Spire: Journal of Law, Politics and Societies*, Vol 3, No 1, pp 5-11.

Orford, A. 2010. "Book Review Article: International Territorial Administration and the Management of Decolonization". *International and Comparative Law Quarterly*, Vol 59, January, pp 227-249.

Orford, A. 2011. *International Authority and the Responsibility to Protect*. Cambridge: Cambridge University Press.

Oxfam. 2012. *Crises in a New World Order. Challenging the Humanitarian Project*. Oxford: Oxfam International, 7 February (*Oxfam Briefing Paper*, No 158).

Piccone, T. 2011. "The contribution of the UN's special procedures to national level implementation of human rights norms". *The International Journal of Human Rights*, Vol 15, No 2, February, pp 206-231.

Pringle, C and D Lambrechts. 2011. "The Risk of Humanitarism: Towards an inclusive model". *Strategic Review for Southern Africa*, Vol XXXIII, No 2, pp 51-80.

Söderbaum, F and J Stilhoff Sörensen (eds). *The End of the Development-Security Nexus? The Rise of Global Disaster Management*. Uppsala: Dag Hammarskjöld Foundation (*Development Dialogue*, No 58).

Stahn, C and H Melber (eds). 2013. *Peace Diplomacy, Global Justice and International Agency: Rethinking Human Security and Ethics in the Spirit of Dag Hammarskjöld*. Cambridge: Cambridge University Press (forthcoming).

United Nations. 2012. General Assembly, Sixty-sixth session, Agenda item 83, *Delivering Justice: A programme of action to strengthen the rule of law at the national and international levels.* Report of the Secretary-General, 16 March.

Wertheim, S. 2010. "A solution from hell: The United States and the rise of humanitarian interventionism, 1991-2003". *Journal of Genocide Research*, Vol 12, No 3, pp 149-172.

Williams, S. 2011. *Who Killed Hammarskjöld? The UN, the Cold War and White Supremacy in Africa*. London: Hurst (also Johannesburg/Cape Town: Jacana 2012).

Zuma, J. 2012. Address on the occasion of the Joint Sitting of Parliament, to pay tribute and bid farewell to Dr Nkosazana Dlamini-Zuma, the African Union Commission Chairperson, Cape Town, 19 September. (Internet: http://www.thepresidency.gov.za/pebble.asp?relid=6775 accessed 21 September 2012.)