



Why normative frameworks? An introduction

Henning Melber

In an address at the University of California's Convocation on 13 May 1954 the United Nations second Secretary-General Dag Hammarskjöld concluded: '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.' According to him, '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). The thematic focus of this issue of *Development Dialogue* and the content of the contributions testify to the same spirit and the recognition of the continued need to support efforts of such a nature. It is the third volume in a series, dealing with the challenges of how to come to terms with genocide, other forms of mass violence and now explicitly also with crimes against humanity.¹

It is noteworthy that in the shadow of the Holocaust the adoption on 9 December 1948 of the Convention for the Prevention and Punishment of the Crime of Genocide actually preceded (if only by one day, but with more votes by member states in favour of it) the Universal Declaration of Human Rights. Both normative frameworks, like many more to follow, have created a compass and navigation kit for measuring the policy of states – both domestically and internationally – and providing them with demarcations. As Noeleen Heyzer, then for a decade the executive director of the United Nations Development Fund for Women (UNIFEM) summarised when presenting the annual Dag Hammarskjöld Lecture in 2004: 'The United Nations plays an important role in upholding the rule of law by helping coun-

¹ See for the earlier volumes of *Development Dialogue* (Nos. 50 and 53) Melber and Jones (2008) and Melber (2009). Like all other publications, these are freely accessible at the Foundation's website: www.dhf.uu.se.

Manuel Fröhlich, Robin May Schott, Jan Axel Nordlander, Diana Amnéus, Monica Serrano and Alex Obote-Odora, all contributors to this volume, participated in an internal seminar and a public panel debate organised by the Foundation in March 2010. The events were arranged in combination with the annual Hugo Valentin Lecture. The collaboration with Paul Levine of the Hugo Valentin Centre of Uppsala University and Björn Wittrock and his colleagues at the Swedish Collegium for Advanced Study during these interrelated activities as an initial point of departure ultimately leading to this publication is herewith gratefully acknowledged.

tries to strengthen national systems for the administration of justice in accordance with international standards. Increasingly, the UN is realizing the importance of adopting a comprehensive approach, by engaging all relevant institutions in the development of national justice systems, and paying attention to various dimensions of this process, including establishing standards of justice, formulating laws that codify them, strengthening institutions that implement them, developing mechanisms to monitor them, and protecting the people who must have access to them' (Heyzer 2004: 17ff.).

Not everyone shares this fundamentally positive view when judging the performance of the institution established as a global body embracing all recognised governments of sovereign states in this world, seeking to shape, formulate and implement – often against all odds – normative frameworks as reference points and guiding principles for the execution of responsible governance. Often the United Nations tends not to be appreciated for its achievements but judged and criticised for its failures. The wide range of conventions, resolutions and other programmatic declarations adopted in the more than 60 years of its existence indeed often reveal an appalling discrepancy between the defined norms and the social and political realities. But would the world of today be a better one in the absence of such frameworks, as selectively and arbitrarily as they are far too often applied? Mary Robinson, then United Nations High Commissioner for Human Rights, in the first Dag Hammarskjöld Lecture delivered in 1998 pointed to some important facts: 'Since the adoption of the Universal Declaration of Human Rights in 1948, there have been notable achievements. An impressive body of international law has been enacted, including the two Covenants and the Conventions on racism, torture, the rights of the child and the elimination of discrimination against women. Human rights mechanisms such as special rapporteurs, experts and working groups have been established.' (Robinson 1998: 8)

Since then, not least empowered through the institutionalisation of the International Criminal Court with its executive legal powers to prosecute, as a result of the Rome Diplomatic Conference in June/July 1998, the seemingly 'toothless tiger' has at least partly turned into a serious watchdog.² The authors of the capstone volume in the impressive stocktaking United Nations Intellectual History Project Series documented the extent of the United Nations' role – greater than many would concede – not only in the creation of a globally rel-

2 The emergence of legal norms, institutions and instruments in international law to prosecute perpetrators – and the limits thereof – is thoroughly reflected upon in the contributions to Hankel (2007).

evant range of normative frameworks but also in the implementation of these, thereby enhancing the effectiveness of codified norms in respect of various essential human rights. That this is a never-ending mission and far from achieving only remotely satisfactory results is another story. The authors themselves stop short of praise songs but point among others to the need for:

- ‘- Integrated approaches to human security that go beyond the traditional compass of territorial defense or military and security forces of countries
- Actions to promote and encourage a greater sense of human solidarity and commitments to human rights, democracy, and culture.’

