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## Sixth Committee

### Summary record of the 8th meeting

Held at Headquarters, New York, on Wednesday, 14 October 2009 at 10 a.m.

*Chairman:* Mr. Benmehidi . . . . . (Algeria)

*later:* Mr. Baghaei Hamaneh (Vice-Chairman). . . . . (Islamic Republic of Iran)

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*The meeting was called to order at 10.15 a.m.*

**Agenda item 83: The rule of law at the national and international levels (A/64/298)**

1. **The Chairman** recalled that in resolution 63/128, the General Assembly had invited Member States to focus on the sub-topic “Promoting the rule of law at the international level”. That included issues such as strengthening an international system based on the rule of law; the role of the United Nations, including the International Court of Justice, in the peaceful settlement of disputes; promoting respect for the purposes and principles of the Charter of the United Nations; and other international dispute resolution mechanisms. He drew attention to the annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/64/298).

2. **Mr. Morrill** (Canada), speaking also on behalf of Australia and New Zealand, said that to meet global challenges such as climate change, the global financial crisis, nuclear non-proliferation and disarmament, terrorism, and gross violations of human rights, States must adhere to the rule of law at the international level to promote peaceful coexistence and cooperation among themselves. It was encouraging that in the past few years, States had increasingly been using treaty-based mechanisms and global institutions to resolve international disputes and to deal with alleged violations of international law. He also welcomed efforts within the United Nations system, especially through the Rule of Law Coordination and Resource Group, to promote and strengthen the rule of law, including the United Nations Rule of Law Indicators Project and the monitoring and evaluation carried on within the Group’s Joint Strategic Plan.

3. Efforts to promote the rule of law at the international level also bolstered the rule of law at the national level. The common principles identified by States became the basis on which much national legislation was drafted, for example in the areas of children’s rights, trade law, access to information and access to justice in environmental matters.

4. **Mr. Hoang Chi Trung** (Viet Nam), speaking on behalf of the ASEAN countries, said that respect for the rule of law at all levels was essential for the maintenance of international peace and security, and for the advancement of socio-economic development.

The ASEAN Charter, which had entered into force in December 2008, reaffirmed the commitment of all the ASEAN member States to the rule of law, good governance, the principles of democracy and constitutional government, and to the United Nations Charter and international law. All ASEAN member States had undertaken to promote the implementation of their international treaty obligations and to ensure a more effective enforcement of agreements within ASEAN itself. The future ASEAN Community would have a dispute settlement mechanism for the region, and the ASEAN Intergovernmental Commission on Human Rights (AICHR) would be inaugurated very shortly. ASEAN was committed to creating a community of South-east Asian nations grounded upon a commitment to the rule of law at the national, regional and international levels.

5. **Mr. Rodiles** (Mexico), speaking on behalf of the Rio Group, said that the maintenance of peace and security entailed the obligation of all States to respect international law in their relations. Alleged violations of international law must be addressed by peaceful means and according to the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and relevant international legal norms and principles. He acknowledged the important contribution made by the International Court of Justice to the stabilization of peace and the promotion of justice, and also the contribution of other tribunals established by treaties, such as the International Criminal Court and the International Tribunal for the Law of the Sea. A multilateral approach was crucial in addressing the most pressing global threats and needs. The United Nations played a key role in that respect, and in addressing those challenges it should create partnerships and coordinate initiatives, programmes and actions among its Member States.

6. The rule of law within the United Nations itself must be consolidated and efforts made to improve accountability for its actions. The work of the International Law Commission on the responsibility of international organizations could be very helpful in dealing with the impact of the Organization’s actions on the outside world.

7. The United Nations, and especially the General Assembly, continued to play a vital role in the codification and progressive development of international law, through the International Law

Commission and through multilateral treaty-making conferences. The Geneva Conventions and their Protocols had contributed very significantly to making the world a more human place. The national and international dimensions of the rule of law were interlinked, because of the need for cooperation between States in order for international law to work. The implementation by States of their international obligations was in turn a necessary condition for consolidating the rule of law at the international level.

