



SECURITY COUNCIL REPORT

UPDATE REPORT



24 June 2010 No. 3

RULE OF LAW

Expected Council Action

An open debate on "The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security" is scheduled for 29 June. The debate which has been initiated by Mexico in its capacity as president is expected to be chaired by Juan Manuel Gómez-Robledo, Deputy Foreign Minister for multilateral affairs and Human Rights. This is the first time since 2006 that this issue has been taken up by the Council. In addition to member states at large, Deputy Secretary-General Asha-Rose Migiro, a representative from the ICJ and Under Secretary-General for Legal Affairs Patricia O'Brien, are likely to be invited to address the Council.

Mexico has circulated a concept paper setting out the suggested themes for the debate. The main objective of the debate is to take stock of how things have developed in the area of rule of law and justice since the 2006 debate and to discuss the Council's role in strengthening rule of law. The areas of focus are:

- the promotion of rule of law in conflict and post-conflict situations;
- international justice and peaceful settlement of disputes; and
- the efficiency and credibility of sanctions regimes.

At press time Council members were negotiating a presidential statement. While the statement is likely to cover many of the key areas in the concept paper, there is some uncertainty whether there will be any concrete new proposals emerging from the debate.

Background

In recent years, rule of law and justice issues have gained prominence in the Council's thinking and discussions about long-term solutions. They have also influenced the design of its operations in the field and are now part of mainstream Council discussion and action.

The first concrete reference to "rule of law" by the Council appears to have been in resolution 1040 on Burundi adopted on 29 January 1996. This resolution expressed the Council's support for the Secretary-General's efforts to promote "national reconciliation, democracy, security and the rule of law in Burundi". Since then many peacekeeping operations have included rule of law components including the mandates of the UN Organization Mission in the Democratic Republic of the Congo (MONUC), the UN Mission in Liberia (UNMIL), the UN Operations in Côte d'Ivoire (UNOCI) and the UN Stabilization Mission in Haiti (MINUSTAH), as well as the Kosovo UN mission and the one set up in Timor-Leste in 1999.

Rule of law and international justice issues also have become a focus in a number of thematic approaches in the Council such as protection of civilians; children and armed conflict; and women peace and security.

Past Rule of Law Debates

In October 2004 the Council held a debate on the theme of "Justice and the Rule of Law: The United Nations Role" under the presidency of the UK. It was a follow-up to two earlier debates on this subject: a ministerial level Council meeting on 24 September 2003 and an open debate on 30 September 2003.

The 2004 meeting discussed the Secretary-General's report on *The rule of law and transitional justice in conflict and post-conflict societies* which took stock of the existing UN practices, experience, and expertise and put forward a series of recommendations both for the Council and, more specifically, the UN system.

During the rule of law debates Council members, as well as other member states, focused on the importance of ensuring the rule of law in conflict and post conflict situations, its significance in building confidence of the populations affected by or emerging from conflict in both the international community and in new local institutions, and on the role the Council could play in these issues by incorporating rule of law components into its operations. Numerous speakers discussed the experience the UN has accumulated in these matters over the past years and analysed the lessons learned.

Several speakers in these debates also highlighted the need for societies emerging from conflict to include mechanisms for reparations for victims of the previous regimes and for an apparatus that would ensure that perpetrators are not allowed to remain in positions of power.

(Please see our 16 June 2006 *Update Report on Strengthening International Law* for more information on the background and history of this issue.)

The 2006 Debate

The Council's last debate on this issue was on 22 June 2006. The open debate on "Strengthening international law: rule of law and maintenance of international peace and security" was held under the Danish presidency. There was active participation from Council members, 14 member states and the Permanent Observer of Palestine to the UN. In the presidential statement adopted following the debate the Council:

- supported the peaceful settlement of disputes including through use of regional mechanisms and the International Court of Justice (ICJ);
- attached importance to promoting justice and rule of law;
- emphasised the importance of rule of law activities in peacebuilding and the role of the Peacebuilding Commission (PBC);
- supported establishing a rule of law assistance unit within the Secretariat;
- emphasised the responsibility of states to comply with obligations to end impunity;
- drew attention to the full range of justice and reconciliation mechanisms;
- considered sanctions an important tool in the maintenance and restoration of international peace and security and resolved to ensure that sanctions are carefully targeted and implemented to balance effectiveness against possible adverse consequences; and
- reiterated that the 1267 Sanctions Committee (the Al-Qaida and Taliban Sanctions Committee) should continue to work on its guidelines, including listing and delisting procedures.

