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Charles Taylor standing trial in the Special Court for Sierra Leone in The Hague.

Cross-Cutting Report on the Rule of Law

This is Security Council Report's first *Cross-Cutting Report on the Rule of Law*, covering a thematic issue which has been on the agenda of the Security Council since 2003. In order to gain an understanding of the relevance of the issue to the Council's work, this report first analyses the relationship between the law and the Council. It then examines two main aspects of the Council's relations with the rule of law. First, it gauges the degree to which it has been incorporated into the Council's work in conflict and post-conflict situations on its agenda. As part of this analysis, it also examines the interaction of rule of law with two Council situations, the Democratic Republic of the Congo and Liberia. The second aspect is the degree to which the Council has been guided by the rule of law—taking into account the due process rights of those affected by Council measures—in the course of its resort to sanctions.

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1. Executive Summary

The political transformations brought about by the end of the Cold War impacted the dynamics of the Security Council and led to many changes to its practices and those of the UN system as a whole. The political changes around the globe not only resulted in an increase in the activity of the Council, but also expanded the range of issues addressed in its debates, statements and resolutions, with the Council responding in unprecedented ways to situations it was unable to address in the past. Simultaneously, the Council was being confronted with an increasing number of internal conflicts within a state affecting international peace and security, as opposed to the interstate conflicts common at the time of the formation of the UN.

One noticeable trend in Security Council deliberations and actions in the last 15 years or so is the appearance of a broad new area of work collectively labelled “rule of law”. The Council held its first thematic debate on the rule of law in 2003, followed by similar debates in 2004, 2006 and 2010. The next thematic debate is expected to be held sometime following the submission of the Secretary-General’s report on the topic to the Council, currently due in November.

The concept of the rule of law, present in domestic legal systems since they came into existence, has been used frequently in the work of the Council in various contexts, e.g., upholding international human rights standards, peacebuilding and peacekeeping. It

has also been relied upon as a yardstick by those analysing—and at times criticising—the Council’s actions and/or omissions. In his 2004 report (S/2004/616), the Secretary-General made recommendations to the Council on integrating the rule of law into its resolutions and mandates. The Council responded by reaffirming its commitment to the rule of law, stating that it will consider these recommendations, as appropriate, in its deliberations. In addition, on several occasions, it has declared its commitment to an international order based on the rule of law and international law.

This report will examine two main aspects of the Council’s relations with the rule of law. First, it will gauge the degree to which the rule of law has been incorporated into the Council’s work on country-specific issues. It will also flesh out the way the rule of law has been used to allow for the incorporation of human rights-related action into work of the Council. It will examine Council resolutions and presidential statements as well as the reports of the Secretary-General. It will then focus on the incorporation of the rule of law in two of the country-specific situations on the Council’s agenda, that of Liberia and the Democratic Republic of the Congo (DRC).

The second aspect this report delves into is the degree to which the Council has been guided by the rule of law—taking into account the due process rights of those affected by Council measures—in the course of its resort to sanctions, under Chapter VII of the UN Charter. It will examine past, present and possible future Council practice in imposing sanctions mainly through the continuing evolution of the 1267 sanctions regime concerning Al-Qaida (and previously the Taliban).



In the main, the report finds that the Council has embraced the notion that establishing and improving the rule of law in conflict and post-conflict situations is an integral part of the mandates it imposes. This integration takes on different forms and contexts, such as institutional reforms, ensuring the security of civilians, and in particular improving human rights conditions as part of peacebuilding and peacekeeping efforts.

When it comes to the standards upheld by the Council in its sanctions regimes, the report finds that due to legal and political pressures, the Council is in the process of expanding the scope of due process rights it affords individuals and entities affected by its sanctions.

The main findings are as follows:

- Since the appearance of the rule of law as a thematic issue on the Council's agenda in 2003, there has been a noticeable increase in the reference to rule of law-related issues in the Council's resolutions and presidential statements.
- The abundance of references to rule of law issues is even more prevalent in the Secretary-General's reports to the Council.
- The Council has incorporated the concept of the rule of law into its thematic outcomes more so than in its country-specific resolutions and presidential statements.
- The year 2010 showed an increase in the Council's explicit use of the term "rule of law".
- Over the years, the Council (and to a lesser degree the Secretary-General's reports) have refrained from discussing rule of law issues in certain country-specific situations, despite their likely relevance.
- In other situations, the Council has continuously mandated rule of law components in its missions, with varying degrees of results.

- Since the rule of law was introduced as a thematic issue in 2003, all Council missions have included rule of law components and human rights components, with the exception of the UN Interim Force in Lebanon (UNIFIL).
- At times, the Council modified its support for the rule of law in a country-specific situation in reaction to changes on the ground. Yet in other situations, the Council has not adapted its actions and approach on rule of law issues as called upon by different actors.
- The Council has faced much pressure from states and others to adjust its own practices and procedures regarding the imposition of sanctions on individuals and entities, so as to respect the rule of law and due process standards.
- This pressure has resulted in adjustments meant to address these concerns, most noticeably in the 1267 sanctions regime with the creation of the Office of the Ombudsperson.
- Some Council members and other states contemplate further adjustments in order to comply with due process requirements. Other Council members, particularly some permanent members, are reluctant to introduce further adjustments into the sanctions regimes. Both these positions may be affected by future legal and political challenges to sanctions in various states and forums.

2. Methodology

In order to appreciate the Council's reference to the rule of law, the report will first analyse the relationship between the law and the Security Council. This is followed by a short overview of the history of the concept of the rule of law in the work of the Council. Part I of the report will then clarify the

meaning of the concept as it pertains to the work of the Council. It will also examine the integration of the rule of law into its mandates and consideration of conflict and post-conflict situations. In doing so, emphasis will be given to the intricate relations between the rule of law as applied by the Council and the integration of a human rights perspective into its work. The report will first give a statistical analysis of the incorporation of the rule of law and the elements that compose it into Council mandates and resolutions. Second, it will more thoroughly examine two test cases—Liberia and the DRC—to evaluate the Council's record in incorporating rule of law components and tasks (such as human rights monitoring and judicial and legislative reform) into its mandates, resolutions and presidential statements.

After evaluating the Council's role in restoring and enhancing the rule of law in situations on its agenda, Part II of the report will then shift the focus to the Council itself to evaluate to what extent the rule of law has been applied to its own practice of imposing sanctions on individuals and other entities. (The focus on these two aspects does not imply in any way that other elements of the concept are not as integral to the rule of law and do not merit future examination of their inclusion in the outcomes of the Council.)

3. The Council, the Rule of Law and International Law

The exact definition and content of the elusive and over-arching concept of the rule to law has been a point of contention since it was coined. If this can be said of its application in domestic legal systems, its emergence on the international level—in certain contexts

related to the Council's work—brings with it an added set of complications and conundrums, pertaining to its relevance, applicability and even its existence. Upon evaluating the implementation of the rule of law by the Council and the Council's own adherence to the rule of law, the question arises whether the Council itself is bound by law at all, and if so, what is the source and content of such law. The answers to these questions will then point to the relevance of the rule of law to the work of the Council, both in the legal and political realms.

The relationship between the UN organs and international law is intricate. The statute of the principal judicial organ of the UN, the International Court of Justice (ICJ), is annexed to the UN Charter and forms an integral part thereof. It requires the court to settle disputes in accordance with international law.¹ The General Assembly, for its part, was charged in Article 13 of the UN Charter with “encouraging the progressive development of international law and its codification.”²

The Security Council's relationship with international law is more complex. As an organ of an international organisation, the Council acts within a legal framework of its constituent document, the UN Charter. The Charter defines and limits the organs' powers—a point made by the ICJ in the *Conditions of Admission* case in 1948.³ The Appeals Chamber of the ICTY, referring to the ICTY as a “subsidiary organ” of the Security Council, opined on the powers of the Security Council in its first case, the *Tadić* case. The tribunal eloquently stated that:

The Security Council is...subjected to certain constitutional limitations, however broad its powers under the constitution may be. Those powers cannot, in any case, go beyond the limits of the jurisdiction of the Organization at large, not to mention other specific limitations or those which derive from the internal division of power within the Organization. In any case, neither the text nor the spirit of the Charter conceives of the Security Council as legibus solutus (unbound by law).⁴

Thus, one source of law binding the Council is its constituent document, the UN Charter, which sets out the Council's powers and restraints.

Article 25 of the Charter obligates member states to carry out the decisions of the Security Council in accordance with the Charter. Article 103 adds that obligations under the UN Charter—including obligations under binding Security Council decisions—prevail over other international agreements entered into by member states. The Council's authority to bind member states, notwithstanding any conflicting obligations, gives the Council the power to make decisions with overriding legal effect. Article 24(2) of the Charter states that the Council “shall act in accordance with the Purposes and Principles of the United Nations” and then points to the chapters of the Charter where the specific powers of the Council are listed. The purposes and principles, in turn, may be found in Articles 1 and 2 of the Charter.

Article 1 states that one of the purposes of the UN is to bring about the

settlement of international disputes “by peaceful means, and in conformity with the principles of justice and international law”. Thus, when the Council exercises its responsibilities to resolve issues by peaceful means, as spelled out in Chapter VI of the Charter, it is bound by international law. However, the first purpose of the UN in Article 1, preventing and removing threats to the peace and suppressing acts of aggression and other breaches of the peace, does not contain such reference to international law. Hence, when the Council acts under Chapter VII to deal with such matters, the Charter does not contain a provision binding it to act in conformity with international law. Commentators tracking the history of the negotiations on the text point out that this omission was deliberate so as not to tie the Council's hands when dealing with such issues in order to make the Council more effective. Though Article 2 contains some fundamental norms of the international order, such as the prohibition on the use of force in Article 2(4), from a legal standpoint, the Council does not seem bound by the norms of international law as such when acting under Chapter VII of the UN Charter, i.e., when it has determined that there exists a threat to the peace, breach of the peace or an act of aggression and responds accordingly. The ICJ has gone so far as to say that the “only limitations” on the Council “are the fundamental principles and purposes found in Chapter I of the Charter”.⁵

Over time, it has become widely accepted that the Council is limited by one more set of legal norms: those norms recognised as *jus cogens* norms,

1 Unless the parties to the dispute agree otherwise. See Article 38 of the ICJ Statute, annexed to the UN Charter.

2 The General Assembly has set out to fulfill this responsibility through its Sixth Committee and the establishment of the International Law Commission.

3 Admission of a State to the United Nations (Charter, art. 4), Advisory Opinion: I.C.J. Reports 1948, p. 57, at p. 64.

4 *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October (1995) IT-94-1-AR72, paras 28.

5 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, at p.52, para. 110, quoting with approval the Secretary-General.

norms that are considered to represent the core of the international legal order, such as the prohibitions on genocide and torture. The Vienna Convention on the Law of Treaties identifies *jus cogens* norms as peremptory norms of international law, accepted and recognised by the international community of states as a whole as norms from which no derogation is permitted.⁶ Judge Elihu Lauterpacht made the following point in his separate opinion at the provisional-measures stage of the *Genocide Convention* case before the ICJ:

*The relief which Article 103 of the Charter may give the Security Council in case of conflict between one of its decisions and an operative treaty obligation cannot—as a simple hierarchy of norms—extend to a conflict between a Security Council resolution and jus cogens.*⁷

Most legal practitioners and commentators accept the argument that Council action that requires states to violate a *jus cogens* norm would be *ultra vires* and therefore null and void.⁸

What is highly debatable is the composition of this limited category of norms.

The International Law Commission has suggested that the accepted peremptory norms of international law are the prohibition on aggression, genocide, slavery and racial discrimination, torture, crimes against humanity and the right to self-determination.⁹ Whether a few rights should be added or omitted from the list or not, what is clear is that *jus cogens* norms are a very small and basic set of international legal norms.

Despite this legal framework, some put forward the argument that the UN, including the Council, is bound by international law, in particular humanitarian and human rights law. They refer to the fact that Article 1 of the UN Charter refers to the promotion of human rights and that the member states of the Council are themselves bound by international law and human rights, and therefore the Council must be as well.

On the other hand, many authorities dub this as wishful thinking rather than assertions based on law.¹⁰ Courts and scholars point to the fact that the reference to human rights in the Charter is unspecified and of a very general and abstract nature, as opposed to the

specific tasks given to the Council. Moreover, this, together with Article 103, grants the Council the authority to override international obligations of states—including human rights obligations—at the very least to the extent that the Council considers it necessary for the maintenance of international peace and security.¹¹ Similarly, the mainstream legal position is that the fact that UN member states are individually bound by human rights obligations does not imply such limitations on the Council or the UN system at large. This is due to the separate international legal personality of the UN from its members under international law¹² and stands in contradiction with Article 103, which implies that the Charter and the obligations that it creates transcend these very obligations.¹³ When it comes to applying human rights norms to UN organs, one can view the ongoing debate as a matter of policy about what should happen or even what the law should be rather than of legal justification.¹⁴

However, as explained above, even if the Council is not bound by the norms of international law when acting under

6 Vienna Convention on the Law of Treaties 1969, Article 53.

7 Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, ICJ Reports 1993, p. 325, Separate Opinion of Judge Lavterpacht at p. 440, para. 100.

8 E.g., A/CN.4/L.778, International Law Commission, Draft Articles on the Responsibility of international organisations, art. 26 (30 May 2011); S. Talmon, “Security Council Treaty Action” (2009) 62 *Revue Hellénique de Droit International* 65, at 68 (2009); A. Orakhelashvili, “The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions” (2005) 16 *EJIL* 59 (2005); Tadić, Judgment by Appeals Chamber (15 July 1999) IT-94-1-A, para. 296; Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities (Court of First Instance of the European Communities, Case T-315/01, Sept. 21, 2005) para. 230; House of Lords, Judgments - R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent) ([2007] UKHL 58).

9 See commentary on Article 26 of the Articles on Responsibility of States for Internationally Wrongful Acts (annexed to General Assembly resolution 56/83 of 12 December 2001); A/CN.4/L.682, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission - Finalised by Martti Koskeniemi, para. 374 (13 April 2006).

10 Simon Chesterman, *An International Rule of Law?*, 56 *Am. J. Comp. L.* 331 (2008); Sir Michael Wood, *The Security Council's Powers and their Limits*, Hersch Lauterpacht Memorial Lectures, as delivered on 8 November 2006; House of Lords, Judgments - R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent) ([2007] UKHL 58).

11 An analogy can be made to the fact the human rights conventions themselves allow for derogation from most rights at times of emergency, such as armed conflict, in certain situations. While the state's right to derogate is limited, the Charter seems to have granted the Council very wide discretion on this issue.

12 In a legal order based on consent to be bound, international organisations are rarely parties to treaties and it is unclear to what extent they and their organs are bound by particular rules of customary international law (which has developed with reference to States and which is largely based on State practice). Arguments that certain statements made by the Secretary-General as per the adherence of UN organs and entities, including peacekeepers, to human rights and humanitarian law norms are evidence of a legal obligation to do so are also questionable. These statements may reflect political and moral obligations and do not necessarily imply a legal obligation on behalf of the UN.

13 A separate argument made is that Council members may be held individually liable for actions they take as Council members. In any case, this argument does not necessitate the Council's liability for the same actions. The separate legal personality of the UN was recognised by the ICJ in the Reparations advisory opinion. (Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: ICJ Reports 1949, p. 174).

14 See for example, comments made by the Secretary-General: “The evolution of international law has led to more and more rights being vested directly in the individual. The time has come to align the law applicable to the United Nations with developments in international human rights law.” A/65/318, para. 94 (20 August 2010).

Chapter VII, that does not mean it is not bound by law at all. Nor does it mean that the Council does not operate within the framework of international law, but rather that this framework—as set out in the UN Charter—does not include the body of law that states are bound by under international law. Furthermore, that the Council is not formally subject to judicial review¹⁵ does not exonerate it from its legal obligations.

Over the years, the Council has, as have other UN organs, interpreted its own powers under the Charter in an expansive way. The ICJ has recognised that organs of international organisations legitimately interpret their own powers, that the organ's practice in the past may indicate that the organ's current practices are within its powers and that when an organ of an international organisation acts to fulfil one of its purposes, the presumption is that it is acting within its powers.¹⁶ In the case of the Security Council, it is understood that when it exercises its responsibilities of a political nature under Chapter VII, it has very wide discretion from a legal standpoint. In light of the terms of the Charter and the practice of the Council in interpreting its own powers, the two recognised legal limits on the actions of the Security Council explained above, will make for a very extreme set of circumstances in which the Council's actions could be considered illegal.

If international law and the legal principles inherent in the system impose a very limited constraint on the Council,

what then is the relevance of the rule of law to the Council's work? As stated above, the Council is not above the law, but rather the legal framework within which it operates is limited compared to the legal obligations of states. The Council is a political body, yet it is at the juncture between politics and law—its actions have legal implications and its resolutions can produce binding legal obligations. Establishing a sanctions regime is a prime example of the Council's acting in a quasi-legislative and quasi-judicial mode.¹⁷

As its actions affect international law as we understand it, the Council is also affected by the law. First, although the Council may be ultimately motivated by politics rather than law, legal arguments matter, as members of the international community tend to engage in legal argumentation, i.e., a law-based discourse, to justify their actions within the normative framework of the Charter. Legal arguments can provide the Council and its members with objective-sounding justifications for their politically motivated actions, thus allowing for more persuasive arguments that other actors can relate to on the one hand, while coating self-interest with an air of legitimacy on the other.¹⁸ Relying on legal arguments and norms immerses interests in higher principles and may influence other states open to the possibility of basing their positions on such legal principles.¹⁹

Secondly, and as will be expanded upon in Part II of this report, even if the Council is not bound by international

law, its members are, and Council members and those states implementing Council decisions have found themselves before courts of law for actions taken pursuant to Council resolutions or for their part in adopting such resolutions.²⁰ This in turn motivates states to ensure that Council action will not result in future legal complications for themselves. In the context of Council-imposed sanctions, states apply political pressure on the Council so that they will not be found in violation of certain procedural human rights, perceived as integral to the rule of law as commonly understood.

Third, the answer also lies in the nature of the Council as a political body rather than a legal one. The Council, lacking its own enforcement mechanisms²¹ depends on UN member states to carry out its decisions. States are, as shown above, legally bound to carry out such decisions, even when they contradict existing legal obligations. But ultimately, states may choose, as a matter of policy, to disregard the Council's decisions, even if this course of action may lead to political and legal consequences. The Council in this regard, despite its binding powers, is in many ways at the mercy of the UN member states. For example, in reaction to the arms embargo imposed by the Council on the former Yugoslavia in resolution 713 (1991), the Organisation of the Islamic Conference (OIC) declared the embargo illegal, inasmuch as it impeded on Bosnia and Herzegovina's inherent right to self-defence in

15 Though, as with the Tadić case, its actions have in reality been subject to review by judicial bodies on several occasions.

16 Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, p. 151, at p. 168.

17 For more on this and concrete examples, see Jeremy Matam Farrall, *United Nations sanctions and the rule of law* (Cambridge University Press, 2007) at 16-18; J. Alvarez, *International Organizations as Law Makers* (New York: Oxford, 2005) pp. 196-198.

18 Ian Johnstone, *Security Council Deliberations: the power of the better argument*, 14 EJIL 437, 454-458 (2003).

19 Ibid.

20 For examples of litigation relating to UN Sanctions regimes, see Part II. For a case brought against states for their role as Council members, see the Lockerbie case brought by Libya against the US and UK before the ICJ. (Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, 3 March 1992)

21 Though article 43 of the UN Charter provides for such capabilities, this provision has never been implemented in practice.



accordance with Article 51 of the UN Charter.²² Thus, despite the existence of a binding resolution under Chapter VII to the contrary, the member states of the OIC openly declared themselves unbound by the embargo and called upon other states to assist Bosnia and Herzegovina by supplying arms, among other things.²³

Therefore, the legitimacy of Council action, even if such actions bear no legal objections, is a key element in ensuring that states comply with Council decisions. Adhering to the rule of law, as it is commonly understood, may be a pragmatic way for the Council to ensure that its actions are perceived as legitimate by the international community. On the other hand, disregard for the rule of law may taint Council action with an appearance of illegitimacy and overreaching power, in light of the rule of law's central role in domestic settings, a role reinforced by the Council itself. The rule of law, even if not binding on the Council in the sense that it would render its actions illegal, becomes relevant as a political factor affecting the Council's actions and a political tool (albeit of a legal nature) by which to evaluate such action. In this sense, it also reflects the political will of some to entrench the rule of law in the work of the Council, whether legally required of the Council or not. This is probably the correct way to understand comments made by Mexico in the 2003 debate (S/PV.4833) on the rule of law, in which it stated that “for the sake of justice and the rule of law, the Security Council must continue to act on the bases of legality that provide support for its mandate.”

Finally, as just mentioned, whether or not the Council is bound by the law, it has increasingly concerned itself with the implementation of the rule of law in domestic jurisdictions and therefore the concept of the rule of law has become integral to its primary responsibility for the maintenance of international peace and security in the international system. This vested interest in domestic application of the rule of law can influence the way the Council's own practice is perceived and evaluated.²⁴

4. Historical Context

The history and evolution of the rule of law as an important concept in the Security Council is fairly recent. The rule of law, as such, was not incorporated in the UN Charter, though some of its elements were, such as international law, the peaceful settlement of disputes and human rights.

Soon after the establishment of the UN, the General Assembly adopted in 1948 the Universal Declaration on Human Rights as a general non-binding declaration to apply moral and political pressure on states to achieve a common standard of legally binding international human rights standards in future agreements. The preamble of the declaration states that “human rights should be protected by the rule of law.”

The expectation that the Council would play a role in strengthening the rule of law, in the aftermath of the Second World War and its atrocities, was voiced by Australia and France at the inaugural meeting of the Council on 17 January

1946. Nevertheless, during the Cold War era, as with many other politically sensitive issues, the rule of law was seldom mentioned in the Council's work. In one such case in 1961, after the assassination of Prime Minister Patrice Lumumba in the midst of the Congo crisis, the Council adopted resolution 161. The resolution noted “with deep regret and concern the systematic violations of human rights and fundamental freedoms and the general absence of the rule of law in the Congo”.

Following the Cold War, in 1992, at the first Security Council summit meeting, “the rule of law” was a term used by several leaders participating in the debate (S/PV.3046). Former US President George H.W. Bush, for example, declared that “democracy; human rights; the rule of law—these are the building blocks of peace and freedom.” The Secretary-General commented that “democratization at the national level dictates a corresponding process at the global level. At both levels, it aims at the rule of law. For national societies, democracy means strengthening the institutions of popular participation and consent, political pluralism and the defence of human rights, including those of minorities. For global society, it means the democratization of international relations and the participation of all States in developing new norms of international life.”

As civil war threatened Burundi in 1996, the Council adopted resolution 1040 expressing its support for efforts to “facilitate a comprehensive political dialogue with the objective of promoting national reconciliation, democracy,

²² OIC, Res. No. 7/21-P (25-29 April 1993), preamble; Res. No. 6/22-P (10-12 December 1994), 7; Res. No. 6/23-P (9-12 December 1995), 12-15; OIC Heads of State and Government Declaration on Bosnia and Herzegovina at Seventh Islamic Summit Conference (13, 15 December 2004), at 4.

²³ OIC, Res. No. 7/21-P (25-29 April 1993), 12; Res. No. 6/23-P 13-14; OIC Heads of State and Government Declaration on Bosnia and Herzegovina at Seventh Islamic Summit Conference (13, 15 December 2004), 1. For more on this see Antonios Tzanakopoulos *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* [Oxford University Press: 2011], 123-126.

²⁴ See, for example, comments made by Austria in the debate in the Council on the rule of law in 2003, noting that a council that is “dedicated to the resolute implementation of international law is the best incentive for the implementation of law at the national level” (S/PV.4835, p.13).

security and the rule of law in Burundi". From that point onwards, the Council started using the term "rule of law" more frequently in its resolutions and statements in various contexts and meanings, as explained below.

The "emergence" of the rule of law in Council vocabulary was part of a wider dynamic that affected the Council and correlated in time with the end of the Cold War. The original concept of peace and security was at first understood narrowly, focusing on armed conflict between states. The Council was given exceptional powers, but this was balanced with the fact that its mandate was understood to be of limited scope. Yet this construed understanding of peace and security eroded as the nature of conflict changed, the Cold War with its paralysing effect on Council affairs ended and the acceptance of the relevance of human rights in international relations and international law grew. With these changes came an understanding that in order to maintain and restore peace, and avoid future conflicts, the underlying roots of conflict could and should be addressed by the Council.

A few key reports added to this trend. The report of the panel on UN peace operations (S/2000/809) of 17 August 2000, commonly referred to as the "Brahimi" report, called for a doctrinal shift in peacebuilding, integrating rule of law elements and respect for human rights in peacekeeping and peacebuilding operations at their initial stage. In particular, it recommended that civilian police, judicial and penal experts and human rights specialists be available to a peace operation as part of its deployment, until local institutions could be re-established. It further recognised that there is a need to focus on strengthening rule of law institutions and improving respect for human rights in peacebuilding efforts.

In a follow-up to the Brahimi report (A/55/977), the Secretary-General conveyed his intention to spell out more clearly to the Security Council what the UN could do to help strengthen local rule of law and human rights institutions in specific scenarios. The Secretary-General's report of 21 March 2005, entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005), took the position that if the UN is to succeed in protecting mankind from the scourge of war, it must ensure respect for fundamental human rights, establish conditions under which justice and the rule of law could be maintained and promote better standards of life. The report emphasised that the three pillars on which the UN stands and justifies its existence—security, human rights and development—reinforce each other. Thus, the Secretary-General opined that there can be no development without security and no security without development and that both development and security also depend on respect for human rights and the rule of law. He further stressed the importance of incorporating rule of law provisions into peace agreements and ensuring their implementation and highlighted that UN peacekeepers and peacebuilders have a solemn responsibility to respect the law themselves and especially to respect the rights of the people whom it is their mission to help. On the international level, the Secretary-General emphasised the vital role that international law should play between states, in particular international humanitarian law.

The Council seems to have accepted the approach promulgated in the "In Larger Freedom" report. A more expansive understanding of international peace and security has become prevalent, inclusive of at least some human rights elements, as well as good

governance, institution-building and the rule of law. One manifestation of this process has been the Council's focus on the rule of law as a thematic issue.