8. **Mr. Ben Lagha** (Tunisia), speaking on behalf of the African Group, said the foundations of the rule of law at the international level were to be found in the Charter of the United Nations. Likewise, the Constitutive Act of the African Union was founded on the principles of sovereign equality of States, peaceful settlement of disputes and respect for territorial integrity. States should act in good faith to fulfil their treaty obligations. In keeping with the duty to settle disputes peacefully, they should also have recourse, wherever appropriate, to the courts and tribunals established under international law, including the International Court of Justice. He welcomed the readiness of the General Assembly in recent years to submit legal questions to the Court. Regional courts and tribunals made their own contribution to promoting international law. For that reason, in 2008 the African Union had adopted a single legal instrument to merge the African Court on Human and Peoples' Rights with the African Court of Justice.

9. The sovereign equality of States was an important element in promoting the rule of law at the international level. The selective application of principles of international law was an example of failure to respect that principle. African States believed that the principle of universal jurisdiction had been selectively applied to African leaders in a manner that suggested it was being abused. The goals of the United Nations could only be achieved by effectively establishing and maintaining the rule of law at the international level.

10. **Mr. Wennerström** (Sweden), speaking on behalf of the European Union; the candidate countries Croatia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Georgia, the Republic of Moldova and Ukraine said that a rules-based international order founded on respect for the rule of law was an essential

prerequisite for relations among States and for peaceful cooperation and coexistence. The future debate in the Committee on the laws and practices of Member States in implementing international law would be an important sub-topic, addressing the rule of law at both the national and the international levels. Priority should be given to strengthening the nexus between the two levels. In his next and subsequent reports, the Secretary-General should focus particularly on the sub-topics to be discussed by the Committee.

11. The European Union fully shared the Secretary-General's vision of the importance of the rule of law at the international level and the role of the United Nations in promoting it. The United Nations should maintain and develop the *acquis* so far established for the rule of law through all its main bodies. The European Union emphasized the role of the International Law Commission in the codification and development of international law and the important contribution made by the United Nations Programme of Assistance in Teaching, Study, Dissemination and Wider Appreciation of International Law.

12. All exercise of power was subject to law, meaning that States, international organizations and, increasingly, non-State actors must fulfil their international obligations irrespective of their domestic law and must establish effective internal mechanisms in order to ensure compliance. All States must refrain from the threat or use of force in any manner inconsistent with the Charter of the United Nations and must settle disputes by peaceful means. As noted in the Secretary-General's report, violations of international law were all too frequent and the political will to ensure compliance too weak, especially with regard to protecting civilians in armed conflict. The European Union reaffirmed its commitment to the fundamental principles of international law and its determination to work for greater compliance with them.

13. The protection of human rights and fundamental freedoms was an essential part of the rule of law at the international level. The principle of responsibility to protect against the serious international crimes of genocide, crimes against humanity, ethnic cleansing and war crimes had been endorsed at the 2005 World Summit.

14. The increasing caseload of the International Court of Justice was encouraging. States that had not yet done so should consider accepting its jurisdiction.

The International Criminal Court, along with the ad hoc and mixed tribunals, had a central role in combating impunity. The European Union fully supported the establishment of a mechanism or mechanisms to deal with residual functions after the closure of the ad hoc tribunals and called upon all States that had not yet ratified the Rome Statute to do so without delay and to cooperate with the Court.

15. The rule of law was one of the core principles on which the European Union built its international relations and its efforts to promote peace, security and prosperity worldwide. Adherence to the rule of law was crucial in conflict prevention, stabilization and the recovery and reconstruction of fragile environments and those affected by conflict, and in sustainable long-term development. Moreover, legal empowerment of the poor was an effective tool in the eradication of poverty. The Charter of the United Nations did not allow for a choice between peace and justice.

16. Supporting the initiatives described in the report, he emphasized the importance attached by the European Union to the work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit. The Unit should be provided through the United Nations regular budget with all the resources needed for its work. The dialogue initiated by the Unit, in cooperation with the Office of Legal Affairs, on the rule of law at the international level was a useful preparation for the debate on the rule of law at the national level.

