

**Dialogue with Member States organized by the Rule of Law Unit**

**(Monday 15 June 2009, 15:00-18:00, Conference Room 7)**

**“The Rule of Law at the International Level”**

**Keynote address by the Legal Counsel**

Distinguished delegates,

Ladies and gentlemen,

It is my great pleasure to take the floor in today’s panel on the theme “The rule of law at the international level” and I would like to thank the Rule of Law Unit for giving me the opportunity to exchange with you some thoughts on this timely topic.

The purpose of my presentation, as the first speaker this afternoon, will be to give a general introduction of the proposed topic by trying to identify some key notions that could serve to set a framework for our discussion. And, in my capacity as Legal Counsel of the United Nations, I considered that it was natural for me to approach the question of the “rule of law at the international level” from the perspective of the Organization itself.

As you well know, the rule of law is today at the centre of the United Nations’ concerns. Many offices within the system are involved in the promotion of the rule of law: an inventory issued by the Secretary-General in 2008 (A/63/64) identified as many as 40 entities active in this field and listed 520 different categories of activities performed for the promotion of the rule of law. In view of the tremendous magnitude and diversity of the Organization’s involvement in this area, the Secretary-General proposed in 2006 to establish a Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and consisting of the main rule of law actors in the system, to ensure the overall coordination of the United Nations’ efforts. This Group has taken a new strategic and results-based approach to United Nations rule of law work, agreeing on a Joint Strategic Plan for 2009-2011 and developing Guidance Notes of the Secretary-

General on the UN Approach to Rule of Law Assistance, Justice for Children and Constitution-making. It is currently preparing, under the leadership of the Office of Legal Affairs, a further Guidance Note on the very topic of our gathering of today, namely the rule of law at the international level.

Furthermore, the issues relating to the rule of law are being discussed in different fora within the Organization. The Security Council, for example, has held between 2003 and 2006 several thematic debates on matters relating to the rule of law. Since 2006, on a joint proposal by Liechtenstein and Mexico, the General Assembly has included the item “The rule of law at the national and international levels” on its agenda, entrusting it to the Sixth Committee. In its latest resolution on this agenda item (resolution 63/128 of 11 December 2008), the General Assembly has invited Member States to focus their comments at the upcoming sixty-fourth session, in October 2009, on the sub-topic of “Promoting the rule of law at the international level”. I look forward to listening to the opinions expressed by the various delegations in this context, which will very probably provide stimulating ideas to further our collective reflection and action in this area.

It is, of course, not my intention today to anticipate that promising debate. But I think it is useful for me to take this opportunity to go back in time and to recall that the “rule of law at the international level” is not only a topical theme, but also one that has always been present in the history of the Organization. It is in this frame of mind that I would like to propose to you that we retrace some landmark documents which contain useful information on how the debate on the rule of law at the international level has come into being, but also on the contents of this notion as understood within the United Nations system.

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It is often noted that the Charter of the United Nations does not contain any explicit mention of the “rule of law”. I think that I can safely argue, however, that the idea of the rule of law at the international level is embedded at the very heart of our constitutive act. The preamble of the Charter itself – which, in the words of the International Court of Justice, constitutes “the moral and political basis for the specific

legal provisions thereafter set out”<sup>1</sup> – expresses 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”. It is in this perspective that the purposes and principles of the United Nations, proclaimed in Articles 1 and 2 of the Charter, are to be understood. Principles such as the sovereign equality of States, the fulfillment in good faith of international obligations, the peaceful settlement of disputes or the prohibition of the threat or use of force in international relations, constitute the foundations of an international society based on the supremacy of the law, equality before the law, accountability under the law etc. This idea was eloquently expressed by Secretary-General Hammarskjöld in the introduction to what was sadly to be his last annual report, when he pointed out that the rules of the Charter “appear, in the main, as a projection into the international arena and the international community of purposes and principles already accepted as being of national validity” (the well-established concept of the “rule of law” developed in the legal theory of various national systems being but the core illustration of this approach). As noted by Secretary-General Hammarskjöld, as recently quoted by our Secretary-General in a 2008 report, “the demand of the Charter for a rule of law”, as expressed in the preamble, “aims at the substitution of right for might and makes of the Organization the natural protector of rights which countries, without it, might find it more difficult to assert and to get respected”<sup>2</sup>.

