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35. The promotion and strengthening of the rule of law in the maintenance of international peace and security

Overview

During the period under review, the Security Council held three meetings in connection with the item entitled “The promotion and strengthening of the rule of law in the maintenance of international peace and security” and issued one presidential statement.

The table at the end of the section lists the meetings at which this item was considered, and gives information on, inter alia, invitees, speakers and decisions adopted.

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies

On 19 January 2012, the Council held an open debate on the promotion and strengthening of the rule of law in the maintenance of international peace and security, in the context of which the Secretary-General introduced his report on the rule of law and transitional justice in conflict and post-conflict societies.¹

The Secretary-General noted that the work of the United Nations to promote the rule of law extended to more than 150 countries and focused on a broad range of areas. He explained that the United Nations approach in relation to the rule of law had three

¹ [S/2011/634](http://www.un.org/en/sc/repertoire).

basic components: to promote accountability and reinforce norms through transitional justice; to build justice and security institutions to promote trust; and to focus on justice for women and girls to foster gender equality. The Secretary-General acknowledged that the Security Council had helped bringing these priorities to the top of the international agenda, but he noted that the Council could do more. He encouraged the Council to include the promotion of transitional justice measures more broadly in the mandates of peacekeeping missions and to reject any endorsement of amnesty for genocide and other serious crimes under international law. He also urged members to bring justice closer to victims by enhancing justice mechanisms and strengthening national prosecutions for serious international crimes.²

During the open debate, numerous speakers endorsed the Secretary-General's report, and some of them highlighted in particular the need for the Security Council to adhere to basic rule of law principles to ensure the legitimacy of its actions.³ Many speakers highlighted the increasingly active role of the Security Council in promoting the rule of law. Some speakers noted the connections between the promotion and protection of the rule of law and the maintenance of peace and security,⁴ and several others emphasized the linkage with sustainable development.⁵ Many speakers underscored the primary role of States in ensuring the rule of law and the importance of national ownership in rule of law activities carried out at the international level.⁶ Several speakers further emphasized and expressed their support to the role being played by international tribunals, including the International Criminal Court (ICC), in ensuring and promoting

² [S/PV.6705](#), pp. 2-3.

³ Ibid.p. 14 (China); p. 15 (Russian Federation); p. 17 (Pakistan); p. 23 (Brazil); p. 27 (Liechtenstein); p. 31 (Austria); and [S/PV.6705 \(Resumption 1\)](#), p. 9 (Luxembourg).

⁴ [S/PV.6705](#), pp. 12-13 (Morocco); p. 14 (China); p. 16 (Guatemala); [S/PV.6705 \(Resumption 1\)](#), p. 5 (Finland); p. 7 (Chile); p. 9 (Australia); p. 9 (Luxembourg); p. 10 (Mauritius); p. 13 (Bangladesh); p. 19 (Denmark); p. 21 (Armenia); p. 21 (Kyrgyzstan); and p. 22 (Ethiopia).

⁵ [S/PV.6705](#), p. 4 (Germany); p. 5 (India); p. 7 (Portugal); p. 11 (United Kingdom); p. 13 (Morocco); p. 14 (China); p. 20 (South Africa); p. 23 (Brazil); p.24 (Mexico); p. 28 (Costa Rica); [S/PV.6705 \(Resumption 1\)](#), p. 4 (Estonia); p. 6 (Switzerland); p. 7 (Chile); p. 8 (Australia); p. 14 (Nepal); p. 17 (Solomon Islands); and p. 19 (Denmark).

⁶ [S/PV.6705](#), p. 5 (India); p. 11 (United Kingdom); p. 13 (Morocco); p. 14 (China); p. 15 (Russian Federation); p.16 (Guatemala); p.17 (Pakistan); p. 20 (South Africa); p. 23 (Brazil); p. 27 (Liechtenstein); [S/PV.6705 \(Resumption 1\)](#), p. 13 (Sri Lanka); and p. 15 (Nepal).

the rule of law.⁷ Some speakers also recalled the importance attached to the peaceful settlement of disputes between States and to the specific role of the International Court of Justice in this regard, as the principal judicial organ of the United Nations.⁸

At the meeting, the Council issued a presidential statement,⁹ recognizing the need for universal adherence to and implementation of the rule of law and emphasizing that promoting justice and the rule of law was an indispensable element of peaceful coexistence and the prevention of armed conflict. The Council also recognized the importance of national ownership in rule of law activities. It requested the Secretary-General to continue his efforts to further clarify roles and responsibilities within the United Nations system for specific rule of law activities. The Council further reaffirmed in the statement its strong opposition to impunity for serious violations of international humanitarian law and human rights law and emphasized the responsibility of States to thoroughly investigate and prosecute persons responsible for war crimes, genocide, crimes against humanity or other serious violations of international humanitarian law.