17. The European Union had designed programmes and activities of its own to promote the rule of law. It supported a number of peacebuilding programmes and had contributed over 17 million euros to the global ratification campaign for the Rome Statute conducted by civil society coalitions. It encouraged the integration of international norms and standards related to the rule of law, both through bilateral human rights dialogues and under partnership and cooperation agreements with various countries. It provided financial support for the international criminal tribunals and the Office of the United Nations High Commissioner for Human Rights. It also conducted rule of law missions, for example in Georgia, Iraq and Kosovo, and had integrated a rule of law component into several other operations, including those in Afghanistan, Guinea-Bissau and the Democratic Republic of the Congo.

18. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Non-Aligned Movement, said it was essential to strike a balance between the national and international dimensions of the rule of law. The international dimension called for greater attention from the United Nations. To ensure that international relations were based on the rule of law, certain elements were essential. All States should have the opportunity to participate in international law-making processes. All States should comply with their obligations under both treaty law and customary international law. The selective application of international law must be avoided. The legitimate and legal rights of States under international law must be respected. Lastly, the cornerstone of the rule of law at the international level was the principle of the prohibition of the threat or use of force and the peaceful settlement of disputes.

19. The Non-Aligned Movement encouraged States to resort to the mechanisms established under international law for the peaceful settlement of disputes, including the International Court of Justice and treaty-based courts such as the International Tribunal for the Law of the Sea, as well as arbitration. It called upon the General Assembly and the Security Council to make use, whenever appropriate, of their right under article 96 of the Charter to request advisory opinions on legal questions from the International Court of Justice.

20. All States should fulfil their obligation to promote the observance and protection of all human rights and fundamental freedoms in accordance with international law. The purposes and principles of the Charter of the United Nations, and the principles of international law were paramount in achieving peace and security, the rule of law, economic development and social progress, and human rights. Members of the Non-Aligned Movement remained concerned at the use of unilateral measures, with their negative impact on the rule of law and international relations. The Movement underscored the need for States Members of the United Nations to fully respect the functions and powers of each principal organ of the United Nations, especially the General Assembly, and to maintain the balance among them. Close cooperation and coordination among all the principal organs was essential. The Movement was concerned that the Security Council was encroaching on the functions and powers of the General Assembly and the Economic and

Social Council by taking up issues within the competence of those two organs.

21. The General Assembly must play a leading role in promoting efforts to ensure respect for the rule of law. The international community must not, however, supplant the national authorities in their task of establishing or strengthening the rule of law. Assistance and cooperation should be provided at the request of Governments and strictly within the respective mandates of the United Nations funds and programmes. Account should be taken of the customs and the political and socio-economic features of each country and the imposition of pre-established models should be avoided. Appropriate mechanisms should be established to enable Member States to keep abreast of the work of the Rule of Law Unit and to ensure regular interaction between the Unit and the General Assembly. It would have been useful if the report of the Secretary-General had provided more details concerning the activities of the Rule of Law Coordination and Resource Group and the Rule of Law Unit, such as the training provided for United Nations staff members in promoting the rule of law, and the activities of the Group and the Unit in promoting the rule of law within the United Nations system itself. He hoped that future reports would include an evaluation of the effectiveness of rule of law activities in the United Nations.

22. Lastly, he welcomed the new system of administration of justice in the United Nations and supported initiatives to hold United Nations personnel accountable for misconduct during a deployment on mission.

23. **Ms. Migiro** (Deputy Secretary-General), briefing the Committee on the activities of the Rule of Law Coordination and Resource Group, drew attention to the activities described in the report of the Secretary-General (A/64/298). Strengthening the rule of law was a complex field, linked to addressing critical goals such as poverty reduction and sustainable human development. It was also closely linked to peacebuilding and peacekeeping, accountability for gross violations of human rights, and combating organized crime. The Organization's rule of law efforts stemmed from the 2005 World Summit Outcome, which had requested States to pay extra attention to the rule of law. The report of the Secretary-General noted that the United Nations was conducting rule of law activities in over 120 countries in all regions. In at

least 50 of those countries, rule of law activities were being carried out by a minimum of three United Nations entities. Five or more United Nations departments, agencies, funds and programmes were concurrently working on the rule of law in over 30 countries, 22 of which were hosting peace operations. The overall aim of United Nations rule of law activities was to find better ways of supporting Member States in fulfilling their international obligations.

