

**Security Council**

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Letter dated 11 December 2020 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

I wish to refer to the meeting of the Security Council on the theme “The promotion and strengthening of the rule of law: strengthening the cooperation between the Security Council and the International Court of Justice” that South Africa will host as one of its elective meetings for its presidency. The open debate is scheduled to be held on 18 December 2020 at 10.30 a.m.

South Africa has prepared the attached concept note in order to guide the discussion on the subject (see annex).

I would appreciate it if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Jerry Matthews **Matjila**
Permanent Representative of the Republic of South Africa



Annex to the letter dated 11 December 2020 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

Concept note for the Security Council open debate on the theme “The promotion and strengthening of the rule of law: strengthening the cooperation between the Security Council and the International Court of Justice”, to be held on 18 December 2020

Introduction

1. In its preamble, the Charter of the United Nations affirms the determination of the “Peoples of the United Nations” to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. Article 1 of the Charter spells out the purposes of the United Nations, including:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

2. Under Article 24 of the Charter, the primary responsibility for the maintenance of international peace and security is conferred on the Security Council. In discharging its functions, the Council acts on behalf of all States Members of the United Nations. Throughout its history, the Council has declared repeatedly its commitment to international law and to an international order based on the rule of law. On numerous occasions, the Council has reiterated its commitment to, and support for, the peaceful settlement of disputes, calling upon States Members of the United Nations to settle them by peaceful means, as set forth in Chapter VI of the Charter. It also emphasized the key role of the International Court of Justice, the principal organ of the United Nations, in adjudicating disputes among States and the value of its work.

3. On 23 December 2020, the International Court of Justice will celebrate its seventy-fifth anniversary and the hundredth anniversary of the Statute of the Permanent Court of International Justice.

4. Statements by various presidents of the Security Council ([S/PRST/2006/28](#); [S/PRST/2010/11](#); and [S/PRST/2012/1](#)) have reaffirmed the importance of the International Court of Justice.

5. The Court has always had a special interest in engaging young people in its judicial activities. It has continuously emphasized in its annual reports the importance of enabling students from a wide range of geographic and linguistic backgrounds to familiarize themselves with the work of the Court and to develop their skills in the field of the peaceful settlement of international disputes through the law.

6. This long-standing interest of the Court is in line with several General Assembly resolutions encouraging States, international organizations and institutions to increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries, especially young woman.

Objectives

7. The purpose of this event is to enhance the relationship between the Security Council and the International Court of Justice, focusing on the Council's contribution to uphold the rule of law at the international level, as part of its primary mandate to maintain international peace and security. Since the 1990s, upholding the rule of law has been an essential component of the United Nations agenda, including the Council. The rule of law has provided to the Council a yardstick to identify threats to international peace and security as well as means to address them. The development of the rule of law at the international level is one of the major success stories of the United Nations, 75 years after its creation.

8. The importance of the rule of law is one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding, and justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations.

9. The use of the Court is perceived as one of the most cost-effective solutions for upholding the rule of law at the international level and to ensure the effectiveness of the United Nations framework for the maintenance of international peace and security.

10. The institutional framework for cooperation between the Council and the Court has not been used often. Aside from the right of States under Article 94 (2) of the Charter to have recourse to the Council, in practice, the Council has rarely relied directly on the Court, for example, under Article 36 (3) of the Charter (Corfu Channel), or under Article 96 (1) (Namibia Advisory Opinion). It is important to note that the work of the Council and the Court were always intended to be complementary, as is clear from the inclusion in the Charter of Articles 36 and 94. The two principal organs can perform their separate but complementary functions with respect to their mandate.

11. The Council therefore needs to make more use of the Court as an instrument or tool in the exercise of its mandate to maintain international peace and security. The Council may do this by recommending that disputing States submit their disputes to the Court (Article 36 (3)). In addition, the Charter also gives the Council responsibility for addressing instances of non-compliance by States with the Court's judgments brought before the Council (Article 94 (2)). The revitalization of the relationship between the Council and the Court could therefore benefit from certain concrete and pragmatic measures.

12. The Council could take advantage of the possibility to request advisory opinions from the Court in accordance with Article 96 (1) of the Charter on various legal issues that arise in the Council's agenda, which has the potential to help to resolve matters between States and assist the relevant parties in moving forward to resolve further issues. The Council can also make use of the Court more frequently by ensuring that in its work regarding both thematic agenda items and country-specific situations, the Council members should bear in mind the provisions of the Charter concerning the interaction of the Council with the Court and the possible role the Court could play in assisting the Council in the execution of its mandate.

13. The Council could invite the President of the International Court of Justice to brief it when instances of non-compliance with decisions of the Court might threaten international peace and security.

14. In a recent address to the Council, in October 2020, the President of the Court focused on the issue of the relationship between the Council and the Court. The President mentioned the separate but complementary functions of the Court and the

Council as two of the principal organs of the United Nations; the necessity for the Council to take into consideration, under Article 36 (3) of the Charter, that legal disputes between Member States should as a general rule be referred by the parties to the Court; the advisory function of the Court, whereby the Council may request advisory opinions from the Court; and the possible role of the Council in the implementation of the decisions of the Court, inter alia, under Article 94 (2) of the Charter.

15. He invited the Council to resume its past tradition of recommending to parties to legal disputes that such disputes be referred to the Court, and to make use of the advisory function of the Court on legal questions. In this regard, the Council could further address the advancement of the peaceful settlement of international disputes and the support that the Council could provide to this important cause.

Format, participants and outcome

16. An open debate under the Presidency of South Africa is envisaged, which will include the President of the Court as a briefer.

17. Members of the Council are invited to make interventions that are focused on practical proposals aimed at upholding international law within the context of fostering close cooperation between the Court and the Council in accordance with the institutional framework of the Charter.

18. In particular, suggestions regarding raising awareness of the Council's resolutions relevant to the issues outlined above and enhancing their implementation, including through assistance to States at their request, would be welcome.

19. The presidency intends to propose a statement by the President of the Council as an outcome of the open debate.

Guiding questions

20. The Council should discuss in more detail the suggestions of the President of the Court to enhance the relationship between the Council and the Court and consider concrete proposals to reinforce the partnership between the Court and the Council in its efforts to uphold the rule of law at the international level, thus ensuring the maintenance of international peace and security, including in the context of the following questions:

- How can we strengthen the partnership between the Council and the Court to uphold the rule of law at the international level?
- For this purpose, what are the concrete difficulties – practical, normative and institutional – that affect the cooperation between the two institutions?
- What measures and practical steps can be taken to revitalize effective cooperation between the two principal organs?
- What measures can the Council take to further support the contribution of the Court to the maintenance of international peace and security?
- What role can the Court play in conflict and post-conflict situations to enhance the capacity of the justice systems in those countries emerging from the conflict?