(Jolly, Emmerij and Weiss 2009: 30).

As Weiss and Thakur (2010: 51) in the additional volume on global governance and the United Nations, with the programmatic subtitle ‘an unfinished journey’, note that the organisation has as an ‘intellectual actor’ succeeded in identifying and diagnosing problems, developing norms and formulating recommendations, while it has somewhat less successfully tried to institutionalise ideas. But in the absence of a better alternative, we remain tasked to strengthen the same organisation that Dag Hammarskjöld as its second Secretary-General between 1953 and 1961 was seeking to turn into an active global governance institution contributing to more peace and human rights for all. Looking back, it would be unfair to dismiss the efforts and achievements completely. Especially the voices from the so-called global South, at times now overtly critical of the flaws and biases that international governance as a tool for hegemonic interests displays, should remember that in the absence of the limited power of a United Nations their future might have been even more at stake.

Three volumes recently published in a noteworthy ‘Pennsylvania Studies in Human Rights’ series deserve mention in this context (Burke 2010; Gibney and Skogly 2010; Whelan 2010). They all document the historic and contemporary relevance of the normative, human rights related frameworks generated by the United Nations and their impact on the global order where they have been implemented politically, as in the case of the decolonisation processes emerging since the 1950s. The historical discourses and stages of contestation over the definition and applicability of the Universal Charter of Human Rights is a fascinating case in point, which shows that ‘the South’ (and in particular representatives from the colonised world, not least from Africa) were indeed able to claim ownership of these

fundamental platforms, also created for the sake of their own emancipation – if only at times to later forget about them or dismiss them as instruments of Eurocentric cultural imperialism when the same conventions were applied to the new governments. Opportunistic selectivity of such a dubious nature seems to be among those matters political rulers share when it suits them – no matter where they are and what they represent. Double standards are, so to say, among the universally shared techniques for those in power. Despite such temptations for member states to make selective use of what suits their own interests and to abandon what is considered as an unwanted nuisance, the former Permanent Representative of South Africa to the United Nations could summarise the role of the United Nations in the following way: ‘It serves as a beacon of hope and inspiration for the poor, disadvantaged, and marginalised peoples of the world. It is also a centre for the political co-ordination of liberation efforts, and the font of many of the international laws and norms on which those who are involved in struggles for liberation and independence can draw their strength and legitimacy’ (Kumalo 2006: 31).³

The spirit and understanding documented in this conclusion, drawn during our times, resonates with that of the second Secretary-General of the United Nations. In an address before the Academic Association of the University of Lund delivered on 4 May 1959 on ‘Asia, Africa, and the West’, Hammarskjöld confidently claims that, ‘the Organization I represent is based on a philosophy of solidarity’ (Cordier and Foote 1974: 384). On 31 October 1956, during the Suez crisis, he stated before the Security Council in no uncertain terms: ‘The principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people... [T]he discretion and impartiality...imposed on the Secretary-General...may not degenerate into a policy of expediency. He must also be a servant of the principles of the Charter, and its aims must ultimately determine what for him is right or wrong’ (Cordier and Foote 1973: 309). In his introduction to the 15th Annual Report of the UN for 1959–1960 (31 August 1960) he reiterated: ‘It is my firm conviction that any result bought at the price of a compromise with the principles and ideals of the Organization, either by yielding to force, by disregard of justice, by neglect of common interests or by contempt for human

3 Given this positive support it seems opportune that the United Nations High Commissioner for Human Rights, heading the most important human rights office within the system, is currently the South African judge Navi Pillay.

rights, is bought at too high a price. That is so because a compromise with its principles and purposes weakens the Organization in a way representing a definite loss for the future that cannot be balanced by any immediate advantage achieved' (Cordier and Foote 1975: 139).