24. The trend towards greater utilization of treaty-based mechanisms for the peaceful settlement of disputes should be encouraged. Given the progress achieved in pursuing individual responsibility for crimes under international law, the Secretary-General was requesting the Group to enhance strategies to strengthen the capacity of Member States to end impunity.

25. The United Nations must be better equipped to respond to immediate rule of law needs in countries undergoing and emerging from conflict, initially by developing a rapidly deployable form of assistance, especially a standing police capacity. Immediate needs for legal protection, safety and access to justice must be addressed, while laying the building blocks for long-term development and public confidence in justice and security institutions. More attention should be paid to prisons and pre-trial detention, in order to ensure lawful and humane criminal justice systems. The rule of law response to sexual and gender-based violence must be strengthened. Rule of law efforts must also be more firmly grounded in the development agenda of the Organization.

26. The Group was complemented by a system of designated lead entities for delivering assistance on the ground. It had now begun implementing the Joint Strategic Plan, setting out targeted initiatives and outcomes for the next three years. Guidance issued by the Secretary-General on important cross-cutting issues was beginning to have an impact on the ground, for instance in strengthening efforts on justice for children.

27. The most important partnerships were with national leaders and stakeholders, and the Rule of Law Unit had recently begun a consultative process aimed at placing the perspectives of national stakeholders at the centre of strengthened rule of law efforts.

28. **Mr. Barriga** (Liechtenstein) said that for a small country like his own it was a matter of survival to

promote the rule of law, which was the only means of guaranteeing protection of the rights and interests of the less powerful. Liechtenstein had accepted the compulsory jurisdiction of the International Court of Justice in 1950 and it was regrettable that so far, only 66 States had done so. Concrete efforts should be made to encourage States to consider accepting the Court's jurisdiction. He therefore proposed that the General Assembly should mandate the Secretary-General to invite them to submit their views on the possibility of doing so.

29. The reform of the system of administration of justice, and the Security Council's efforts to improve the fairness of sanctions, showed that the United Nations was increasingly dealing with individuals as well as with governments and other organizations. In some cases, it served as a de facto interim government. It was time, therefore, to clarify the extent to which the United Nations and its principal organs were bound by the same human rights standards as those it had created for Member States, perhaps by enacting a bill of rights for the United Nations itself.

30. The steadily increasing number of States Parties to the Rome Statute emphasized the principle that ultimately, no individual should enjoy impunity for the gravest international crimes. He called on all States to keep working towards an acceptable definition of the crime of aggression, especially through the International Court of Justice Review Conference in 2010. Attention should also be given to the role of the United Nations in promoting the principle of complementarity with respect to international crimes, particularly through capacity-building.

31. Noting the proliferation of international forums in which matters relevant to all Members of the United Nations were discussed and sometimes decided, he emphasized that rules must apply equally to all, in accordance with the principle of sovereign equality of States.

32. **Mr. Morier** (Switzerland) said that given the huge diversity of States Members of the United Nations, peaceful coexistence was essential and it was vital to ensure that the philosophy of "might is right" did not prevail. Strengthening the rule of law had a major role to play in that respect. There was an overriding need to resort systematically to peaceful means of settling disputes at the international level, a concern already expressed by his country in a previous

report of the Secretary-General (A/62/121/Add.1). The specific mechanisms for settling disputes should be brought into play before conflict broke out. It was for Member States to ensure that the mechanisms mentioned in the report of the Secretary-General were provided with sufficient funds and resources to respond to requests.

33. **Ms. Pino Rivero** (Cuba) said that consideration of the item, and in particular the sub-topic of the rule of law at the international level, was essential to the maintenance of international peace and security and to advancement in the establishment of a just and equitable international order. Respect for the rule of law would help to prevent and eliminate aggression, genocide, drug trafficking and other transnational crimes of concern to the international community. The principles of the Charter — the sovereign equality of States, fulfilment in good faith of their obligations, peaceful settlement of disputes, refraining from the threat or use of force and non-selectivity in the application of international law — were essential for the preservation and promotion of international peace and security, economic development and social progress and respect for human rights and the rule of law.