The Council held its first thematic debate on "Justice and the Rule of Law: The United Nations Role" on 24 September 2003 (S/PV.4833), under the presidency of the UK. In the presidential statement following the debate (S/PRST/2003/15), the Council highlighted the relevance of the rule of law in its work in areas such as protection of civilians, peacekeeping and international criminal justice. The statement also welcomed the preparation of a report by the Secretary-General on this topic. During the debate, the Russian representative stated that rule of law is "an imperative for the entire system of international relations" and that "for the sake of justice and the rule of law, the Security Council must continue to act on the bases of legality that provide support for its mandate."

On 23 August 2004, the Secretary-General submitted his report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (S/2004/616). The report included a working definition of the rule of law and recommendations for the future work of the Council.

On 6 October 2004, the Council held an open debate on the same agenda item (S/PV.5052). In the presidential statement following the debate (S/PRST/2004/34), the Council recognised the significance of the restoration of the rule of law in post-conflict societies and the importance of helping to prevent future conflicts through addressing their root causes in a legitimate and fair manner. It further recalled that justice and the rule of law at the international level are of key importance for promoting and maintaining peace, stability and development in the world.



On 22 June 2006, under the presidency of Denmark, the Council held another open debate, this time on “Strengthening International Law: Rule of Law and Maintenance of International Peace and Security”, thus departing from the title under which previous debates were held. (This change may reflect fewer inhibitions on the part of certain Council members to consider the relevance of the rule of law—and the content it brings with it—to the maintenance of peace and security.) The concept note prepared by Denmark (S/2006/367) stated that the objective of the debate was to consider the role of the Council in promoting international law, recognising its past contribution to the strengthening of an international order based on legal principles. The note outlined three issues to be discussed: the promotion of the rule of law in conflict and post-conflict situations; ending impunity for international crimes; and enhancing the efficiency and credibility of sanctions regimes. In the presidential statement adopted after the debate (S/PRST/2006/28), the Council reaffirmed its commitment to the UN Charter and international law and stressed the importance of promoting the rule of law, including respect for human rights, as an indispensable element for lasting peace. The Council further reiterated the critical role that enhancing the rule of law plays in peacebuilding activities in post-conflict societies.

The next relevant open debate took place on 29 June 2010, under the presidency of Mexico, and focused on “The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security”. The concept note introduced by Mexico (S/2010/322) built upon the fact that the Council had previously acknowledged that it operated within the framework of international law and aimed at

highlighting two interrelated objectives: further embedding the rule of law and international law into the daily work of the Council and increasing the global level of adherence to these concepts. In the presidential statement adopted after the debate (S/PRST/2010/11), the Council reaffirmed its commitment to the UN Charter and an international order based on the rule of law and international law. It further expressed its commitment to ensure that the UN’s efforts to restore peace and security will respect and promote the rule of law and it recognised that sustainable peacebuilding requires an integrated approach that strengthens the coherence between security, development, human rights and rule of law activities. The statement emphasised the importance of the adherence of states to international law, in particular international humanitarian law. It also reaffirmed the Council’s stance on opposition to impunity for serious violations of international humanitarian law and human rights law. Finally, the Council requested the Secretary-General to report to it within 12 months regarding the implementation of the recommendations contained in the 2004 report and further steps for promoting the rule of law in conflict and post-conflict situations.

Meanwhile, since the early 1990s, the Security Council has also taken action on issues of criminal liability for gross violations of international law. In 1993, the Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) and in 1994, the International Criminal Tribunal for Rwanda (ICTR). Furthermore, in resolution 1315 (2000), it requested the Secretary-General to negotiate an agreement with Sierra-Leone on the establishment of a Special Court for Sierra Leone to try those bearing the greatest responsibility for crimes

against humanity and war crimes committed in the country and then adopted resolution 1757 (2007) establishing the Special Tribunal for Lebanon. Since the coming into force of the Rome Statute for the International Criminal Court (ICC) in 2002, the Council has twice acted upon its powers under Article 13 of the statute and referred the situations in Darfur (resolution 1593 in 2005) and in Libya (resolution 1970 in 2011) to the ICC.

The Council’s increased interest in the rule of law should be viewed within the UN system’s awakening to the concept in general. Over the years, the General Assembly referred to the rule of law in several key documents. The Universal Declaration of Human Rights states in its preamble that human rights should be protected by the rule of law, and the Declaration on Friendly Relations of 1970 mentions the concept as well (A/RES/2627(XXV)). In Part II of the 2000 Millennium Declaration (A/RES/55/2), concerning peace, security and disarmament, the General Assembly resolved to strengthen respect for the rule of law in international and national affairs.

On December 20 1993, following the World Conference on Human Rights, the General Assembly adopted a resolution titled “Strengthening the Rule of Law”, recognising that the rule of law is essential to protecting human rights and its intention to help states in building institutions impacting the protection of human rights and the maintenance of the rule of law (A/RES/48/132). Under the agenda item of “Human Rights Questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms”, its Third Committee annually discussed and considered draft resolutions on the rule of law and its interrelations with human rights until

2003. Simultaneously in 1993, the General Assembly started to incorporate language on the rule of law in its resolutions entitled “Human Rights in the Administration of Justice” (A/RES/48/137 of 20 December 1993).

During its 61st session, on the initiative of Liechtenstein and Mexico, the General Assembly decided to include the topic “The Rule of Law at the National and International Levels” on the provisional agenda of its 62nd session (A/RES/61/39 of 4 December 2006). Resolution 61/39 also recommended that the Sixth Committee focus on one or two subtopics. Subtopics were subsequently introduced during the General-Assembly’s 63rd session, when it was decided that “Promoting the Rule of Law at the International Level”, “Laws and Practices of Member States in implementing International Law” and “Rule of Law and Transitional Justice in Conflict and Post-Conflict Situations” should be discussed in the 64th session (A/RES/63/128 of 11 December 2008). Additionally, on 11 April 2011, the General Assembly held an interactive thematic debate on the rule of law. Finally, during its 65th session, the General Assembly decided to hold a meeting of the General Assembly on the rule of law at the national and international levels during the high-level segment of its 67th session in 2012 (A/RES/65/32 of 4 December 2010).

The Secretary-General’s report of 23 August 2004 (S/2004/616) not only contained the first UN definition for this elusive concept but, as discussed below, also called on his Executive Committee on Peace and Security to propose measures to be taken for enhancing the UN’s system-wide support for the rule of law. Later, on 21 March 2005, in the “In Larger Freedom” report, the Secretary-General stated his intention to create a rule of law assistance unit to assist in the reestablishment

of the rule of law in post-conflict societies. The idea gained traction in the outcome document of the 2005 World Summit (A/RES/60/1), subject to a report by the Secretary-General to the General Assembly.

On 14 December 2006, in his report to the General Assembly and the Security Council, “Uniting Our Strengths: Enhancing United Nations support to the Rule of Law” (S/2006/980), the Secretary-General announced the establishment of the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General, together with a Rule of Law Unit to support it.

The Resource Group is an interagency mechanism comprised of nine UN departments and agencies—the Department of Peacekeeping Operations (DPKO), the Department of Political Affairs (DPA), the Office of the High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA), the UN Development Programme (UNDP), the UN Children’s Fund (UNICEF), United High Commissioner for Refugees (UNHCR) and the UN Office on Drugs and Crime (UNODC), and the UN Entity for Gender Equality and the Empowerment of Women (UN Women),—vested with the task of ensuring quality and policy coherence and coordinating efforts within the UN system for the promotion of the rule of law.

The interest of the Council in the concept of the rule of law can be understood as part of a more general trend within the UN system, recognising the rule of law, in its various facets, as integral to achieving development, the protection of human rights and peace and security. As for the Council, supporting the rule of law when it collapses within states on its agenda has become one of its important functions over the past years.

PART I: The Security Council and Domestic Rule of Law

5. Understanding the Rule of Law

Many who have written on the rule of law have observed that it is more easily invoked than understood. Although it allows for many definitions, generally there are two principal ways to understand the concept. The first is the procedural approach, which in its basic form implies that all actors are governed by the law and all behaviour is regulated by law. This approach focuses on the existence of a legal system as such and legitimate procedures for the adoption of norms regulating actions and omissions. As is clear, this perspective does not concern itself with the substance of the law and, taken to the extreme, may justify great grievances adopted by a legitimate process. The substantive approach to the rule of law adds to the procedural requirements the examination of the quality of norms existent in the legal order. For example, under the procedural perspective it is sufficient that there are set rules for the adoption of laws followed by the different branches of state. Under the substantive approach, the rules must conform to certain values, such as human rights. The downside of the latter is that it promulgates subjective notions of justice and morality.

In “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” report (S/2004/616), the Secretary-General provided what may be the first comprehensive UN definition of the rule of law:

The ‘rule of law’ is a concept at the very heart of the Organisation’s mission. It refers to 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. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

This expansive definition includes within it elements of both the procedural and the substantive understanding of the rule of law. It subjects all institutions and entities to the law, governs the procedure for adoption of the law and its content. It goes further than promulgating that all are accountable before the law, also requiring measures to be taken to ensure certain standards of governance are met, standards which comply with international human rights. This in turn would require the existence of state authority and institutions facilitating such capacity.

This understanding of the rule of law in the UN system in the context of conflict and post-conflict situations raises the question of its applicability to evaluate the Council's own actions. Applying such an inclusive and substantive understanding to the work of the Council is problematic considering that the Council may not be bound by human rights norms as states are, as explained above. Even applying the more procedural understanding of the rule of law to the Council, e.g., that all are equal before the law, brings with it inherent difficulties: the Charter recognises that not all Council members are equal, distinguishing between permanent and non-permanent members, and gives preference to political

considerations over legal ones when Chapter VII is invoked. Moreover, moving beyond the Council, legal experts continue to debate how and to what extent the rule of law applies to the international legal order.

Nevertheless, the legal question notwithstanding, the argument for holding the Council to rule of law standards stems from policy considerations and should be understood as such. The Council has chosen to react to these political pressures (though some of these pressures stem from legal obligations of UN member states) in ways elaborated in the final part of this report for essentially political reasons rather than recognition of its legal obligations.

The working definition of the rule of law given by the Secretary-General has become central in the UN system's understanding of the issue. Its inclusiveness allows for a varied understanding of the rule of law by member states and other actors. Indeed, before and following the elaboration of the definition by the Secretary-General, the Council had referred to the rule of law in various contexts and meanings.

The rule of law has been used by the Council and those evaluating its actions as a concept applying to states and other international legal personalities, including the Council itself, applying certain normative standards by which to measure Council procedure and practice. It is in this sense that the rule of law is used when the Council's own actions are under scrutiny, such as when it imposes sanctions on individuals and entities (for more on this, see Part II).

Additionally, the rule of law has been used as a phrase encompassing efforts to restore law and order in post-conflict environments (e.g., resolution

1168 of 1998 on the situation in Bosnia-Herzegovina). This includes mandating peacekeeping operations to re-establish institutions, including security and police forces, strengthening national judicial capacities and improving the human rights situation in the country (e.g., resolution 1536 of 2004 on the situation in Afghanistan). It also includes ensuring good governance in domestic settings including the principle that government is not above the law but subject to it (e.g., resolution 1606 of 2005 on the situation in Burundi). The rule of law has been referred to by the Council when discussing the need to end impunity and hold individuals accountable for their alleged crimes (e.g., resolution 1315 of 2000 on Sierra Leone and comments made by several delegations in S/PV.5297 of 2005 in a debate focused on the situation in Lebanon). It has also been referred to as encompassing the respect for the law by parties to a conflict or in post-conflict situations, in particular human rights and the protection of civilians. (Adherence to human rights standards is related to the fact that, at times, in making reference to the rule of law the Council may simply be calling upon all actors to abide by international law, whether it be humanitarian law or resolving disputes in accordance with international law.) At times, the Council's reference to the rule of law is obscure or can be interpreted to have several meanings, or all of the above. As will be elaborated in the next subsection, the rule of law has been used as an umbrella or gateway for the Council to involve itself in human rights-related activities in conflict situations without framing them as such.

In his 2004 report (S/2004/616), the Secretary-General not only defined the rule of law within the UN system but also made recommendations to the Council on integrating a rule of law

approach into its resolutions and mandates. These include:

- giving priority to the restoration of the rule of law with an emphasis on judicial institutions;
- incorporating international standards of due process and human rights in the administration of justice, with particular attention to the rights of vulnerable groups, such as women, children and minorities;
- avoiding the imposition of externally developed models and determining the course of transitional justice and restoration of the rule of law with the meaningful participation of national actors;
- adopting an integrated and comprehensive approach to the rule of law, including proper sequencing and timing for implementation of related processes; and
- ensuring the provision of adequate resources for the restoration of the rule of law and the establishment of transitional justice.

The Council responded to these recommendations by reaffirming its commitment to the rule of law, stating that it will consider these recommendations, as appropriate, in its deliberations. It has since reiterated this commitment. For example, in resolution 1625 (2005) on conflict prevention in Africa, the Council reaffirmed its commitment to promote good governance, democracy, gender equality, the rule of law and respect for the protection of human rights.

In its presidential statement of 29 June 2010 (S/PRST/2010/11), the Council requested a report on the implementation of the recommendations contained in the 2004 report. This report, originally due in 12 months, is now expected in November.

6. The Rule of Law and Human Rights

During the Cold War, Council members, most noticeably the communist bloc states, perceived human rights as a strictly internal matter not falling within the mandate of the Security Council. Yet undoubtedly, the changing nature of the majority of conflicts from international interstate conflict to intrastate conflicts contributed to the gradual acceptance of the relevance of human rights issues to the work of the Council.

The first human rights component to be included in a Council mandate came in resolution 693 (1991) on El Salvador. The UN Observer Mission in El Salvador (ONUSAL) was to, inter alia, monitor the human rights situation, investigate cases of specific alleged violations and promote human rights. Though lacking consistency, the connection between peacekeeping and human rights was increasingly made, and human rights developments were included in the reporting of the Secretary General on several operations. In 1992, the Council was willing to address a humanitarian situation within the border of a single state. Recognising that the “magnitude of human tragedy” in Somalia constituted a threat to international peace and security, the Council authorised the UN Operation in Somalia (UNOSOM) and called on member states to use all necessary measures to provide for humanitarian relief (S/RES/794 of 3 December 1992). Since then, including human rights components in Council mandates has become more frequent.

Nevertheless, the continued failure to fully appreciate the links between human rights violations—especially on a mass scale—and peace and security had been a factor in the Council’s inability to prevent the escalation of humanitarian crises throughout the 1990s.

Failure to address the substance of these interlinkages also manifested itself in the lack of procedure to allow non-state actors (outside of the UN organisation) to address the Council. An attempt to partially remedy this took place during the war in the Balkans, when, on the initiative of Ambassador Diego Arria, an informal meeting with a Croat priest was organised for Council members in March 1992, during the Venezuelan presidency of the Council. These informal meetings of the Council with non-state actors, including many NGO and human rights organisations, would later become known as “Arria Formula” briefings.

Despite the fact that post-facto inquiries revealed that the Secretariat and some Council members were aware of signs of a potential genocide in Rwanda and that information on the atrocities taking place was readily available, the Council did not act to address the serious human rights situation in the country. At the time, the Council-mandated UN Assistance Mission in Rwanda did not include a human rights component. It was only after the fact that the Council referred to human rights violations in Rwanda, in particular as it established the ICTR, about half a year after the events (resolution 955).

In the case of the genocide in Srebrenica, Council-mandated “safe areas”, meant to protect the wellbeing of civilians from the forces of the self-styled Republika Srpska in Bosnia and Herzegovina, were not adequately backed up by military capacity. In what would later be recognised by the ICTY as an act of genocide, in July 1995 thousands of civilians were forced out of the UN safe area in Srebrenica and taken into the hands of the Bosnian-Serb forces, never to be seen again. In the aftermath of the events, the Council was quick to express its concern over this mass disappearance in a presidential statement issued



on 14 July (S/PRST/1995/32). However, only on 21 December, after the signing of the Dayton Accords, did the Council fully condemn the humanitarian law and human rights violations that took place and affirm the need to investigate these violations (S/RES/1034).

The Council also failed to act as the situation in Kosovo escalated in 1998. The Council expressed concern over reports of increasing human rights violations in Kosovo yet, with the threat of a Russian veto looming, could not agree on taking further measures. Subsequently, NATO conducted a campaign from March to June 1999 without Council authorisation. For many, this represented a failure of the UN system, and the Council in particular, to address a threat to international peace and security, for which it bears primary responsibility under the UN Charter.

During the aforementioned events, not only did the Council fail to act when needed, it also failed to obtain relevant data on gross violations of human rights. Informal solutions, such as the "Arria formula" meetings, could not make up for this lack of information. One example of this inaction was the fact that although established in 1993, the High Commissioner for Human Rights only first addressed the Council in September 1999. Since then, the frequency of the High Commissioner's appearances before the Council has fluctuated over the years. For example, diplomatic efforts by Austria were needed to restore the practice of inviting the High Commissioner to Council debates on the protection of civilians in 2009.

As the inability of the Council to address human rights catastrophes became blatant in the aftermath of the events that unfolded in the 1990s, an independent inquiry commission on the UN's reaction to the Rwandan genocide of

1994 was set up by the Secretary-General with the support of the Council (S/1999/1257 of 16 December 1999). One of the main conclusions of its report was that "information about human rights must be a natural part of the basis for decision-making on peacekeeping operations, within the Secretariat and by the Security Council."

Another initiative to address these concerns was that of the Canadian government to create an independent International Commission on Intervention and State Sovereignty. It released a report in December 2001, concluding that the Council was the body placed in the best position, politically and legally, to authorise intervention in situations of mass violations of human rights. (To date, the Council has reminded states of their responsibility to protect on occasion, though refraining from invoking its own responsibility explicitly. Most recently, on 26 February 2011, in resolution 1970, it reiterated the responsibility of Libya to protect its civilians and expressed its determination to ensure the protection of civilians in Libya, though not linking directly this determination with the responsibility to protect as such. Yet on 17 March, in resolution 1973, the Council authorised the use of "all necessary measures...to protect civilians and civilian populated areas under threat of attack", thus coming quite close to formally invoking the principle as applicable to itself.)

Further attempting to identify ways to better address conflict situations, the Secretary-General set up a high-level panel, on threats, challenges and change. The panel was tasked with evaluating whether existing UN policies and practices were adequate to address the security threats of the new millennium and to make recommendations to better enhance collective security efforts (A/59/565 of 2004). The panel recommended, among other things,

that the Security Council actively involve the High Commissioner for Human Rights in its deliberations on country-specific situations.

Other developments in incorporating human rights elements in the Council's work have also taken place. It has established on occasion commissions of experts. These bodies have touched upon human rights violations to various degrees. A prime example is the International Commission of Inquiry on Darfur established by the Council (S/RES/1564 of 18 September 2004) to investigate violations of humanitarian law and human rights law in Darfur and to determine whether acts of genocide occurred.

Currently, Council members seem to acknowledge that conflict prevention and lasting peace require that the human rights situation in a country in conflict or post-conflict is addressed, as was suggested by the Secretary-General in the "In Larger Freedom" report. For example, the Council has acknowledged "that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognising in this regard that development, peace and security and human rights are interlinked and mutually reinforcing" (S/RES/1674 of 28 April 2006).

As the Council seems to have accepted that there is a link between human rights and security, information about human rights in situations on its agenda is recognised as relevant for it to make more knowledgeable decisions. Yet although human rights have become integral to many of its mandates, many states, including Russia and China, argue that considering human rights issues as such falls outside the scope of the Council's mandate and encroaches on other UN bodies and organs, such as the Human Rights Council. Such was

the case when several Council members objected or abstained and Russia and China vetoed a resolution on the situation in Myanmar on 12 January 2007, sponsored by the UK and the US (S/2007/14). Another failed effort to address human rights crises was the attempt to impose sanctions on Zimbabwe on 11 July 2008 (S/2008/447), also vetoed by Russia and China, with three additional votes against by non-permanent members.

Against this background, the rule of law has sometimes served the Council as a gateway to address certain human rights aspects in conflict and post-conflict situations. That the rule of law in the UN system includes within it certain aspects of human rights is now established in Council practice. A prime example of such a connection can be found in the presidential statement issued following the debate on the rule of law on 22 June 2006, which stated that the “Security Council attaches vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace” (S/PRST/2006/28).

Adherence to human rights standards is also related to the fact that at times, the Council refers to the rule of law when it calls upon all actors to abide by international law, whether it be humanitarian law or resolving disputes in accordance with international law. For example, in S/PRST/2010/11, the Council stated that it “recognizes that respect for international humanitarian law is an essential component of the rule of law in conflict situations and reaffirms its conviction that the protection of the civilian population in armed conflict should be an important aspect of any comprehensive strategy to resolve conflict”.

Incorporating the rule of law into its vocabulary has allowed for the Council to promote the protection of human

rights without labelling its actions as such, thus avoiding tensions and criticism by those who view the link between international peace and security and human rights as tenuous. The rule of law also links development issues with security and human rights as an umbrella concept that enables the Council to address all three within its work. Thus, the rule of law is a concept that contains elements pertaining to all three pillars of the UN system—including human rights—in the work of the Security Council.

7. Cross-Cutting Statistical Analysis

7.1 Methodology

In collating the following data in order to test whether the Security Council has integrated the rule of law into its work, we analysed Council resolutions from 2003, the year the rule of law first appeared on the agenda, until the end of 2010. We disaggregated the total number of adopted resolutions into two categories: those that could reasonably be expected to touch upon issues relating to the rule of law and those where issues relating to the rule of law, as previously defined, were actually covered.

Given the breadth of relevant issues included in the Secretary-General’s definition of the rule of law, references to at least some of the components might be expected in all country-specific resolutions. In particular, expecting references in resolutions that established or altered the mandate of peacekeeping operations seemed reasonable, given that the recommendations the Council resolved to consider in S/PRST/2004/34 placed special emphasis on Council-mandated operations. That said, certain resolutions related to Council-mandated missions of a “technical” nature were not counted as relevant, for example resolutions “rolling-over” a mission’s mandate for a short period.

A judgment was also made regarding the quality of the references to issues that fall under the rubric of the rule of law. Thus, in considering whether the Council has integrated the rule of law into its resolutions, both in its international and domestic dimensions, consideration was given to the situation addressed by the Council and its context. A resolution may contain limited or minimal language addressing a rule of law-related issue, such as ending impunity, yet if the vast majority of relevant issues—such as human rights, judicial reform and establishing state authority—were ignored, the resolution was not considered as meeting the test. For example, a reference to the Secretary-General’s zero tolerance approach to sexual abuse and exploitation by peacekeepers, important as it may be, was not considered a substantial reference to the rule of law in a situation that carries with it many other relevant aspects. Besides determining whether the Council integrated the rule of law in its resolutions where relevant, the analysis also examined the prevalence of the rule of law as a term of art in the Council’s resolutions, and the appearance of human rights (and the rights of specific groups, such as women and children) as an aspect of the rule of law.

Our analysis also covers presidential statements. Presidential statements are as carefully negotiated as resolutions and are official Council documents, though they usually lack clauses creating new obligations on UN member states. They are usually adopted when there are significant developments on the ground in country situations on the Council’s agenda or to reinforce important points following open debates or the release of key documents by the Secretariat.

As with resolutions, we have considered carefully which statements should reasonably include a reference to the rule of law. We have considered relevant

those that address specific events that carry a potential rule of law dimension, e.g., responses to specific terrorist attacks, and those where the Council took the opportunity to reinforce more general points in a given situation.

Secretary-General's reports were also examined to determine whether rule of law issues were reported, where one could reasonably expect such content, in relevant thematic topics and country-specific situations. The analysis explores the reference to rule of law issues in terms of content, and whether observations and recommendations pertaining to the rule of law are offered by the reports. Reports on children in armed conflict in country-specific situations were considered thematic reports for the purpose of examining Secretary-General's reports.

7.2 Resolutions

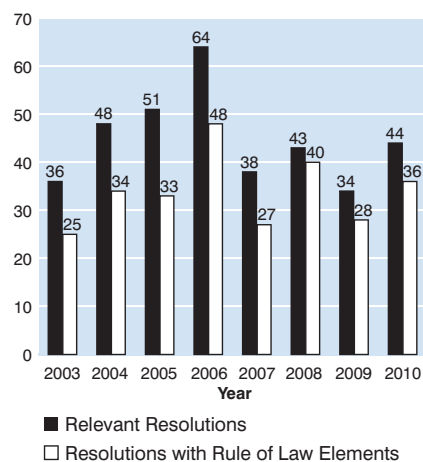
In our analysis we categorised the following as thematic issues: UN peace operations (including the relationship between the Security Council and troop-contributing countries), conflict prevention/mediation, the Security Council's relationship with regional organisations (such as the AU), protection of civilians, international criminal tribunals, counter-terrorism, small arms and light weapons, children and armed conflict and non-proliferation.

The analysis shows that there has been a gradual increase in the Council's integration of rule of law elements into relevant resolutions, from about 69 percent in 2003 to 82 percent both in 2009 and in 2010. Though the spike in this trend was in 2008 (93 percent), the period between 2008 and 2010 has shown a steady integration of 86 percent, compared to 68 percent in resolutions between 2003 and 2005.

Over the period covered, the Council has included rule of law elements in thematic resolutions (89 percent) more

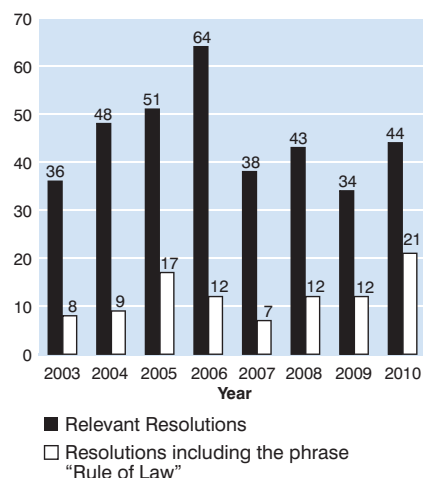
so than in country-specific situations (74 percent). This is also the case for the integration of language concerning human rights, which are mentioned in 64 percent of the thematic resolutions and about 49 percent of the country-specific situations.