2011 marks half a century since Hammarskjöld died during a mission to seek a peaceful solution for the Congo. The country has remained torn by violence bordering on chronic civil strife, at the expense of the lives of millions of people and the destruction of the physical and mental health of so many more. As so often, women and children suffer most and are the victims of a warfare which does not shy away from systematic rape and other forms of destruction of the individual. But the situation in what is today the Democratic Republic of the Congo is only the tip of the iceberg. People are exposed to similar forms of destruction in many other parts of our world. The challenges Hammarskjöld and his staff were facing in their day have not been solved. Nor have mistakes, which marred the United Nations' involvement in this decolonisation conflict and culminated in the brutal murder of the Congo's first prime minister, Patrice Lumumba, been eliminated since then in other missions.⁴ But the onus 'to save us from hell' still rests on the institution, which despite all setbacks and shortcomings has at the same time also been a norm-setting authority. Since then a wide range of further reference points in support of the advocacy of human rights for all have been created.⁵

The quiet diplomacy at times so skillfully applied by the late Dag Hammarskjöld to advocate the interests of people who otherwise would continue to remain victims of the abuse of power should, however, not be confused with a 'façade of action' (Roth 2011). Throughout his eight years in office Dag Hammarskjöld lived what he considered the ethics of 'The International Civil Service in Law

4 The ambiguous – both constructive and destructive – role of the United Nations in the decolonisation processes on the African continent was personified by Ralph Bunche as one of the most outstanding international civil servants during the 1940s to 1960s. The contributions marking the occasion of the centenary of his birth – in recognition of the remarkable services he rendered – display the merits but also the failures, especially with regard to lack of judgment in the case of the Congo (Hill and Keller 2010).

5 Among the last of these has been the breakthrough achieved by an unanimously adopted United Nations Security Council resolution (1960) on 16 December 2010 to publicly shame armed groups that target women for sexual abuse, using rape as a weapon in warfare. The Council resolution – voicing deep concern at the slow progress in combating the scourge and the limited number of perpetrators brought to justice – stresses the need to end impunity and vows to take 'appropriate steps to address widespread or systematic sexual violence in situation of armed conflict' in accordance with procedures of relevant sanctions committees. For more details see http://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_1960

and in Fact'. This was the programmatic title of his address delivered at Oxford University on 30 May 1961 – not much more than 100 days before his untimely death. As he stressed in this paradigmatic explanation of his understanding: '...the international civil servant cannot be accused of lack of neutrality simply for taking a stand on a controversial issue when this is his duty and cannot be avoided. But there remains a serious intellectual and moral problem as we move within an area inside which personal judgment must come into play. Finally, we have to deal with the question of integrity or with, if you please, a question of conscience' (Cordier and Foote 1975: 488).⁶

The question of conscience also guides the thematic focus of this volume and the contributions. This is evident in the first chapter by *Bengt Gustafsson*, who addresses the moral and political aspects scholars and scientists alike – just as much as political office bearers and governments – should face and contemplate by adhering to the existing norms and conventions and refraining from an involvement in potentially adverse activities. In a similar spirit, *Manuel Fröhlich* revisits the schools of thought and resulting arguments of three political philosophers, who contributed with lasting effects to our moral compass. As he suggests, the ideas of Kant, Arendt and Broch provide us with some robust insights and convictions, forming the basis for a legal constitution of the international community.

Following these more theoretical reflections on principles, the chapter by *Robin May Schott* addresses the actual effects of rape as social death and political evil. In doing so, she positions her own approach in the tradition of a feminist philosophy also inspired by and engaged with Hannah Arendt's analyses of the extermination practices under Nazism. The comments by *Jan Axel Nordlander* underline the political relevance for both men and women of such engagement as rigorous contemporary human rights advocacy.