Peace and justice with a special focus on the role of the International Criminal Court

On 17 October 2012, the Council held an open debate on “Peace and justice, with a special focus on the role of the International Criminal Court”, presided by the Minister of Foreign Affairs of Guatemala. According to the concept note circulated prior to the debate,¹⁰ the relationship between the Security Council and the ICC had never been comprehensively discussed in the Council. Therefore, Guatemala had proposed an open

⁷ [S/PV.6705](#), p. 4 (Germany); p. 6 (Portugal); p. 8 (France); p. 9 (United States); p. 20 (South Africa); p. 23 (Brazil); p. 24 (Mexico); p. 25 (Japan); p. 26 (Peru); p. 27 (Liechtenstein); p. 30 (Austria); [S/PV.6705 \(Resumption 1\)](#), pp. 2-3 (European Union); pp.3-4 (Estonia); p. 18 (Argentina), p. 20 (Denmark) and p. 23 (Philippines).

⁸ [S/PV.6705](#), p. 4 (Germany); p. 9 (France); p. 14 (China); p. 16 (Guatemala); p. 17 (Pakistan); p. 20 (South Africa); p. 23 (Brazil); p. 26 (Peru); p. 29 (Costa Rica); [S/PV.6705 \(Resumption 1\)](#), p. 2 (European Union); p.10 (Mauritius); p. 17 (Solomon Islands); pp. 18-19 (Argentina); and p. 21 (Kyrgyzstan).

⁹ [S/PRST/2012/1](#).

¹⁰ [S/2012/731](#).

debate with a twofold purpose: to explore how the ICC could assist the Security Council as a tool of preventive diplomacy in carrying out its mandate to uphold the rule of law, maintain peace and security, and combat impunity while ensuring accountability for mass atrocities; and to examine how the relationship between the two bodies had developed over the previous decade and to consider the way forward in strengthening their linkages.¹¹

The Secretary-General delivered an introductory statement in which he emphasized that the ICC stood at the centre of a new system of international criminal justice. He affirmed that the Council and the Court could have an impact on each other and could support each other in building local justice responses and in strengthening the rule of law.¹²

The President of the ICC emphasized that the Security Council and the Court were two highly distinct bodies with very different roles but connected by the shared objectives of peace, justice and respect for international law, enshrined in the Charter of the United Nations and the Rome Statute. He affirmed that for the ICC to effectively deal with situations referred by the Council under Chapter VII, it needed to count on the full and continuing cooperation of all United Nations Member States, including those that were not parties to the Rome Statute. He added that in making future referrals, it would be very helpful if the Security Council could underline the obligation of full cooperation. In this regard, he also noted the difficulty to sustain a system under which a referral was made by the Security Council on behalf of the United Nations, but the costs of any investigation and trial proceedings were met exclusively by the parties to the Rome Statute.¹³

The representative of the Prosecutor of the Court affirmed that the relationship between the Office of the Prosecutor and the Council could be nurtured and strengthened by extending the interaction beyond specific situations referred to the Prosecutor by the

¹¹ Ibid., p. 4.

¹² [S/PV.6849](#), pp. 2-3.

¹³ Ibid, p. 5.