On 14 December 2006 the Secretary-General circulated a report, "Uniting our strengths: Enhancing United Nations support for the rule of law". This report had been requested 26 months earlier in the 6 October 2004 presidential statement which had asked the Secretariat to provide a report with proposals about the implementation of the Secretary-General's recommendations related to the UN system, with particular emphasis on those measures that could be implemented rapidly. The report set out how the UN Secretariat would be organised to support rule of law and transitional justice activities including a rule of law coordination mechanism to coordinate rule of law activities across the UN.

Key Developments Since the 2006 Debate

A direct development arising out of the Secretary-General's 2006 report is a new interdepartmental and interagency mechanism within the UN. The Rule of Law Coordination and Resource Group, which was set up in 2007, is chaired by the Deputy Secretary-General and supported within the Secretariat by a rule of law unit. The Group's main role is to ensure coherence in the different areas of the UN that deal with rule of law. Also in 2007 the Office for Rule of Law and Security Institutions was set up within the Department of Peacekeeping to cover areas related to the police, judiciary, legal infrastructure, correctional units and mine action, as well as disarmament, demobilisation and reintegration and security sector reform. It also supports policing and corrections in countries with no peacekeeping missions.

The creation of the PBC has led to greater attention being paid to rule of law in post-conflict situations. The PBC held its first meeting on 23 June 2006, one day after the last thematic debate on rule of law and justice. Rule of law and justice issues feature prominently in the priorities of all four countries on the PBC agenda—Burundi, the Central African Republic, Guinea-Bissau and Sierra Leone. (Please see our November 2009 *Special Research Report on the Peacebuilding Commission* for more information on developments in the PBC.)

Another key development in this area is increasing awareness among Council members of the overlapping roles of peacekeeping and peacebuilding. This has been reflected in recent Security Council decisions reflecting acceptance that peacebuilding cannot be sequenced and relegated to only post-peacekeeping phases. While this development is still at a fledgling stage there seems to be a greater openness to consideration of peacebuilding, even while peacekeeping is underway. (Please see S/PRST/2009/23 on peacebuilding in the immediate aftermath of conflict; S/RES/1889 on women, peace and security; and S/PRST/2010/2 on UN peacekeeping operations' transition and exit strategies.)

A development related to international justice and impunity is the International Criminal Court's (ICC) decision on 25 May after three years of inaction by the Sudanese government on ICC arrest warrants to send a formal finding of non-cooperation by the Sudanese government to the Council. Security Council Resolution 1593, which refers the situation in Darfur to the ICC, requires the Government of Sudan to cooperate fully. On 28 May the Secretary-General transmitted a letter from the ICC's registrar to the Council president about Sudan's lack of cooperation in the prosecution of former minister, Ahmad Harun, and militia leader, Ali Kushayb. As the jurisdiction of the ICC to investigate and prosecute crimes in Darfur and the obligation of Sudan to cooperate with the ICC originates from the Council, it is vested with the power to address and take any action in respect of Sudan's failure to cooperate with the Court. This is the first time a finding of non-cooperation has been sent to the Council. This issue was raised during the briefing on Sudan by Luis Moreno-Ocampo, the ICC prosecutor, to the Council on 11 June.

The Council has also continued to signal its concerns about impunity in resolutions and statements. In 2009 the Council highlighted impunity in its resolutions on Chad/CAR, Somalia, Timor-Leste, Afghanistan, Guinea-Bissau, Côte d'Ivoire, Haiti and Burundi. However, none of the country-specific references gave the Council a role nor was there any request for more information from the Secretary-General. Interestingly, while the January 2009 resolution renewing the UN mission in Nepal (UNMIN) did not contain any reference to impunity, the July 2009 and January 2010 resolutions recognised the need to address impunity and promote human rights. Also noteworthy is the lack of any reference to impunity in both the resolutions renewing both UNMIS and UNAMID in Sudan.

Substantive references to impunity were found in thematic resolutions on women, peace and security; sexual violence; children and armed conflict; and protection of children. The November 2009 resolution on protection of civilians underlined the Council's role in ending impunity.

Rule of law, impunity and justice issues were highlighted in almost all the 2009 presidential statements. This can be partly explained by the fact that many presidential statements during that year were in response to the type of peace and security crises which come about as a result of a break-down in law and order. Thematic presidential statements on issues like post-conflict peacebuilding and protection of civilians also contained references to rule of law and justice issues.