34. An essential element of the rule of law was the fulfilment by States of their obligations under international treaties. States must adapt their domestic legislation to fulfil the letter and spirit of the treaties to which they were parties. However, her delegation was concerned about the unilateral exercise of extraterritorial civil and criminal jurisdiction by national courts when it did not emanate from international treaties or other obligations under international law. Cuba also condemned the adoption of national laws against other States based on political motivations.

35. While international assistance and cooperation played an important role in establishing and improving the rule of law, any support to a particular State in implementing international rules and regulations or in strengthening its institutions, policies and processes must be provided at the request of the State itself and take into account the specific characteristics of the country. The imposition of pre-established models that could hinder the solution of internal problems should be avoided.

36. Within the United Nations system, Member States must maintain the balance between the functions and powers of the Organization's principal organs as provided for in the Charter. There was a danger that the Security Council was encroaching on questions that clearly fell within the competence of other United Nations bodies, in particular by attempting to deal with the establishment of standards and definitions, a matter exclusively within the purview of the General Assembly. Close cooperation and coordination between the principal organs of the United Nations were indispensable in order for the Organization to remain relevant and able to face existing global threats and challenges.

37. **Mr. Shautsou** (Belarus) noted the detailed analysis in the report of the measures taken to implement the rule of law principle at the national level. He hoped that in future reports more attention would be given to the international aspect. International law was one of the chief factors in achieving stability and security in international relations and in resolving global problems. Likewise, of great importance was the contribution to international peace and security that would be made by drafting a comprehensive convention on international terrorism. In that process, the temptation to achieve consensus by using political rather than legal terminology should be avoided. It was also important to continue working on issues of importance for the Security Council, such as the definition of aggression and the procedure for imposing sanctions.

38. The reason why international law lacked effectiveness was not primarily the inadequacy of the legal rules themselves, but the lack of political will, combined with protectionism and the use of double standards. The existing shortcomings should be tackled through the work on codification and progressive development, not through the one-sided actions of individual States. The only alternative to upheaval in the existing legal order was for sovereign States to cooperate, on the basis of an unconditional recognition of the right to pursue different paths in progressive development.

39. International law was becoming increasingly important in the "right to development". Multilateral international law initiatives could protect and advance the interests of all States. His own country, which was committed to the rule of law in international affairs, observed its international obligations and played an

active part in international lawmaking and the progressive development and codification of international law. Despite the progress made by the Rule of Law Coordination and Resource Group, there was still much to be done to enhance the effectiveness of international cooperation based on the rule of law, even within the United Nations itself. A greater role for international legality in the work of the Security Council, the General Assembly and other United Nations organs would lend greater authority to international law as a whole.

40. Recourse to international judicial organs for the peaceful settlement of disputes was becoming more frequent. However, political considerations must not be allowed to prevail in the deliberations of those bodies.

41. The International Law Commission did valuable work in the progressive development of international law. Its work on any particular topic should result in a set of draft articles which would become an international treaty.

42. Both States and other subjects of international law had a special responsibility to ensure the rule of law at the international level. The overall aim of the United Nations relating to the rule of law was to find more effective ways of supporting Member States in fulfilling their international obligations, depending on their individual needs. It had an especially important role in fostering contacts between experts and exchanges of experience in a variety of forums.

43. *Mr. Baghaei Hamaneh (Islamic Republic of Iran), Vice-Chairman, took the Chair.*

44. **Mr. Patriota** (Brazil) said that an international system based on legal principles, norms and rules was fundamental to ensuring world peace and security and friendly relations among States, enhancing international cooperation and achieving justice. The general principles of international law, particularly those embodied in Article 2 of the Charter, including peaceful settlement of disputes, the prohibition against the threat or use of force and non-interference in internal matters, must continue to guide the efforts of Member States to fulfil the purposes of the Charter.