Council and by creating a space for open discussion on thematic issues. He added that such dialogue was crucial, as both the Security Council and the Office of the Prosecutor were committed to preventing mass atrocities which constituted a threat to international peace and security. He highlighted different mandates and organizational structures of the Security Council and the Office of the Prosecutor, while also emphasizing what both have in common; namely, the fight against impunity, their respective roles in strengthening the complementary relationship between peace and justice, and their respective preventive mandates. In looking forward, the representative of the Prosecutor highlighted that increasing the political and diplomatic support of the Council for the Court was essential. He also mentioned that tools such as avoiding all non-essential contacts with ICC suspects in order to achieve the arrest of these individuals needed to be further explored. In his view, a new chapter should be added to the relationship with the Council by having the Office of the Prosecutor proactively collect information and monitor situations under preliminary examination and investigate as well as prosecute those most responsible for serious crimes.¹⁴

During the open debate, many speakers emphasized the preventive role of the ICC.¹⁵ Other speakers reflected about the challenges in the relationship between the two bodies, underlining practical as well as legal implications arising from the referral by the Council of certain situations to the ICC.¹⁶ Some speakers made suggestions with a view to improving that relationship and strengthening common efforts to achieve peace and justice.¹⁷ A number of Member States criticized the inconsistent approach of the Council

¹⁴ Ibid., pp. 6-8.

¹⁵ Ibid., p. 14 (Portugal); p. 23 (France); p. 25 (Guatemala); [S/PV.68\49 \(Resumption 1\)](#), p. 9 (Bangladesh); p. 10 (Slovenia); p. 13 (Honduras); p. 13 (Lithuania); p. 20 (Belgium); p. 27 (Philippines); p. 28 (Austria); p. 31 (Czech Republic); and p. 33 (Netherlands).

¹⁶ [S/PV.6849](#), p. 9 (Colombia); p. 11 (India); p. 14 (Portugal); p. 16 (South Africa); pp. 18-19 (Germany); p. 20 (Russian Federation); p. 24 (United Kingdom); p. 28 (Estonia); p. 29 (Peru); [S/PV.6849 \(Resumption 1\)](#), p. 5 (New Zealand), p. 6 (Australia); p. 7 (Japan); p. 8 (European Union); p. 9 (Bangladesh); pp. 11-12 (Argentina); p. 14 (Lithuania); p. 16 (Costa Rica); p. 20 (Switzerland); p. 20 (Belgium); p. 21 (Mexico); p. 23 (Slovakia); p. 27 (Philippines); and p. 32 (Timor-Leste).

¹⁷ [S/PV.6849](#), p. 15 (Azerbaijan); p. 16 (South Africa); p. 22 (Togo); p. 23 (France); p. 25 (Guatemala); p. 26 (Luxembourg), p. 27 (Finland), p. 28 (Estonia), [S/PV.6849 \(Resumption 1\)](#), pp. 2-3 (Lichtenstein); p. 5 (New Zealand); pp. 6-7 (Australia); p. 10 (Slovenia); p. 11 (Argentina); p. 14 (Lithuania); p. 16

towards different situations, as well as the lack of follow-up to referrals made by the Council.¹⁸ In this regard, some speakers emphasized the need to address the question of the financial implications of referrals made by the Security Council.¹⁹ A number of speakers stressed the need to achieve a balance between justice and reconciliation and to carry out its functions in a manner that supported collective efforts aimed at restoring peace and stability.²⁰ Some speakers, in reference to the Kampala compromise reached by the State Parties to the ICC in negotiations in Kampala in 2010,²¹ addressed the issue of the crime of aggression.²²

Effectiveness of the United Nations system support to the promotion of the rule of law in conflict and post-conflict situations

On 30 January 2013, the Deputy Secretary-General provided an interim briefing on the effectiveness of the United Nations system support to the promotion of the rule of law in conflict and post-conflict situations. The Deputy Secretary-General explained that further to internal consultations, the Secretary-General had made a decision in September 2012 to realign the United Nations institutional response to the challenges faced in supporting the rule of law in conflict and post-conflict States: first, at the field level, the Secretary-General had enhanced the United Nations field leadership, making leaders

(Botswana); pp. 16-17 (Costa Rica); pp. 18-19 (Tanzania); p. 20 (Switzerland); p. 21 (Belgium); pp. 21-22 (Mexico); pp. 22-23 (Tunisia); p. 24 (Spain); pp. 27-28 (Chile); p. 28 (Austria); and p. 33 (Netherlands).