The same approach was soon to be reaffirmed in the context of the emerging culture of respect for human rights and fundamental freedoms, in pursuance of Articles 13, paragraph 1(b), and Article 55 of the Charter. It is well-known that the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, makes explicit reference to the rule of law when it proclaims, again in its preamble, that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. The international dimension of the concept is also present in the Declaration, when the Assembly stated that recognition of the inherent dignity and of the equal and inalienable

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<sup>1</sup> *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase, Judgment, I.C.J. Reports 1966*, p. 34, para. 50.

<sup>2</sup> Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1960-15 June 1961, A/4800/Add.1, respectively at pp. 1 and 2.

rights of all members of the human family “is the foundation of freedom, justice and peace in the world” or that it is essential, to fulfill the objectives of the Declaration, “to promote the development of friendly relations between nations”.

The pursuit of “friendly relations between nations” indeed appears to be a core element of the “rule of law at the international level” as conceived by the Organization. Our minds, as international lawyers, cannot but make the immediate link between these words and the adoption by the General Assembly of the famous Declaration on Friendly Relations on the occasion of the twenty-fifth anniversary of the United Nations. From our perspective, this is a pioneering document in many respects. First of all, it contains the first explicit reference by the General Assembly to a “rule of law among nations”. In the preamble of the cover resolution (resolution 2625 (XXV) of 24 October 1970), the Assembly expressed its deep conviction that the adoption of such a Declaration “would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in *promoting the rule of law among nations* and particularly the universal application of the principles embodied in the Charter”. Secondly, the Declaration recognizes the inherent link between the United Nations and the international rule of law: its preamble emphasizes “the paramount importance of the Charter of the United Nations in the promotion of the *rule of law among nations*”. Finally, the Declaration does not limit itself to proclaim the concept, but endeavours to provide a framework for its implementation, by identifying seven “principles of international law concerning friendly relations and co-operation among States in accordance with the Charter”, namely: the prohibition of the threat or use of force, the peaceful settlement of disputes, the non-intervention in matters within the domestic jurisdiction of States, the duty of States to co-operate with one another, the equal rights and self-determination of peoples, the sovereign equality of States, and the fulfillment in good faith of international obligations.

I thought that it was important for me to recall these historic landmarks to show that the rule of law at the international level finds deep roots in the history of the Organization. But let me now turn to the *renaissance* of the concept in recent times, especially since the 1990s, which shows the vitality of the “rule of law” in the context of

the United Nations and how the international dimension of the concept has been consistently reaffirmed.

The current debate on the rule of law seems to have arisen from the need for strengthening the action of the Organization in specific areas of its mandate, such as the protection of human rights, peacekeeping or development. As early as 1993, for example, the Vienna World Conference on Human Rights, following the steps of the Universal Declaration and the Commission on Human Rights<sup>3</sup>, again linked the protection of human rights with the strengthening of the rule of law. It recommended, among other things, that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures, which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. This initiated a decade-long debate in the General Assembly, under an agenda item “Strengthening of the rule of law” allocated to the Third Committee, which in turn gave way to the work of the High Commissioner for Human Rights as “the focal point for coordinating system-wide attention for human rights, democracy and the rule of law”. Yet another example is to be found in the discussion, this time in the Security Council, of the question of “The rule of law and transitional justice in conflict and post-conflict societies”, on the basis of a 2004 report in which the Secretary-General highlighted key issues and lessons learned from the Organization’s experience in the field.

It is interesting to note that the “rule of law” referred to in most of the documents of this period is mainly the rule of law *at the national level*, the rule of law that protects the fundamental rights of the individual vis-à-vis its national institutions and within the State or which is to be implemented in conflict and post-conflict societies or in the context of development. However, it is apparent from all these discussions that, for the United Nations, the domestic rule of law is necessarily linked with the respect of international norms and standards. This is clearly illustrated by the often-quoted description of the concept made by the Secretary-General in 2004. In other words, the national and international dimensions of the rule of law appear to be interdependent: one cannot be achieved without the ultimate fulfillment of the other.

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<sup>3</sup> Resolutions 1992/51 of 3 March 1992 and 1993/50 of 9 March 1993.

This interdependence is confirmed by the most recent documents adopted in our field, which demonstrate that the promotion of the rule of law for the United Nations is an objective that shall be pursued both at the national and at the international levels. In the Millennium Declaration, first of all, the Heads of State and Government of the United Nations affirmed their resolve to “strengthen respect for the rule of law *in international as in national affairs*”. Following up on this declaration, Secretary-General Annan, in his 2005 report “In larger freedom”, expressed his belief that “every nation that proclaims the rule of law at home must respect it abroad and that every nation that insists on it abroad must enforce it at home”<sup>4</sup>.