Related to the area of international justice is the Council's current engagement in discussions on how to wind down the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). It is discussing a possible residual mechanism with eight functions: trial of fugitives; trial of contempt cases; protection of witnesses; review of judgments; referral of cases to national jurisdictions; supervision of enforcement of sentences; assistance to national authorities; and management of the archives. However, a number of issues are yet to be decided. Among them are the structure of the mechanisms and whether there will be one or two mechanisms or one mechanism with two branches. The location of the mechanism, its residual functions and start date are also undecided. An important area that has not been agreed on is the jurisdiction of the mechanism(s) and how best to ensure that there is no impunity for any fugitives.

The 29 June debate will also focus on the efficiency and credibility of UN sanctions regimes. Sanctions are seen as tools in promoting compliance with international law and in fighting terrorism. However, the sanctions regime targeting Al-Qaeda and the Taliban, has itself been for years the focus of a number of rule of law concerns. Originally imposed in 1999 on Afghanistan through resolution 1267, it was modified following the 2001 terrorist attacks in the US and under resolution 1390 and can be applied worldwide and to a larger category of individuals and entities. As a result nearly 500 individuals and entities were targeted which raised concerns about possible mistaken identity, the lack of transparent procedures and the difficulty of appealing a listing decision.

In the last two years important steps have been taken to address these concerns. In 2008 the Council adopted resolution 1822 which mandated a review of all names on the consolidated list of sanctions' targets. And in December 2009, the Council adopted resolution 1904 which considerably improves the procedures of the Al-Qaida and Taliban sanctions regime in terms of due process such as ensuring that delisting requests are addressed by the Committee in a more timely fashion, within six months. Other improvements include member states having to provide a narrative summary of their listed individuals and a description of the effects of their listing. Most notably, resolution 1904 created an "Office of the Ombudsperson" which provided the right to review of the lists by an independent mechanism. It took six months to fill the position, but on 7 June Judge Kimberly Prost of Canada, who had previously served with the ICTY, was appointed as the Ombudsperson for the 1267 Sanctions Committee. The creation of this position allows individuals and entities subject to sanctions measures the opportunity to present their cases to an independent body. The Ombudsperson, after consultations with both relevant states and the petitioner, presents her observations to the 1267 Sanctions Committee.

Key Issues

An issue for the Council is to be able to develop a more enduring and sustained focus on issues of justice and rule of law (this will be the first time the Council will have an opportunity to address the Secretary-General's 2006 report on matters that the Council had requested in 2004). With the increasing importance of rule of law and justice issues in country-specific situations on the Council's agenda and its cross-cutting significance, more regular thematic discussions could allow for a more meaningful response from the Council.

A related issue is whether there should be better coordination between the Council and relevant bodies such as the Rule of Law Coordination and Resource Group and the PBC.

Also an issue is ensuring that the Council's approach to this issue shows sensitivity to the fact that much of this matter is a key area of competence for the General Assembly.

An important emerging issue is being able to address new threats to peace and security, such as piracy, in the framework of rule of law and justice.

An increasingly important issue is what the Council can do to support and strengthen national rule of law and security institutions in the context of laying the foundation for the transition and exit of peacekeeping operations.

In the area of international justice, an issue for the Council is how best to wind down the ICTY and ICTR. A key aspect of this for many is ensuring that there will not be impunity for fugitives still at large. (This is the first time the Council will be closing an international tribunal, and how it handles this could set a precedent for future international justice mechanisms.)

A key international justice issue is whether the Council should try to make better use of the ICJ. Among the possible areas that could be developed is allowing the Secretary-General to seek advisory opinions from the ICJ and the Council to have recourse to the advisory opinions of the ICJ.

An issue related to the use of pacific settlement of disputes is how to develop the Council's institutional capacity to help prevent the outbreak of situations that threaten peace.

There are also a number of issues in the area of sanctions:

- What more can the Council do to ensure that fair and clear procedures are being used in listing and delisting mechanisms?
- How to ensure more rigorous implementation of sanctions.
- How to deal with the delay between the decisions regarding the establishment of individually targeted sanctions and the naming of targets. (Recent examples include Sudan where it took from March 2005 to April 2006 and the DRC where it took three and a half years for the first names of child recruiters to be added to the DRC sanctions list and Somalia where resolution 1844 of November 2008 specified sanctions against individuals but the first designations for targeted sanctions were only announced by the Sanctions Committee for Somalia and Eritrea in April 2010.)
- What can be done to strengthen Council sanction regimes' legitimacy and overall effectiveness?

