

private sector.⁹ A number of representatives emphasized the need for a greater role to be given to the Economic and Social Council and to improve cooperation between it and the Security Council,¹⁰ while the representative of Pakistan reiterated the proposal by his Government for establishing ad hoc composite committees of the Security Council, the General Assembly and the Economic and Social Council.¹¹

Several speakers recognized the importance of an efficient civilian police force, emphasizing that, while military peacekeepers can help to stabilize a post-conflict country, the establishment of a competent, impartial and adequately resourced civilian police mission was crucial to maintaining security. The representative of the United States believed that civilian police should be linked with assistance to the judicial and penal systems, lest policing become nothing more than a continuation of the peacekeeping function.¹²

⁹ Ibid., p. 12.

¹⁰ Ibid., p. 17 (Brazil); p. 19 (Pakistan); p. 20 (Angola); and p. 28 (Algeria).

¹¹ Ibid., p. 19.

¹² Ibid., p. 21.

The President (Spain) made a statement on behalf of the Council,¹³ which read, in part:

The Security Council met at the ministerial level on 22 September 2004 to consider “Civilian aspects of conflict management and peacebuilding”;

Ministers recognized the increasing importance of civilian aspects of conflict management in addressing complex crisis situations and in preventing the recurrence of conflict; they affirmed the importance of conflict resolution in accordance with the relevant provisions of the Charter;

Ministers also acknowledged the importance of civilian-military cooperation in crisis management;

Ministers recognized the increasing role of some regional and subregional and other international organizations in crisis management;

Ministers supported the efforts by Member States to continue to develop their own civilian crisis management capabilities, and they also supported their initiatives to make those capabilities available to United Nations and other relevant regional or subregional organizations, as a contribution to their efforts in the maintenance of international peace and security.

¹³ S/PRST/2004/33.

51. Items relating to the rule of law

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

Decision of 6 October 2004 (5052nd meeting): statement by the President

At its 5052nd meeting, on 6 October 2004, the Security Council included in its agenda the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies.¹ In his report, the Secretary-General highlighted that justice, peace and democracy were not mutually exclusive objectives, but were rather mutually reinforcing imperatives. He advocated for truth commissions, vetting processes, reparation programmes, international norms and standards, and providing the necessary resources to support such programmes. He underlined the particular ability of the Security Council to refer situations to the International Criminal Court, “even in

cases where the countries concerned are not States parties to the Statute of the Court”, and encouraged the further ratification of its Statute. Finally, he emphasized that strengthening United Nations support would require enhancing coordination among all actors; developing rosters of experts and technical tools; keeping more systematic records; and analysing and applying those lessons in Security Council mandates, peace processes and the operations of United Nations peace missions.

At the same meeting, the Council heard briefings by the Secretary-General, the Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Centre for Transitional Justice, and the Administrator of the United Nations Development Programme; following which statements were made by all Council members and the representatives of Argentina, Australia, Austria,

¹ S/2004/616.

Belarus, Burundi, Canada, Costa Rica, Fiji, Finland, India, Indonesia, Japan, Jordan, Liechtenstein, Mexico, the Netherlands (on behalf of the European Union),² Nigeria, Peru, the Republic of Korea, Saint Vincent and the Grenadines, Sierra Leone, Singapore, South Africa, Sweden, Switzerland and Uganda and the Permanent Observer of Palestine.

The Secretary-General said that peace and stability could prevail only if the “causes of conflict” were addressed in a “legitimate and fair manner”. He suggested that the approach to justice needed to be comprehensive, including the police, prisons and courts, and that a nationally determined combination of mechanisms would generally work better, including traditional justice mechanisms, where appropriate. He commented that while international or mixed tribunals had brought a measure of justice, they had also been expensive and had not contributed adequately to building sustainable national capacity for the administration of justice.³

