

level in public institutions. However, senior officials of the Government and others suggested that Afghanistan was too weak to face the challenges of the past and that measures to enhance good governance should be given priority. Finally, representatives of women's

organizations pointed out that their active participation in the public arena was being hampered, and expressed special concern over the lack of explicit guarantees for women's rights in the draft constitution.¹⁵

¹⁵ S/PV.4855, pp. 2-6.

55. Justice and the rule of law: the United Nations role

Initial proceedings

Decision of 24 September 2003 (4833rd meeting): statement by the President

At its 4833rd meeting, on 24 September 2003, the Security Council included in its agenda the item entitled "Justice and the rule of law: the United Nations role". Statements were made by the Secretary-General and by all members of the Council.¹

The Secretary-General observed that the United Nations, through many complex operations, had learned that the rule of law was not a luxury and that justice was not a side issue. He advocated a comprehensive approach to justice and the rule of law, which needed to encompass the entire criminal justice chain. He pointed out that the actions of the United Nations needed to be based in its standards for human rights and the administration of justice and in the principles of international humanitarian law, human rights law, refugee law and criminal law. He stated that the United Nations needed, wherever possible, to guide rather than direct, and reinforce rather than replace, with the aim of leaving behind strong local institutions when it departed. He asserted that ending the climate of impunity was vital to restoring public confidence, and that transitional justice mechanisms needed to concentrate not only on individual responsibility for serious crimes, but also on the need to achieve national reconciliation. He recognized that at times, the goals of justice and reconciliation competed with each other, and added that, in each case, the Council needed to attempt to balance the demands of peace and justice.²

¹ At the meeting, Bulgaria, Chile, China, France, Guinea, Mexico, Pakistan, the Russian Federation, Spain and the Syrian Arab Republic were represented by their respective Ministers for Foreign Affairs. The United Kingdom was represented by the Secretary of State for Foreign and Commonwealth Affairs.

² S/PV.4833, pp. 2-4.

In their statements, participants called for, inter alia, a more intensive use of measures for the pacific settlement of disputes, as contemplated in Article 33 of the Charter of the United Nations; greater compliance with the resolutions of the Council; ensuring application of international human rights and humanitarian law and all the provisions of the Geneva Conventions; and greater coordination within the United Nations system, as well as with other international institutions, regional organizations, local partners and non-governmental organizations. Many speakers commended the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the International Criminal Court. A number of representatives advocated the formation of a pool of experts for emergency situations in the areas of justice and the rule of law. A number of speakers held the view that justice and the rule of law needed to be given earnest attention in United Nations peacekeeping operations and post-conflict reconstruction. Some representatives emphasized the need for development, which was a necessary condition for justice and the rule of law.

The representative of Pakistan observed that the resolutions and decisions of the Council needed to be implemented uniformly and without discrimination and also with equal force, irrespective of their falling within Chapter VI or Chapter VII of the Charter. He warned that selective implementation eroded confidence in the system and undermined the credibility of the United Nations.³ The representative of the Syrian Arab Republic expressed the view that a number of the resolutions adopted by the Council had been imposed on some States while not truly imposed on others.⁴

³ *Ibid.*, p. 4.

⁴ *Ibid.*, p. 10.

The representative of the Russian Federation believed that joint efforts needed to be made to ensure that the legal bases for peacekeeping were strengthened, in accordance with the Charter and the decisions of the Council. He also remarked that the work of United Nations structures needed to be conducted in strict accordance with the decisions of the Council and that it needed to preclude any arbitrary or broader interpretation of those decisions, which could have negative consequences for the success of peacekeeping efforts and for the credibility of the United Nations in general.⁵

The representative of the United States expressed the view that launching prosecutions in the midst of negotiations might not be the best route to post-conflict development, whereas flexibility in approach was needed.⁶ The representative of the United Kingdom expressed the hope that the International Criminal Court would eventually remove the need for separate international tribunals.⁷

The representative of Cameroon stressed that the United Nations should give priority to providing security to assuring State reform and preventing the breakdown of the State, and to laying down the basis for the establishment of a modern State. In other words, the United Nations was expected to work for the reconstruction of the State, as understood under Articles 2 and 4 of the Charter.⁸

At the same meeting, the President (United Kingdom) made a statement on behalf of the Council,⁹ which read, in part:

The Security Council met at the ministerial level on 24 September 2003 to consider "Justice and the rule of law: the United Nations role". Ministers expressed their respective views and understandings on, and reaffirmed the vital importance of, these issues, recalling the repeated emphasis given to them in the work of the Council, for example in the context of the protection of civilians in armed conflict, in relation to peacekeeping operations and in connection with international criminal justice;

The statements made on 24 September demonstrated the abundant wealth of relevant experience and expertise that exists within the United Nations system and in the Member States. Ministers considered that it would be appropriate to examine

further how to harness and direct this expertise and experience so that it would be more readily accessible to the Council, to the wider United Nations membership and to the international community as a whole, so that the lessons and experience of the past could be, as appropriate, learned and built on. The Council welcomed in particular the offer by the Secretary-General to provide a report which could guide and inform further consideration of these matters.

