

RULE OF LAW IN THE UNITED NATIONS SECURITY COUNCIL

By- Manas Agarwal

Student, B.A. Political Science
Ramjas College, Delhi University

ABSTRACT

Rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

The concept of the rule of law is embedded in the Charter of the United Nations. The Preamble of the Charter states as one of the aims of the UN “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” In addition, a core purpose of the UN is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.” The Universal Declaration of Human Rights of 1948 also gives the rule of law a central place, stating 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 General Assembly recognized the importance of the Rule of law and at its 67th Session, held a High-level Meeting on the Rule of Law at the National and International Levels on 24 September 2012. This was a unique occasion for all Member States, non-governmental organizations and civil society represented at the highest level, to commit to strengthening the rule of law. The High-level meeting concluded with the adoption by consensus of a Declaration in which Member States reaffirmed their commitment to the rule of law and elaborated on the efforts required to uphold different aspects of the rule of law. The Declaration recognises “that the rule of law applies to all States equally, and to international organizations, including the

United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions.

It also recognizes that all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.”

The Declaration highlighted the rule of law as a cross-cutting issue, linking the three pillars of the UN: peace and security, human rights and development. These linkages between the rule of law, human rights, peace and security and development have been further emphasized in the addendum to the 2014 Report of the Secretary-General on Strengthening and coordinating United Nations rule of law activities.

THE RULE OF LAW IN THE UNITED NATIONS SECURITY COUNCIL

The Security Council first used the concept of the “rule of law” in 1996 in resolution 1040. It expressed its support for the Secretary-General’s efforts to promote “national reconciliation, democracy, security and the rule of law” in Burundi.

In 2000, the influential Brahimi-report on peacekeeping advocated strongly for a new paradigm in peacekeeping and peace building, stressing the important role of the rule of law. Since then, the Council has mandated support for the rule of law in many peacekeeping operations and special political missions. There are currently 19 Security Council mission mandates that include strengthening the rule of law.

In most peacekeeping operations and special political missions the role of the United Nations has been that of support to the national police, justice authorities, and of coordinating international assistance in these areas. However, in two situations, Kosovo and Timor-Leste, the United Nations has had direct responsibility for the administration of justice, including control of police and prison services. Recently, in resolution 2149 (2014) on the Central African Republic, in addition to the rule of law assistance mandate given to the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), the Security Council mandated “urgent temporary measures” to maintain basic law and order on the request of the Government of the Central African Republic.

Rule of law activities have also been integrated into all kinds of council resolutions and presidential statements. The Council held its first thematic debate on the rule of law in 2003. The resulting Presidential Statement mandated the Secretary-General to report on the rule of law and transitional justice in conflict and post-conflict societies.. This report became foundational for the Council's consideration of the rule of law, including, for example, a definition by the Secretary-General of the rule of law for the purposes of the United Nations. The Security Council has further debated "the promotion and strengthening of the rule of law in the maintenance of peace and security" in on various occasions. In the resulting resolutions and presidential statements, the council has focused on a number of rule of law issues, including protection of civilians, peacekeeping and international criminal justice. In February 2014, Presidential Statement reaffirmed the continued emphasis of the need for universal adherence to and implementation of the rule of law. It also underscored that sustainable peace requires an approach based on coherence between political, security, development, human rights, including gender equality, and rule of law and justice activities.

In addition to the thematic debates dedicated to the rule of law, the importance of the restoration and strengthening of the rule of law has been prominently recognized in other discussions and documents of the Security Council, for example on Children and Armed Conflict, on the Protection of Civilians and on Women, Peace and Security.

The Security Council has also been vital to strengthening the rule of law by promoting accountability for the most serious international crimes. Acting under Chapter VII of the Charter, the Security Council established the International Criminal Tribunals for former Yugoslavia and Rwanda, finding that accountability was essential for the maintenance of international peace and security.

Whilst the centre of gravity for accountability efforts has now shifted to the International Criminal Court, the Security Council has an important role in moving forward the principle of accountability for serious international crimes, and for highlighting their link with international peace and security. Article 16 of the Rome Statute of the International Criminal Court allows for a referral of a situation by the Security Council to the ICC, under Chapter VII of the Charter. This has been exercised in respect of the situations in Darfur and in Libya.

UNITED NATIONS COORDINATION OF RULE OF LAW ACTIVITIES

The United Nations engages in wide ranging work in the rule of law area, including: the drafting of constitutions and legislative reform; the strengthening of institutions and capacity building, in the areas of policing, justice and corrections; and the provision of support to transitional justice processes. There has been a growing need to ensure a coordinated and coherent approach to the work of the United Nations given that the tasks are so broad, In September 2012, the Secretary-General provided a new direction for the collective efforts of the United Nations system and created a new three-tier system to strengthen the Organization's ability to deliver activities related to the rule of law at the field level, at the Headquarters (operational support) level and at the Senior Executive level.

At the field level, the power of United Nations field leadership has been enhanced. Leaders in the field are now responsible and accountable for guiding and overseeing United Nations rule of law strategies, resolving political obstacles and coordinating United Nations country support on the rule of law. While responsibility for programme implementation is left firmly in the hands of the different United Nations entities, in order to maximize the benefits arising from their comparative advantage, these entities are also required to cooperate with field leadership.

THE GLOBAL FOCAL POINT FOR POLICE, JUSTICE AND CORRECTION AREAS IN THE RULE OF LAW IN POST-CONFLICT AND OTHER CRISIS SITUATIONS

The Secretary-General appointed the Department of Peacekeeping Operations (DPKO) and United Nations Development Program (UNDP) to lead the Global Focal Point for Police, Justice and Corrections Areas in the Rule of Law in Post-conflict and other crisis situations.

The idea behind the Global Focal Point arrangement (GFP) is to strengthen the United Nations' ability to fill critical civilian capacity gaps in the aftermath of conflict, facilitate collaborative work from the early planning phase onwards, leverage resources, draw on external assets, facilitate decision making and avoid duplication of efforts. It provides technical assistance, knowledge, people and advice on assessments, planning, funding, resources and partnerships. DPKO and UNDP are responsible and accountable for responding to country-level requests, channelled through United Nations entities on the ground, with timely and quality police, justice and corrections assistance. This includes facilitating access to global knowledge and people, as

well as providing advice on assessments, planning and funding. The implementation of the GFP has involved co-location of staff, not only from DPKO and UNDP, but also from Office of the High Commissioner for Human Rights, United Nations Office on Drugs and Crime and UN Women.

THE RULE OF LAW COORDINATION AND RESOURCE GROUP

The Rule of Law Coordination and Resource Group (RoLCRG), which is chaired by the Deputy Secretary-General, has the overall leadership role for the rule of law. It ensures that the United Nations is able to foresee new opportunities and address new challenges. The Group takes into account the emergence of new realities and actors in the field of the rule of law and provides guidance to ensure overall coordination and coherence in the Organization's support to member states. With strengthened leadership and new institutional arrangements in place, the organization is better placed to address the challenges faced in strengthening the rule of law.

To respond to the interest of encompassing within the framework of the rule of law a broader range of UN activities, the membership of the Rule of Law Coordination and Resource Group now includes twenty entities with important normative components in their mandates (DESA, DPA, DPKO, OCHA, OHCHR, OLA, OSRSG for Children and Armed Conflict, OSRSG on Sexual Violence in Conflict, PBSO, UNDEF, UNDP, UNEP, UNESCO, UN-Habitat, UNHCR, UNICEF, UNODC, UNOPS, UN Women, World Bank).