The Special Adviser on the Prevention of Genocide and Director of the International Centre for Transitional Justice affirmed that atrocities were often met “by de jure or de facto impunity”, but there could be no transition to a more humane, just and democratic order unless impunity was broken through prosecution, trial, and eventual punishment. He stressed that reconciliation needed to be viewed as the ultimate object and condition of the legitimacy of efforts to achieve transitional justice. He commended the report’s rejection of amnesty for international crimes such as genocide, war crimes and crimes against humanity. He expressed the view that it was important for future peacemaking to end the “easy resort to blackmail” embodied in the “promise of loose amnesties and other rewards for atrocities”. He suggested that the Security Council could play a large role in enhancing the legitimacy of this evolving doctrine. He therefore recalled that, when international tribunals were created under Chapter VII of the Charter, there was an explicit obligation on the part of all Member States to cooperate with their investigations, detentions and evidence-gathering, and, even when not acting under Chapter VII, the Council could explicitly mandate

cooperation with mixed or hybrid courts and the International Criminal Court.⁴

The Administrator of the United Nations Development Programme said that the rule of law was “too important to be left to lawyers”, but needed to be rooted in the social and political context of a nation. He observed that international assistance needed to aim at building indigenous support for reform, and in particular the United Nations needed to facilitate negotiations among national stakeholders in order to build a political will for rule of law reform.⁵

Most delegations welcomed the report of the Secretary-General and endorsed its recommendations. Many participants expressed support for, inter alia, effective integration of justice and rule of law elements in United Nations missions and mandates; local consultation and ownership; addressing the causes of conflict; the formulation of a list of experts as well as the provision of necessary financial resources; the establishment of international tribunals, including the International Criminal Court; further cooperation with regional organizations and non-governmental organizations; promotion of international standards; and reinforcing capacity-building. A number of representatives urged the Executive Committee on Peace and Security to focus on possible institutional changes. Several speakers welcomed the relationship agreement on cooperation and consultation between the United Nations and the International Criminal Court and urged those States that had not yet done so to ratify the Rome Statute.

The representatives of Germany, Finland and Jordan said there was a need to create a new entity within the United Nations Secretariat, enabling the United Nations to operate more effectively in the area of the rule of law and transitional justice.⁶ The representative of the Russian Federation, while not rejecting the idea of establishing a new coordinating structure within the United Nations on issues relating to the rule of law and transitional justice, suggested that increasing the number of bureaucratic mechanisms did not always lead to enhanced functioning and effectiveness of the system. He therefore urged the Executive Committee on Peace and Security to focus

² Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Iceland, Norway, Romania, Serbia and Montenegro, the former Yugoslav Republic of Macedonia and Turkey aligned themselves with the statement.

³ S/PV.5052, pp. 2-3.

⁴ *Ibid.*, pp. 4-5.

⁵ S/PV.5052 (Resumption 1), pp. 2-3.

⁶ S/PV.5052, pp. 8-9 (Germany); S/PV.5052 (Resumption 1), pp. 6-8 (Jordan); and pp. 8-9 (Finland).

on finding ways to improve coordination within existing mechanisms.⁷

The representative of the Philippines underlined that the religious sector was well situated to deal with community-based issues, such as justice and the rule of law. Consequently, he advocated for the creation of an inter-religious council or a specific unit on inter-faith understanding in the United Nations system.⁸

The representative of Chile believed that the report's approach to reconciliation, as an extrajudicial means of transitional justice, did not reflect the fact that reconciliation was a process.⁹

The representative of the United States stressed that his delegation did not endorse the report's embrace of the International Criminal Court, to which the United States had fundamental objections, and argued that the report did not properly respect national decisions about criminal justice, particularly sentences a particular society might deem appropriate. He expressed the view that the International Criminal Court should not have jurisdiction over citizens of States that were not parties to the Rome Statute; and that the Statute did not reflect due process of law as understood in the United States, as it, among other things, allowed multiple jeopardy and did not provide for jury trials. He argued that the Court also ran a high risk of politicization and was not accountable.¹⁰

The representative of Belarus stressed that the involvement of the Council in forming rules of international law could be justified only by exceptional and extraordinary circumstances that constituted a threat to international peace and security. He also said that the Council's practice of including in resolutions "political elements that contradict existing international law" challenged the idea of the supremacy of law.¹¹

The representative of China stressed that all parties needed to respect the Charter and the universally recognized norms of international law with regard to the sovereignty and territorial integrity of the

country in question, and refrain from interfering in internal disputes and differences.¹²

The representative of Uganda maintained that sovereignty should not be used as a cloak to cover gross human rights abuses by nations.¹³

The President (United Kingdom) made a statement on behalf of the Council,¹⁴ by which the Council, *inter alia*:

Urged the Secretariat to make proposals for implementation of the recommendations set out in paragraph 65 of the report of the Secretary-General;¹

Recalled the important statement made by the Secretary-General to the fifty-ninth session of the General Assembly on 21 September 2004;

Underlined the importance of assessing the particular justice and rule of law needs in each host country;

Emphasized that ending the climate of impunity was essential to the efforts of a conflict and post-conflict society to come to terms with past abuses and in preventing future abuses;

Recalled that justice and the rule of law at the international level are of key importance for promoting and maintaining peace, stability and development in the world;

Welcomed the Secretary-General's decision to make the United Nations work to strengthen the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his tenure; and invited the Secretary-General to keep it informed on the Secretariat's progress in taking forward the recommendations set out in paragraph 65 of the report and expressed the intention to consider the matter again within six months.

B. Strengthening international law: rule of law and maintenance of international peace and security

Initial proceedings

Decision of 22 June 2006 (5474th meeting): statement by the President

At its 5474th meeting, on 22 June 2006, the Council included in its agenda the letter dated 7 June 2006 from the representative of Denmark to the United Nations addressed to the Secretary-General,¹⁵

⁷ S/PV.5052, p. 8.

⁸ *Ibid.*, pp. 6-7.

⁹ *Ibid.*, pp. 12-13.

¹⁰ *Ibid.*, p. 18.

¹¹ S/PV.5052 (Resumption 1), pp. 14-15.

¹² S/PV.5052, p. 22.

¹³ S/PV.5052 (Resumption 1), p. 10.

¹⁴ S/PRST/2004/34.

¹⁵ S/2006/367.

transmitting a non-paper to help guide the discussion. The non-paper identified three specific issues for special attention: the promotion of the rule of law in conflict and post-conflict situations, ending impunity for international crimes, and enhancing the efficiency and credibility of United Nations sanctions regimes. The Council heard briefings by the Legal Counsel of the United Nations and the President of the International Court of Justice, following which statements were made by all Council members¹⁶ and the representatives of Austria (on behalf of the European Union),¹⁷ Azerbaijan, Canada (on behalf also of Australia and New Zealand), Egypt, Guatemala, Iraq, Liechtenstein, Mexico, Nigeria, Norway, Sierra Leone, South Africa, Switzerland and Venezuela (Bolivarian Republic of) and the Permanent Observer of Palestine.

The Legal Counsel recalled the imminent establishment of the Organizational Committee of the new Peacebuilding Commission, and noted that in that context the Secretariat was tasked with identifying more precisely the means it already possessed to support actions to promote the rule of law and the best way of organizing those resources effectively. With regard to the question of impunity, he pointed out that justice and peace needed to be regarded as complementary requirements. He believed that the rejection of amnesty for international crimes needed to be enshrined as a “standard to be enforced”. On the question of improving sanctions, he recalled the views of the Secretary-General concerning listing and delisting of individuals and entities on sanctions lists, who stressed that minimum standards were required to ensure that the procedures were fair and transparent, including a review by an efficient mechanism.¹⁸

The President of the International Court of Justice observed that “strengthening international law” meant, first, the widening and deepening of the content of international law; and second, the fortifying of the mechanisms for securing compliance with or enforcement of international law. She affirmed that the tool contained in Article 36 (3) of the Charter, by

which the Security Council should take into consideration that legal disputes should as a general rule be referred by the parties to the Court, needed to be brought to life and made a central policy of the Security Council.¹⁹

Most representatives expressed appreciation for the establishment of the Peacebuilding Commission and noted, *inter alia*, the importance of combating impunity; the Council’s referral of the situation in Darfur to the Prosecutor of the International Criminal Court; and the need for analysis of the root causes of conflict. Many delegations stressed the need for temporal, fair and clear procedures for listing and delisting on sanctions as well as granting humanitarian exceptions; the establishment of a rule of law assistance unit within the Secretariat; an early-warning system to reduce the incidence of conflicts; better cooperation among United Nations units; the credible practice of the “responsibility to protect” concept; and universal jurisdiction and competence of the International Criminal Court. A few speakers urged the Secretariat to prepare a report containing proposals concerning the implementation of the recommendations in the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies.²⁰ A number of representatives shared the opinion that the credibility of the Council rested on its commitment to operate within the framework of international law.