Resolutions with Rule of Law Elements



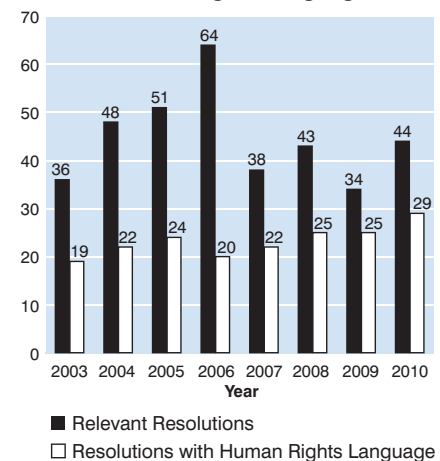
The term "rule of law", was mentioned in 22 percent of the resolutions found relevant in 2003. A steady increase in the use of the term was noted since 2008, when it was referred to in 28 percent of relevant resolutions, followed by 35 percent in 2009. In 2010, "rule of law" was mentioned in 48 percent of the relevant resolutions.

Resolutions Including the Phrase "Rule of Law"



Over the period analysed, human rights were mentioned in 52 percent of the relevant resolutions. Between 2007 and 2009, an increase in such references was observed, and human rights appeared in 63 percent of the relevant resolutions throughout the period. The mention of human rights peaked at 74 percent in 2009, while in 2010 a decline was observed, as human rights were only mentioned in 29 of 44 relevant resolutions (66 percent), less than in 2003. Interestingly, 2010 was also the year that the term "rule of law" was most prevalent in Council resolutions.

Resolutions with Human Rights Language



Country situations differ from one to another. Resolutions pertaining to Haiti, for example, reflect consistent language on the rule of law with no exceptions, including ten resolutions referring to human rights and 11 to the term "rule of law". Similarly, only two relevant resolutions on Afghanistan contain no language on the rule of law, seven contain language on human rights and eight on the rule of law. As for Timor-Leste, resolutions refer to "rule of law" five times and to human rights six times, with only two resolutions lacking any language on rule of law issues. In contrast, resolutions on Cyprus (despite an initial mandate to restore law and order in the country) do not

address rule of law issues (such as the rights of minorities in Cyprus) and resolutions on UNIFIL continually refrain from using substantial language on establishing Lebanese governmental authority in southern Lebanon.

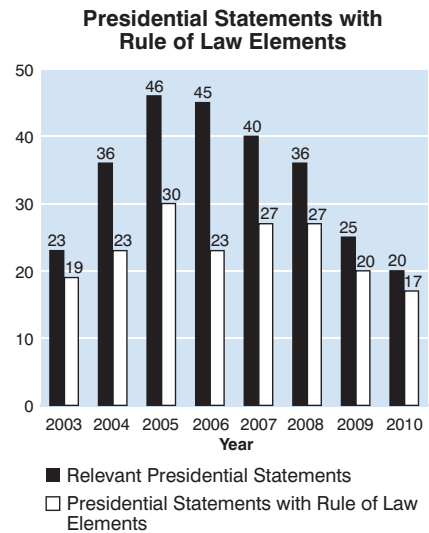
In other countries, situation patterns are less evident. For Somalia, nine resolutions lack language on the rule of law, but 15 refer to human rights and eight to the term “rule of law”. In similar vein, 16 resolutions on the DRC refer to human rights and 11 to “rule of law”, whereas nine omit relevant language on the rule of law.

Several thematic issues contain language that falls under the definition of the rule of law. In addition to the protection of civilians in armed conflict, the two prime examples are resolutions on women, peace and security and on children in armed conflict. During the examined period, all resolutions on children and women contained references to the human rights of the respective vulnerable group. In two resolutions on women, peace and security in 2009, the term “rule of law” was also incorporated. Resolutions on the protection of civilians in the examined period all contained language on human rights and the term “rule of law”.

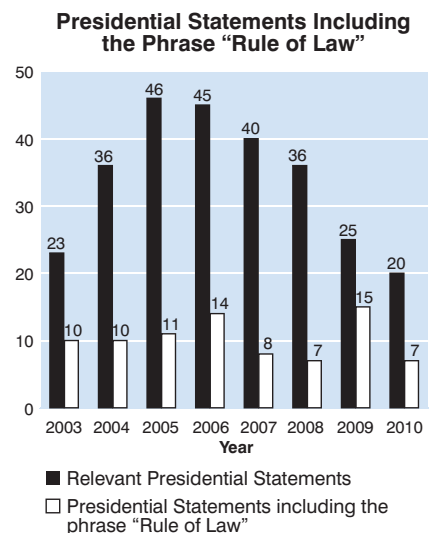
7.3 Presidential Statements

Our analysis shows that about 69 percent of relevant presidential statements between 2003 and 2010 contain language on the various aspects of the rule of law, 6 percent less than in relevant resolutions. Interestingly, 2003 and 2010 registered quite similar rates, 83 percent and 85 percent respectively. The low point of incorporation of rule of law elements into presidential statements was 2006, with just barely over 50 percent, while 2009 and 2010 were both consistently over 80 percent. As with the resolutions, the Council seems more comfortable incorporating language on the rule of law in roughly 89 percent

of relevant thematic presidential statements, as opposed to 66 percent of country-specific ones. Similarly, human rights were more frequently mentioned in thematic presidential statements (57 percent) than in country-specific situations (37 percent).



The Council’s use of the term “rule of law” in presidential statements was similar to that of the resolutions during the same period. Human rights were not as frequently referred to in presidential statements as they were in resolutions, with less than 50 percent.



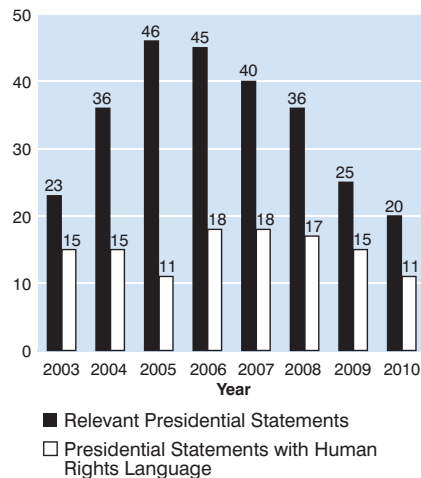
More specific points are also evident from the analysis.

The presidential statement of 10 November 2005 (S/PRST/2005/55) marked a shift in the language the Council normally uses to condemn terrorist attacks. Whereas previously the Council was in the habit of calling upon states to bring perpetrators of terrorist attacks to justice and combat terrorism in accordance with the UN Charter, this presidential statement specified that states must combat terrorism in accordance with “international law, in particular international human rights, refugee and humanitarian law”. (Notwithstanding that the old format was used by the Council in the press statement of 13 July 2008 following the terrorist attacks in Mumbai [SC/10325]. Presidential statements on the protection of civilians referred to the term “rule of law” four times from 2003 to 2010, while omitting any consideration of the rule of law from only one statement. Statements on women, peace and security all contained language on human rights and all but two referred specifically to the “rule of law”.

As with the resolutions, presidential statements on the DRC contained more references to human rights (eight instances) than to the term “rule of law” (three times). Presidential statements on Guinea-Bissau used the term “rule of law” eight times and mentioned human rights six times. On two occasions, presidential statements on the situation in Guinea-Bissau refrained from mentioning the concept of “rule of law”, yet addressed issues falling under its definition under other rubrics. In relevant presidential statements on Somalia, human rights were mentioned on three occasions, though rule of law-related issues were mentioned in four of 16 relevant statements. Patterns on country-specific situations regarding the rule of law were generally along the lines of

the relevant resolutions regarding the same country-specific situation.

Presidential Statements with Human Rights Language



7.4 Secretary-General's Reports

During the period examined, coverage of rule of law issues in relevant reports has increased from about 81 percent in 2003 to roughly 90 percent in 2010. In fact, since 2005, more than 90 percent of reports have included information on rule of law annually, with the exception of 2008 (about 88 percent). The year 2009 ranked highest, with 95 percent of relevant reports discussing the rule of law in different contexts. Notably, since 2006, all relevant thematic reports have contemplated rule of law issues, with no exception.

References to rule of law can come in different ways and contexts. For example, a thematic report on children and armed conflict in a country most noticeably contemplates the rule of law in the context of children's rights, though at times it may address rule of law issues as such, and also issues of impunity and capacity-building (e.g., S/2007/520 on Sudan). Similarly, reports on women, peace and security focus on women's rights but may also address the rule of law as an issue in itself, as well as accountability and impunity (e.g., S/2008/622). The analysis shows that in the last

few years, reports on both of these issues have increased their reference to the rule of law as a concept that is integral to the protection of children and women. The thematic reports on small arms, though not addressing rule of law in the past (e.g., S/2003/1217), do so in recent years (e.g., S/2008/258).

In country-specific situations, the rule of law can be discussed as a stand-alone topic, in its own section (e.g., S/2008/458 on Kosovo with a section entitled "Rule of law"). At other times, sections or subsections on the rule of law will be grouped with specific rule of law-related issues such as "Rule of Law and Corrections" (e.g., S/2009/357 on Sudan), or "Rule of Law, Justice and Human Rights" (e.g., S/2010/85 on Timor-Leste). Frequently, rule of law is peppered throughout a report and or under sections such as human rights or justice. Sometimes the rule of law and human rights are grouped into one section, for example in the Secretary-General's reports on Liberia, a section is commonly dubbed "Promotion of human rights and the rule of law" (e.g., S/2007/151). These sections and subsections tend to repeat themselves regularly within most country-specific situations. In 2003, only ten reports

contained specific sections on the rule of law (16 percent). In 2009 by contrast, 23 reports (25 percent) contained such sections, and in 2010, the number of specific sections on the rule of law increased to 26 (31 percent).

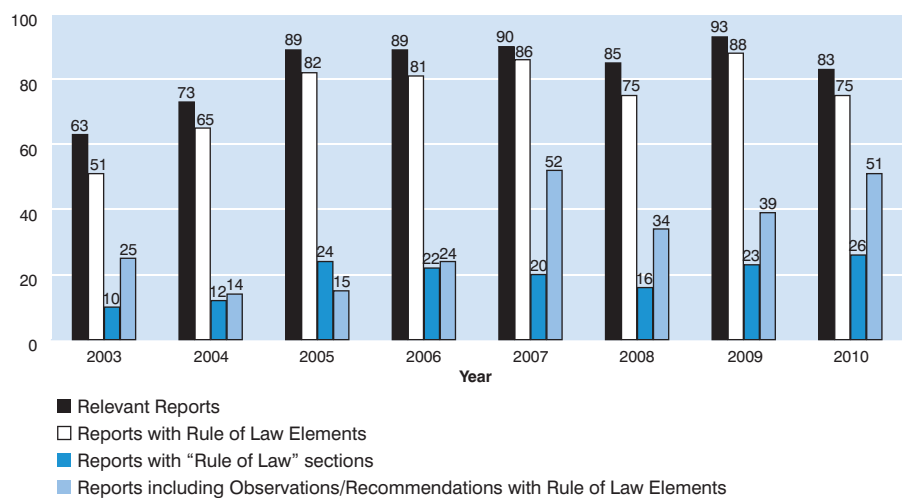
An increase was also noted in Secretary-General's observations and/or recommendations in his reports. In 2003, only 25 reports (40 percent) contained observations and recommendations related to the rule of law. Between 2007 and 2010, however, over 50 percent of the reports included observations and recommendations related to the rule of law, whereas the reports of 2010 contained 51 such observations (61 percent).

The phrase "rule of law", as in resolutions and presidential statements, has become more common over time in the Secretary-General's writing. From references in 54 percent of 2006 reports and 47 percent in 2007, in 2010 a full 73 percent of relevant reports used this term of art.

7.5 Mission Mandates

The analysis also covers Security Council-mandated missions, to see whether the Council has incorporated the rule of law into the mandates of field operations it authorised. Council-mandated missions include peacekeeping

Secretary-General's Reports with Rule of Law Elements



Security Council Mission	Date Established	Last Renewed	Mandate includes Rule of Law
UN Military Observer Group in India and Pakistan (UNMOGIP)	20 January 1948 (S/RES/39 and S/RES/47)		No
UN Truce Supervision Organization (UNTSO)	29 May 1948 (S/RES/50)		No
UN Peacekeeping Force in Cyprus (UNFICYP)	4 March 1964 (S/RES/186)	13 June 2011	Yes
UN Disengagement Observer Force (UNDOF)	31 May 1974 (S/RES/350)	30 June 2011	No
UN Interim Force in Lebanon (UNIFIL)	Established on 19 March 1978 (S/RES/425) and expanded on 11 August 2006 (S/RES/1701)	30 August 2011	No
UN Mission for the Referendum in Western Sahara (MINURSO)	29 April 1991 (S/RES/690)	27 April 2011	No
UN Interim Administration Mission in Kosovo (UNMIK)	10 June 1999 (S/RES/1244)		Yes
The International Security Assistance Force (ISAF)	20 December 2001 (S/RES/1386)	12 October 2011	Yes
UN Assistance Mission in Afghanistan (UNAMA)	28 March 2002 (S/RES/1401)	22 March 2011	Yes
UN Mission in Liberia (UNMIL)	19 September 2003 (S/RES/1509)	16 September 2011	Yes
UN Operation in Côte d'Ivoire (UNOCI)	27 February 2004 (S/RES/1528)	27 July 2011	Yes
UN Stabilization Mission in Haiti (MINUSTAH)	30 April 2004 (S/RES/1542)	14 October 2011	Yes
UN Assistance Mission for Iraq (UNAMI)	8 June 2004 (S/RES/1546)	28 July 2011	Yes
UN Integrated Mission in Timor-Leste (UNMIT)	25 August 2006 (S/RES/1704)	24 February 2011	Yes
AU Mission to Somalia (AMISOM)	20 February 2007 (S/RES/1744)	22 December 2010	Yes
AU/UN Hybrid operation in Darfur (UNAMID)	31 July 2007 (S/RES/1769 and S/2007/307/Rev.1)	29 July 2011	Yes
The UN Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL)	4 August 2008 (S/RES/1829)	14 September 2011	Yes
UN Integrated Peacebuilding Office in the Central African Republic (BINUCA)	7 April 2009 (came into effect 1 January 2010) (S/PRST/2009/5)	14 December 2010	Yes
UN Organization Stabilization Mission in the DRC (MONUSCO)	28 May 2010 (S/RES/1925)	28 June 2011	Yes
UN Office in Burundi (BNUB)	16 December 2010 (S/RES/1959)		Yes
UN Interim Security Force for Abyei (UNISFA)	27 June 2011 (S/RES/1990)		Yes
UN Mission in the Republic of South Sudan (UNMISS) S/RES/1996 (2011)	8 July 2011		Yes
UN Support Mission in Libya (UNSMIL)	9 September 2011 (S/RES/2001)		Yes

operations, special political missions, observer missions and peacebuilding support missions. DPKO administers and directs peacekeeping and observer missions. DPA administers and directs special political missions and peacebuilding support missions. The only current exception is the UN Assistance

Mission in Afghanistan (UNAMA), which is a political mission directed by DPKO.

As can be seen from the table above, with the exception of UNIFIL, all Council missions established after the Council agreed to consider incorporating the rule of law into its work in 2004 contain

provisions that relate to establishing and implementing the rule of law. All of these mandates request the mission to assist in the promotion of human rights, while some mandates require the mission to assist in the protection of human rights, as in the case of MONUSCO.



UNFICYP's, MINURSO's and UNIFIL's mandates, renewed since 2004, do not include rule of law components within their mandates, despite the fact that the rule of law is relevant to their mandates, such as post-conflict community reconciliation, human rights of individuals (UNFICYP and MINURSO) and capacity-building and the establishment of effective state authority and viable state institutions (UNIFIL).

The Council's practice regarding UNIFIL—and Lebanon in general—avoids any significant language on capacity-building and the establishment of the state's authority in its resolutions. Similarly, the Secretary-General's reports avoid the usage of language on rule of law, though the reports do contain a varying degree of language on the establishment of state authority as the only governmental authority in the whole of Lebanon. This undoubtedly is related to the delicate political situation in the country.

Reports on MINURSO and UNFICYP contain language on the rule of law on occasion, but this has not been reflected in the respective mandates by the Council (e.g., S/2007/202 on Western Sahara and S/2011/332 on Cyprus).

(Please see Annex I for more specific language on the rule of law contained in current Council-mandated operations.)

8. Case Studies: Council Implementation of the Rule of Law

8.1 Liberia: Sustainable Achievements?

The Council's involvement with Liberia dates back to 1993, when it established the UN Observer Mission in Liberia (UNOMIL) in support of the Economic Community of African States (ECOWAS) peacekeeping mission, set up in 1990 to address the civil war ravaging the

country. (UNOMIL was the first UN peacekeeping mission set up to cooperate with an operation already in place, undertaken by another organisation.) UNOMIL's mandate was focused on compliance with the ceasefire and supporting the peace process agreed upon in 1993 and included reporting on violations of international humanitarian law by the parties. The mission was succeeded in November 1997 by the UN Peace-building Support Office in Liberia (UNOL), established by the Secretary-General with the primary task of assisting the government of Liberia in consolidating peace after the election of former President Charles Taylor in a landslide victory, gaining more than 75 percent of the popular vote. The mandate included the promotion of national reconciliation, good governance and respect for the rule of law and human rights.

In the six years that followed, Taylor did very little to improve life in Liberia. Rather, Taylor focused his efforts on supporting the Revolutionary United Front (RUF) in Sierra Leone and the atrocities they committed, backing them with weapons sales in exchange for diamonds. Misrule led to the resumption of Liberia's civil war in 2003, as the government pursued a policy of political harassment and systematic abuses of human rights, coupled with the lack of effective reform of the security sector.

On 4 June 2003, the Chief Prosecutor of the Special Court for Sierra Leone issued a press statement announcing Taylor's indictment for "bearing the greatest responsibility" for atrocities in Sierra Leone since November 1996. As fighting between the government and rebel groups ensued in Monrovia in July 2003 and ceasefires were not being respected, ECOWAS decided to deploy a vanguard force to Liberia meant to stabilise the security situation, as of 4

August. On 1 August, the Security Council adopted resolution 1497, authorising the deployment of a multinational force in Liberia (i.e., authorising the deployment of the ECOWAS intervention force). As fighting continued and international pressure mounted, including the threat of a US intervention, Taylor left Liberia in exile to Nigeria on 11 August.

On 18 August, a Comprehensive Peace Agreement was signed by the parties. The agreement declared an immediate end to the war and provided for the establishment of a national transitional government in Liberia that would take over from the interim government headed by former Vice President Moses Blah. Other key provisions of the peace agreement included the establishment of a Truth and Reconciliation Commission (TRC).

The Secretary-General submitted a report to the Council (S/2003/875) on 11 September, recommending the deployment of a Chapter VII peacekeeping operation, with a mandate, among other things, to advise, train and assist the Liberian authorities, including the judiciary and corrections systems; to monitor and report on the human rights situation and provide training and capacity-building in the field of human rights and child protection; and to support the establishment and operations of the TRC. The Secretary-General added that the judicial institutions in the country had suffered from a near-complete breakdown, corruption was common, and police officers—often seen as oppressors—had not been paid in over a year and a half.

The Council established the UN Mission in Liberia (UNMIL) in resolution 1509 (2003). The resolution urged the transitional government of Liberia to ensure that human rights protection and the establishment of a rule of law-based

state with a functioning judiciary were among its highest priorities. It authorised the mission to contribute towards efforts to protect human rights in Liberia, with emphasis on vulnerable groups and the establishment of state authority and administration. UNMIL was also tasked with ensuring that it had the capacity and expertise to carry out human rights promotion, protection and monitoring activities. The resolution further authorised UNMIL to support the restructuring and training of local police in accordance with democratic police policies as well as the restructuring of the military and to assist the government in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions.

Accordingly, UNMIL established the Human Rights and Protection Section (HRPS) to fulfil this mandate. HRPS's stated goals are to prevent or address human rights violations and abuses and to minimise the harmful impact of violations on victims. This involves intervention in individual cases as well as technical assistance for the development of national institutions, legislation and policy to support the government in fulfilling its international human rights obligations. Since its establishment, HRPS has supported the establishment and operation of national human rights institutions in order to promote sustainable national human rights capacity. It provided technical and advocacy support to the establishment of the TRC and the Independent National Commission on Human Rights (INCHR), both of which were among the goals of the Comprehensive Peace Agreement. As part of its effort to assist sustainable human rights promotion and protection, HRPS includes capacity-building in all its activities and tries to work closely with civil society to increase community

awareness of human rights. It also supports official efforts to implement human rights obligations. At the national level, HRPS has integrated training on human rights for the Liberian National Police, correction officers and the military.

Pursuant to the resolution, UNMIL also established the Legal and Judicial System Support Division (LJSSD). The LJSSD provides advice, assistance and support to the judiciary, the legislature and the Ministry of Justice. The division has been actively working with the Ministry of Justice on a programme of law revision, harmonisation, codification and compilation. Over time, the division assisted the Ministry of Justice with the revision of the bail law and legislation on rape and sexual offenses, on human trafficking, on drug trafficking, on the security agency, on the jury system and the increase in the case load and jurisdiction of the Magistrates' Courts.

The LJSSD has been very active in assisting judicial reforms. It has formulated a comprehensive programme of legal education and training courses. As of August 2011, the division has provided training for 336 magistrates, 220 justices of the peace, 226 prosecutors, 146 clerks of magisterial courts, 45 clerks of circuit courts and 1,000 immigration officers. It is currently supporting the judiciary in the establishment of the Judicial Training Institute. The division monitors and evaluates ongoing cases in the courts in Monrovia and in the counties. Its advisers and monitors collaborate with the prosecutorial unit of the ministry by advising, assisting, monitoring and evaluating the investigations and the progress of cases as well as assisting in ensuring the observance of due process of law. The LJSSD further gathers information, monitors and advises, to help implement reforms needed to strengthen the capacity of the

courts and the prosecution. In addition, the division has assisted in establishing public defenders' offices and embarked upon a thorough review of the legal-aid system in Liberia, to include detailed recommendations as to the additional support and funding required.

The LJSSD trains law enforcement officers to bolster their capacity in the area of investigations and prosecution. The division is also engaged in seminars, meetings and workshops for the education and sensitisation of the public about its rights and about legal reform initiatives, including the role of the traditional justice system and the importance of ensuring the supremacy of the rule of law.

On 17 March 2006, the Council held an open debate on the situation in Liberia. The newly inaugurated president, Ellen Johnson-Sirleaf, addressed the Council, introducing the country's four-pillar strategy for peacebuilding, one of which focused on the rule of law and governance. Several representatives stressed the need to strengthen the rule of law in Liberia if the country was to move forward.

President Johnson-Sirleaf also formally requested the extradition of Taylor from Nigeria to Liberia. Taylor fled and was later captured on 29 March 2006 and extradited to Liberia, where he was handed over to UN officials. The Council adopted resolution 1688 on the trial of Charles Taylor in the Netherlands on 16 June 2006, reiterating its determination to establish the rule of law and protect human rights in Liberia and other countries and West Africa. The decision to try Taylor in The Hague was not taken lightly, and eventually fears of instability in the region caused by the trial led to the decision to transfer the proceedings to The Netherlands.

Council-Mandated Sanctions

In December 2003, the Council also imposed sanctions on Liberia, linking their lifting to the restructuring of the security sector and stability in Liberia (S/RES/1521). In resolution 1647 (2005) the Council renewed sanctions on the export of diamonds and timber, stressing UNMIL's role in assisting the newly elected government in establishing its authority, and called upon Liberia to cancel existing concessions and reform the timber industry, in order to ensure transparent and accountable management of timber. Three years later, the Council adopted resolution 1689 (2006) applauding the government's commitment to reforming the forestry sector, while

stressing that the absence of appropriate legislation was holding back progress. The resolution stated the importance of UNMIL's role in helping Liberia in establishing its authority, in particular in developing an effective certificate-of-origin regime for diamonds as a prerequisite for lifting sanctions. Sanctions on the export of diamonds were lifted as Liberia made significant progress towards joining the Kimberley Process Certification Scheme.

In December 2009 (S/RES/1903), the Council recalled its lifting of sanctions on the timber and diamond industries of Liberia. It stressed that progress must continue in implementing forestry reform and transparency legislation along with the implementation of the

Kimberley Process Certification Scheme for the diamond sector. The resolution also mandated the panel of experts to assess the role of existing legislation pertaining to natural resources on stability in Liberia.

It seems that sanctions may have functioned as an incentive pushing several reforms and the improvement of standards and regulations in different industries. On the other hand, criticism by several Council members has focused on lack of full implementation of the sanctions by the Liberian government, in particular the assets freeze. Some of these members criticise the US for not applying enough pressure on the government to implement all necessary reforms.

Also in June, the Secretary-General submitted a report on UNMIL to the Council (S/2006/376). Under a section dubbed "promotion of human rights and the rule of law" (a practice maintained in many UNMIL reports), the report highlighted the lack of court-houses and qualified judicial and legal personnel, resulting in a denial of justice and due process rights, protracted detention and overcrowded prisons. Inadequacies were also seen as prevalent in the juvenile justice and rehabilitation sector. The Secretary-General further reported on the mission's rule of law task force, established to develop a strategy on rule of law reform to assist the government. Efforts to battle corruption and enhance transparency in public finances were bearing some fruit as government revenues tripled compared to the same period in 2005. The report indicated steady progress in police force reform, though hampered by lack of funding and basic equipment.

In July 2006 the Council responded in resolution 1694 by increasing the number of authorised civilian police by 125 while decreasing its military component by the same figure. In another report in September of that year (S/2006/743), the Secretary-General suggested benchmarks for further drawdowns in UNMIL's mandate. Some of the key benchmarks were security and police sector reforms and consolidating state authority throughout the country, in particular over natural and mineral resources. The Council requested in resolution 1712 (2006) that the Secretary-General monitor the achievement of these benchmarks and also added judicial reform. Significant challenges in judiciary and security sector reform and the establishment of the rule of law and state authority continued to be highlighted by the Council in several resolutions.

Noting, among other things, that the human rights situation in Liberia had improved, yet little progress had been achieved in the reform of the judiciary,

the Secretary-General recommended in August 2007 specific benchmarks related to steps taken to enhance the capabilities of the Liberian National Police and restore the rule of law throughout the country (S/2007/479). He recommended the drawdown of the military component of the mission in three stages and a gradual reduction of 498 police advisers in seven stages, both of which were approved by the Council in resolution 1777 of 20 September 2007. The Secretary-General's report of 19 March 2008 (S/2008/183) listed the progress achieved in reaching these benchmarks, including in the area of the various institutional reforms and strengthening the rule of law. The Secretary-General identified lack of full implementation in the extension of the rule of law throughout the country and the operative strength of the national police as continuing concerns. He then expanded on the judicial system, considering it to be a key element in avoiding a return to conflict.