Diana Amnéus explores the legal implications for the (limited) prosecution of sexual violence in a post-conflict situation and discusses the normative weaknesses in the legal procedures protecting against sexual and gender-based violence. She raises the concern that current initiatives fall short of providing any secure protection to women and girls in the aftermath of armed conflicts. The dilemma of reconciling

6 See for the current relevance of Hammarskjöld's Oxford speech the illuminating essay by the former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, Hans Corell (2010).

a pragmatic effort to reduce violence without sacrificing prosecution and providing new impunity for perpetrators is at the centre of the deliberations offered by *Francis Deng* in the Dag Hammarskjöld Lecture 2010, which is added to this volume for its obvious relevance to the thematic focus. He describes the – at times – painful choices his office has to make by walking the thin line between justice, prosecution and pragmatism. While it is difficult to accept that perpetrators commit their crimes with impunity, this might under certain circumstances bring an end to mass violence and save the lives of thousands more potential victims. Who would want to take these decisions without moral scruples?

Monica Serrano presents overview on the emergence of the R2P norm to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity. The progress made by the initiative to promote a Convention for Crimes Against Humanity is summarised in an overview by *Leila Nadya Sadat* as the main initiator of this concerted action, which has the support of many renowned scholars and legal practitioners. *Alex Obote-Odora* reflects on his experiences and insights related to the Rwanda Tribunal's jurisprudence and the normative effects the judgments have in the further development of international criminal law related to genocide, war crimes and crimes against humanity.

Finally, the challenges of peacebuilding and statebuilding as an emerging paradigm for responses by the United Nations to fragile situations are at the core of the deliberations of *Ursula Werther-Pietsch* and *Anna-Katharina Roithner*. Their article suggests that in the face of the consequences of the evil of warfare and civil strife, under which so many people continue to suffer in this world, prevention is the best cure. They conclude that regional integration, coherent action, local ownership and proper leadership should be among the ingredients to establish a new standard for United Nations interventions.

★★★

On 8 September 1961, Dag Hammarskjöld addressed the staff at the Secretariat of the United Nations for the last time. His words then are as relevant today, half a century later: 'What is at stake is a basic question of principle: Is the Secretariat to develop as an international secretariat, with the full independence contemplated in Article 100 of the Charter, or is it to be looked upon as an intergovernmental – not international – secretariat providing merely the necessary administrative services for a conference machinery? This is a basic question, and the answer to it affects not only the working of the Secretariat but the

whole of the future of international relations. (...) There is only one answer to the human problem involved, and that is for all to maintain their professional pride, their sense of purpose, and their confidence in the higher destiny of the Organization itself, by keeping to the highest standards of personal integrity in their conduct as international civil servants and in the quality of the work that they turn out on behalf of the Organization. This is the way to defend what they believe in and to strengthen this Organization as an instrument of peace for which they wish to work' (Cordier and Foote 1975, 563ff.).

Hammarskjöld died 10 days later, during the early morning hours of 18 September 1961, in the wreckage of the plane that crashed before landing in Ndola, the Northern Rhodesia border town to the former colony of the Belgian Congo.⁷ His legacy remains alive – not only, but not least through the further drafting and implementation of normative frameworks serving the promotion and protection of human rights for all.

7 None of the 15 other members of his entourage and the crew on board survived. For a short and concise summary of the official versions of the crash as well as the various speculations about foul play see Fröhlich (2008, 27ff.). Until today, rumours have not ceased that the official accident version might not be the full story. As Cordier and Foote (1975: 573) summarise: 'A UN investigation commission later found no evidence to support such theories but also reported its inability definitely to exclude any of four possible causes – sabotage, attack from ground or air, aircraft failure, or pilot failure.'