¹⁸ [S/PV.6849](#), p. 11 (India); p. 20 (Russian Federation); p. 21 (Togo); [S/PV.6849 \(Resumption 1\)](#), p. 4 (Brazil); p. 5 (New Zealand); p. 19 (Switzerland); p. 22 (Tunisia); p. 28 (Austria); and p. 31 (Czech Republic).

¹⁹ [S/PV.6849](#), p. 10 (Colombia); p. 14 (Portugal); p. 19 (Germany); p. 21 (Togo); p. 27 (Finland); p. 28 (Estonia); p. 29 (Peru); [S/PV.6849 \(Resumption 1\)](#), p. 2 (Lichtenstein); p. 5 (New Zealand); p. 9 (Bangladesh); p. 12 (Argentina); p. 14 (Lithuania); p. 14 (Uruguay); p. 19 (Tanzania); p. 28 (Austria); p. 29 (Ecuador); p. 32 (Timor-Leste); and p. 33 (Netherlands).

²⁰ [S/PV.6849](#), p. 12 (China), [S/PV.6849 \(Resumption 1\)](#), p. 5 (New Zealand); pp. 9-10 (Bangladesh); p. 18 (Lesotho); pp. 18-19 (Tanzania); and p. 30 (Sudan).

²¹ For more information on the negotiations in Kampala regarding the definition on the crime of aggression, see Supplement 2010-2011, part VII, sect. I, case 7.

²² [S/PV.6849](#), p. 13 (Portugal); p. 15 (Azerbaijan); p. 20 (Russian Federation); p. 27 (Finland); p. 29 (Peru), [S/PV.6849 \(Resumption 1\)](#), p. 3 (Lichtenstein); p. 12 (Argentina); p. 14 (Uruguay); p. 28 (Austria); p. 29 (Ecuador); and p. 32 (Timor-Leste).

responsible and accountable for guiding United Nations rule of law strategies, addressing local challenges, and coordinating United Nations country support on the rule of law; secondly, at Headquarters, the Secretary-General had designated the Department of Peacekeeping Operations and the United Nations Development Programme as the joint global focal point for the police, justice and corrections areas in post-conflict and other crisis situations in order to support field leadership in carrying out its responsibilities; and thirdly, at the strategic level, the Secretary-General had strengthened the Rule of Law Coordination and Resource Group, to ensure that the United Nations could foresee emerging opportunities and mobilize partners in response.²³

²³ [S/PV.6913](#), p. 2.

Meetings: the promotion and strengthening of the rule of law in the maintenance of international peace and security

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote</i>
S/PV.6705 and S/PV.6705 (Resumption 1) 19 January 2012	Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2011/634)		26 Member States ^a	Head of the Delegation of the European Union to the United Nations	Secretary-General, all Council members and all invitees	S/PRST/2012/1
S/PV.6849 and S/PV.6849 (Resumption 1) 17 October 2012	Peace and justice, with a special focus on the role of the International Criminal Court Letter dated 1 October 2012 from the Permanent Representative of Guatemala (S/2012/731)		38 Member States ^b	President of the International Criminal Court, Representative of the Office of the Prosecutor of the International Criminal Court, Head of the Delegation of the European Union	Secretary-General, all Council members ^c and 35 invitees	
S/PV.6913 30 January 2013					Deputy Secretary-General	

^a Argentina, Armenia, Australia, Austria, Bangladesh, Brazil, Chile, Costa Rica, Denmark, Estonia, Ethiopia, Finland, the Islamic Republic of Iran, Japan, Kyrgyzstan, Liechtenstein, Luxembourg, Mauritius, Mexico, Nepal, Norway, Peru, the Philippines, Solomon Islands, Sri Lanka and Switzerland.

^b Argentina, Armenia, Australia, Austria, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Chile, Costa Rica, the Czech Republic, Ecuador, Estonia, Finland (Minister for Foreign Affairs), Honduras, Japan, Lesotho, Liechtenstein, Lithuania, Luxembourg (Vice-Prime Minister and Minister for Foreign Affairs), Mexico, the Netherlands, New Zealand, Peru, the Philippines, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, the Sudan, Switzerland, Timor-Leste, Tunisia, Uganda, the United Republic of Tanzania and Uruguay.

^c Guatemala (Minister for Foreign Affairs), India (Minister for Foreign Affairs).