He noted that Liberia had to overhaul the judicial and corrections system by adopting a comprehensive approach and far-reaching reforms. In addition, measures were still needed to ensure that the diamond industry was effectively regulated.

On 15 August 2008, the Secretary-General reported to the Council that progress in achieving the benchmarks for drawdown had been slow, particularly with respect to the strengthening of the justice sector, improving the operational capacity of the police, implementing the national security strategy and building the capacity of national institutions (S/2008/553). Lack of progress in police reform, and UNMIL's continued support for regular policing activities, led the Secretary-General to backtrack and request additional personnel for UNMIL, after the Council had previously approved his recommendation for a gradual reduction in UNMIL's police component. The Council subsequently endorsed the request in resolution 1836 (2008).

Between 14 and 21 May 2009, the Security Council went on a mission to Africa, including a 20-21 May visit to Liberia (S/2009/303). The Council noted that economic recovery and peace remained fragile, owing in part to weak security, justice and correction systems. The mission met with civil society organisations, which expressed their concern that any post-election drawdown in UNMIL strength should consider progress in the development of rule of law institutions. The mission also met with President Johnson-Sirleaf and highlighted the weakness of the rule of law aspect of the national poverty reduction strategy and the absence of public trust in state institutions. Some members of the Council mission met with representatives of the Truth and Reconciliation Commission (TRC, see

below). The Council mission also visited the Monrovia Central Prison, where the mission members heard concerns about the penitentiary situation, including the fact that 86 percent of all prisoners in Liberia were pre-trial detainees, as well as feeding and overcrowding problems.

In two reports submitted to the Council in summer 2009 (S/2009/299 and S/2009/411), the Secretary-General recognised that the government of Liberia, with the assistance of its international partners, had made commendable progress towards consolidating stability in the country and implementing its ambitious reform and recovery agenda. At the same time, the complex nature and magnitude of the challenges inherited from the civil war continued to pose serious difficulties for building essential national institutions, particularly in the security and rule of law sectors, requiring a sustained, long-term effort. The human rights situation in Liberia continued to improve, although the weakness of rule of law institutions, economic insecurity and limited access to social services posed serious challenges for the effective protection of human rights. The gains achieved thus far remained fragile, however, particularly in the areas of building the security and rule of law institutions.

The Secretary-General also informed the Council that the comprehensive technical assessment mission to be deployed following the October 2011 elections would focus on the handover of UNMIL responsibilities to national authorities and, taking into account the functions and capacities of all security and rule of law institutions present, develop recommendations for the subsequent drawdown stage and final withdrawal. All stakeholders characterised the 2011 elections as a crucial

milestone that will test the sustainability of the peace and the capacity of the country's rule of law institutions to conduct a major operation.

On 29 June 2009, the TRC released its final edited report. The TRC was established in 2005, in accordance with the peace agreement, to investigate and report on gross human rights violations that occurred in Liberia between January 1979 and October 2003. The eight members of the commission were appointed by the transitional government in 2005. The TRC expressed the view that all factions committed egregious violations of national and international criminal law and recommended the establishment of an extraordinary criminal tribunal to prosecute those identified as having committed gross violations of human rights. The TRC listed several factions and significant perpetrators of these violations, including the Movement for Democracy in Liberia, the party of the incumbent president. The commission's report included a "non-exhaustive" list of 50 individuals identified as financiers or supporters of the warring factions, whom the commission recommended barring from public office for a period of 30 years, including President Johnson-Sirleaf. On the other hand, the work of the commission received some criticism on the quality of the evidence and facts backing its conclusions. Two of its members, Sheikh Kafumba Konneh and Pearl Brown Bull, did not sign the final report, indicating their dissent.

Concrete action on the report has yet to be taken. A national reconciliation road map was suggested by the Independent National Commission on Human Rights (INCHR) to take forward the recommendations. (The INCHR was created by law in 2005, with its members nominated by the president and approved by the legislature. Inaction on



the part of the president and later disagreement on its composition led to its formal establishment only in October 2010. The INCHR is responsible for promoting national implementation of, and compliance with, the international and regional human rights treaties signed by Liberia. It is also responsible for implementing the recommendations of the TRC. The INCHR is meant to receive and investigate allegations of human rights violations and investigate issues on its own initiative and to be able to make recommendations to the government on remedial actions that are required in individual cases or systematic reforms required where the violations are of a widespread nature. The INCHR has faced internal divisions that have compromised its public image and affected implementation of its 2011 work plan.)

In September 2009, the Council called upon the government of Liberia, in coordination with UNMIL, to redouble its efforts to develop national security and rule of law institutions that are fully and independently operational (S/RES/1885). In his report of August 2010, the Secretary-General commended existing strategic planning in Liberia, but noted that implementation is long overdue (S/2010/429).

The Council adopted resolution 1938 in September 2010, linking again stability with the rule of law and calling upon Liberia to double efforts to develop security and rule of law institutions that are fully independent and functional. The Council welcomed the efforts made by Liberia to combat corruption and strengthen governmental control over natural resources and the engagement of the Peacebuilding Commission (PBC) with Liberia on security sector reform and rule of law. Later in July 2010, the president of the Security Council requested the PBC's recom-

mendations on meeting the benchmarks set out for Liberia, including security sector reform and strengthening the rule of law.

On 29 October 2010, a draft statement of mutual commitments on peacebuilding in Liberia was published by the PBC country-configuration. It recognised priorities in five main areas relating to the rule of law and restoring confidence in the justice system: legislative reform, including land reform; increased access to the justice system; enhancing the substantive and administrative capacity of the judiciary; justice system oversight mechanisms; and public information and outreach programs to fight the alienation of the people from the justice system. It also recognised the priority of strengthening the national police and a self-sustainable military to ensure law and order throughout the country. For its part, Liberia committed to taking steps on strengthening the rule of law and supporting security sector reform. The PBC will also provide funding to further these priorities.

On 14 February 2011, the Secretary-General reported to the Council on the situation in Liberia (S/2011/72). He noted that Liberia enjoyed relative stability, but many rule of law-related problems persisted. He noted progress in developing the security and justice sectors but said that considerable work remained to be done in view of the eventual handover of UNMIL's security responsibilities to national authorities. Though UNMIL continued to support military operations and reforms in the security sector, much progress in the completion of the national security sector reform strategy and its implementation was achieved with the bilateral support of the US. The report also listed progress made by Liberia in meeting the Secretary-General's benchmarks, many relating to other rule of law issues.

Currently, though Liberia is stable in terms of security, reports indicate that maintaining law and order remains a challenge, with frequent reported incidents of rape and armed robbery, as well as the prevalence of drugs and mob violence, especially outside of Monrovia. The undisciplined—at times abusive—and ill-equipped Liberian police rely heavily on UNMIL, while lack of public confidence in the police and criminal justice systems have led people to take justice into their own hands. Two special units of the Liberian police—the Emergency Response Unit and the Police Support Unit—showed some promise in addressing crime. Due to insufficient equipment, delays in the procurement of new assets and continued delays in endorsing the national defence strategy by the government, Liberia's military forces will not achieve fully operational status before 2014.

Limitations in human capacity, infrastructure and equipment in the judicial, legal and corrections sectors continued to impede justice delivery, leading to hundreds of prisoners being held in extended pre-trial detention in overcrowded jails that lack basic conditions. Though the operational capacity of the Liberia Anti-Corruption Commission continued to improve, lack of prosecution of high-profile officials implicated in corruption reinforced public opinion that the government lacked the will to take serious steps to address this issue. In his most recent report dated 5 August 2011, the Secretary-General noted that despite positive developments, significant challenges continued to slow progress in the justice sector, particularly insufficient human capacity, infrastructure and equipment (S/2011/497).

The Secretary-General's report also indicates that the TRC's recommendations have yet to be implemented. The president has directed the INCHR to

develop a road map for national reconciliation and to establish the “Palava Hut” Programme—a mechanism for perpetrators to seek public forgiveness—yet little has been done to advance this initiative. In comments to the media, the chairman of the INCHR, Le Roy Urey, attacked the UN travel ban as “illegal and unconstitutional” because it lacks due process. He also took the same position with respect to the TRC’s recommendation to ban certain figures from public office, including the incumbent president currently nominated for a second term. Urey based his assertions on a recent Supreme Court decision that declared one of those affected by the recommendations to be a free man who should not be deprived of his right to participate in the political process without due process of law in a court of competent jurisdiction.

On 16 September 2011, the Council unanimously renewed UNMIL’s mandate for another year (S/RES/2008). During the negotiations on the resolution, some permanent members and other Western countries tried to push for a shorter mandate extension of eight months. Their position reflected financial restraints but also an attempt to pressure the Liberian government to move faster in strengthening institutional capacities, independent of UNMIL and bilateral backing. Though these states eventually conceded, these tendencies are reflected in the resolution, which urges Liberia to intensify its efforts to complete the transition of security responsibilities from UNMIL and to further develop fully independent and operational rule of law institutions.

Conclusions and analysis:

- The Council has commonly referred to the rule of law in its resolutions and statements on Liberia, giving the establishment of the rule of law in

conflict and post-conflict situations much attention in both the preamble and operative clauses.

- A stable security environment allowed the Council to focus on rule of law issues in Liberia. Also, the removal of Charles Taylor from the scene to stand trial in The Hague demonstrates that accountability for gross human rights violations can advance institutional reforms and other rule of law aspects.
- As institutional reform requires a long-term engagement and alteration of local practices, advancements in implementation of the rule of law, even after the successful establishment of an institutional framework, are slow. For some Council members, progress in Liberia is nevertheless too slow, raising questions about the ability of state institutions to function independently as international support wanes.
- In order to ensure that institutions internalise the rule of law and function independently, the Council and its missions should avoid imposing reforms not suited for the particularities of the local system.
- Resolution 1836, which increased the number of police personnel after an initial decrease due to lack of expected progress in police reform, demonstrates that the Council can increase its investment in rule of law issues, even as missions are in their drawdown phase. This case also demonstrates that reporting must quickly recognise adverse effects of premature drawdown plans.
- The experience of Liberia shows that when a Council-mandated operation is winding down, the PBC can play a substantial role in assisting the local government in rule of law efforts.
- Sanctions have proven effective in inducing the government to introduce legislative reforms in different

sectors. On the other hand, lack of substantial political pressure on the government to implement sanctions against listed individuals has resulted in continuing partial implementation of sanctions in Liberia, thus undermining the Council’s authority.

- Exit strategies based, *inter alia*, on future—rather than past—achievements in strengthening the rule of law can create pressure to proceed with drawdowns even when progress is not achieved. Such dynamics can also strain relations with local governments.
- Though much has been achieved, there are still substantial rule of law issues that remain unresolved. One such issue is the status of President Johnson-Sirleaf in light of the recommendation of the TRC to ban her and other political figures from holding public office.

8.2 The DRC: The Rule of Lawlessness

Since the mid-1990s, the DRC (previously Zaire) has experienced continuous instability and two civil wars that took an extremely heavy toll on the civilian population. Today, the DRC continues to face instability in its eastern provinces and resulting abuse of the civilian population, as well as a relatively weak state authority.

The second civil war (1998-2003), which prompted the establishment of a UN peacekeeping mission in the DRC, is estimated to have led to the death of millions of civilians. Following the rise of former rebel leader Laurent Kabila as Congolese president, relations between the DRC and former allies Rwanda and Uganda began to sour. Angola, Zimbabwe, Namibia, Chad, Sudan and Libya intervened on behalf of the government, and numerous militias aligned with either side emerged. The catastrophic ensuing violence was



only contained after the governments in the region agreed to a ceasefire in 1999.

The Lusaka Ceasefire Agreement (S/1999/815), a primarily subregional initiative aided by international (and Council) pressure, called for the establishment of a UN peacekeeping mission under Chapter VII. Though the agreement contained clauses on the protection of human rights and the establishment of state authority, the peacekeeping force was requested to deal with issues related to the implementation of the ceasefire between the parties, disarming armed groups and the reintegration of those groups.

That initial peacekeeping response was more modest than expected in the region. It only authorised 90 military observers in resolution 1258 (1999). In the following months, the Council went further and established the UN Organisation Mission in the Congo (MONUC), expanding the mission to 5,537 military personnel in resolution 1291 (February 2000). It also provided MONUC with a protection mandate under Chapter VII, in addition to human rights monitoring and assistance in human rights protection. Resolution 1291 also called on MONUC to develop an action plan to implement the Lusaka Ceasefire Agreement, with particular emphasis on the disengagement and redeployment of the parties' forces and the comprehensive disarmament, demobilisation, resettlement and reintegration of all members of all armed groups referred to in the ceasefire agreement. (As the account below indicates, the integration of former rebels has proven to be an immense challenge. Many groups and individuals have gone through the process, yet in practice have continued to adhere to a separate chain of command rather than that of the government authorities.)

In the next few years, the Council took several steps aimed at addressing a number of rule of law-related issues. It has also visited the DRC regularly, and the rule of law figured prominently in the scope of these visits. Some of these visits influenced subsequent Council decisions on the DRC and have most likely influenced the Council's overall approach to the situation. (The DRC has been the country that the council has visited the most: 11 times to date.)

Visiting the country in May 2000, the Council recognised that lack of progress on disarmament, demobilisation, reintegration and resettlement of armed groups will make it difficult to restore the rule of law in the eastern parts of the country (S/2000/416). In a June 2000 presidential statement (S/PRST/2000/20) the Council established an expert panel "on the illegal exploitation of natural resources and other forms of wealth". In a visit to the DRC in May 2001, the Council mission recommended that the Security Council take the necessary action needed to halt illegal exploitation (S/2001/521). On the day of the mission's arrival in Kinshasa, President Laurent Kabila repealed a decree banning political parties in the DRC.

During its April-May 2002 visit to the DRC, the Council was exposed to what it termed "the serious violations of human rights and the appalling humanitarian situation of much of the population in the Democratic Republic of the Congo" (S/2002/537). After it received reports of large-scale atrocities—such as the report of the Office of the High Commissioner for Human Rights on the situation in Kisangani presented to the Council by the High Commissioner in July 2002 (S/2002/764) or later on the situation in Ituri (S/2003/216)—it called in resolution 1468 (2003) for the military officers named in these reports to be brought

to justice through credible processes and encouraged the establishment of a truth and reconciliation commission to determine responsibility for human rights violations. Resolution 1468 went on to ask the Secretary-General to enlarge the human rights component of the mission to assist in the investigation of human rights violations and in particular to increase the number of human rights personnel and military observers in Ituri.

In resolution 1457 of 24 January 2003, the Council took note of the report of the panel of experts on natural resources and other forms of wealth (S/2002/1146; established the panel in June 2000) and called upon relevant actors to assist governments in the region in the establishment of institutions to control these resources. But it did not take any action on the matter.

The withdrawal of Ugandan troops in April 2003 led to the deterioration of the security situation in Ituri. As MONUC was incapable of providing protection for the civilian population, the Secretary-General requested that the Council authorise an intervention force to stabilise the situation in the town of Bunia (S/2003/574). The Council quickly responded by authorising an Interim Multinational Emergency Force (IMEF) on 30 May 2003, with a mandate to protect civilians in the city until 1 September 2003 (S/RES/1484). The EU-led mission rapidly deployed thereafter.

In the midst of these events, the Council visited the DRC in June 2003 (S/2003/653), including Bunia. While the Council was in Bunia, local actors requested that it ensure that MONUC was provided with capabilities similar to that of IMEF, upon the latter's departure. Several Council members contemplated whether MONUC's mandate in Ituri could be separated from its mandate in the rest of the country.

Since IMEF was meant as a temporary, stop-gap measure, in July 2003 the Council adopted resolution 1493, authorising MONUC to use “all necessary means” to protect civilians and improve security conditions. In other regions of the DRC, such authorisation was conditioned on whether the mission “deems it within its capabilities”, giving MONUC discretion whether to use force to fulfil its mandate. And while a transition government was set up in the DRC in the aftermath of the civil war, the Council also called on MONUC to provide assistance in security sector reform to foster the establishment of the rule of law in the DRC. The resolution also urged the transitional government to place the establishment of the rule of law and an independent judiciary among its highest priorities.

In early 2004 media reports began to circulate alleging widespread sexual exploitation and abuse by MONUC personnel in Bunia. The DPKO subsequently approached the Office of Internal Oversight Services (OIOS) to conduct an investigation into the allegations, corroborating several of them. In its report of January 2005, OIOS made recommendations for corrective action based on its findings.

Nevertheless, violence and lawlessness continued on the ground. In his report in August 2004 (S/2004/650), the Secretary-General painted a bleak picture, highlighting the lack of progress in the DRC and escalating violence and tensions involving the Congolese army and the *Forces Armées de la République Démocratique du Congo* (FARDC). The report followed the seizure of Bukavu in June 2004 by the dissident forces led by Laurent Nkunda. (Nkunda, a rebel leader during the second civil war, joined the transitional coalition government of Laurent Kabila in 2003 and was promoted to general in the

Congolese Army. But he never took up his post, instead forming his own militia, the *Congrès National pour la Défense du Peuple* (CNDP), denouncing the government in Kinshasa.)

The Secretary-General informed the Council in his report that MONUC would establish a rule of law task force, composed of UN bodies and other international partners, and a national rule of law advisory group involving local representatives. But he also noted the lack of engagement on promoting the rule of law on the part of the DRC government. The Secretary-General identified MONUC’s key priority in fulfilling its mandate as assistance to the electoral process, security sector reform and assisting the adoption of essential legislation to restore public order. In addition, the Secretary-General was highly critical of the lack of clarity in the mandate given to MONUC in resolution 1493, including with respect to the use of force, as the resolution called for the use of “all necessary means” by MONUC in all areas except Ituri. He noted the wide gap between the expectation that MONUC would restore peace to the DRC and the mission’s ability to meet those expectations. Though the Secretary-General did not explicitly call on the Council to expand MONUC’s military mandate, his report laid down a strategic framework to provide stability in other regions, recommending 13,100 additional troops for the task.

In response, the Council revised MONUC’s mandate (resolution 1565) in October 2004, adding an additional 5,900 troops and the authorisation to use all necessary means to protect civilians throughout the DRC. In addition the Council expressed grave concern at the allegations of sexual exploitation and misconduct by civilian and military personnel and requested that it be kept informed of developments. The new mandate also included

the promotion and protection of human rights, while working to ensure that those responsible for human rights violations were brought to justice. MONUC was also tasked with supporting FARDC operations to disarm foreign combatants and facilitate the repatriation of all illegal foreign armed groups and their dependents from the DRC to their respective countries of origin. MONUC was to train the DRC police forces.

Following the adoption of resolution 1565, the Council visited the region in November 2004 (S/2004/934). The Council noted that much work was needed in preparation for the elections and in the reform of the armed forces and the police. In November 2005 the Council again visited the DRC. A key objective of the visit was to evaluate the extension of state authority, security sector reform, and the rule of law in the DRC. The Council found that impunity with respect to human rights and economic crimes was prevalent in the DRC. The lawlessness was further exacerbated by the fact that many members of the military and the police had not been paid for long periods of time. In resolutions 1635 of 28 October 2005 and 1649 of 21 December 2005, the Council called on the transition government to initiate reforms in the military and the national police.

In Council resolution 1653 adopted in January 2006 and addressing the Great Lakes region, countries including the DRC were encouraged to strengthen and institutionalise respect for human rights, good governance and the rule of law and to bring perpetrators of grave violations of human rights to justice.

In resolution 1756 of May 2007, the Council finally implemented the Secretary-General’s recommendations of August 2004 for a more robust UN presence in the Kivus. The resolution also contained expansive language on

Council-Mandated Sanctions

The Council first mandated sanctions against the DRC in July 2003 in resolution 1493, imposing an arms embargo on all non-state entities in the country.

The DRC Sanctions Committee was created in March 2004 in resolution 1533 to implement the sanctions. Resolution 1596 of April 2005 expanded the regime to include an assets freeze and travel ban on those designated by the sanctions committee. In July 2006, the Council expanded its sanctions regime to apply to individuals listed for recruiting child soldiers and those committing serious violations of international law involving children (resolution 1698).

While renewing the sanctions in August 2007 (resolution 1771), the Council emphasised the importance

of security sector reform, disarmament, demobilisation, repatriation, resettlement and reintegration (DDRRR) and police reform for future adjustments in the sanctions regimes. Subsequently, in several resolutions, it called on the DRC to urgently intensify these efforts and develop a strategy to this end (resolution 1794 of 2007 and later resolutions).

Resolution 1807 of March 2008 added additional criteria for including individuals on the sanctions list for violations of human rights against women, including sexual violence. But it was not until March 2009 when the 1533 Sanctions Committee added four individuals to its travel ban and assets freeze list, citing as the reasons for listing three of them the abduction and sexual abuse of girls and the recruitment and use of child soldiers. These listings were based on a report of the group of experts from February 2008.

The Secretary-General's Special Representative for Children and Armed Conflict, Radhika Coomaraswamy, provided information to the DRC Sanctions Committee on six individuals, in a briefing on 21 May 2010. On 1 December 2010, the Committee added four people to the list of individuals and entities subject to the assets freeze and travel ban. One of the individuals is a lieutenant colonel in the FARDC, who was listed for several human rights violations, including violations of international law regarding children. On the initiative of Germany, the Committee also intends to hear a briefing from the Special Representative of the Secretary-General on Sexual Violence in Conflict, Margot Wallström, possibly before the end of the year.

MONUC's role in assisting security sector reform, strengthening democratic institutions and the rule of law, the development of a transitional justice strategy, promoting good governance and accountability, promoting and protecting human rights, investigating human rights violations and ending impunity. The Council called again on the government to develop various reform strategies and end impunity.

In June 2008, the Council paid another visit to the DRC (S/2008/460). Though exposed to what it termed the "grave humanitarian situation" in the eastern DRC, the Council expressed encouragement at the government's determination to accelerate critical reforms, in particular security sector reform, justice reform and strengthening democratic institutions. It took the view that MONUC should maintain its current strength, while preparing for a future drawdown.

Yet soon after, several events with huge impact on civilians took place in the second half of 2008. Large-scale fighting erupted in August between FARDC and Laurent Nkunda's CNDP. On 27 and 28 October, Congolese protesters attacked UN headquarters in Goma, North Kivu, over what they saw as insufficient action against Nkunda's offensive. At that time, the CNDP reached the outskirts of Goma. The CNDP continued to challenge the legitimacy of the elected Congolese institutions, which it accused of mismanagement and collusion with the *Forces Démocratiques de Liberation du Rwanda* (FDLR). (In their report of 12 December 2008, the group of experts monitoring the sanctions regime accused both Rwanda and the DRC of supporting rebels fighting in eastern DRC and claimed to have found strong evidence that the FARDC collaborated with the FDLR during this period.)

The Council was briefed on developments on the ground several times and was asked to mandate a reinforcement of MONUC as early as 12 September. Its reaction, however, was limited to a presidential statement, noting that it would "study expeditiously that request in view of developments on the ground" (S/PRST/2008/40 of 29 October 2008). By the time an increase in troop levels was authorised on 22 December 2008 in resolution 1856, the fighting in Goma had resulted in hundreds of civilian casualties and approximately 250,000 displaced persons. The DRC was called on to establish a vetting mechanism to screen out candidates for official positions with a record of violating human rights and international humanitarian law. The Council further requested the Secretary-General to present it with recommendations on handing over MONUC's rule of law tasks in western DRC to the UN country team and

bilateral donors, so as to enable MONUC to focus its resources on the eastern parts of the country.

At the time of these events, the crisis was compounded by exchanges of fire across the border between Rwanda and the DRC, as well as a resurgence of armed groups in Ituri and atrocities committed by the Lord's Resistance Army (LRA), which was now operating in the DRC. In what became known as the "2008 Christmas massacres", the LRA attacked villages in Haut-Uele province, killing hundreds (reports range from 189 to over 800 people), abducting children and displacing thousands.

In January 2009, Bosco Ntaganda—CNDP's second-in-command, for whom there is a standing ICC arrest warrant—denounced Nkunda as leader of the CNDP. Nkunda was placed under house arrest by the Rwandan authorities later that month, where he remains as of this writing. On 23 March 2009, Bosco agreed to integrate CNDP forces into those of the DRC, and the government committed to legislate a reconciliation mechanism and a law of amnesty for CNDP members "in accordance with international law" (which could mean that amnesty would not be provided for international crimes) and to give precedence to security sector reform. (The amnesty law was adopted on 7 May 2009, covering acts of war committed since 2003 but not war crimes.)

During the Council's mission to the DRC in May 2009, the Council visited a hospital for rape victims in Goma and further witnessed the lack of accountability for such crimes. Shaken by the experience, members of the delegation decided on the spur of the moment to raise the names of five alleged perpetrators of sexual violence, all high-ranking officers within the FARDC, in meetings with the prime minister and the president of the DRC the next day.

Within weeks, all five were relieved of their posts. The DRC authorities have initiated judicial proceedings against three of these officers. A fourth, for whom there was already an arrest warrant due to a rape conviction in Bukavu, continued commanding a battalion of troops in Equateur province. His commanding officer refused to transfer him to the military prosecutor. The fifth is presumed to have fled the country. On 5 July 2009, President Kabila announced a zero-tolerance policy within FARDC with respect to lack of discipline and human rights violations, including sexual and gender-based violence.

Several new military offensives were launched in 2009 by the Congolese army with support from neighbouring countries and in some cases also with assistance from MONUC. Though military success was achieved, the actions led to retaliation by armed groups against civilians and was accompanied by actions by undisciplined and recently integrated FARDC elements, resulting in reported mass human rights violations. Human Rights Watch estimated in May 2009 that at least 200 civilians had been killed since the start of the joint campaigns against the FDLR and that between December 2008 and June 2009 more than 1,000 had been killed, 600 abducted and 140,000 displaced by LRA reprisal attacks. In addition, human rights groups raised concerns about the role played by known human rights abusers in the military operations supported by UN peacekeepers, in particular Bosco Ntaganda. The DRC government, however, refused to arrest Ntaganda.

In December 2009, the Secretary-General reported that in response, MONUC had developed a policy paper specifying that it would not participate in or support operations with FARDC

units if there were substantial grounds for believing that there was a real risk that such units would violate human rights law (S/2009/623).