Also an issue is whether the Council should take any action following the letter from the ICC informing the Council of Sudan's failure to cooperate with the ICC.

A continuing issue for the Council is following up on earlier decisions on impunity related issues. For example, a December 2004 report on human rights violations in Côte d'Ivoire requested by a presidential statement in May of that year has not been made public by the Council. Also on Côte d'Ivoire, a December 2005 report by the Secretary-General's Special Adviser on the Prevention of Genocide has not been published.

A logistical issue for the Council is being able to have a productive discussion and attracting a substantial number of member states, given the short period of time for preparation, as well as the number of critical issues being handled by the Council in June.

Options

One option is a presidential statement simply focusing on areas to be covered in the debate without asking for any follow-up action.

Another option is a presidential statement which makes specific recommendations for greater Council involvement in this issue and includes a request for a follow-up report on rule of law in conflict and post-conflict situations.

Other options include discussion on:

- developing strategies for using the peaceful means available under Chapter VI;
- how the Council can work more closely with the ICJ and ICC; and
- ways of strengthening the legitimacy and effectiveness of sanctions regimes.

Another option for the Council is to agree to make rule of law issues a high priority in its reviews of existing peacekeeping mandates on the grounds that proper addressing of these issues could help create suitable exit conditions for peacekeeping missions.

Council and Wider Dynamics

Council members are generally supportive of the debate although some feel that the short lead-time will not allow for a substantive outcome. Expectations for any new decisions therefore appear to be quite low. Among the Council members who have played an active role in helping Mexico develop its ideas for this debate are Austria and the UK. Non-Council member Liechtenstein, which together with Mexico, has been actively involved in several aspects of the issue in the General Assembly, also contributed to the issues for the debate.

Some members are concerned that a follow-up report from the Secretary-General could be a duplication of the Secretary-General's annual report to the General Assembly on Rule of Law. In this context members are also aware of the sensitivity of the Council appearing to encroach on what is seen as General Assembly purview.

Among Council members there are also different approaches to a number of international justice issues, as well as to sanctions. Russia and China see the international tribunals as a big expense and are more likely to want to have a far more streamlined residual mechanism than some of the other members. The

issue of sanctions has been a difficult one for the Council as there are clear differences over whether this is the best way to put pressure on individuals and countries.

For a number of Council members there is a growing interest in finding ways of bringing down the high cost of peacekeeping. However, there is also awareness of the importance of putting in place the right conditions for the withdrawal of peacekeeping operations. In this context the discussions on rule of law and justice and their role in helping a country return to normalcy may be of particular interest to these members.

UN Documents

Selected Security Council Resolutions

- S/RES/1904 (17 December 2009) improved the procedures of the Al-Qaida and Taliban sanctions regime and created an “Office of the Ombudsperson”.
- S/RES/1889 (5 October 2009) was on women, peace and security.
- S/RES/1888 (30 September 2009) was on sexual violence.
- S/RES/1844 (20 November 2008) expanded the mandate of the Somalia and Eritrea Sanctions Committee to designate individuals and entities for targeted sanctions.
- S/RES/1822 (30 June 2008) mandated a review of all names on the consolidated list of sanctions’ targets.
- S/RES/1698 (31 July 2006) extended the scope of sanctions in the DRC to leaders recruiting children in armed conflict.
- S/RES/1674 (28 April 2006) was on civilians in armed conflict and emphasised the need to end impunity and drew attention to the range of justice mechanisms to be considered, including national, international and mixed criminal courts and tribunals.
- S/RES/1593 (31 March 2005) referred the situation in Darfur to the ICC.
- S/RES/1390 (28 January 2002) made the measures of resolution 1267 applicable worldwide.
- S/RES/1315 (14 August 2000) requested the Secretary-General negotiate an agreement to create the Special Court for Sierra Leone.
- S/RES/1267 (15 October 1999) imposed sanctions on the Taliban in Afghanistan.
- S/RES/955 (8 November 1994) established the ICTR.
- S/RES/827 (25 May 1993) established the ICTY.
- S/RES/780 (6 October 1992) asked the Secretary-General to appoint an international commission to provide recommendations on how to address the situation in the former Yugoslavia.
- S/RES/688 (5 April 1991) stated that repression against civilian population within a state had consequences that could “threaten international peace and security in the region.”

