

**Statement by Ms. Patricia O' Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel**

Security Council, 29 June 2010

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

Mr. President,
Members of the Security Council,
Ladies and gentlemen,

- Thank you for your welcome, Mr. President, and for the opportunity to participate in this debate. I am pleased to support your initiative in bringing this important issue to the Council for further debate. At the outset I wish to acknowledge the leadership which the Deputy Secretary-General has shown on this matter.

Background

- My focus today will be on the rule of law at the international level. Establishing respect for the concept is essential – not just to establish or to maintain peace, but also to enable sustained economic progress and development.
- I hope to demonstrate how this legal perspective has contributed to a “trend toward an international rule of law”. In doing so, I will first refer to those instances where the Organisation reaches out to the world and strives to contribute to the establishment of an international rule of law. But I would also draw attention to some less visible aspects of the paradigm of rule of law for the UN and, more specifically, within the UN. In our Organisation, acting in conformity with legal requirements is a constant and dynamic pattern which is present in all our activities. In other words, respect for the rule of law is, for the Organisation, a goal to be achieved every day.

- We live in an age in which international law is no longer the exclusive domain of international courts and institutions. The links between the individual, the nation state and the international community are now inextricable. International law issues are increasingly being considered by national and regional courts. This evolution goes even beyond national and regional courts: international law has now become part of our everyday lives. Its basic principles contribute essentially to the empowerment of each individual. The "personalization" of international law, in which more and more rights are vested directly in the individual, is now a reality. Everyone should have access to the tools enabling him or her to understand international law, to invoke it, and to contribute to its development.

Codification and dissemination of international law

- An important aspect of the rule of law at the international level refers to the codification of international legal obligations as well as to the implementation of and compliance with these obligations, whether arising from treaties or from customary international law.
- This concept is rooted in part in the multilateral conventional framework largely developed under UN auspices.
- For the past decade, the Secretary-General has been providing special facilities for States to sign or ratify treaties of which he is the depositary through an annual "Treaty Event" held during the high-level segment of the General Assembly. This event has proved to be a catalyst for encouraging a wider participation in the multilateral treaty framework.
- The concept of rule of law also translates into initiatives to promote the application of international law through technical assistance to Member States. We have developed a significant number of training initiatives and publications which encompass several branches of international law. But, more needs to be done. This is particularly true in post-conflict environments.
- Another practical way to make tangible the concept of rule of law at the international level lies in our ability to encourage the teaching, study, dissemination and wider appreciation of international law. The development of the UN Audio-Visual Library, is a web-resource which is an essential outreach tool of our time to both demystify international law, to make it more accessible, better understood and closer to the individual.

- I am taking this opportunity to highlight the work of a less obvious, but very important area of our endeavours, that of: the UN Commission on International Trade Law (UNCITRAL) – which is the core legal body within the UN system in the field of international commercial law. UNCITRAL's work on unifying and harmonising international commercial law has played an important role in laying the basis for an orderly functioning of an open economy. Effective commercial law plays a supportive role in addressing root causes of many international problems, such as migration caused by impoverishment, inequality and internal conflicts, or inequitable access to shared resources. Next week, UNCITRAL will host a panel discussion – to be opened by the Deputy Secretary-General - that will analyse the impact of commercial law and commercial activities on the rule of law. Such a thematic debate is rare in the UN, where the traditional focus in the context of the rule of law has been on human rights, criminal law and international public law.

Peaceful Settlement of disputes

- The Charter envisages a system of settling disputes peacefully before intractable conflict situations arise. The General Assembly, the Security Council and the International Court of Justice each have a responsibility to contribute to the peaceful settlement of disputes. However, the fullest use has not always been made of the organic link between these bodies and the procedural means made available to them by the Charter to coordinate and complement their respective action.
- In 2006, the then President of the Court recalled both Article 33 of the Charter, under which the Security Council may call upon the parties to settle their disputes by means which include judicial settlement, and Article 36, paragraph 3, which provides that in making recommendations for the settlement of disputes, "the Security Council should also take into consideration that legal disputes should, as a general rule, be referred by the parties to the ICJ". In doing so, she invited the Council to bring these tools to life and to make them a central policy of the Security Council. I take this opportunity to encourage members of the Council to follow up on this recommendation. I would also encourage those States, which have yet to deposit declarations accepting the jurisdiction of the court, to do so and to do so as unconditionally as possible

International Criminal Justice – ending impunity

- Another essential component of the rule of law at the international level is, of course, the struggle to end impunity for international crimes. International criminal justice has recently emerged as a powerful, resonant and effective voice in this new age of accountability. The Council has amply emphasised the importance it attaches to the responsibility of States to comply with their obligations to end impunity and to prosecute those responsible for the most serious crimes.
- Justice is a nation's choice. The primary role of national jurisdictions in the prosecution of crimes has been thrown into greater relief as international justice has evolved and as the ICC in particular has become operational. The principle of complementarity is the bedrock of international criminal justice.
- International justice mechanisms, whether permanent or ad hoc, are not intended to supplant States where they have organized criminal justice systems which are willing and able to ensure that there is accountability for the crimes concerned.
- They are not substitutes for national mechanisms. Thus we see that, within the Statutes of the international criminal courts and tribunals, there is ample room for the exercise of national jurisdiction.

Sanctions regimes

- Any discussions on rule of law at the international level should address the ongoing issue of Security Council sanctions regimes. This regime performs a necessary role in the maintenance of international peace and security. In so doing, it is critical that, as with any decision of the Council, sanctions be adopted in accordance with international law, consistent with the objectives enshrined in the Charter.
- Over the past years, the Council has put emphasis on setting out and strengthening the international legal framework and norms for addressing those issues.
- The recent adoption of resolution 1904 (2009) – reflects the significant effort to address the rights of due process and, in particular, that of an effective review of decisions. The establishment of an "Office of the Ombudsperson" is an important step by the Security Council towards ensuring fair and clear procedures for individuals and entities listed by the "Committee".
- We will follow with great interest how the interaction between the Ombudsperson and the Committee on the one hand, and between the Ombudsperson and the petitioners, on the other, works in practice. Much may depend on how the Ombudsperson's observations will be dealt with by the Committee.

- It will also be instructive to see what impact resolution 1904 (2009) and its implementation will have on the jurisprudence of national and regional courts seized with relevant cases.

Administration of Justice within the UN

- No discussion regarding rule of law and the United Nations would be complete without addressing the internal administration of justice system, particularly since we are about to reach the first anniversary of the new system.
- For 60 years, the internal mechanism for resolving employment disputes consisted of review by a peer review body composed of staff members, followed by a review by the UN Administrative Tribunal. The new system called for by the General Assembly in 2005 has introduced two tiers of judicial review. This became operational on 1 July 2009. The Dispute Tribunal has issued over 200 judgments to date. By the end of this week, the Appeals Tribunal will have already convened two sessions this year and reviewed over 60 cases.
- The reform of the United Nations internal system of administration of justice was achieved in a remarkably short period of time, demonstrating the capacity of Member States, management and staff to act swiftly and in a coordinated effort. The new system stands as a milestone in strengthening the commitment of the Organization to the rule of law, justice and accountability.

Conclusion

- In conclusion, Mr. President, the concept of the rule of law in the UN embraces the most classical and fundamental principles of the international legal order and allows us to use these principles to face the most urgent and contemporary concerns of the international community.
- I would also like to thank you for this initiative which will no doubt assist the Security Council – and, through it, the international community at large – to discharge its special role to promote and strengthen the rule of law in the maintenance of international peace and security.

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