Meanwhile, starting late in 2009, President Kabila had consistently pressed for a drawdown of MONUC in the immediate future. (During the Council's open debate on the DRC on 16 October 2009 [S/PV.6203], the DRC Ambassador to the UN conveyed his government's wish for the UN to scale down gradually, noting a timetable for the disengagement of UN troops while at the same time also providing support to the Congolese government to ensure security and strengthen the rule of law.)

The Council then adopted resolution 1906 on 23 December 2009, renewing MONUC's mandate only until 31 May 2010. The resolution reprioritised MONUC's focus onto protection of civilians and asked MONUC to continue its support for extending state authority by strengthening democratic institutions and the rule of law within the framework of the government's June 2009 stabilisation and reconstruction plan, co-managed by the DRC government and MONUC. The Council urged the DRC to fully implement its "zero-tolerance policy" with respect to human rights violations within the FARDC and reiterated that MONUC support for FARDC operations would be conditioned on the latter's compliance with international law.

On 30 March 2010, the Secretary-General reported back to the Council, focusing on the conclusions of his technical-assessment mission on the future of the Council's mandate in the DRC (S/2010/164), following the military performance of the FARDC in the Kivus. While there was some progress, the overall implementation of the agreements of 23 March remained slow and CNDP elements had maintained and



established new parallel administrations and tax-collection posts in parts of North Kivu. Meanwhile, armed groups—in particular the FDLR and the LRA, as well as elements of the FARDC, the National Police, and other officials entrusted with protecting the population—continued to commit serious human rights violations. Overall, the technical-assessment mission noted the absence of effective oversight, including by the Parliament, of the security sector and lack of capacity in the police, correctional and civilian judicial system. Though some soldiers have been prosecuted for human rights violations, enforcement of President Kabila's zero-tolerance policy with regard to indiscipline within FARDC remained limited. MONUC informed the Council of its intention to establish prosecution-support cells to assist and advise FARDC military justice authorities in combating grave human rights violations, including sexual violence.

Besides protection of civilians and security sector reform, the technical-assessment mission recommended that MONUC focus on integrating the efforts of MONUC and the UN country team in joint operations and programmes in the areas of protection, assisting in building the capacity of national institutions and the rule of law. The assessment mission concluded that the improvement in the security situation in eight of the country's 11 provinces, mainly in the western DRC, provides a sound basis for devising a responsible exit strategy for the MONUC peacekeeping force, with periodic review following the first stage. It further recommended that the reconfiguration of the force include a rule-of law and protection component. It also recognised as urgent the establishment of state authority, through the deployment of police, territorial

administration and rule of law institutions, in areas freed from armed groups, to avoid a security vacuum that might be created if national rule of law and security institutions were not deployed to strategic areas in a timely manner as MONUC drew down. President Kabila voiced the view that the security situation warranted the complete drawdown of MONUC within a year's time. The government was of the view that the urgent tasks enumerated by the assessment mission should not serve as preconditions, but rather accelerators that should help to spur the drawdown process.

With the position of the DRC government aired publicly, the Council planned a five-day visit to the DRC in April 2010, with its central focus being MONUC's mandate. The visit would have been an opportunity for Council members to assess the needs of the DRC and to underline their view that a withdrawal based on the achievement of critical tasks, rather than a fixed timetable, was essential. However, due to the volcanic ash cloud emanating from Iceland that paralysed flights all over the globe, the trip was postponed to mid-May and considerably shortened.

During what was essentially a two-day visit, members of the Council met mostly with DRC officials and did not leave Kinshasa. They heard from President Kabila and other officials that the situation in the DRC was calm and that major institutional reforms were under way. The officials reiterated their position that MONUC should begin its drawdown from the DRC. Some DRC officials went so far as to say that they viewed the drawdown as an agreed issue, or "a given" (S/2010/288). The Council also heard different opinions from the President of the Senate, Léon Kengo wa Dondo, and several NGO's: that a drawdown must be linked to

improvements in the security and human rights situation, the extension of state authority throughout the DRC, progress on SSR and accountability mechanisms. The short and hastily planned visit, just days away from the deadline to renew the peacekeeping mission's mandate, did not produce any recommendations, and the Council refrained from challenging the position of the DRC government regarding the situation on the ground.

In light of the position of the DRC government, the Council overhauled MONUC following the visit in resolution 1925 of 28 May 2010 and transformed the mission into the UN Stabilisation Mission in the DRC (MONUSCO), with an initial one year mandate. While authorising a drawdown of 2,000 troops, the Council, as suggested by the Secretary-General, decided that future reconfiguration will depend on the completion of military operations, the protection of civilians and the establishment of state authority and the rule of law. MONUSCO's priorities were, first, protection of civilians, including continued support for DRC military operations in accordance with international law, and then stabilisation and peace consolidation, including institutional reform and support for the establishment of state authority and the rule of law. In accordance with the resolution, a joint DRC-MONUSCO assessment process on the reconfiguration of the mandate was initiated. As of yet, the process has not found a need for reconfiguration of the mandate.

MONUSCO's rule of law component, though initially small when established under MONUC in 2004, has since expanded to support wider security sector reform, including civilian and military justice and reform of the penitentiary system. The Rule of Law Section assists the existing DRC

capacity, supports mid-term coordinated strategic plans to reform justice sub-sectors—such as legislation, military justice, prisons and courts—and implementation of longer-term reform strategy, including building capacity to investigate and try cases involving gross violations of international humanitarian and human rights law.

It was initially thought by the Council that the expansive FARDC operations of 2008 and other regional efforts would stabilise eastern DRC, as they took a heavy toll on several rebel groups, including the LRA and the FDLR. But mass human rights violations on the part of the FARDC and rebel groups have continued to occur, and lawlessness is prevalent.

In particular, the scale of atrocities committed against women in the DRC is unimaginable. A study published by the American Journal of Public Health on 11 May 2011 concluded that approximately 1.69 to 1.80 million women in the DRC had reported being raped in their lifetime, more than 400,000 of them in the 12 months preceding the study period in 2006 and 2007. Other studies and figures made public all paint the same horrific picture. Though the Council has been informed of this issue on various occasions, the ample amount of incidents makes clear that the scale and recurrence of sexual violence in the DRC has not diminished.

One incident that stood out in its scale—and lack of adequate response—took place from 30 July to 2 August 2010, just a few months after the establishment of MONUSCO, when 387 civilians, including 300 women, 23 men, 55 girls and nine boys, were raped by rebel groups in Walikale, North Kivu. One of the affected villages was reportedly 30 kilometres from a MONUSCO forward operating base in Kibua, where 80 military personnel were stationed,

a fact for which MONUSCO received much criticism. The mission claimed that it was made aware of the events only on 12 August, despite some indications that MONUSCO received information as events developed. In addition, MONUSCO's first public reports on the events came out on 21-22 August, and the Council was only officially informed through the UN media spokesperson on 23 August. Wallström and her office were also absent in responding to these events. In effect, the whole UN system—including the Council—failed to prevent, react or respond in a timely manner to the events.

In a press statement on 26 August (SC/10016), the Council members expressed their outrage at the mass rape. The Council was briefed on the events by Wallström and then-Assistant Secretary-General for Peacekeeping Atul Khare on 7 September. Khare, among other things, recommended that the Council impose sanctions on the alleged perpetrators of the events. The Council adopted a presidential statement on 17 September (S/PRST/2010/17), stressing the responsibility of the DRC to ensure that human rights and international humanitarian law are respected in the DRC, as is the rule of law. It also called on the DRC to bring to justice those responsible for gross human rights violations. As of this writing, only one person has been arrested by the authorities regarding these incidents.

Another highly publicised series of events involving the Council and rule of law issues unfolded later in 2010, when the Council declined to discuss a study it had previously mandated in a resolution. The Office of the High Commissioner for Human Rights had conducted a comprehensive multi-year “mapping exercise” documenting a decade of past human rights violations

in Zaire and then DRC (from 1993 to 2003). At the time of the launch of this process, the Council had called on the DRC to fully support the conduct of the exercise in resolution 1794 (2007). The report, completed in 2010, contained allegations of genocide committed by Rwandan forces—with others—against people of Hutu ethnicity in 1996 and other grave breaches of human rights and international humanitarian law committed by various government forces and groups. Angola, Burundi, the DRC, Uganda and Rwanda all objected to the findings and conclusions of the exercise. Rwanda also threatened to pull all of its troops out of peacekeeping missions if action were taken based on the mapping exercise. Following press leaks, the report was officially released on 1 October 2010. The Council never discussed the matter.

Some prosecutions for sexual violence have taken place in the last year in the DRC. On New Year's Day of 2011, members of the FARDC reportedly committed acts of sexual violence involving at least 50 women in the town of Fizi, in South Kivu. On 21 February, a military court in South Kivu sentenced Lt. Col. Kibibi Mutware and three subordinate officers to 20 years imprisonment for their role in these events. Five other soldiers received sentences of between ten and 15 years.

On 18 May, the Council held a debate on the DRC. Addressing the Council, the Secretary-General said that 1.7 million people remained displaced, and human rights violations continued on a large scale. The Congolese minister for international and regional cooperation surveyed the progress that had been achieved in the DRC and the government's plans for further advances. He suggested that it was time for the reconfiguration of MONUSCO, with a progressive yet steady withdrawal of its

military component. (This recurrent position of the DRC was slightly softened in 2011 due to the upcoming elections in November.) Many Council members focused on the continuing human rights violations and lack of progress in institution building. Russia, for example, stated its concern that “the number of human rights violations in those territories is not decreasing”. It added that those crimes “must not go unpunished” (S.PV/6539). In a presidential statement following the debate, the Council underlined its concern with the persisting violence, including sexual violence, and human rights abuses against civilians, particularly in the eastern provinces and areas affected by the LRA (S/PRST/2011/11).

Resolution 1991 of 28 June renewed MONUSCO’s mandate under the same terms and linking future reconfiguration of the mandate to the same benchmarks enumerated in resolution 1925. The Council again stressed the lack of security and the abuse of human rights in the provinces of North and South Kivu and Orientale. The resolution said limited progress in establishing and strengthening rule of law institutions remained challenging, recognising that limited progress was achieved on all fronts in the DRC in the year since the establishment of MONUSCO.

Lack of improvement in the security and human rights situation in the eastern parts, accompanied by weak state authority in the DRC in general, has also resulted in the Congolese people’s disappointment in MONUC, now MONUSCO, and the role it has played in the DRC. Animosity also relates to continuing allegations of sexual abuse and misconduct by MONUC peacekeepers in the DRC, initially reported in 2004. In a briefing to the Council on 27 July, MONUSCO force commander Lt. Gen. Chander Prakash reported that

allegations of sexual abuse by soldiers serving in MONUSCO have declined by 75 percent since 2008. Yet in 2011 MONUSCO still leads peacekeeping missions in the number of complaints of sexual misconduct. The UN established the Conduct and Discipline Unit (originally the Conduct and Discipline Team) in November 2005 as part of a series of reforms in UN peacekeeping designed to strengthen accountability and uphold the highest standards of conduct. Yet responsibility for judicial procedures still lies with the contributing states, and criminal proceedings by states against their own soldiers have been scarce.

Conclusions and analysis:

- As with UNMIL, MONUC’s and MONUSCO’s mandates included robust authorisation and rhetoric about building and strengthening the rule of law. Yet successful implementation of these mandates may have been hampered by lack of adequate resources, inadequate size of missions and lack of qualified personnel on rule of law and institutional reform. As with some other issues, the Council’s engagement on the DRC has been uneven and at times thin. Within this context, the rule of law does not appear to reflect a coherent and long-term plan to improve the situation in the DRC.
- The Council has included rule of law elements, such as security sector reform, police reform and judicial reform, as benchmarks for reconfiguration of MONUSCO’s mandate. These may provide a certain incentive to achieve results, as the DRC is interested in reducing UN presence in the country.
- Cooperation of local governments with UN and bilateral efforts is essential for the successful establishment of rule of law institutions and reforms. As opposed to Liberia, the DRC’s

relations with the Council are tense, and cooperation with MONUSCO is fragile, hampering the Council’s ability to pressure or create incentives for rule of law achievements.

- Where the protection of civilians is a major concern, as it is in parts of the DRC, the Council tends to choose to prioritise protection over rule of law issues, in terms of resources and attention. As conflicts subside, more attention is given to the rule of law.
- Lack of progress on rule of law efforts may lead to regression in the security situation and the level of adherence to human rights. Military achievements have not been followed-up by establishing the rule of law throughout the DRC, leaving it susceptible to such regression.
- Protecting human rights and holding their violators accountable are integral elements of the rule of law and the establishment of state authority. The DRC situation exemplifies that without these elements, other rule of law components such as security sector reform, judicial reform and good governance are unattainable.
- The existence of political interest or lack thereof, on the part of Council members, in the DRC, has affected the successful implementation of the rule of law aspects of the mandate. Certain Council members, particularly France but also others such as the UK and the US, provide bilateral support to the DRC. (This includes training of FARDC units; the US also closely supports the Uganda People’s Defence Force [UPDF] in its operations in the region against the LRA.) Nevertheless, as opposed to Liberia, where the US has a strong interest that manifests itself in sustained and extensive bilateral support, no Council members have a similarly strong and ongoing interest to invest political efforts and financial

resources in the DRC. With the strongest Council concern now being the reduction of costs, quick solutions are preferred, while failings and misconduct of local authorities have often been ignored. The premature transformation of MONUC to MONUSCO, despite the fact that the situation on the ground did not warrant such a transformation and a drawdown, reflects the lack of will and consistency on the part of the Council to engage and invest in improving the situation in the DRC.

- Lack of strong political interest in the DRC also results in less pressure that Council members can assert bilaterally on the DRC government to cooperate and implement rule of law reforms in the country. Since the beginning of 2010, the DRC has displayed increasing cooperation with MONUSCO in the joint assessment process while lobbying for an exit strategy and drawdown of MONUSCO. The Council, in order to secure such cooperation, has refrained from introducing new initiatives that might improve the rule of law, so as not to strain the relations between the Council and the local government.
- Sanctions can be used as a tool to alter the behaviour of human rights offenders and deter potential offenders from obstructing rule of law efforts. Yet the lack of political will to hasten such action and the reluctance to sanction elements within the FARDC for political reasons hamper this tool as an effective mechanism in the DRC. Sanctions imposed several months or more after the relevant events took place are not likely to achieve the same deterrence as timely imposed sanctions that would be associated both by the perpetrators and the population at large with a specific behaviour or act committed by a sanction's target. They are also less likely to foster trust amongst

the local population in the Council's commitment to better the situation in the DRC.

- Though the addition of sexual violence and protection of children as criteria for listing by the DRC sanctions committee is noteworthy, it took years for the Council to first make practical use of these provisions and, overall, it has remained infrequent.
- Sporadic prosecution of perpetrators of violence, accompanied by disregard of some ICC warrants, contributes to an atmosphere of impunity and lawlessness in parts of the DRC. As opposed to the example of Charles Taylor in Liberia, the lack of accountability is an impediment on other rule of law issues, such as consolidating state authority and institutional reforms.
- A timely reaction by the Council to events as they unfold can make a difference in protecting civilians from mass violations of human rights. Hesitant responses can prove costly and also might undermine any progress on rule of law and the establishment of state authority throughout the DRC in affected regions.
- The relatively frequent Council missions to the DRC (11 in total) enabled the Council to maintain a "hands on" approach and correctly assess the situation on the ground. Yet visits only touching upon the surface of the issues, consisting mostly of meetings with officials, may produce a distorted image of the country situation (for example, the Council's visit to the DRC just before violence broke out in the fall of 2008).
- The Council has proved in several instances that when it asserts itself, it can achieve results, as in the example of the five officers who were removed from their positions after the Council raised their cases with the country's top officials during the Council visit in

May 2009. At other times, the Council has failed to show consistency; for example, it asked the Secretary-General to elaborate the concept of operation and rules of engagement of MONUSCO in resolution 1925 (2010). These were never elaborated upon before the Council, which has not followed up on the matter.

Part II: The Security Council Sanctions Regimes and the Rule of Law

9. Historical Development of the Use of Sanctions

The Council's authority to impose binding sanctions on states stems from Article 41 of the Charter, as part of the arsenal of tools it possesses under Chapter VI and Chapter VII to maintain or restore peace and security. Article 50 is also of relevance, because it gives states facing "special economic problems" arising from the implementation of Council decisions the right to consult with it on a solution to those problems. Sanctions can come in many forms and shapes and may include various measures, ranging from imposing full-fledged comprehensive embargoes on states to trade restrictions on specific commodities, such as minerals or other natural resources, to more targeted measures against individuals involving travel bans and asset freezes. They can apply to states or non-state actors. They can target both individuals and entities and may be put in place for a variety of goals, from addressing violations of territorial integrity to attacks against civilians, recruitment of children as soldiers, committing sexual violence as part of military operations, spoiling peace agreements or committing grave human rights violations. In applying



sanctions, the Council may be pursuing a variety of goals for various motives, including action to deter international terrorism and prevent states or non-state actors from acquiring or developing weapons of mass destruction.

Like many other Chapter VII powers, the use of sanctions by the Council during the Cold War was rare. Up until 1990, the Council imposed sanctions only twice, on Southern Rhodesia, starting in 1966 (S/RES/221 and S/RES/232 and subsequent resolutions, terminated by the Council in S/RES/460 of 1979) and on South Africa starting in 1977 (S/RES/418, terminated by the Council in S/RES/919 of 1994). After the end of the Cold War, a new pattern began to emerge, starting with Iraq in 1990 (S/RES/661), and sanctions have subsequently become a frequent tool used by the Council to gain leverage in a conflict situation short of the use of force. (For a complete list of the various sanctions regimes, see Annex II.)

As the resort to sanctions has expanded in Council practice, Council members have continuously developed and adapted the nature of sanctions to enhance their effectiveness, improve compliance, respond to concerns about the humanitarian impact and address political concerns, by some members, as to whether or not heavy sanctions actually incentivise protagonists towards the desired behaviour. After the Council imposed the first comprehensive sanctions, on Iraq, many states expressed concern about their impact on the population and the benefits and legitimacy of sanctions at large. When the Council was considering imposing aviation sanctions on Sudan, neighbouring states argued that the proposed sanctions would have adverse political and security impacts on them as well. The Council then proceeded to adopt resolution 1070

(1996), which imposed a flight ban on Sudan but delayed the coming into force of the sanctions. A humanitarian assessment report conducted by the Department for Humanitarian Affairs (now the Office for the Coordination of Humanitarian Affairs) in February 1997 contributed to the unease, as it stated that the flight ban would have adverse humanitarian effects. Subsequently, sanctions were never applied.

By the mid-1990s, it was clear that sustained comprehensive trade embargoes have adverse humanitarian effects. The humanitarian impact of comprehensive sanctions on Iraq, for example, was not given weight by Council members at first. Nevertheless, as the effect of the sanctions and the response of the Saddam Hussein regime on the Iraqi population became apparent, the Council looked for ways to address the humanitarian situation. The Iraq sanctions committee adopted procedures to expedite the import of essential supplies and the UN oil-for-food programme was conceived as a way to provide relief. Nevertheless, the sanctions remained controversial, and a split emerged between the permanent members, with China, France and Russia (all of whom had significant financial stakes in Iraq) pushing for an end to these sanctions, while the UK and the US insisted on maintaining them. In the end, resolution 1409 (2002) modified the sanctions regime to include a specialised list of prohibited goods rather than the wider trade embargo initially placed on Iraq.

Yet the most substantial response to the pushback against the Council's use of full-scope sanctions was the evolution of the sanctions tool in the direction of "smart sanctions" or "targeted sanctions", designed to better achieve political goals rather than punish entire populations indiscriminately. They were

also seen as better suited to conflicts where the parties were not sovereign states. As opposed to comprehensive trade embargoes, targeted sanctions involve quite detailed specificity as to the measure involved, such as travel bans, arms embargoes or restrictions on the trade in specific commodities.

The first targeted sanctions—targeting a specific actor rather than a state—were imposed against the *União Nacional para a Independência Total de Angola* (UNITA) in Angola, in resolution 864 (1993), after UNITA's military actions were determined to be a source of instability. Later, the Council would progress into imposing sanctions on the leadership of UNITA (S/RES/1127) and on diamonds not certified by the government to target UNITA's main source of funding (S/RES/1173).

Around the same time, the Council's practice regarding sanctions also evolved as it dealt with the crisis in Haiti in 1993-1994. On top of the comprehensive sanctions imposed on the country in resolution 917 of 6 May 1994 (preceded by a petroleum embargo and freeze on government assets in resolution 841 of 16 June 1993), the Council resolution decided in the resolution to pressure the military regime led by General Raoul Cedras to comply with the Governor's Island Agreement and cease its human rights violations by imposing sanctions on key figures named by the Haiti sanctions committee. (This rethinking of sanctions was voiced in a non-paper [S/1995/300], prepared by the permanent members, declaring that future sanctions should be construed to minimise unintended adverse effects on vulnerable populations.)

One method of targeted sanctions was focusing the Council's efforts on specific individuals who hold decision-making powers or are personally

suspected of serious violations of international law. Thus, instead of denying entire populations access to all imported goods or the ability to export goods, the Council resorted to freezing the assets and limiting the movement of specific individuals in order to achieve a desired objective. Playing a substantive role in achieving these and other modifications of the Council's practice regarding sanctions were several policy initiatives sponsored by the governments of Switzerland, Germany and Sweden (discussed below).

The Council has devoted effort to improving its sanctions regime on the procedural level as well. On 17 April 2000, the Council established an informal working group to make recommendations on improving the effectiveness of the sanctions regimes (S/2000/319). Disagreement among Council members was prevalent, however, on issues such as temporal limits of sanctions and voting procedures in sanctions committees, resulting in a six-year delay before the working group's final report was issued in December 2006 (S/2006/997). Though many issues were left unresolved, the final report did produce some adjustments in Council practice, such as the establishment of the delisting "focal point" (see below).

Despite considerable disagreement between Council members, the Council has developed a practice over time regarding sanctions, usually forming a subsidiary body (a committee of the whole) to administer and monitor each sanctions regime. These committees usually adopt guidelines that govern their working methods (although in some cases these have been decided by the Council itself). One general and crucial working method is that sanctions committees work by consensus, thus giving each member of the Council the power to block decisions— such as

listing or delisting. (On a few occasions, states have opted for adopting a sanctions-management decision through a Council resolution, in accordance with the usual voting procedures, in order to bypass the unwritten consensus rule of the sanctions committee.) In practice, the committees tend to work by a "no-objection procedure", whereby suggested decisions are circulated by the Chair and adopted after a set period of time if no state expresses an objection. In decisions regarding listings, states may place requests "on hold", in effect ensuring that a decision is blocked until such "hold" is retracted by the relevant state. In recent practice, such holds have been placed by the US and Russia, on the grounds that they must clear the listing in their domestic legal system prior to approval by the sanctions committee.

The chair and vice-chair of the committees are appointed from amongst the non-permanent members of the Council for terms of one or two years.

The Council has also developed a practice of establishing bodies to assist the committees in their tasks. These are monitoring bodies, usually staffed by outside experts hired on temporary contracts.

Many states, academics and others have criticised the Council's past and current practice regarding sanctions from a rule of law perspective. Some have questioned possible adverse effects on innocent persons. Others have focused on alleged violations of the rights of the targeted individuals resulting from having restrictions imposed on them without affording them various procedural and substantive rights as elaborated in international instruments and domestic constitutions. Many states accord their citizens certain rights aimed at curbing the arbitrary exercise of political power such as the

right to be heard, the right that decisions are taken transparently and are equal and impartial, consistent and well-reasoned. These are generally referred to as "due process" rights and are viewed as integral to the wider concept of the rule of law. In the 2005 World Summit Outcome Document, the General Assembly called on the Security Council to ensure that fair and clear procedures are developed for placing and removing individuals and entities on sanctions lists.

The due process issue has raised legitimacy concerns regarding some sanctions regimes in the eyes of many states. Lacking enforcement mechanisms of its own, the Council is dependent on the political will and ability of states to comply with its binding resolutions. Legal challenges to sanctions regimes in domestic, regional and international institutions, most prominently the 1267 sanctions regime (originally imposed on Afghanistan but then extended to Al-Qaida and the Taliban worldwide), have created legal obstacles for states in implementing Council sanctions and further deepened the perceived concerns about the Council's working methods regarding listing and de-listing. Subsequently, certain changes were introduced into the regime in recent years, including the establishment of the Office of the Ombudsperson, which will be elaborated upon below.

This part of our cross-cutting report will focus on the development of two sanctions regimes, the 1267 sanctions regime and the more recent 1973 Libya sanctions regime. Through the thorough analysis of these two different situations, the Council's past, present and possible future actions and dynamics regarding the rule of law in its sanctions regimes will be assessed.

10. The 1267 Regime and Due Process

The sanctions regime that is currently perhaps most widely identified with the Security Council's use of sanctions, in part because of the numerous controversies and legal actions that it has generated in the last several years, is the sanctions regime referred to as 1267. Originally established by resolution 1267 in 1999 to target the Taliban rulers in Afghanistan, the regime subsequently changed in nature and scope in response to the increased activities of, and interest in, Al-Qaida. The use of the sanctions increased and has arguably morphed in its nature from what was originally envisioned into a tool of the world-wide fight against terrorism.

10.1 The Establishment of the Regime and its Post-11 September 2001 Expansion

On 15 October 1999, acting under Chapter VII, the Security Council adopted resolution 1267, insisting that the Taliban cease to provide sanctuary and training for international terrorists and organisations. It also imposed sanctions on the Taliban collectively pending the surrender of Usama bin Laden, following his indictment in the US for the 7 August 1998 bombings of the US embassies in Kenya and Tanzania. The sanctions imposed included a flight ban on Taliban-operated flights and an assets freeze of Taliban funds and resources. The resolution also established a committee to implement the new sanctions regime and to consider requests from states for exemptions on humanitarian grounds. Finally, the resolution called upon states to strictly adhere to the sanctions regime, notwithstanding the existence of other international obligations.

In subsequent resolutions, the sanctions were expanded and altered

in nature and scope. On 19 December 2000, the Council adopted resolution 1333, imposing an arms embargo on Afghanistan, with the exception of non-lethal military equipment as approved in advance by the 1267 Sanctions Committee. The resolution also urged states to minimise diplomatic ties with Afghanistan and broadened the previous flight restrictions to and from Taliban controlled areas, unless the flight was pre-approved by the Committee for humanitarian needs, including religious obligations. The Council also requested the Secretary-General to appoint a committee of experts in order to assist the Committee in implementing the sanctions. The experts were also to draft a report with an assessment and recommendations on the humanitarian implications of the measures taken by the Council.