References

- Burke, Roland (2010), *Decolonization and the Evolution of International Human Rights*, Philadelphia: University of Pennsylvania Press.
- Cordier, Andrew W. and Wilder Foote (eds) (1972), *Public Papers of the Secretaries-General of the United Nations. Volume II: Dag Hammarskjöld 1953-1956*, (Selected and edited with Commentary), New York and London: Columbia University Press.
- Cordier, Andrew W. and Wilder Foote (eds) (1973), *Public Papers of the Secretaries-General of the United Nations. Volume III: Dag Hammarskjöld 1956-1957*, (Selected and edited with Commentary), New York and London: Columbia University Press.
- Cordier, Andrew W. and Wilder Foote (eds) (1974), *Public Papers of the Secretaries-General of the United Nations. Volume IV: Dag Hammarskjöld 1958-1960*, (Selected and edited with Commentary), New York and London: Columbia University Press.
- Cordier, Andrew W. and Wilder Foote (eds) (1975), *Public Papers of the Secretaries-general of the United Nations. Volume V: Dag Hammarskjöld 1960-1961*, (Selected and edited with Commentary), New York and London: Columbia University Press.
- Corell, Hans (2010), 'The Need for the Rule of Law in International Affairs – Reflections on Dag Hammarskjöld's address at Oxford University on 30 May 1961, The International Civil Service in Law and in Fact', in Henning Melber (ed.), *The Ethics of Dag Hammarskjöld*, Uppsala: Dag Hammarskjöld Foundation, pp. 6-17.
- Fröhlich, Manuel (2008), 'The Unknown Assignment : Dag Hammarskjöld in the Papers of George Ivan Smith', in Manuel Fröhlich and Marie-Noelle Little, *Beyond Diplomacy. Perspectives on Dag Hammarskjöld from the papers of George Ivan Smith and the Ezra Pound case*, Uppsala: The Dag Hammarskjöld Foundation (Critical Currents; No. 2), pp. 9-35.
- Gibney, Mark and Sigrun Skogly (eds) (2010), *Universal Human Rights and Extraterritorial Obligations*, Philadelphia: University of Pennsylvania Press.
- Hankel, Gerd (ed.) (2007), *Die Macht und das Recht. Beiträge zum Völkerrecht und Völkerstrafrecht am Beginn des 21. Jahrhunderts*, Hamburg: Hamburger Edition.
- Heyzer, Noeleen (2004), *Women, War and Peace. Mobilising for Peace and Security in the 21st Century. The 2004 Dag Hammarskjöld Lecture*, Uppsala: Dag Hammarskjöld Foundation.
- Hill, Robert A. and Edmond J. Keller (eds.) (2010), *Trustee for the Human Community. Ralph J. Bunche, the United Nations, and the Decolonization of Africa*, Athens, Ohio: Ohio University Press.
- Jolly, Richard, Louis Emmerij and Thomas G. Weiss (2009) *UN Ideas That Changed the World*, Bloomington and Indianapolis: Indiana University Press.
- Kumalo, Dumisani S. (2006), 'The UN: a personal appreciation', in Garth le Pere and Nhamo Samasuwo (eds), *The UN at 60. A new spin on an old hub*, Midrand: Institute for Global Dialogue, pp. 29-50.
- Melber, Henning (ed.) (2009), Responses to mass violence – mediation, protection, and prosecution, *Development Dialogue*, No. 53, Uppsala: Dag Hammarskjöld Foundation.
- Melber, Henning with John Y. Jones (eds.) (2008), *Revisiting the heart of darkness – Explorations into genocide and other forms of mass violence*, *Development Dialogue*, No. 50, Uppsala: Dag Hammarskjöld Foundation.
- Robinson, Mary (1998), *Human Rights. Challenges for the 21st Century. The Dag Hammarskjöld Lecture 1998*, Uppsala: Dag Hammarskjöld Foundation.
- Roth, Kenneth (2011), 'A Facade of Action. The Misuse of Dialogue and Cooperation with Rights Abusers', in Human Rights Watch, *World Report 2011. Events of 2010*, New York: Human Rights Watch, pp. 1-22.
- Weiss, Thomas G. and Ramesh Thakur (2010), *Global Governance and the UN. An Unfinished Journey*, Bloomington and Indianapolis: Indiana University Press.
- Whelan, Daniel J. (2010), *Indivisible Human Rights. A History*, Philadelphia: University of Pennsylvania Press.