45. The various mechanisms and institutions established to interpret the law and settle disputes had made an outstanding contribution to peace, security and better relations among States. The International Court of Justice, in adjudicating extremely sensitive

cases, contributed to the maintenance of international peace and security. The International Tribunal for the Law of the Sea, the Dispute Settlement Body of the World Trade Organization and regional institutions such as the Inter-American Court of Human Rights and the system for the settlement of disputes of MERCOSUR, among others, were also instrumental in ensuring the effective and impartial implementation of international law.

46. His delegation also wished to stress the contribution made by the International Criminal Court in addressing the most serious crimes of concern to the international community. In establishing the Court, States had aimed not only to put an end to impunity for war crimes, crimes against humanity and genocide but also to prevent them; that deterrent effect was an important element of the Court's work. Furthermore, since the Court's jurisdiction was complementary to national criminal jurisdictions, States still had the primary responsibility for bringing those responsible for the most serious crimes to justice; that approach had led many States to enact appropriate legislation.

47. Since lasting peace and security, as well as social and economic development, were closely linked to the strict observance of international law, the efforts being made in that regard merited the unwavering support of Member States.

48. **Mr. Eriksen** (Norway) said that the rule of law was both an aim in itself and a means of achieving the aim of a more peaceful, prosperous and just world. Peace and security, development, human rights, the rule of law and democracy went hand in hand and were among the indivisible core values of the United Nations. In that connection, it was useful to recall the 2005 World Summit Outcome.

49. In discussing the rule of law at the international level, it must be recognized that the topic could not be considered in isolation from the rule of law at the national level. A State's ability to fulfil its international obligations depended to some extent on how those obligations had been implemented in domestic law. Recognizing the need to establish clarity, certainty and predictability in their international relations, States protected their interests through the conclusion of agreements with other States. If a State failed to honour its international obligations, it ran the risk that other States would take countermeasures or present claims for compensation. All States, big or small, had a

genuine self-interest in being perceived as a responsible actor on the international stage and in promoting the rule of law at the international level.

50. A key factor in enhancing support and respect for international law was strengthening the sense of ownership of universal treaties through an open and inclusive negotiating process. First, there must be an arena accessible to all States; the United Nations provided such an arena and Member States should strengthen its role in that respect. Second, all participants must have the opportunity and capacity to contribute meaningfully to the discussions; his delegation commended all parts of the United Nations that were involved in capacity-building to that end. Furthermore, the outcome of the negotiations — the text of the treaty — must be clear and unambiguous and reflect the common understanding of the treaty's object and purpose.

51. Among the mechanisms for peaceful conflict resolution, the International Court of Justice provided an underutilized opportunity. Norway had accepted the compulsory jurisdiction of the Court and urged all States to do the same. His delegation wished to highlight the efforts of the Council of Europe's Committee of Legal Advisers on Public International Law to promote broader acceptance of the Court's jurisdiction. It was encouraging that the Court was currently considering a larger number of cases; that trend should be continued.

52. The international ad hoc criminal tribunals had made crucial contributions to upholding justice and the rule of law. The prevailing view now in all quarters was that there should be no impunity for serious crimes. His delegation was also pleased that the International Criminal Court had begun its first trial, and it encouraged all States that had not done so to ratify the Rome Statute and to cooperate fully with the Court.

53. The lack of protection of civilians in conflict, increased targeting of civilians and the use of sexual violence as a method of warfare evidenced the urgent need to work, in many different forums, towards greater respect for international humanitarian law. It was also vital that international organizations too should respect the rule of law. The United Nations and the Security Council should set an example by scrupulously adhering to the Charter and international law. Lastly, his delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Unit, which would help to



improve the effectiveness of the United Nations, lead to synergies and reduce duplication of work. The two bodies should continue their practice of open consultations with Member States. The Rule of Law Unit should be provided with the necessary financial and human resources to carry out its important tasks.

54. **Mr. Hernández-Milian** (Costa Rica) said that the rule of law had been a guiding principle of his country's national life and its relations with other States long before the founding of the United Nations. Costa Rica had abolished its army and for more than sixty years had entrusted its peace and security entirely to dialogue and institutional conflict resolution mechanisms. Its stance had enabled it to play a peacemaking role during the Central American conflicts of the 1980s and it was currently being called upon to mediate the conflict in Honduras.

