It is a great honor to have been invited to give the first memorial lecture in tribute to the late Professor Alf Ross. His writings have enriched our understanding of many fields: Philosophy of Law, Constitutional Law, International Law, International Organization, World Politics. He brought to them not only learning but wisdom, the product of an incisive intellect and much reflection. His ideas were expressed with admirable clarity and vigor; one always knew where he stood and why. As a scholar, he took pride in his objectivity and political realism. He did not, I must say, give much encouragement to those who placed their hopes in “world peace through world law.” But his realism contains an intellectual challenge to those who seek to extend the rule of law among nations and for that, too, I am indebted to him.

In his book on the United Nations – which appeared in 1966 – Professor Ross set forth his conception of world order and of the role of the United Nations.1 The essence of that conception – if you allow me to simplify – was in his words, “the concert of great powers.”2 It was only through the harmony of the powerful – in particular, the United States and the Soviet Union – that the United Nations could ensure peace and security. That harmony, he conceded, was far from certain; but like others, he saw the over-hanging threat of nuclear destruction as the effective element in binding the great powers in a community of interest.3 The UN Charter was, therefore, realistic in endowing the Security Council with mandatory power subject to the veto, and in limiting the General Assembly to recommendations (other than in internal organizational matters). It was an illusion, in the opinion of Ross, to think that the power of binding decision in important matters could be given to the General Assembly or similar bodies which decided issues by majority vote.4 Such decisions would not reflect the sources of power in international society. Nor would they be grounded in the historically-based solidarity of a people, which in a national state “integrates majority and minority into a whole.”5 Hence, any pretension of majorities in the United Nations to “governance” would lack political as well as legal authority and be doomed to failure.

These views of Ross lead into the theme of this lecture, “The Crisis of Legitimation in the United Nations.” For today in the “new” United Nations claims are made for the authority of UN decisions that rest on grounds quite different from the constitutional order Professor Ross regarded as realistic. In the last few years, we have witnessed an increasing insistence on the authoritative character of General Assembly resolutions

2. Id. at pp. 38–41, 395 ff.
3. Id. at p. 399.
4. Id. at p. 401.
5. Id. at p. 171. See also pp. 401–403.
on intervention, self-determination, territorial occupation, human rights, sharing of resources and foreign investment. They purport to "declare the law," either in general terms or as applied to a particular case. Neither in form nor in intent are they recommendatory. Surprising as it may seem, the authority of the General Assembly to adopt such declaratory resolutions was accepted from the very beginning. At its first session, in 1946, the Assembly considered the Nuremberg Principles and then "affirmed" them in a unanimous resolution. In another resolution adopted at the same session, genocide was declared a crime under international law. This, too, was unanimous. No one questioned the Assembly's competence to adopt such resolutions despite the absence of explicit Charter authority to do so. The Assembly also interpreted and applied the Charter in particular cases, characterizing certain conduct as illegal. The resolutions condemning South Africa for apartheid and for its administration of South West Africa fall into this category. The competence of the Assembly to do this—that is, to destigate conduct as illegal under the Charter and to assert obligations and rights applicable in particular cases—was not questioned.

What was, however, in question was the legal force of the declarations of law, whether general or particular. Could they be considered "binding" when the Assembly lacked constitutional authority to adopt mandatory decisions concerning the subjects dealt with? If not binding, were they authoritative in some other sense? Was unanimity or near-unanimity a requirement for their authority? If nearly all states agreed on what is the law, was there a sufficient reason to deny effect to that determination? These and related questions gave rise to official perplexity and a considerable body of legal analysis. Some issues were clarified though by no means settled. In fact, the issues have become more controversial as more declaratory resolutions have been adopted and as increasing emphasis has been placed on their authority. Such resolutions have been used to legitimize action by international institutions as well as by states in their international—and sometimes even domestic—affairs. What appeared in the early years to be a noncontroversial means to affirm principles of law seems to have

8. G. A. Res. 2074 (XX) (1965) condemned the policies of apartheid in South West Africa as "a crime against humanity." Res. 2145 (XXI) (1966) reaffirmed the prior resolution and terminated South Africa's mandate. Res. 2202A (XXI) (1966) was one of the many in which the assembly condemned South Africa's policy of apartheid as a crime against humanity.