Selected Presidential Statements

- S/PRST/2010/2 (12 February 2010) was on UN peacekeeping operations’ transition and strategies.
- S/PRST/2009/23 (22 July 2009) was on peacebuilding in the immediate aftermath of conflict.
- S/PRST/2006/28 (22 June 2006) followed the 2006 rule of law debate.
- S/PRST/2005/30 (12 July 2005) stressed the importance of justice and the rule of law in post conflict situations and the need for the end of impunity as a part of peace agreements.
- S/PRST/2004/34 (6 October 2004) expressed the Council’s intention to consider the matter of justice and the rule of law in conflict and post-conflict societies within six months and asked the Secretary-General to make proposals for rapid implementation of the recommendations made in the Secretary-General’s report of 23 August 2004 on strengthening UN support for transitional justice and the rule of law in conflict and post-conflict countries.
- S/PRST/2004/17 (25 May 2004) asked the Secretary-General to establish an international commission of inquiry to investigate all human rights violations committed in Côte d’Ivoire since 19 September 2002 and determine responsibility.
- S/PRST/2004/2 (26 January 2004) was on post-conflict national reconciliation and asked the Secretary-General to give consideration to the views expressed in the 26 January open debate in the preparation of his report on justice and the rule of law.
- S/PRST/2003/15 (24 September 2003) welcomed the offer by the Secretary-General to

	provide a report to guide further consultations on justice and the rule of law.
Secretary-General's Reports	
	<ul style="list-style-type: none"> • S/2006/980 and Corr. 1 (14 December 2006) was the report "Uniting our strengths: Enhancing United Nations support for the rule of law". • S/2004/616 (23 August 2004) was the report <i>The rule of law and transitional justice in conflict and post-conflict societies</i> which assessed existing UN practices, experience and expertise and put forward a series of recommendations for both the Council and the UN system.
Selected Security Council Meeting Records	
	<ul style="list-style-type: none"> • S/PV.6270 and S/PV.6270 Res.1 (12 February 2010) was an open debate on transition and exit strategies in peacekeeping operations. • S/PV.6224 (25 November 2009) was an open debate on post-conflict peacebuilding in the immediate after-math of conflict. • S/PV.5474 and Res.1 (22 June 2006) was the last open debate on rule of law. • S/PV.5052 and Res. 1 (6 October 2004) was an open debate in which the Council discussed the Secretary-General's report on the rule of law. • S/PV.4993 and Res. 1 (22 June 2004) was an open debate on the role of civil society in post-conflict peacebuilding. • S/PV.4903 and Res. 1 and Corr. 1 (26 January 2004) was an open debate on the role of the UN in post-conflict national reconciliation. • S/PV.4835 (30 September 2003) was a follow-up on the meeting of 24 September 2003; emphasis was placed on the justice system and the importance of having an independent and impartial judiciary. • S/PV.4833 (24 September 2003) was an open meeting on the role of the UN with regard to justice and the rule of law. • S/PV.4394 Res. 1 and Corr.1 (25 October 2001) was a continuation of the debate of 22 October. • S/PV.4394 (22 October 2001) was an open debate on general issues related to sanctions.
Other	
	<ul style="list-style-type: none"> • A/64/298 (17 August 2009) was the Secretary-General's annual report on strengthening and coordinating UN rule of law activities. • S/2006/997 (22 December 2006) was the final report of the Informal Working Group of the Security Council on General Issues of Sanctions. • S/2006/367 (7 June 2006) contained the Danish discussion paper for the 22 June meeting. • A/RES/60/1 (24 October 2005) contained the 2005 World Summit Outcome Document. • SC/7672 (25 February 2003) was a press release on the presentation of the Stockholm process findings to the Council. • SC/7673 (25 February 2003) was a press release encouraging further discussion and work to refine the instrument of targeted sanctions.

Useful Additional Sources

- 1267 Committee website with annual reports and selected documents (<http://www.un.org/Docs/sc/committees/1267Template.htm>)
- Human Rights Watch publications on international justice (<http://www.hrw.org/en/category/topic/international-justice>)
- International Center for Transitional Justice publications (<http://www.ictj.org/en/index.html>)
- *Strengthening Targeted Sanctions through Fair and Clear Procedures*, White Paper, Watson Center, Brown University, 30 March 2006 (http://www.watsoninstitute.org/news_detail.cfm?id=425)

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Security Council Report is published with the support of the Governments of Canada, Denmark, Liechtenstein, Norway and Switzerland, The Rockefeller Foundation, the John D. and Catherine T. MacArthur Foundation, the William and Flora Hewlett Foundation and the David and Lucile Packard Foundation. It is incorporated as a not for profit Organisation and operates in affiliation with the School of International and Public Affairs at Columbia University in New York.

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