55. While serving on the Security Council during the past two years, Costa Rica had sought to ensure that the rule of law formed the basis of the political agreements putting an end to conflicts and of peacekeeping and peacebuilding operations, with particular consideration given to criminal justice, due process and reform of the security sector. In the work of the United Nations in general his delegation devoted particular attention to the reform of the internal justice system, respect for due process in sanctions regimes, implementation of the principles of the Global Compact within the Administration and the codification and progressive development of international law.

56. Despite some progress on all those fronts, making the rule of law the guiding principle in international relations still remained an aspiration, an unfinished and urgent task. The crises the world currently faced could only be resolved if the responses to them were governed by the rule of law: by setting clear rules and following them; by recognizing rights and respecting them; by determining responsibilities and sharing them; by defining obligations and enforcing them. No crisis loomed larger than the environmental crisis, which threatened human survival. A global strategy was required that set standards, defined shared responsibilities in reducing emissions, recognized the right to development and established enforceable obligations in the transfer of know-how, technology and resources. Similarly, overcoming the economic and financial crisis required a global environment governed by the rule of law, one capable of ensuring security, transparency, stability and accountability. The same

principle applied in deciding how to resolve the world food crisis, prevent nuclear proliferation and reduce and ultimately eliminate nuclear weapons.

57. His delegation recognized the role that the transitional and permanent international criminal justice mechanisms and institutions had played in reconciliation and peacebuilding and was committed to working to strengthen international criminal justice and eliminate the crimes against which it was directed.

58. **Ms. Guo Xiaomei** (China) said that advancing the rule of law at the international level would contribute to safeguarding world peace, promoting common development and building a harmonious world. It would entail work on two mutually reinforcing core elements: full and faithful implementation of the rules of international law and preservation of the common interests of the international community.

59. The principle of *pacta sunt servanda* derived from customary international law and had been confirmed by numerous international treaties and legal precedents, including the Charter of the United Nations. The principle required the parties to fulfil their treaty obligations in good faith and to refrain from selective application or unilateral interpretation of treaty provisions. Parties should not abuse their treaty rights or undermine the object and purpose of the treaty. Any State violating its treaty obligations should be held responsible, and no State should acquiesce in or allow acts that violated treaty obligations.

60. In order to safeguard the common interests of humankind, the international community should uphold the authority of the Charter and abide by its purposes and principles; deal appropriately with the relationship between the common interests of mankind and the interests of the individual State and uphold the values of cooperation and benefit-sharing; promote universal participation by States on an equal footing in international legislative processes and ensure that international legal instruments reflected the interests and concerns of all States in a balanced manner; and promote the democratization of international relations and encourage the settlement of international issues through egalitarian consultations on the basis of international law.

61. **Mr. Dos Santos** (Mozambique) said that the rule of law at the international level was the foundation for cooperation and peaceful coexistence of States and should be seen as the essential means for addressing

current and future global challenges. The rule of law required all nations to conduct their relations with other nations in accordance with the principles embodied in the Charter and other universally recognized principles of international law, making full use of the mechanisms provided for peaceful settlement of disputes.

62. In view of its unique position and accumulated expertise, the United Nations had a crucial role to play in encouraging all nations to resort increasingly to an effective multilateral system in order to address global challenges, in particular in the areas of peace and security, human rights and development. To that end, the United Nations should, among other things, encourage further treaty ratification and adherence and promote broader knowledge of international law and wider participation by all States in the codification and progressive development of international law.

63. The United Nations itself must reflect the democratic values that were an essential element of the rule of law. In that regard, it was worth remembering the words of the Millennium Declaration, which reaffirmed the central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations and invoked the need to intensify efforts to achieve a comprehensive reform of the Security Council.