For our purposes, however, one of the most interesting features of the recent discussions on this topic is that they have provided further elements to complete our picture of what is meant by the rule of law at the international level within the United Nations. In the 2005 Outcome Document, for example, the Heads of State and Government of the United Nations recognized “the need for universal adherence to and implementation of the rule of law at both the national and international levels”, reaffirming their “commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States”<sup>5</sup>. We see here, in the dawn of the twenty-first century, the reaffirmation of convictions that were already proclaimed in the Friendly Relations Declaration: the centrality of the rule of law to foster peaceful relations among States and the essential role of the Charter in this regard. What is more, the General Assembly has further clarified that the rule of law is a key element of the fulfillment of the mandate of the Organization: Member States acknowledged, for example, that “good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger”<sup>6</sup> and that human rights, the rule of law and democracy “are interlinked and mutually reinforcing and they belong to the universal and indivisible core values and principles of the United Nations”<sup>7</sup>. These statements have

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<sup>4</sup> A/59/2005, para. 133.

<sup>5</sup> A/60/1, para. 134, chapeau and *lit.* (a).

<sup>6</sup> A/60/1, para. 11.

<sup>7</sup> A/60/1, para. 119.

consistently been reaffirmed in the most recent resolutions adopted on the item “The rule of law at the national and international levels” upon the recommendation of the Sixth Committee. There, the General Assembly also expressed its support for the current efforts for coordination within the system and its conviction that “the promotion of and respect for the rule of law at the national and international levels, as well as justice and good governance, should guide the activities of the United Nations and of its Member States”<sup>8</sup>.

These general statements are accompanied by calls for action on more specific issues of concern. Thus, for example, the 2005 Outcome Document expressed its support for the annual treaty event and called upon States to adhere to treaties concerning the protection of civilians and the eradication of policies and practices that discriminate against women. It also recognized the important role of the International Court of Justice in the peaceful settlement of disputes, encouraging States to consider accepting the jurisdiction of the Court and to consider means of strengthening its work.

In similar lines, the most recent Presidential Statement, issued following the Security Council’s discussion of the item entitled “Strengthening international law: rule of law and maintenance of international peace and security” on 22 June 2006, did not limit itself to the reaffirmation of the Council’s commitment to the Charter and international law as “indispensable foundations of a more peaceful, prosperous and just world”. It also expressed the Council’s support to the peaceful settlement of international disputes and to rule of law activities in the peacebuilding strategies in post-conflict societies. It emphasized the importance it attaches to the responsibility of States to comply with their obligations to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law, and its resolve to ensure that its sanctions be targeted and have clear objectives<sup>9</sup>.

As to the Secretary-General, in his most recent report on the strengthening and coordination of United Nations rule of law activities, he devoted a separate section to “fostering the rule of law at the international level”, which he qualified as “an aim that predates the United Nations” and a “perpetual endeavour”. He recalled the existing

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<sup>8</sup> See resolution 63/128, seventh preambular paragraph.

<sup>9</sup> S/PRST/2006/28.

commitments in the field (based on the Charter, the Friendly Relations Declaration, the 2005 Outcome Document and multilateral treaties), and emphasized several aspects of the United Nations' action in this area, including the need to ensure that the rule of law is respected by the Organization itself. He referred in this regard, among others, to the establishment of a new internal justice system, issues of due process in relation to Security Council sanctions regimes, and the implementation of the principles of the United Nations Global Compact in the internal management of the Organization. He also referred to the progressive development and codification of international law, the efforts of the United Nations in capacity-building for general treaty ratification and domestic implementation of international obligations, the strengthening of the International Court of Justice and other international dispute resolution mechanisms as well as the efforts to combat impunity and to strengthen universal justice.

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What conclusions may be drawn at the end of this brief overview of the rule of law at the international level from the perspective of the United Nations? First of all, I think that we cannot but confirm the centrality of the notion both in the constitutive act of the Organization and in its mandate as it was originally conceived and has subsequently developed in the course of the past decades. In this perspective, the renewed interest in the concept in the past years should not surprise us: the rule of law at the international level finds deep and solid roots in the Charter and major declarations adopted by the General Assembly. What also arises from this overview is that the rule of law at the international level appears as a powerful notion that embraces the most classical and fundamental principles of the international legal order. It allows us to use those principles to face the most urgent and contemporary concerns of the international community, such as the maintenance of peace and security, the respect for human rights and fundamental freedoms, the fight against impunity and universal justice ... In other words, the rule of law appears as one of the clearest demonstrations of the dynamism of the Organization and of its continuous relevance as an instrument to establish, as promised in San Francisco in 1945, "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".