In the aftermath of the attacks of 11 September 2001 in the US, the Council adopted resolution 1390 on 16 January 2002, noting in the preamble its support for efforts to "root out terrorism, in accordance with the Charter of the United Nations". The resolution adjusted the sanctions imposed, adding a world-wide travel ban on members of Al-Qaida and the Taliban and those individuals, groups, undertakings and entities associated with them. The resolution also established the "consolidated list" of individuals and entities suspected of terrorist links to the aforementioned organisations.

On 17 January 2003, the Council adopted resolution 1455, reaffirming its commitment to combat terrorism in accordance with the Charter and with a view to improving the implementation of the sanctions regime. The Council requested the 1267 Committee to communicate the sanctions list to all UN member states every three months

and stressed the importance of states submitting to the Committee names and identifying information of members of Al-Qaida, the Taliban and their associates.

Following the 11 September attacks, the consolidated list, composed of 164 individuals and entities in August 2001, expanded dramatically, with 126 additional listings added by 25 April 2002. A fast-track approach was established for a state to place an individual on the consolidated list, simply by forwarding a name and only contingent on it not being objected by other Committee members within 48 hours (later extended to a week). Concerns were soon raised outside the Council that the 1267 listing procedure could be used to target individuals in order to advance national political goals, unrelated to the Taliban or Al-Qaida. Questions arose regarding the legitimacy of the process, which differed from the previous rationale for targeted sanctions—targeting specific individuals whose identities were widely known, usually key figures of a particular regime—rather than a long list of individuals and entities with whom most Council members were unfamiliar.

10.2 Challenges Based on Notions of Due Process and Rule of Law

The implementation of the 1267 sanctions regime has been criticised over the years by different actors. Arguments have been put forward that people have been stripped of their freedom of movement, their assets and social benefits based on scant or no information. Some, regardless of the justification of their listing, were placed in Kafkaesque situations.

Such is the case of Youssef Nada, still pending before the Grand Chamber of the European Court of Human Rights in

Strasbourg. Nada lives in Campione d'Italia, a 1.7 square kilometre Italian enclave surrounded by the Swiss canton of Ticino. On 9 November 2001, Nada was listed by the 1267 Committee and subsequently listed by Switzerland in an order that froze his assets. It further restricted his entry into or transit through Switzerland, effectively confining him to Campione d'Italia, interfering with his private and family life and damaging his reputation. On 10 March 2010, Nada was removed from the 1267 sanctions list (SC/9877), and 12 days later was delisted by Switzerland as well.

The 1267 sanctions have subsequently been challenged before different judicial and quasi-judicial bodies. These legal challenges seem to have potentially created difficulties for states to implement relevant Council resolutions at the national or regional level. In addition, the associated public outcry has raised questions regarding the legitimacy of Council sanctions as such as an air of secrecy surrounded the listing process, with no possibility for the targeted individual to challenge inclusion on the list *ex ante* or to submit the decision to a review after the event (delist).

Once on the list, chances for delisting seemed virtually impossible. The targeted individuals or entities did not have standing to raise their case before the 1267 Committee. In fact, no UN body or organ was competent to receive delisting requests from individuals. The only avenue available was for a state to file a delisting request, yet even then consensus within the Committee was required for a decision. Over the years, several states learned first-hand how difficult it was to get their citizens—listed due to mistaken identities—off the 1267 consolidated list.

Three specific challenges to 1267 listings filed before the judicial systems

and the UN Human Rights Commission warrant examination.

*The Yusuf, Kadi, Ayadi and Hassan cases concerned European Community Regulation No. 881/2002, adopted pursuant to resolution 1267. Individuals residing in Sweden, Ireland, Great Britain and Saudi Arabia were all listed in the annex to the regulation. They sought its annulment by the European Court of Justice (ECJ) on the grounds, inter alia, that it infringed on their rights to property, to a fair hearing and to an effective judicial remedy—all rights provided for in the European Convention on Human Rights. The Court of First Instance (now called the General Court) held that the obligations of EU members to implement sanctions under a Chapter VII resolution prevailed over fundamental rights as protected by the EU. The Court also held that it had no jurisdiction to inquire into the lawfulness of a Security Council resolution other than to check, indirectly, whether it infringed *jus cogens*. (As defined in Article 53 of the 1969 Vienna Convention on the Law of Treaties, “a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.)*

On appeal in the *Kadi* case, the ECJ took a different approach. On 3 September 2008, it struck down the EU implementing regulation because the appellant had not been afforded due process not being able to challenge the listing in a court. At the same time the Court disclaimed any power to find the Security Council resolution itself unlawful. Following the judgment, and adopting a different procedure in an effort to comply with the ECJ, the European Commission re-imposed the

measures on Kadi, who once again challenged the listing before the European courts. In its judgment of 30 September 2010, the General Court, following on the ECJ, again struck down the listing. The case is currently under appeal before the ECJ.

Abousfian Abdelrazik was jailed in Sudan in 1989 after the military coup by Omar Al-Bashir. In 1990 he managed to flee to Canada, where he was first granted refugee status and then citizenship. In March 2003, after some of his acquaintances had been charged or convicted for participating in terrorist attacks, Abdelrazik returned to Sudan, claiming he had been continuously harassed by the Canadian Security Intelligence Service (CSIS) in the wake of the 11 September attacks. Abdelrazik was twice detained in Sudan at the request of Canada in 2003 and 2005 spending 11 and 9 months in detention without charge, during which time he was questioned by the CSIS, as well as allegedly tortured by local authorities. After each detention he undertook several attempts to return to Canada, which were thwarted by the Canadian authorities. In July 2006, Abdelrazik was designated as an Al-Qaida associate by US and was subsequently listed by the 1267 Committee, subjecting him to an asset freeze and a travel ban under the relevant Council resolutions. A request for de-listing was initiated by Canada but was rejected by the Committee on 21 December 2007.

On 29 April 2008, fearing another detention period in Sudan, Abdelrazik sought safe haven in the Canadian embassy in Khartoum, where he has been living ever since. Having been denied travel documents and safe conduct to Canada, despite the fact that the Canadian authorities had expressed (and later reiterated) a commitment to allow his return,



Abdelrazik brought a case before the Federal Court in Ottawa, Ontario, claiming a violation of his right to return to Canada under the Canadian Charter of Rights and Freedoms.

On 4 June 2009, the Court found that Canada had violated his right to enter Canada. The Court also determined that, in order to effectively remedy the breach, Canada had to provide an emergency passport to Abdelrazik, as well as the airfare or additional airfare required for his to return to Canada. To achieve this result, the Court applied its own interpretation of Council resolution 1822. The Court ascribed the following shortcomings to the 1267 listing and de-listing procedures: no direct hearings available, not even in limited form; no independence and impartiality in the consideration of petitions, where the Committee acts as judge and executor; no reasoning provided for listings, not even in narrative form for some of the individuals listed and despite requirements to this effect in resolution 1822 and finally, the requirement that the petitioner prove a negative assertion (that he or she is not associated with Al-Qaida), something as easily achievable as proving that “fairies and goblins do not exist” according to the Court.

The Court concluded that these shortcomings amount to “a denial of basic legal remedies” and “a situation, for a listed person, not unlike that of Josef K in Kafka’s *The Trial*, who awakens one morning and, for reasons never revealed to him or the reader, is arrested and prosecuted for an unspecified crime.”

The judgment produced a dilemma for Canada: whether to comply with resolution 1822 and disobey its own Court, or to comply with its domestic Court and risk the political consequences of non-compliance with the resolution and thus Article 25 of the UN Charter.

Following the judgment, Abdelrazik arrived in Canada in June 2009 and filed a law suit against the Canadian government for compensation.

Nabil Sayadi and Patricia Vinck, a married couple of Belgian nationality living in Belgium, filed a communication before the UN Human Rights Committee under Optional Protocol I to the International Convention on Civil and Political Rights (ICCPR), which allows for individual complaints against state parties to the protocol. The couple ran the European branch of an American NGO that was placed on the 1267 consolidated list in 2003, after the initiation of a criminal investigation against the applicants in Belgium. Pursuant to EU and Belgian implementing legislation, the applicants’ financial assets were frozen and they were banned from traveling abroad. The applicants were not provided the reasons and the relevant information behind their listing. In 2005, the applicants obtained a Belgian court order, ordering the Belgian government to initiate delisting procedures before the 1267 Committee. Additionally, the criminal proceedings against them were dismissed. The Belgian government did initiate a delisting procedure, as ordered, but failed to obtain the necessary consensus in the Committee to delist the applicants.

The UN Human Rights Committee found that Belgium was in violation of the ICCPR as it had violated the couple’s right to liberty of movement, which is protected by article 12 of the covenant. Furthermore, Belgium was found to be in violation of article 17—which recognises the right of everyone to protection against arbitrary or unlawful interference with his or her privacy, family, home or correspondence and against unlawful attacks on his honour and reputation—despite the fact that Belgium had in effect requested the

removal of the petitioners from the list. The Committee found that Belgium was responsible for the continued listing of the couple and that publicly listing the full contact details of individuals and entities on the consolidated list, the standard practice of the 1267 Committee, was in violation of article 17. The decisions of the Human Rights Committee are not binding but are highly respected.

These legal and political pressures were a catalyst for—and accompanied by—diplomatic efforts by individual states to delist their nationals. For example, after three of its citizens and a related entity were listed in November 2001 based on US intelligence, Sweden requested the sanctions committee to delist the three individuals, after its own police investigation concluded that the allegations had no basis. Its request was blocked in February 2002 by Russia, the UK and the US. Sweden then negotiated with the US, which agreed to support the removal of two of the three, who were eventually delisted in July 2002.

Various challenges have also prompted several governments to undertake initiatives aimed at adjusting and reforming the Security Council application of sanctions. The Interlaken (2001), Bonn-Berlin (2001), and Stockholm processes (2003)—sponsored respectively by the governments of Switzerland, Germany, and Sweden—were undertaken to further the effectiveness and credibility of targeted sanctions. The Interlaken Process focused on the issue of targeted financial sanctions, whereas the Bonn-Berlin Process focused on travel and air traffic-related sanctions as well as on arms embargoes. The Stockholm Process dealt with the practical feasibility of implementing and monitoring targeted sanctions.

Another noteworthy initiative was launched by Austria (2008) on the Security Council and the rule of law. Its final report included recommendations on sanctions: improving the procedures of the Council by affording individuals the right to be informed of measures taken against them and their reasoning and the procedures available to them for review, the right to be heard (via submissions in writing) with representation by counsel and the right to review by an independent and impartial mechanism with binding decision-making powers. (Recommendations on independent forms of review, ranging from an ombudsperson to judicial review, and procedural safeguards were also provided in the research paper by the Watson Institute for International Studies of Brown University, which was commissioned by Germany, Sweden and Switzerland and submitted to the Council in 2006 [S/2006/33].)

The idea of creating an independent, impartial and judicially qualified panel for the purpose of examining listing decisions was also raised by the so-called “like-minded states” (Denmark, Germany, Liechtenstein, The Netherlands, Sweden and Switzerland). A discussion paper (S/2008/428 of 23 June 2008) prepared by these states suggested that this independent panel, modelled after the World Bank review panels, should make recommendations on delistings to the sanctions committee. These recommendations, along with the decision of the Committee, would then be published, while taking into account the need to protect confidential information. The paper also suggested that states cooperate with the panel “to the fullest extent possible”, in order to provide it with all the relevant information.

10.3 Subsequent Adjustments of the 1267 Sanctions Regime to Conform with Due Process and the Rule of Law

The Council’s reaction to challenges or criticisms regarding the 1267 regime on due process grounds was initially quite defensive. Council members would argue on several occasions, both publicly and privately, that the Council was not a judicial body and thus did not have judicial or semi-judicial rules. Yet it very gradually proceeded to modify some elements of the 1267 regime. The first adjustment aimed at improving the due process of listed individuals came in late 2002. On 20 December, the Council, in resolution 1452, decided to exclude from the sanctions regime those assets determined by the relevant state to be necessary for basic expenses, provided that the state notified the Committee of its intention to authorise access to such funds and in the absence of a decision to the contrary by the Committee within 48 hours.

Then on 30 January 2004, the Council adopted resolution 1526, for the first time addressing the need to fight terrorism “in accordance with the Charter of the United Nations and international law”. The Council also called upon states submitting new names to the Committee to include identifying information and information related to the individual’s relations with Al-Qaida and the Taliban, “to the greatest extent possible”. The Council also strongly encouraged states to inform listed individuals of the sanctions imposed on them and of the Committee’s guidelines.

On 29 July 2005, the Council adopted resolution 1617, reaffirming its commitment to combat terrorism in accordance with the Charter and international law. In this resolution—as opposed to the weaker language used in resolution

1526—the Council made it mandatory for states to provide a statement describing the basis of a proposed listing. It further requested, to the extent possible, that states inform listed individuals and entities on the consolidated list of the measures imposed on them and the listing and delisting procedures. The Council also decided that, with the consent of the designating state, the information provided could be released to member states that filed queries with the Committee.

On 22 June 2006, at the conclusion of its thematic debate on the rule of law, the Council expressed its commitment to ensuring that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them (S/PRST/2006/28). The Council reiterated this commitment following the thematic debate on the rule of law on 29 June 2010 (S/PRST/2010/11).

On 19 December 2006, the Council adopted resolution 1730. This resolution was the first adjustment to the 1267 sanctions regime that included significant provisions related to due process. Its preamble emphasised the Council’s commitment to ensure that fair and clear procedures exist for placing individuals and entities on the consolidated list and for removing them, as well as its resolve to ensure that clearly targeted sanctions are implemented in ways that balance their effectiveness against adverse consequences. Annexed to the resolution was a document titled “De-listing Procedure”, applicable to the various sanctions committees established by the Council. The procedure included the establishment of a “focal point” within the Secretariat to receive delisting requests from petitioners on the consolidated list. The Committee would be notified of such a petition, and if any Committee



member recommended delisting, it would be put on the agenda for consideration. Otherwise, the petition would be rejected.

On 22 December 2006, the Council adopted resolution 1735, reaffirming again its commitment to combat terrorism “in accordance with the Charter of the United Nations and international law”. The resolution established a new cover sheet with a set format for states to use when proposing names for the consolidated list, “in order to ensure clarity and consistency in requests for listing”. The Council decided that such a request should contain as much information as possible, including: information supporting a determination that the listed individual or entity is a member or associated with the Taliban or Al-Qaida; the nature of the information; and supporting documents, to the extent possible.

The resolution added that the Secretariat should notify the relevant states of a listing within two weeks of its publication and include a copy of the publicly releasable portion of the listing request, the effects of a designation and the Committee’s procedures regarding delisting. States were then called upon to take reasonable steps to relay this information to the listed individual. The resolution specified that the 1267 Committee would continue to develop guidelines regarding delisting and for this purpose might consider whether a listing was a result of mistaken identity or whether the listed individual or entity no longer met the criteria for being listed—be it by severing ties with the relevant bodies or by finding that the listed individual is deceased. Finally, resolution 1735 extended the period for consideration by the Committee of notifications for exempting funds of individuals necessary for basic expenses from 48 hours to three working days.

A more significant adjustment occurred on 30 June 2008, when the Council adopted resolution 1822. In the preamble the Council spelled out that combating terrorism must be achieved not only in accordance with the Charter and international law, but also specifically “including applicable international human rights, refugee, and humanitarian law”. The preamble clarified that the sanctions regime is intended to be preventative by nature and not reliant upon criminal standards. The resolution decided that states making a designation shall identify which parts of their statement of case—in a particular instance—can be made public, including making available on the Committee’s website a narrative summary of the reasons for a listing. Additionally, the Council decided that notification of a listing or a delisting must be communicated to the relevant states within a week, and those states must take “all possible measures”—as opposed to reasonable measures in resolution 1735—to notify the individual or entity of the listing, its reasons and implications. Furthermore, the Committee was directed to undertake a review of all the names on the consolidated list and thereafter to make sure that each name on the list is reviewed at least once every three years and to circulate these names to the designating states to ensure the appropriateness of the list.

A further major development occurred on 17 December 2009, when the Council adopted resolution 1904. As in resolution 1822, the preamble of the resolution affirms that terrorism must be combated in accordance with international law, including human rights law. For the first time, the Council openly recognised the challenges—“both legal and otherwise”—that states face in implementing Council resolutions on this issue. The Council adjusted

the transparency rules by deciding that when proposing names to the Committee for listing, the request will be made public except for those parts that the respective state has identified as confidential. Furthermore, the Council called upon states to use a new standard form for listing. The Council again shortened the time for the Secretariat to notify the relevant state of a listing to three days.

The resolution also directed the Committee to review its guidelines in accordance with the provisions of the resolution and to ensure that no matter is pending before it for a period longer than six months, other than in extraordinary circumstances. A review of matters pending before the Committee was to be conducted and concluded by 30 June 2010.

A key aspect of resolution 1904 is the establishment of an Ombudsperson to replace the focal point established under resolution 1730. The Office of the Ombudsperson is to receive and process delisting requests in accordance with procedures set out in an annex attached to the resolution. The procedure laid out in Annex II sets a timetable of two months for information-gathering by the monitoring team on any request for delisting and for further information to be gathered from the relevant states by the Ombudsperson. After the information-gathering, the Ombudsperson is requested to facilitate a two-month engagement with the petitioner, for further information-gathering and to answer questions that arose in the information-gathering period. This period may be extended for up to two additional months by the Ombudsperson. Following this stage, the Ombudsperson, with the assistance of the monitoring team, circulates a “comprehensive report” to the Committee on the delisting request. This report is not a public document. After a period of 30 days, the

matter must be placed on the agenda of the Committee for consideration. If the Committee accepts the delisting request, the petitioner is then notified of the removal from the consolidated list. If the petition is rejected, the Committee is requested to convey its decision to the Ombudsperson along with explanatory comments, "as appropriate", and an updated narrative summary of the reasons for the listing. The Ombudsperson then conveys the information to the petitioner within 15 days, along with a description of the process followed, while respecting the confidentiality of Committee deliberations and communications between states.

The annex to the resolution also tasks the Ombudsperson with distributing publicly releasable information on Committee guidelines, procedures and Committee-produced documents and also with notifying individuals of the status of their listing after the Secretariat has notified a member state of a new addition to the consolidated list.

The first Ombudsperson, Kimberly Prost, a former *ad litem* judge of the ICTY with 20 years of experience as a federal prosecutor in Canada, was appointed by the Secretary-General on 3 June 2010. At press time, 16 delisting requests have been filed with the Ombudsperson, seven of which are assisted by legal counsel. The first six have reached the 1267 Committee via a comprehensive report submitted by the Ombudsperson. Of the six, one petition was withdrawn by the petitioner, and four delisting requests resulted in the Committee delisting the petitioner. The first report's contents were initially discussed on 10 May 2011. Of the 16 reports, only the name of one petitioner has been made public while under consideration, that of the previously mentioned Abousfian Abdelrazik.

The first biannual report was submitted by the Ombudsperson to the Committee

on 24 January 2011 (S/2011/29) and the second on 21 July 2011 (S/2011/447). These reports, together with the first few comprehensive reports in response to specific delisting requests described above, give some initial indications.

The biannual reports indicate that states have been generally cooperative with the Ombudsperson's requests for information regarding delisting. Thus, of the six cases for which a comprehensive report was submitted to the Committee, responses to requests for information from states were received for 25 of the 28 requests made in relation to those delisting requests. Nevertheless, the Ombudsperson noted that in certain cases it has been difficult to obtain the necessary level of detailed information for a proper analysis. In particular instances, there has also been an issue as to the timeliness of the disclosure of information.

Despite the generally good response to requests for information, problems have arisen with respect to several issues related to transparency. First, when classified information is involved, the Ombudsperson has pointed out the need to develop arrangements for access to such information. At present, such agreements have been concluded with Belgium and Switzerland granting the Ombudsperson access to relevant classified material. Second, the absence of publicly accessible supporting information for past delistings is an obstacle. Making such reasoning public would provide useful comparative analysis of other cases and strengthen the incentives for other listed individuals to alter their behaviour (thus achieving one of the major goals of targeted sanctions). Another issue is the non-disclosure of the identity of the listing state, which makes the task of the petitioner to dispute accusations more difficult.

The Ombudsperson also raised concerns on related issues that currently do not fall within her mandate, such as continued restrictions applied to delisted individuals or the impact on non-listed individuals affected by sanctions due to a similarity in name to that of a listed individual.

As for resources, the Office of the Ombudsperson lacks the necessary staff and resources to communicate with some of the petitioners in their own language, the latter being an impediment on procedural fairness towards the affected petitioners.

The 17 June 2011 adoption by the Council of resolutions 1988 and 1989, splitting the sanctions regime on the Taliban from that on Al-Qaida, changed the scope of the work and the mandate of the Ombudsperson. As with previous related resolutions adopted since June 2008, the preambles of the resolutions affirm that terrorism must be combated in accordance with international law, including human rights law. Resolution 1988 established a new sanctions regime and a sanctions committee pertaining to the Taliban, a regime that is similar to other country-oriented regimes. The resolution requires that states provide "as much relevant information as possible" on proposed listings and that this information be releasable upon request, except for the information that the state designated as confidential. The Afghan government or other relevant state shall be notified of approved listings within three days. Individuals and entities on the sanctions list may now submit delisting requests to the focal point established in resolution 1730, as in all other sanctions regimes, but not to the Ombudsperson, who now only has a mandate pertaining to the Al-Qaida regime. The 1988 Committee is requested to "give due regard" to delisting requests of those who meet the



reconciliation conditions, and states are to coordinate listing and delisting requests with the Afghan government.

Resolution 1989 clarifies that the 1267 regime is no longer applicable to Taliban-related individuals and entities, which are now covered by the 1988 sanctions regime. It reiterates the recognition of the legal and other challenges states face in implementing sanctions, stresses their preventive nature and welcomes the work of the Ombudsperson in improving fairness and transparency.

The resolution contains several innovations. First, it encourages past and future designating states to publicly identify themselves as such. Second, it extends the mandate of the Office of the Ombudsperson for 18 months and adds that it shall present the 1267 Committee with observations and recommendations on the delisting requests received. Where the Ombudsperson recommends retaining a listing, states continue to be bound to apply sanctions to the relevant individual, unless the Committee submits a delisting request, which the Council must approve by consensus. Where the Ombudsperson recommends delisting, sanctions cease to apply to that individual 60 days after the Committee completes consideration of the comprehensive report of the Ombudsperson, unless the Committee decides to the contrary by consensus. During that time period, a Committee member may request that a decision on delisting be brought before the Security Council. The same procedure applies when a delisting request is made by the designating state.

As of 4 October 2011, the list included 127 individuals associated with the Taliban, 253 individuals associated with Al-Qaida, 91 entities associated

with Al-Qaida and no entities associated with the Taliban.

11. Council and Wider Dynamics

In recent years the Council has displayed a growing recognition of the need to incorporate the rule of law—in terms of due process—in its sanctions procedures, as a matter of policy more than a matter of law. As mentioned above, from a legal point of view it is unclear whether the Council, as opposed to states, is bound by due process (for a complete analysis of this point, see section above on “The Council, the Rule of Law and International Law”). Ergo, the Council as a body views this issue as a political one, as it has an interest in addressing the legitimacy of the sanctions regimes in order to eventually enhance their implementation and thus their effectiveness. It is therefore mainly to address implementation at the state level, upon which the Council relies, that legal obligations of due process come into play.

Many states have played an integral role in addressing the rule of law in sanctions regimes. Amongst both permanent and non-permanent members, there is a general sense that some progress has been achieved on this issue within the Council, and in particular in the functioning of the 1267 regime. But most Council members also believe that there is still more that needs to be done.

When it comes to due process in the Council’s sanctions regimes, the debate tends to focus on the 1267 regime. Council members view this regime as the flagship of the Council’s sanctions practice. The 1267 regime has also attracted the most attention and criticism, both on the political and the legal spectrum, as it is the most

expansive in the number of listings and has a very high political profile. It has therefore become the litmus test for evaluating the Council’s adherence to due process even in the eyes of Council members themselves.

In particular, some Council members feel that there is still much to achieve in improving the Council’s ability to afford listed individuals and entities due process rights in the 1267 Committee, in accordance with the rule of law. Several elected Council members seem to support the view that there is a need to adjust the regime so that there is a sunset provision on all designations and a new practice that would allow decisions to be taken by majority vote. By contrast, several permanent members (including the US and Russia) seem to be of the view that though further adjustments can be made to the regime, the Council is close to reaching the limits they are prepared to tolerate in its sanctions to curb international terrorism. Well aware of this, states wishing to further the Council’s due process record realise that further major adjustments in the regime will not be easy to achieve.

Some permanent members tend to see the case-law against the 1267 regime as an internal European problem that must be addressed at that level in order to allow EU members to comply with the measures called for by the sanctions regime. Many European countries, on the other hand, stress that legal challenges to the 1267 regime are a global phenomenon and therefore the regime must adapt in order to allow states to comply with it. They take the view that the challenges in the European legal system can enhance the 1267 regime by improving its compliance with international norms and thus boosting its legitimacy and ultimately its effectiveness. They also point out that most

European states—and most states at large—by virtue of not being on the Council do not have the luxury of placing listings on hold while they can verify the relevant legal requirements, as the permanent members do. On the practical level, they point out the unfeasibility of changing national and European laws in order to allow the implementation of the sanctions regime without due process rights. However, even some European countries remain concerned that a universal regime not be undermined by regional dynamics.

The push for further alteration of the 1267 regime has therefore become a significant ongoing issue in the Council. Most states seem to accept that it would be very difficult to address due process concerns by establishing an *ex ante* right to an independent review or the right to be heard at the time of listing by the Council. Improving the procedure for delisting has therefore become the best available avenue. There are several reasons for this. First, states requesting a listing are usually unable and unwilling to share their information with other states in advance of listing or as a prerequisite for listing, for their own security reasons and so as to avoid alerting the targeted individuals and give them time to shift or hide their assets. In addition, if a listing were dependent on prior judicial review in the Council members' national jurisdiction, such a process would give *de-facto* veto power to the courts of all states sitting on the Council. Finally, addressing the listing procedure will not solve the legacy of many listings that were added to the consolidated list in the past before any of the reforms were put in place. (An added difficulty in managing these older listings is that states are reluctant to devote intelligence resources to reviewing listed individuals instead of focusing on new targets yet to be addressed by the 1267 regime.)