Deliberations of 30 September 2003 (4835th meeting)

At its 4835th meeting, on 30 September 2003, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations, following which statements were made by the representatives of Argentina, Australia, Austria, Azerbaijan, Bahrain, Brazil, Canada, the Democratic Republic of the Congo, Denmark, Finland, Italy (on behalf of the European Union¹⁰), Japan, Jordan, Liechtenstein, New Zealand, the Philippines, the Republic of Korea, Romania, San Marino, Serbia and Montenegro, Sierra Leone, Sweden, Switzerland, Trinidad and Tobago and Uruguay, as well as the Legal Counsel of the United Nations.

The Under-Secretary-General for Peacekeeping Operations, on behalf of several Secretariat departments and United Nations entities that were engaged in supporting justice and the rule of law in post-conflict societies, affirmed that the United Nations could no longer afford to treat the rule of law as a side activity in which they engaged "longside political objectives. He advocated ensuring that the rule of law figured more prominently from the early stages of peace negotiations onwards. He believed that it had become clear that the effectiveness of the United Nations in promoting the rule of law in many parts of the world had been hampered by the inadequacy of mandates and resources. He commented that the international tribunals had so far not always proved to be efficient or effective instruments for prosecuting and trying those suspected of the most serious crimes. He expressed support for, inter alia, a move towards broader assistance and support to national justice systems, and stressed the need to ensure that any amnesty clauses in peace agreements exclude amnesties for war crimes, genocide, crimes against

⁵ Ibid., pp. 5-6.

⁶ Ibid., p. 20.

⁷ Ibid., p. 23.

⁸ Ibid., p. 19.

⁹ S/PRST/2003/15.

¹⁰ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

humanity and other serious violations of international human rights and humanitarian law. Finally, he pointed out that any strategy adopted needed to have as its primary objective the promotion of national ownership of justice systems and capacity-building, and that international norms and standards needed to be the reference point of all their work.¹¹

Most of the speakers agreed on the importance of, *inter alia*, the strengthening and consolidation of local rule-of-law capacity; the involvement of local actors; the promotion of national ownership and capacity-building; the core of the peaceful settlement of disputes; the establishment of the International Criminal Court, which was based on the principle of complementarity, as well as the other international tribunals; the inclusion of justice and the rule-of-law elements in peace operations and mission mandates; the mainstreaming of rule-of-law aspects into the work of the United Nations; and the need for better resources and technical assistance. Many representatives welcomed the offer by the Secretary-General to provide a report on the issue. Several speakers supported, *inter alia*, the formation of a pool of experts in the rule of law; stronger cooperation between the United Nations and international organizations; and closer coordination between donors.

Some representatives suggested that the Council was well positioned to make use of article 13 (b) of the Rome Statute of the International Criminal Court and refer relevant situations to the Court as a tool for fighting impunity.¹² The representative of New Zealand

expressed the hope that the Council would cooperate with the International Criminal Court within the framework of the Rome Statute and the Charter, and would refrain from actions that would undermine the effective operation of the Court.¹³ The representative of Canada suggested that the concerns in some quarters about the theoretical possibility of the International Criminal Court investigating nationals of certain non-State parties were unwarranted. He added that his delegation assumed that in cases where the jurisdiction of Court was clearly accepted by the State affected, and where that State was unwilling or unable to respond to massive crimes, the Council would support the Court in bringing justice for victims.¹⁴ The representative of Sweden suggested that there should be no obstacles to the Court eventually achieving universal application.¹⁵

The representative of Uruguay expressed the view that justice and the maintenance of international peace and security could sometimes be incompatible goals, and in that context he recalled that article 16 of the Statute of the International Criminal Court authorized the Council to request that the Court suspend investigations or prosecutions that had been initiated if those proceedings interfered with the Council's mission to maintain international peace and security. Nonetheless, he held that resolutions 1422 (2002) and 1487 (2003)¹⁶ were not correct applications of that article of the Statute.¹⁷

¹¹ S/PV.4835, pp. 3-7.

¹² *Ibid.*, p. 20 (Jordan); and p. 22 (Sweden).

¹³ *Ibid.*, p. 11.

¹⁴ *Ibid.*, p. 18.

¹⁵ *Ibid.*, p. 22.

¹⁶ For information on these resolutions, see sect. 47.D, of the present chapter, on United Nations peacekeeping.

¹⁷ *Ibid.*, pp. 25-26.