The representative of South Africa also opined that if the Council was to realize its full potential to strengthen international law and to help instil the rule of law, comprehensive reform would be required, reform that addressed both its composition and its working methods.²¹

The representative of Mexico expressed the view that all disputes between States stemmed from differences concerning the interpretation of some rule of international law. He advised the Council to refrain from taking decisions of a “legislative nature”, and rejected the validity of the argument about the “Council’s residual, implicit or subsidiary powers”.²² The representative of Venezuela (Bolivarian Republic of) declared that the Council needed to avoid the practice of using its authority to “impose legislative requirements on

¹⁶ Denmark was represented by its Minister for Foreign Affairs.

¹⁷ Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Iceland, Norway, Romania, Serbia and Montenegro, the former Yugoslav Republic of Macedonia and Turkey aligned themselves with the statement.

¹⁸ S/PV.5474, pp. 3-5.

¹⁹ *Ibid.*, pp. 5-8.

²⁰ S/2004/616.

²¹ S/PV.5474 (Resumption 1), pp. 13-14.

²² S/PV.5474, pp. 29-31.

Member States or assuming powers” that could be considered an “usurpation” of the Assembly’s competencies.²³

The President (Denmark) made a statement on behalf of the Council,²⁴ by which the Council, *inter alia*:

Reaffirmed its commitment to the Charter of United Nations and international law; underscored its conviction that international law plays a critical role in fostering stability and order in international relations and in providing a framework for cooperation among States in addressing common challenges, thus contributing to the maintenance of international peace and security;

²³ S/PV.5474 (Resumption 1), p. 16.

²⁴ S/PRST/2006/28.

Emphasized the important role of the International Court of Justice, the principal judicial organ of United Nations, in adjudicating disputes among States;

Attached vital importance to promoting justice and the rule of law; supported the idea of establishing a rule of law assistance unit within the Secretariat and looked forward to receiving the proposals of the Secretariat for implementation of the recommendations set out in paragraph 65 of the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies;²⁰

Emphasized 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;

Considered sanctions an important tool in the maintenance and restoration of international peace and security; and resolved to ensure that sanctions were carefully targeted in support of clear objectives and implemented in ways that balance effectiveness against possible adverse consequences.

52. Post-conflict peacebuilding

Initial proceedings

Decision of 26 May 2005 (5187th meeting): statement by the President

At its 5187th meeting, on 26 May 2005, the Security Council included in its agenda the item entitled “Post-conflict peacebuilding” and a letter dated 16 May 2005 from the representative of Denmark to the Secretary-General,¹ transmitting a discussion paper for the open debate on the item.

Statements were made by all members of the Council and the Deputy Secretary-General, the President of the World Bank and the representatives of Australia, Chile, Côte d’Ivoire, Egypt, Ghana, Iceland, India, Indonesia, Luxembourg (on behalf of the European Union),² Malaysia, Morocco, New Zealand, Nigeria, Norway, Pakistan, Papua New Guinea, Peru, the Republic of Korea, Sierra Leone, Slovakia, South Africa, Switzerland and Ukraine.³

¹ S/2005/316.

² Albania, Bulgaria, Croatia, Romania, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Turkey and Ukraine aligned themselves with the statement.

³ The representative of Sweden was invited to participate but did not make a statement.

In his statement, the Minister for Foreign Affairs of Denmark elaborated on some aspects of the discussion paper submitted by his country. He referred to the nexus between security and development, issues which had both to be addressed in order to build lasting peace. He saw the greatest danger of insufficient efforts in the post-crisis phase, particularly in Africa, resulting in a relapse into conflict. He said this danger could best be reduced through action in three different fields. First, in the policy field, local ownership must be ensured since the country in question and its people carried the main responsibility for their future, and a regional perspective was indispensable to address the specifics of a conflict. He therefore welcomed and encouraged the development by which regional organizations were taking on continuously greater responsibilities. Turning to the institutional field, he called for more coordination and better knowledge management between the different United Nations actors at Headquarters and in the field. Lastly, he emphasized that ensuring long-term funding was equally indispensable for successful peacebuilding.⁴

The Deputy Secretary-General said that it was essential for the United Nations to improve upon its strategies for ending wars by also tackling the question

⁴ S/PV.5187, pp. 2-4.