Another sensitive issue is that of confidential information and cooperation by the Committee with the Ombudsperson. Some take the view that states wishing to pursue listings should be willing to make adjustments in their domestic laws and policies in order to allow some sharing of their information with third parties in order to legitimise such listings. According to this view, the Office of the Ombudsperson plays a key role in legitimising the process, but only if it is given sufficient information to credibly review and publicise the reasoning behind listing decisions.

In resolution 1904, the Ombudsperson was not explicitly given a mandate to make recommendations. According to its website, the Office of the Ombudsperson's takes the view that its role to assist the Council in delisting decisions means that the Ombudsperson can include observations on "whether there is sufficient information to provide a reasonable and credible basis for listing." In practice, the Ombudsperson's reports so far have included factual information, a framework for analysis and conclusions, which are essentially recommendations to the Council. Resolution 1989 recognises and now endorses this practice and gives the Ombudsperson a mandate to make consequential recommendations regarding the delisting requests processed. Certain Council members have expressed discomfort with this practice while others are pleased with the role and the way the Ombudsperson is interpreting her mandate and defining her role. The latter take the view that the mandate of the Ombudsperson in 1904 was intentionally broad and undefined.

As for cooperation with the Ombudsperson, Council members are generally pleased with the establishment of this position and Prost's performance thus far, though some

permanent members are cautious about her assertive interpretation of her mandate, as mentioned above. There seems to be general agreement that the office should be better equipped and staffed in order for her to fulfill her mandate successfully and enable her to better engage states and petitioners. Several members were successful in mandating the Ombudsperson to provide recommendations to the Committee. (Prost has been giving "observations" on delisting requests to the Committee, with a practical effect of recommendations. Some states had taken the view that, given that in practice the Ombudsperson has been making recommendations in her reports, there was no need to address this in a Council resolution, in order not to make it a contentious issue. The UK, for example, was of the view that if recommendations lacked any binding force, the issue would be better left untouched. Nevertheless, the Council agreed in resolution 1989 to give practical effect to a recommendation of the Ombudsperson to delist a petitioner from the consolidated list, and so several members pushed to officially recognise the Ombudsperson's recommendation role. Members such as France view this and further possible adjustments giving practical effect to the recommendations as a way to induce states to share their information on the legitimacy of a specific listing with other Council members or accept that the listing will not be maintained.)

Council members seem to be in agreement that the future success of the regime will be determined to a large extent by the quality of the Council's interaction with the Ombudsperson. Thus, even more than the eventual decisions on delisting, proper reasoning and a sense that the Office of the Ombudsperson enjoys positive cooperation with the Council will be important



in convincing the wider UN membership and courts seized of this issue worldwide that the Ombudsperson's role is to be helpful. Believing that the perception of due process is just as important as due process itself, a number of Council members feel that legal challenges may be overcome if basic information is shared with the Ombudsperson. In this respect, what the Ombudsperson says about cooperation and access to information in her future reports may have a significant impact on how pending court cases assess the implementation of Council-initiated sanctions.

Another issue raised in the documents released by the Ombudsperson is the standards of proof for listing and delisting. Permanent members stress that sanctions are preventive in nature and not criminal proceedings and therefore a lower standard of proof is justified. The Ombudsperson seems to have accepted this approach in reflecting a lower standard of proof in assessing delisting requests than would be required for due process in criminal proceedings. Similarly, several states point out that many domestic jurisdictions allow for *ex parte* legal proceedings of a preventive nature, which permit states to take measures such as freezing assets or orders restricting the freedoms of certain individuals, such as traveling outside the country. *Ex parte* procedures, which, according to this position, are somewhat comparable to the process of listing in sanctions regimes, are not necessarily perceived as conflicting with due process and the rule of law.

Yet several states are of the view that the scope and nature of the practice of the 1267 regime continue to be more punitive than preventive. On this point, states critical of the regime point out

that the consolidated list still contains hundreds of individuals and entities rather than a select few, as initially envisioned at the time of the establishment of the regime. Without sunset clauses, listings can be virtually infinite, thus colouring them as criminal sanctions rather than temporary administrative ones.

As it is Council practice that all decisions in the 1267 Committee be taken by consensus and there is no public record of these proceedings, including delisting decisions, the perception of due process is also affected by the lack of transparency in the Committee. The current practice prevents making public the views expressed in the Committee by individual states, as all decisions or lack thereof reflect "the committee as a whole". Certain procedural amendments considered amongst states try to address this issue and will be discussed below.

Another issue is Council dynamics regarding the implications of the developments in the 1267 regime for other sanctions regimes. In particular, an important question is whether the position of the Ombudsperson could be established for other regimes. Though no such plans are currently being considered by Council members, some view such a development as a positive one and support it. As the Ombudsperson's functions and role become better defined and appreciated over time, this idea may gain traction. At present, however, the separation of the 1988 regime from the 1267 regime has in effect narrowed the scope of the Ombudsperson role.

However, countries such as the UK and the US tend to take the view that country-specific sanctions regimes are different in their scope and nature from that of the 1267 regime. In their opinion, the former are aimed at achieving certain political goals—most often

applying political pressure on governments or parties to a conflict—and therefore the ability and policy considerations of affording listed individuals and entities due process rights is less relevant. In addition, the limited amount of mostly high-profile political figures listed in most country-specific regimes, may account for the relatively little political pressure against such listings, as in the case of the listing of Muammar Gaddafi (S/RES/1970).

The 1267 regime, by contrast, is seen as a law enforcement regime against a constant global phenomenon and as such, the due process rights of those affected need to be addressed as far as possible. The relatively high number of individuals and entities on the consolidated list increases the risk of erroneous listings. Other states, including permanent members, are of the view that though the political merit of this position is clear, certain rights, such as the right to be heard or the right of appeal, are as relevant to country-specific sanctions regimes as they are to the 1267 regime. Thus legal challenges to country-specific sanctions regimes similar to those facing the 1267 regime cannot be ruled out. Whatever the positions of Council members may be, in splitting the Taliban sanctions regime from the Al-Qaida sanctions regime in resolutions 1988 and 1989, the former should now be characterised as a country-specific regime. It is too soon to assess whether this change reflects a principled position of the Council on the difference between the 1267 sanctions regime and the country-specific regimes or an ad-hoc change for pragmatic reasons.

One "spill over" effect recognised by some Council members is in the way Council members now approach the issue of listings in country-specific cases. These have become much more well-thought-out and heavily considered,

as members now realise that listings may lead to political backlash and litigation in courts, where Council members and other states will be hard-pressed to justify their collective actions. On the other hand, some may argue that sanctions procedures have become overly cumbersome, even in obvious cases where listings are justified.

During the hasty negotiations on Libya that resulted in the 1970 and 1973 resolutions and sanctions, Council members recall that there was little discussion of due process in deciding on the initial listings. This was in contrast to the extensive timeframes for listing and delisting decisions insisted upon recently in other sanctions regime, where Council members argued the delay was necessary in order to verify that there were solid grounds to list an individual and that national and regional legal requirements for sanctioning were met *ex ante*. Even after the Libya Sanctions Committee was formed, its focus was not on due process issues but rather on other concerns regarding the scope and implementation of resolutions 1970 and 1973. For example, little consideration was given to the humanitarian effect that the listing of an entity such as the Bank of Libya might have on civilians reliant on the import and export of money and commodities through the central bank. It was only after the fact, and as the conflict in Libya continued, that due process began to surface in the considerations of the Council.

The speed with which individuals and entities were placed on the sanctions list in resolutions 1970 and 1973 is an example of Council dynamics regarding due process. First, it demonstrates that where a political will exists, states—including those that undergo an *ex ante* vetting process prior to approving listings—can act quickly to sanction

certain individuals, if they so choose. Second, and perhaps more important, the Libya situation is a stark reminder that listings and delistings are essentially political actions taken by a political body, and always will be, despite the rule of law aspects of the issue. Ultimately, agreement to list or delist individuals will always be subject to political dealings within a given sanctions regime or to obtaining concessions on issues unrelated to that specific regime. This, for one, differentiates listing and delisting decisions from a judicial procedure that (in theory) is objective. Permanent Council members and other states seem to agree that enhancing due process in the Council's actions regarding sanctions is important for ensuring widespread enforcement and therefore the effectiveness of the regime. To this end, it seems likely that the Council will continue to look for ways to enhance compliance with the 1267 regime.

12. Future Options for Sanctions Regimes

Undoubtedly, as long as legal challenges continue to arise in national and regional courts, and the legitimacy of Council decisions is questioned, the Council will, perhaps reluctantly, continue to occupy itself with questions of due process in sanctions regimes. The ECJ's upcoming second decision in the *Kadi* case will be watched very closely. If the ECJ finds that the new EU regulations implementing the 1267 sanctions are not in violation of due process, it will indirectly give a stamp of approval to the Council. This may have two possible ramifications. On the one hand, it may give momentum to those states advocating more due process in the Council, and Council efforts to improve its track record and legitimacy

may proceed more diligently. Alternatively, it could signal the end of major adjustments to the 1267 regime on due process issues, absent serious legal challenges in other parts of the world.

As mentioned above, the Council is currently unlikely to contemplate expanding the position of the Ombudsperson to other sanctions regimes, yet if litigation challenging any of these regimes gains traction, other regimes may see future adjustments to meet legal and political pressure.

As already noted, several processes initiated by states have played a key role in improving the working methods of the sanctions regimes, both in terms of efficiency and of due process. Not all of these recommendations were taken on board by the Council, yet some continue to be promoted by some members and circulate as possible options for future reconfiguration of Council practice regarding sanctions in general, and of the 1267 regime in particular.

Most permanent members are not likely to support the idea of setting up an external panel with decision-making powers because this would constrain their ultimate control over the sanctions process. Other permanent members are not necessarily against the idea of an independent panel but are in favour of its having only recommendation powers. Most take the view that the Ombudsperson is essentially a “one-person independent panel” and fulfils this role sufficiently, especially following the termination effect that its recommendations on delistings carry pursuant to resolution 1989.

Several members would like to see enhanced cooperation with the Office of the Ombudsperson, in particular in providing it with access to the relevant information behind a given listing, even

if the information is sensitive. However, it seems that due to the objection of some permanent members, the Council will not be able to agree on more than encouraging further cooperation and sharing of information in the future. Nevertheless, resolution 1989 gives a recommendation for delisting by the Ombudsperson practical effect unless the Committee decides otherwise by consensus (or by decision of the Council). This gives members interested in keeping an individual on the consolidated list a stronger incentive to share information with the Ombudsperson prior to a final recommendation thus avoiding the need to convince the Committee to keep that person on the list, despite a recommendation to the contrary by the Ombudsperson.

Another often-suggested adjustment to the regime is that of sunset clauses, terminating certain listings after a given period of time in the absence of a Council or Committee decision to the contrary (either by consensus in the Committee or by a vote in the Council, open to veto by the permanent members and requiring nine positive votes). These sunset clauses could take many different forms. They could be applied to categories of listings or to each and every listed individual or entity separately. Another option is to have a trigger mechanism to “activate” a sunset clause. This, for example, was done in resolution 1989, which gave the Ombudsperson the capacity to recommend a delisting, which then triggers a sunset clause for that listing, unless the Committee decides by consensus and within a defined period of time (60 days) to keep that individual or entity on the consolidated list (or adopt a resolution by the Council). In effect, this kind of sunset clause reverses the current practice of maintaining a listing indefinitely, thus giving more emphasis to the temporary, preventive nature of sanctions.

Some members will most likely continue to push for more general procedural reforms to expand the notion of sunset clauses to listed individuals who have not initiated a delisting process. In that way, the Committee will have to review the justification for listings on a regular basis in order to maintain the consolidated list. As mentioned, however, other members question whether states have sufficient resources to constantly review and update their information on past listings. This debate demonstrates that the rising popularity of using targeted sanctions in different situations has also brought with it many complications, whether political, legal or financial.

13. Final Remarks

This report addresses two distinct aspects of the rule of law in the work of the Security Council, the implementation of the rule of law in conflict and post-conflict situations, i.e., at the national level, and the rule of law at the international level, as it applies to situations resulting from Council decisions. Though sharing commonalities, these two aspects of the rule of law differ in form, content and substance.

Nevertheless, in both realms the rule of law has become integral. On the international level, in an era when comprehensive sanctions have been largely abandoned in favour of targeted sanctions, the Council’s actions have been constantly evaluated and criticised for lack of regard for the rule of law. Whether for legal or political reasons, this pressure has led the Council to recognise the relevance of due process rights in its work. This has led to changes in the Council’s language when imposing sanctions. The Council now commonly stresses states’

obligations under international law and human rights law in particular. Perhaps more important, it has led to alterations in the procedures afforded to individuals and entities affected by sanctions—from the establishment of a focal point for delisting requests in all sanctions regimes to the creation of the Office of the Ombudsperson in the 1267 regime.

On the national level, the rule of law issues have been addressed with increasing frequency in Council official documents and even more so in the Secretary-General’s reports. Council-mandated missions created after the Council’s commitment in 2004 to incorporate the rule of law into its work all contain rule of law components, including human rights-related components (as did some Council mandates beforehand). In a stark change from just a few years ago, the Council seems to have accepted that various elements within the definition of the rule of law—such as judicial and security sector reform, good governance, viable state institutions, protecting human rights and accountability for gross violations of those rights—are all relevant to prevent the occurrence and recurrence of violence. As its definition within the UN system is wide, incorporating many elements, the rule of law may be both substantive yet at the same time fluid and vague enough for all Council members to feel comfortable with this term, as opposed to explicitly naming other elements inherently imbedded within the rule of law.

14. UN Documents and Useful Additional Sources

Security Council Resolutions

- S/RES/2009 (9 September 2011) established UNSMIL with a mandate to promote the rule of law.
- S/RES/1996 (8 July 2011) established UNMISS, with a mandate to support South Sudan in establishing the rule of law.
- S/RES/1991 (28 June 2011) renewed the mandate of MONUSCO, while recognising that limited progress was achieved on all fronts in the DRC in the year since the establishment of the mission.
- S/RES/1990 (27 June 2011) established UNISFA, including supporting the Abyei police on matters of law and order.
- S/RES/1988 and S/RES/1989 (17 June 2011) split the Al-Qaida sanctions regime from that of the Taliban and extended the mandate of the ombudsperson.
- S/RES/1973 (17 March 2011) expanded the sanctions regime imposed on Libya.
- S/RES/1970 (26 February 2011) referred the situation in Libya to the ICC.
- S/RES/1964 (22 December 2010) welcomed the intent of the Secretary-General to establish security and other institutional reform capacities within the UN Political Office in Somalia.
- S/RES/1961 (17 December 2010) renewed sanctions on Liberia.
- S/RES/1959 (16 December 2010) established BNUB to promote human rights, strengthen institutional capacities and fight impunity in Burundi.
- S/RES/1945 (14 October 2010) renewed the arms embargo, assets freeze and travel ban on Sudan.
- S/RES/1941 (29 September 2010) mandated UNIPSIL to assist the government in promoting good governance, rule of law and human rights.
- S/RES/1938 (15 September 2010) noted the link between stability and the rule of law, and called upon Liberia to double efforts to develop security and rule of law institutions that are fully independent and functional.
- S/RES/1927 (4 June 2010) encouraged MINUTSAH to build the rule of law capacity of the Haitian authorities.
- S/RES/1925 (28 May 2010) established MONUSCO.
- S/RES/1910 (28 January 2010) called on the Secretary-General to assist in the Somalia transitional government's security reforms and rule of law efforts.
- S/RES/1907 (23 December 2009) renewed sanctions on Somalia and Eritrea.
- S/RES/1906 (23 December 2009) reprioritised MONUC's focus onto protection of civilians.
- S/RES/1904 (17 December 2009) established the office of the ombudsperson.
- S/RES/1903 (17 December 2009) renewed the targeted-sanctions regime for Liberia and called for further progress on forestry reform and transparency legislation.
- S/RES/1893 (29 October 2009) renewed sanctions on Côte d'Ivoire.
- S/RES/1889 (5 October 2009) urged taking women's protection and empowerment into account during post-conflict needs assessment and planning.
- S/RES/1888 (30 September 2009) strengthened efforts to end sexual violence against women and children in armed conflict.
- S/RES/1885 (15 September 2009) recognised that lasting stability in Liberia will require sustainable rule of law sectors.
- S/RES/1872 (26 May 2009) called upon the transitional government in Somalia to develop a national security strategy and ensure the rule of law and human rights.
- S/RES/1856 (22 December 2008) requested the Secretary-General to make recommendations on handing over rule of law tasks in western DRC to the UN country team.
- S/RES/1844 (20 November 2008) established humanitarian exemptions to sanctions in Somalia and Eritrea.
- S/RES/1836 (29 September 2008) increased the number of police personnel in Liberia in accordance with the Secretary-General's request.
- S/RES/1829 (4 August 2008) established UNIPSIL with a human rights and rule of law mandate.
- S/RES/1822 (30 June 2008) provided that terrorism must be combated in accordance with applicable human rights, refugee and humanitarian law and that narrative summaries of listings be made public on the 1267 sanctions committee website.
- S/RES/1807 (31 March 2008) expanded sanctions in the DRC to include perpetrators of human rights violations against woman, including sexual violence.
- S/RES/1803 (3 March 2008) renewed sanctions on Iran and established a humanitarian exemption to the travel ban.



- S/RES/1802 (25 February 2008) requested UNMIT to enhance the effectiveness of the judiciary in Timor-Leste.
- S/RES/1794 (21 December 2007) called on the DRC to intensify efforts and develop a strategy for DDRRR and security and police reforms.
- S/RES/1777 (20 September 2007) endorsed the Secretary-General's benchmarks on rule of law issues in Liberia.
- S/RES/1776 (19 September 2007) encouraged ISAF to train and mentor the Afghan national security forces, especially the police.
- S/RES/1771 (10 August 2007) emphasised the importance of security sector reform and police reform for future adjustments in the sanctions regimes in the DRC.
- S/RES/1769 (31 July 2007) established UNAMID to promote human rights and the rule of law.
- S/RES/1757 (30 May 2007) established the Special Tribunal for Lebanon under Chapter VII.
- S/RES/1756 (15 May 2007) renewed MONUC's mandate with a stronger emphasis on institutional reform and the rule of law.
- S/RES/1744 (20 February 2007) established AMISOM.
- S/RES/1739 (10 January 2007) renewed the mandate of UNOCI, to assist in re-establishing the rule of law.
- S/RES/1737 (23 December 2006) imposed sanctions on Iran and established a humanitarian exemption to the assets freeze.
- S/RES/1735 (22 December 2006) established a new cover sheet containing a set format for states to use when proposing listings to the 1267 sanctions committee.
- S/RES/1730 (19 December 2006)

- established the "focal point" for sanctions regimes.
- S/RES/1718 (14 October 2006) imposed sanctions on the DPRK.
 - S/RES/1712 (29 September 2006) added judicial reform to the Secretary-General's proposed benchmarks for drawdown in Liberia.
 - S/RES/1711 (29 September 2006) extended MONUC's mandate, deplored violations of human rights and stressed the need to bring such perpetrators to justice.
 - S/RES/1704 (25 August 2006) established UNMIT to assist the security sector and strengthen human rights capacities.
 - S/RES/1701 (11 August 2006) established UNIFIL.
 - S/RES/1698 (31 July 2006) strengthened sanctions in the DRC to include child recruiters and those committing serious violations of international law involving children.
 - S/RES/1694 (13 July 2006) increased the number of civilian police personnel in UNMIL.
 - S/RES/1689 (20 June 2006) lifted sanctions on the diamond industry in Liberia.
 - S/RES/1688 (16 June 2006) reiterated the Council's determination to establish the rule of law and protect human rights in West Africa.
 - S/RES/1674 (28 April 2006) was on the protection of civilians, recognising the interlinkages between development, peace and security and human rights.
 - S/RES/1653 (27 January 2006) called on countries in the Great Lakes region to strengthen and institutionalise respect for human rights, good governance and the rule of law.
 - S/RES/1649 (21 December 2005)

- called on the transition government of the DRC to initiate reforms in the military and police.
- S/RES/1647 (20 December 2005) renewed sanctions on Liberia.
 - S/RES/1636 (31 October 2005) imposed sanctions on individuals in Lebanon.
 - S/RES/1635 (28 October 2005) called on the transition government of the DRC to initiate reforms in the military and police.
 - S/RES/1625 (14 September 2005) was on conflict prevention in Africa, including a commitment to promote the rule of law and human rights.
 - S/RES/1621 (6 September 2005) emphasised that elections in the DRC have long-term effects on the rule of law.
 - S/RES/1617 (29 July 2005) required states to provide the basis for listing request to the 1267 sanctions committee.
 - S/RES/1606 (20 June 2005) requested the Secretary-General to start negotiations on transitional justice mechanisms in Burundi and stated that the government is subject to the rule of law.
 - S/RES/1596 (18 April 2005) expanded sanctions on the DRC to include a travel ban and assets freeze.
 - S/RES/1593 (31 Mar 2005) referred the situation in Darfur to the ICC.
 - S/RES/1591 (29 March 2005) imposed sanctions on Sudan and established humanitarian exemptions.
 - S/RES/1572 (15 November 2004) imposed sanctions on Côte d'Ivoire and established humanitarian exemptions.
 - S/RES/1565 (1 October 2004) authorised MONUC to use all necessary means throughout the

DRC and to promote and protect human rights.

- S/RES/1546 (8 June 2004) established UNAMI, in order to promote and protect human rights, assist legal reforms and strengthen the rule of law.
- S/RES/1542 (30 April 2004) established MINUSTAH, with a mandate to assist in reform efforts and the protection of human rights.
- S/RES/1536 (26 March 2004) renewed the mandate of UNAMA, including various human rights elements.
- S/RES/1533 (12 March 2004) imposed sanctions on the DRC.
- S/RES/1532 (12 March 2004) established exemptions to the travel ban and assets freeze in Liberia.
- S/RES/1528 (27 February 2004) established UNOCI, among other things to assist in re-establishing the rule of law.
- S/RES/1526 (30 January 2004) emphasised for the first time the need to combat terrorism in accordance with the UN Charter and international law.
- S/RES/1521 (22 December 2003) imposed sanctions on Liberia, linking them to security sector reform and stability.
- S/RES/1518 (24 November 2003) imposed sanctions on Iraq.
- S/RES/1509 (19 September 2003) established UNMIL, among other things to establish the rule of law in Liberia.
- S/RES/1497 (1 August 2003) authorised the deployment of a multinational force in Liberia.
- S/RES/1493 (28 July 2003) authorised MONUC to use all necessary means to fulfil its mandate in Ituri.
- S/RES/1484 (30 May 2003) authorised the deployment of the

IMEF in Ituri region, in the DRC.

- S/RES/1483 (22 May 2003) lifted sanctions on Iraq with the exception of the arms embargo.
- S/RES/1471 (28 March 2003) requested UNAMA to assist the Afghan Independent Human Rights Commission.
- S/RES/1457 (24 January 2003) called upon relevant actors to assist governments in the Great Lakes region in establishing institutions to control national resources.
- S/RES/1452 (20 December 2002) excluded from the 1267 sanctions regime assets necessary for basic expenses.
- S/RES/1445 (4 December 2002) noted that lack of progress on DDRRR of armed groups will make it difficult to restore the rule of law in the eastern parts of the DRC.
- S/RES/1409 (14 May 2002) modified Iraqi sanctions to include specified goods, replacing the general embargo.
- S/RES/1401 (28 March 2002) established UNAMA.
- S/RES/1390 (16 January 2002) created the consolidated list of individuals and entities related to Al-Qaida and the Taliban.
- S/RES/1386 (20 December 2001) established ISAF.
- S/RES/1333 (19 December 2000) imposed an arms embargo on Afghanistan.
- S/RES/1315 (14 August 2000) called for the establishment of the Special Court for Sierra Leone.
- S/RES/1291 (24 February 2000) expanded the military component of MONUC.
- S/RES/1279 (30 November 1999) established MONUC.
- S/RES/1258 (6 August 1999) authorised the deployment of 90

military observers to the DRC.

- S/RES/1244 (10 June 1999) established UNMIK.
- S/RES/1267 (15 October 1999) imposed sanctions on Al-Qaida.
- S/RES/1192 (27 August 1998) suspended sanctions on Libya pending a report from the Secretary-General on the appearance of the two suspects in the Lockerbie bombing to stand trial in The Hague.
- S/RES/1173 (12 June 1998) imposed sanctions on non-government certified diamonds in Angola.
- S/RES/1168 (21 May 1998) was on strengthening the International Police Task Force on Bosnia-Herzegovina.
- S/RES/1127 (28 August 1997) imposed sanctions on UNITA leadership.
- S/RES/1040 (29 January 1996) supported the facilitation of a comprehensive political dialogue by the Secretary-General to end the civil war in Burundi.
- S/RES/1034 (21 December 1995) condemned the violations of humanitarian law and human rights in Bosnia-Herzegovina and stated the need to investigate these violations rights.
- S/RES/955 (8 November 1994) and S/RES/827 (25 May 1993) established the ICTR and ICTY.
- S/RES/919 (26 May 1994) terminated Council sanctions on South Africa.
- S/RES/917 (6 May 1994) imposed sanctions on political and military figures in Haiti.
- S/RES/883 (11 November 1993) imposed a freeze on Libyan assets.
- S/RES/866 (22 September 1993) established UNOMIL.
- S/RES/864 (15 September 1993)



imposed sanctions on the *Uniao Nacional para a Independencia Total de Angola in Angola*.

- S/RES/841 (16 June 1993) imposed a petroleum embargo and freeze on government assets in Haiti.
- S/RES/794 (3 December 1992) authorised the use of all necessary measures to provide for humanitarian relief in Somalia.
- S/RES/751 (24 April 1992) imposed sanctions on Somalia.
- S/RES/748 (31 March 1992) imposed an arms embargo and flight ban on Libya.
- S/RES/731 (21 January 1992) urged Libya to cooperate with the investigation of the attacks on Pan Am flight 103 over Lockerbie.
- S/RES/713 (25 September 1991) imposed an arms embargo on the territory of the former Yugoslavia.
- S/RES/693 (20 May 1991) mandated the UN Observer Mission in El Salvador to monitor the human rights situation in El Salvador.
- S/RES/690 (29 April 1991) established MINURSO.
- S/RES/661 (6 August 1990) imposed sanctions on Iraq.
- S/RES/425 (19 March 1978) established UNIFIL (later expanded in resolution 1701).
- S/RES/460 (21 December 1979) terminated Council sanctions on Southern Rhodesia.
- S/RES/418 (4 November 1977) imposed sanctions on South Africa.
- S/RES/350 (31 May 1974) established UNDOF.
- S/RES/232 (16 December 1966) imposed sanctions on Southern Rhodesia.
- S/RES/221 (9 April 1966) called on Portugal not to allow oil shipments to reach Southern Rhodesia through Mozambique and permit-

ted the UK to use force to deny oil tankers to transfer such oil.

- S/RES/186 (4 March 1964) established UNFICYP.
- S/RES/161 (21 February 1961) was the first Council resolution to mention the rule of law.
- S/RES/50 (29 May 1948) established UNTSO.
- S/RES/39 (20 January 1948) and S/RES/47 (21 April 1948) established UNMOGIP.

Presidential Statements

- S/PRST/2010/17 (17 September 2010) was on the situation in the DRC regarding mass rape in late July and early August.
- S/PRST/2010/11 (29 June 2010) requested the Secretary-General to report on the implementation of the recommendations contained in his 2004 report on the rule of law.
- S/PRST/2009/5 (7 April 2009) established BINUCA to assist security sector reforms and promote human rights and the rule of law.
- S/PRST/2008/40 (28 October 2008) condemned the CNDP offensive on North Kivu in the DRC.
- S/PRST/2006/28 (22 June 2006) was on the rule of law and maintenance of international peace and security.
- S/PRST/2005/55 (10 November 2005) was the first time the Council condemned a terrorist attack calling on states to combat terrorism while complying with human rights.
- S/PRST/2004/34 (6 October 2004) contained the commitment of the Council to consider the incorporation of the rule of law into its resolutions and mandates.
- S/PRST/2003/15 (24 September 2003) was a statement on justice

and the rule of law.

- S/PRST/2000/20 (2 June 2000) initially established the panel of experts on natural resources and other forms of wealth in the DRC.
- S/PRST/1999/22 (9 July 1999) conveyed the Council's intention to lift suspended sanctions on Libya "as soon as possible".
- S/PRST/1999/10 (8 April 1999) suspended sanctions on Libya after the Council was satisfied that the two suspects in the Lockerbie bombing had arrived in The Hague.
- S/PRST/1995/3 (24 January 2005) expressed concern over the removal of the male population in Srebrenica.

Council Debates

- S/PV.6539 (18 May 2011) was on stabilisation in the DRC.
- S/PV.6347 (29 June 2010) was on strengthening the rule of law.
- S/PV.6203 (16 October 2009) was on the DRC in which the DRC permanent representative expressed his governments will for a drawdown of peacekeeping operations in the country.
- S/PV.5474 and resumption 1 (22 June 2006) was on "strengthening international law: rule of law and maintenance of international peace and security".
- S/PV.5389 (17 March 2006) was attended by the Liberian president, who introduced a four-pillar strategy, including a pillar on the rule of law and governance.
- S/PV.5297 (31 October 2005) was on the situation in Lebanon, including the need to end impunity and uphold individual accountability.
- S/PV.5052 (6 October 2004) was on justice and the rule of law.
- S/PV.4833 (24 September 2003) was on justice and the rule of law.

- S/PV.4046 (16 September 1999) was the first time the High Commissioner for Human Rights was invited to address the Council, in an open debate on the protection of civilians in armed conflict.
- S/PV.3046 (January 31 1992) was the first Council summit meeting.
- 1st Meeting (17 January 1946) Security Council Official Records, First Year, was the inaugural meeting of the Security Council, including a discussion of the role of the Council.

Secretary-General's Reports

- S/2011/497 (5 August 2011) was on UNMIL, noting challenges still remaining in consolidating rule of law in Liberia.
- S/2011/332 (31 May 2011) was on Cyprus and did not address the rule of law.
- S/2011/72 (14 February 2011) noted that civilians in Liberia enjoy relative stability, but many rule of law-related problems persist.
- S/2010/164 (30 March 2010) was on the conclusions of the Secretary-General's technical assessment mission on the future of the Council's mandate in the DRC, recommending a reconfiguration of the UN presence in the DRC.
- S/2010/85 (12 February 2010) was on the situation in Timor-Leste, addressing the rule of law under "Rule of Law, Justice and Human Rights".
- S/2009/623 (4 Dec 2009) reported on successes in FARDC operations against the FDLR in the Kivus, accompanied by continued human rights violations.
- S/2009/411 (10 August 2009) recognised progress achieved in Liberia, but that gains achieved so far remain fragile, particularly in the areas of building the security

and rule of law institutions.

- S/2009/357 (14 July 2009) was on the situation in Sudan, addressing the rule of law under "Rule of law and corrections".
- S/2009/299 (10 June 2009) recognised achievements in Liberia, but that notable challenges remain in the areas of building security and rule of law institutions.
- S/2008/622 (25 September 2008) was on women, peace and security, addressing the rule of law as a separate issue.
- S/2008/553 (15 August 2008) requested additional police personnel for UNMIL, due to lack of progress in police reform in Liberia.
- S/2008/458 (15 July 2008) was on UNMIK, addressing the rule of law as a stand-alone issue.
- S/2008/183 (19 March 2008) was on progress achieved on reaching benchmarks in Liberia, including on institutional reforms and the rule of law.
- S/2008/258 (17 April 2008) was on small arms, addressing issues of rule of law.
- S/2007/520 (29 August 2007) was on children and armed conflict in Sudan, including references to the importance of the establishment of the rule of law to protect children.
- S/2007/479 (8 August 2007) provided benchmarks for progress in Liberia, including steps taken to enhance the capabilities of the Liberian National Police and restore the rule of law throughout the country.
- S/2007/202 (13 April 2007) was on Western Sahara and did not address the rule of law.
- S/2007/151 (15 March 2007) was on the situation in Liberia, addressing the rule of law under "Promotion of human rights and

the rule of law".

- S/2006/980 (14 December 2006) announced the establishment of the Rule of Law Coordination and Resource Group.
- S/2006/743 (12 September 2006) provided benchmarks for progress in Liberia, including security and police sector reforms and consolidating state authority throughout the country.
- S/2006/376 (9 June 2006) highlighted challenges related to the rule of law in Liberia, in particular in the police and the judicial systems.
- A/59/2005 (21 March 2005) was the report entitled "In larger freedom: towards development, security and human rights for all".
- S/2004/650 (16 August 2004) noted the continued violence and lack of rule of law in the DRC.
- S/2004/616 (23 August 2004) was on the rule of law and transitional justice in conflict and post-conflict societies. The report included a working definition of the rule of law and recommendations for the Council's future work.
- S/2003/1217 (31 December 2003) was on small arms and did not address the rule of law.
- S/2003/875 (11 September 2003) recommended the establishment of a peacekeeping operation in Liberia.
- A/55/977 (1 June 2001) was the "comprehensive review" of the Secretary-General on the implementation of the "Brahimi Report", including further steps to strengthen the rule of law and human rights institutions in country-specific situations.
- S/1999/726 (30 June 1999) was on Libya's compliance with Council resolutions.



Security Council Mission Reports

- S/2010/288 (30 June 2010) was the Council's visit to the DRC, before transforming MONUC into MONUSCO.
- S/2009/303 (11 June 2009) was on the Council's visit to Liberia, where impediments in progress on rule of law issues were highlighted.
- S/2008/460 (15 July 2008) was the Council's visit to the DRC just prior to the eruption of large scale violence in the eastern parts of the country.
- S/2005/716 (14 November 2005) evaluated progress made in security sector reform, the extension of state authority and the rule of law in the DRC.
- S/2004/934 (30 November 2004) noted much work needed in preparation of the elections, and reform of the armed forces and of the police in the DRC.
- S/2003/653 (17 June 2003) was the Council's mission to the DRC, including Ituri, while hostilities were taking place.
- S/2002/537 (13 May 2002) exposed the Council first-hand to the grave humanitarian situation in the DRC.
- S/2001/521 (29 May 2001) was on the Council's visit to the DRC, during which the mission recommended that the Security Council take the necessary action needed to halt illegal exploitation.
- S/2000/416 (11 May 2000) noted that lack of progress on DDRRR of armed groups will make it difficult to restore the rule of law in the eastern parts of the DRC.

General Assembly Resolutions

- A/RES/63/128 (11 December 2008) was the decision to hold a high-level thematic debate on the

rule of law.

- A/RES/60/1 (16 September 2005) was the outcome paper of the World Summit, expressing the support of the Secretary-General's intention to form a rule of law assistance unit.
- A/RES/61/39 (4 December 2006) decided to include the topic "The rule of law at the national and international levels" on the provisional agenda of the General Assembly.
- A/RES/55/2 (8 September 2000) was the UN millennium declaration.
- A/RES/48/137 (20 December 1993) was on human rights in the administration of justice.
- A/RES/48/132 (20 December 1993) recognised that the rule of law is essential to protecting human rights.
- A/RES/2625 (XXV) (24 October 1970) was the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.
- A/RES/217A (III) (10 December 1948) adopted the Universal Declaration of Human Rights.

Selected Letters

- S/2011/447 (21 July 2011) transmitted the second report by the Ombudsperson pursuant to resolution 1267.
- S/2011/397 (27 June 2011) and S/2011/396 (23 June 2011) were an exchange of letters between the president of the Council and the Secretary-General, concerning the latter's request to submit his report on the rule of law, pursuant to S/PRST/2010/11 by 1 November 2011.
- S/2011/29 (21 January 2011) transmitted the first report by the Ombudsperson pursuant to resolution 1267.

- S/2010/322 (18 June 2010) transmitted the concept note prepared by Mexico for the debate on the rule of law.
- S/2008/773 (10 December 2008) transmitted the report of the DRC group of experts on the collaboration between the FARDC and the FDLR.
- S/2008/428 (23 June 2008) transmitted the discussion paper prepared by Denmark, Germany, Liechtenstein, the Netherlands, Sweden and Switzerland, suggesting that an independent panel make recommendations on delistings to the sanctions committee.
- S/2008/270 (18 April 2008) was the Austrian initiative on the Security Council and the rule of law.
- S/2007/367 (18 June 2007) transmitted the concept note prepared by Denmark for the debate on the rule of law.
- S/2007/307/Rev/1 (5 June 2007) contained the AU-UN recommendations on the hybrid operation in Darfur.
- S/2006/997 (22 December 2006) transmitted the final report of the informal working group on sanctions.
- S/2006/33 (20 January 2006) transmitted the paper by the Watson Institute for International Studies on sanctions, commissioned by Germany, Sweden and Switzerland.
- A/59/565 (2 December 2004) transmitted the report of the Secretary-General's high-level panel.
- S/2003/574 (15 May 2003) requested the Council to authorise an international intervention force in Ituri region, in the DRC.
- S/2002/1146 (15 October 2002) transmitted the report of the panel of experts on the illegal exploitation of natural resources in the DRC.

- S/1999/1257 (15 December 1999) transmitted the report by the independent inquiry commission set up by the Secretary-General concluding that “information about human rights must be a natural part of the basis for decision-making on peacekeeping operations, within the Secretariat and by the Security Council”.
- S/1999/815 (23 July 1999) contained the Lusaka ceasefire agreement between the governments of the Great Lakes region concerning the DRC.
- S/1999/378 (5 April 1999) was from the Secretary-General to the president of the Security Council reporting that the two suspects in the Lockerbie case had appeared to stand trial in The Hague.
- S/1995/300 (13 April 1995) was from the permanent Council members to the president of the Council on the use of sanctions in the Security Council.

Other

- UNJHRO (July 2011) was a report on the mass rapes and other human rights violations committed in North Kivu on 31 Dec 2010 and 1 Jan 2011.
- UNJHRO (July 2011) was a report on the attacks on civilians by armed groups in 13 in Walikale territory, North Kivu, between 30 July and 2 August 2010.
- SC/10325 (13 July 2011) was a press statement condemning terrorist attacks in Mumbai and calling upon states to fight terrorism in accordance with the UN Charter.
- SC/10099 (1 December 2010) was a press statement announcing the listing of four individuals by the DRC sanctions committee.
- PBC/4/LBR/L.1 (29 October 2010) was a draft statement of mutual

commitments on peacebuilding in Liberia, published by the Liberia configuration of the Peacebuilding Commission.

- SC/10016 (26 August 2010) was a press statement expressing outrage at the mass rapes committed in Walikale.
- High Commissioner for Human Rights (UNHCHR) report (August 2010) mapping the most serious human rights violations in the DRC from 1993-2003.
- S/2010/187 (14 April 2010) was the terms of reference of the Council’s mission to the DRC, focused on the configuration of MONUC.
- SC/9608 (3 March 2009) was on the listing of four individuals by the DRC sanctions committee, three for sexual abuse of girls, among other things.
- S/2008/447 (11 July 2008) was the draft resolution imposing sanctions on Zimbabwe.
- UN Doc S/2007/14 (12 January 2007) was a draft resolution on the situation in Myanmar.
- CCPR/C/94/D/1472/2006 (29 December 2008) was the Human Rights Committee’s communication regarding the case of Nabil Sayadi and Patricia Vinc against Belgium.
- A/59/661 (5 January 2005) was the report of the OIOS on allegations of sexual misconduct of UN peacekeepers in Bunia, DRC between May and September 2004.
- S/2003/216 (13 February 2003) was a report of the joint fact-finding mission on the situation in Ituri (DRC) presented to the Council by the High Commissioner for Human Rights.
- S/2002/764 (16 July 2002) was a report of the joint fact-finding mission on the situation in Kisangani (DRC) presented to the

Council by the High Commissioner for Human Rights.

- S/2000/809 (21 August 2000) was the report of the panel on UN peace operations (“Brahimi” report).
- S/2000/319 (17 April 2000) was on the establishment of the informal working group on improving sanctions regimes.

Useful Additional Sources

- *The Responsibility to Protect*, International Commission on Intervention and State Sovereignty, December 2001
- The Bonn-Berlin Process final paper (2001) (<http://www.bicc.de/publications/studies/studies-no-6.html>)
- The Interlaken Process final paper (2001) (http://www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en&download=N-HzLpZeg7t,Inp6l0NTU042l2Z6ln1ad1lZn4Z2qZpnO2Yuq2Z6gpJCDdIJ5f-Gym162epYbg2c_JjKbNoKSn6A--)
- The Stockholm Process final paper (2003) (http://www.smartsanctions.se/stockholm_process/stockholm_process.htm)
- Joanna Weschler, “*The Evolution of Security Council Innovations in Sanctions*”, International Journal, UN Sanctions: New Dilemmas and Unintended Consequences, 65, no.1 (Winter 2009-10)
- Joanna Weschler, “Human Rights”, David Malone, ed., *The UN Security Council: from the Cold War to the 21st century* (2004)
- David Cortright and George A. Lopez, “Reforming Sanctions”, David Malone, ed., *The UN Security Council: from the Cold War to the 21st century* (2004)
- Jeremy Matam Farrall, *United Nations sanctions and the rule of law* (2007)
- Antonios Tzanakopoulos, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (2011)



Annex I: A list of Council mandates with rule of law components

Security Council Mission	Mandate Relevant to the Rule of Law
UN Military Observer Group in India and Pakistan (UNMOGIP) S/RES/39 (1948) and S/RES/47 (1948)	None
UN Truce Supervision Organization (UNTSO) S/RES/50 (1948)	None
UN Peacekeeping Force in Cyprus (UNFICYP) S/RES/186 (1964)	Contribute to the maintenance and restoration of law and order and a return to normal conditions (S/RES/186)
UN Disengagement Observer Force (UNDOF) S/RES/350 (1974)	None
United Nations Interim Force in Lebanon (UNIFIL) S/RES/425 (1978) and S/RES/1701 (2006)	None
UN Mission for the Referendum in Western Sahara (MINURSO) S/RES/690 (1991)	None
UN Interim Administration Mission in Kosovo (UNMIK) S/RES/1244 (1999)	Performing basic civilian administrative functions where and as long as required; organizing and overseeing the development of provisional institutions for democratic and autonomous self-government; maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo; protecting and promoting human rights. (S/RES/1244)
The International Security Assistance Force (ISAF) S/RES/1386 (2001)	The Council encouraged ISAF to sustain efforts, as resources permit, to train, mentor and empower the Afghan national security forces, in particular the Afghan National Police. (S/RES/1776)
UN Assistance Mission in Afghanistan (UNAMA) S/RES/1401 (2002)	Assist the Afghan Independent Human Rights Commission in the full implementation of the human rights provisions of the Bonn Agreement and the National Human Rights Programme for Afghanistan (S/RES/1471) Assist the full implementation of the human rights provisions of the new Afghan constitution, in particular those regarding the full enjoyment by women of their human rights; support the establishment of a fair and transparent judicial system and work towards the strengthening of the rule of law. (S/RES/1536)
United Nations Mission in Liberia (UNMIL) S/RES/1509 (2003)	Contribute towards international efforts to protect and promote human rights in Liberia and to ensure an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection and monitoring activities; to assist Liberia in monitoring and restructuring the military and police forces of Liberia; to assist Liberia in establishing a rule of law-based state and in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions (S/RES/1509)
UN Operation in Côte d'Ivoire (UNOCI) S/RES/1528 (2004)	To contribute to the promotion and protection of human rights in Côte d'Ivoire and to keep the Security Council sanctions committee regularly informed; to assist the government of Côte d'Ivoire in re-establishing the authority of the security services, judiciary and the rule of law throughout Côte d'Ivoire (S/RES/1528 and S/RES/1739)
UN Stabilization Mission in Haiti (MINUSTAH) S/RES/1542 (2004)	To assist in monitoring, restructuring and reforming the Haitian National Police; to support the constitutional and political processes; to assist with the restoration and maintenance of the rule of law, public safety and public order; to assist in organising, monitoring, and carrying out free and fair municipal, parliamentary and presidential elections; to support the transitional government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights and to monitor and report on the human rights situation in the country (S/RES/1542) The Council encouraged MINUSTAH to provide logistical support and technical expertise to assist the government of Haiti to continue operations to build the capacity of its rule of law institutions at the national and local level (S/RES/1927)

Annex I: A list of Council mandates with rule of law components (continued)

Security Council Mission	Mandate Relevant to the Rule of Law
UN Assistance Mission for Iraq (UNAMI) S/RES/1546 (2004)	Promote the protection of human rights, national reconciliation and judicial and legal reform in order to strengthen the rule of law in Iraq (S/RES/1546)
UN Integrated Mission in Timor-Leste (UNMIT) S/RES/1704 (2006)	Provide support to the national police and assist in conducting a comprehensive review of the role and needs of the security sector; assist in further strengthening the national capacity for the monitoring, promotion and protection of human rights (S/RES/1704) Enhance the effectiveness of the judiciary system (S/RES/1802)
African Union Mission to Somalia (AMISOM) S/RES/1744 (2007)	Called upon the transitional government to develop a national security strategy for the operation of security forces and ensuring the rule of law and human rights (S/RES/1872 (2009)); called on the Secretary-General to assist and advise on these efforts (S/RES/1910 (2010); S/RES/1964 (2010)); welcomed his intent to establish such capacity (including institutional and security sector reforms) within the UN Political Office for Somalia (S/RES/1964)
African Union/United Nations Hybrid operation in Darfur (UNAMID) S/RES/1769 (2007) and S/2007/307/Rev.1 (2007)	Contribute to the promotion of respect for and protection of human rights and fundamental freedoms in Darfur; assist in the promotion of the rule of law in Darfur, including through institution building, and strengthening local capacities to combat impunity (S/RES/1769 and S/2007/307/Rev.1)
The United Nations Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL) S/RES/1829 (2008)	Monitor and promote human rights, democratic institutions and the rule of law, including efforts to counter transnational organised crime and drug trafficking; support decentralisation, reviewing the 1991 Constitution and the enactment of relevant legislation (S/RES/1829) Provide assistance to the government in promoting good governance, the rule of law and human rights, including institutional reform; combat illicit drug trafficking and organised crime; combat corruption; provide support to the Human Rights Commission and assist in strengthening national capacity-building in the areas of law enforcement, forensics, border management, money laundering and the strengthening of criminal justice institutions (S/RES/1941)
United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) S/PRST/2009/5	To assist in the reform of security sector institutions and support activities to promote the rule of law; support efforts to restore state authority; support efforts to enhance national human rights capacity and promote respect for human rights and the rule of law, justice and accountability (S/PRST/2009/5)
United Nations Organization Stabilization Mission in the DRC (MONUSCO) S/RES/1925 (2010)	Support government efforts to fight impunity and ensure the protection of civilians from violations of international human rights and humanitarian law, including all forms of sexual and gender-based violence; strengthen its military capacity, including military justice and military police; support the reform of the police; develop and implement a multi-year joint United Nations justice support programme in order to develop the criminal justice chain, the police, the judiciary and prisons in conflict-affected areas and a strategic programmatic support at the central level in Kinshasa; support the Congolese government in consolidating state authority in the territory freed from armed groups (S/RES/1925)
United Nations Office in Burundi (BNUB) S/RES/1959 (2010)	Strengthen the independence, capacities and legal frameworks of key national institutions, in particular judicial and parliamentary institutions; support Burundi's efforts to professionalize and enhance the capacity of the national security services and the police; promote and protect human rights, including strengthening national capacities in that area; support efforts to fight impunity, particularly through the establishment of transitional justice mechanisms (S/RES/1959)
United Nations Interim Security Force for Abyei (UNISFA) S/RES/1990 (2011)	Strengthen the capacity of the Abyei Police Service by providing support, including the training of personnel, and coordinate with the Abyei Police Service on matters of law and order; the Council requested the Secretary-General to ensure that effective human rights monitoring is carried out and that the results are included in his reports to the Council (S/RES/1990)
United Nations Mission in the Republic of South Sudan (UNMISS) S/RES/1996 (2011)	Support the government of South Sudan in developing its capacity to provide security, to establish rule of law and to strengthen the security and justice sectors; support South Sudan in exercising its responsibilities regarding the protection of human rights and exercising good governance (S/RES/1996)
United Nations Support Mission in Libya (UNSMIL) S/RES/2009 (2011)	Assist and support Libyan national efforts to restore public security and order and promote the rule of law; extend state authority and strengthen emerging accountable institutions; promote and protect human rights; promote national reconciliation, and embark upon the constitution-making and electoral process (S/RES/2009)



Annex II: A list of the sanctions regimes, including their establishment and any modifications made that are related to the rule of law and protection of human rights

Sanctions Committee	Relevant Resolutions	Types of Sanctions	Number of Listed Individuals and Entities	Adjustments to the Sanctions Regimes Related to the Rule of Law*
Somalia and Eritrea	S/RES/751 (1992); S/RES/1844 (2008); S/RES/1907 (2009)	Arms embargo (including a ban on arms sales to specific individuals); travel ban; assets freeze	11	Humanitarian exemptions to travel ban and assets freeze S/RES/1844 (2008)
Al-Qaida	S/RES/1267 (1999) and S/RES/1989 (2011)	Arms embargo on listed individuals; travel ban; assets freeze	344	Humanitarian exemption on assets freeze S/RES/1452 (2003) and S/RES/1735 (2006); exemptions for travel for judicial purposes and possible humanitarian needs S/RES/1904 (2009)
Iraq	S/RES/661 (1990); S/RES/1518 (2003); S/RES/1483 (2003)	Arms embargo; assets freeze	297	
Liberia	S/RES/1521 (2003); S/RES/1532 (2004); S/RES/1961 (2010)	Arms embargo (on all non-governmental entities); travel ban; assets freeze	45 subjected to travel ban; 52 subjected to assets freeze.	Humanitarian exemptions to travel ban and assets freeze S/RES/1521 (2003) and S/RES/1532 (2004)
Democratic Republic of the Congo	S/RES/1533 (2004); S/RES/1596 (2005); S/RES/1807 (2008)	Arms embargo (on all non-governmental entities); travel ban; assets freeze	31	Humanitarian exemption on assets freeze S/RES/1807 (2008); exemptions for travel for judicial purposes and humanitarian needs S/RES/1807 (2008)
Côte d'Ivoire	S/RES/1572 (2004); S/RES/1893 (2009)	Arms embargo; diamonds embargo; travel ban; assets freeze	8	Humanitarian exemptions to travel ban and assets freeze S/RES/1572 (2004)
Sudan/Darfur	S/RES/1591 (2005); S/RES/1556 (2004); S/RES/1945 (2010)	Arms embargo; travel ban; assets freeze	4	Humanitarian exemptions to travel ban and assets freeze S/RES/1591 (2005)
Lebanon	S/RES/1636 (2005)	Travel ban; assets freeze	0	Humanitarian exemptions to travel ban and assets freeze S/RES/1636 (2005)
DPRK (North Korea)	S/RES/1718 (2006)	Arms embargo; embargo on items related to ballistic missiles and weapons of mass destruction; luxury goods; assets freeze; travel ban	13	Humanitarian exemptions to travel ban and assets freeze S/RES/1718 (2006)
Iran	S/RES/1737 (2006); S/RES/1747 (2007); S/RES/1803 (2008); S/RES/1929 (2010)	Arms embargo on specific categories of weapons; embargo on items related to ballistic missiles and weapons of mass destruction; luxury goods; assets freeze; travel ban	116	Humanitarian exemption on assets freeze S/RES/1737 (2006); humanitarian exemption to travel ban S/RES/1803 (2008)

Annex II: A list of the sanctions regimes, including their establishment and any modifications made that are related to the rule of law and protection of human rights

(continued)

Sanctions Committee	Relevant Resolutions	Types of Sanctions	Number of Listed Individuals and Entities	Adjustments to the Sanctions Regimes Related to the Rule of Law
Libya	S/RES/1970 (2011)	Arms embargo; a flight ban; travel ban; assets freeze	20 subjected to travel ban; 19 subjected to assets freeze.	Humanitarian exemptions to travel ban and assets freeze S/RES/1970 (2011); humanitarian exemption to flight ban S/RES/1973 (2011)
Afghanistan/ Taliban	S/RES/1988 (2011)	Arms embargo on listed individuals; travel ban; assets freeze	127	Humanitarian exemption on assets freeze S/RES/1452 (2003) and S/RES/1735 (2006); exemptions for travel for judicial purposes S/RES/1988 (2011)

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