64. To be effective, international law must be implemented at the national level by being adequately incorporated in both fundamental and ordinary domestic law and upheld by a national judicial system fully accessible to all citizens. Only then could it serve as a bedrock for democracy and respect for individual rights and freedoms, thereby creating the enabling conditions for social and economic development. The United Nations should therefore focus on the mutually reinforcing relationship between the rule of law at the national and international levels and should devote special attention to enhancing national capacity for domestic implementation of international legal instruments by mainstreaming United Nations rule of law activities within the Organization's development assistance activities at the country level. In order for rule of law assistance programmes to succeed, however, national authorities and local communities must be committed to them, an end to be achieved by allowing them to participate in defining the needs and aspirations to be addressed.

65. His delegation would urge enhanced cooperation between the United Nations and regional or subregional organizations, such as the African Union and the Southern African Development Community, in support of their initiatives relating to the rule of law.

66. **Mr. Ramafole** (Lesotho) said that the Joint Strategic Plan marked a significant step in bringing together the leading United Nations departments and agencies engaged in rule of law activities to work in coordination towards joint outcomes.

67. Respect for the rule of law was the cornerstone of peaceful coexistence and a prerequisite for good relations among States. It entailed respect for the equal sovereignty of States, peaceful settlement of disputes, compliance with the judgements or advisory opinions of international judicial bodies and discharge of treaty obligations. Promoting respect for the rule of law had been one of the main founding purposes of the United Nations. The broad set of legal norms developed over the years under the auspices of the United Nations covering such fundamental issues as human rights, the environment and trade represented one of the Organization's most impressive achievements. A strengthened legal regime at the international level could help to prevent or resolve conflicts, control the proliferation of weapons, protect against genocide and other crimes against humanity, assist in the fight against terrorism and support efforts to develop international trade.

68. At the national level, the point of departure was that everyone, from the individual to the State itself, should be subject to laws that were publicly promulgated and equally enforced. In Lesotho, which was governed by a democratically elected Government, respect for fundamental human rights and freedoms, the independence of the judiciary, separation of powers and a host of other rights and obligations were embodied in the national constitution. His delegation subscribed to the view that it was critical for the United Nations to enhance its ability to deliver effective rule of law assistance to Member States, at their request and in accordance with their national priorities and strategies, and to strengthen multilateral cooperation based on the rule of law.

69. **Ms. Ramachandran** (Malaysia) said that multilateral cooperation among States was important in facilitating the rule of law in the international legal sphere. Malaysia's implementing laws in the areas of counter-terrorism, transnational organized crime,

disarmament and non-proliferation of weapons of mass destruction, as well as its laws enabling mutual assistance in criminal matters and extradition, were evidence of its commitment to transitional justice. A State's failure to conform to its international obligations undermined the rule of law domestically and globally. Malaysia took its treaty obligations seriously and had exerted its best efforts to ensure that the necessary domestic legislative and administrative measures were in place before ratifying or acceding to any treaty. In that regard, her delegation welcomed the ongoing efforts by the United Nations to strengthen national institutions and provide legislative guidance to Member States in order to promote ratification of international treaties and compliance with international obligations.

70. In order for the rule of law to be promoted at the international level, justice must not only be done — it must be seen to be done. Breaches of international law by States must be addressed by the international community without preferential treatment of any party. That was an area that merited the attention of the Rule of Law Coordination and Resource Group.

71. At the national level, her country steadfastly adhered to the rule of law in the administration of the criminal justice system, which was anchored in the federal constitution, the Criminal Procedure Code, the Evidence Act of 1950 and other penal laws. Prosecution and punishment were based on duly enacted laws and transparent procedures. As a member of the Association of Southeast Asian Nations (ASEAN), Malaysia was part of the regional effort to promote the principle of the rule of law, which was included in the ASEAN charter as part of the purposes and principles of ASEAN. Recently, the ASEAN Foreign Ministers had endorsed the terms of reference for the new ASEAN Intergovernmental Commission on Human Rights, which also reflected the principle of the rule of law.

72. Her delegation reiterated its readiness to engage with the international and regional communities to strengthen the rule of law at the international level, including through the elaboration of relevant international law instruments, enhancing mechanisms designed to respond to breaches of international law and ensuring firm compliance with monitoring mechanisms, particularly those established by Security Council and General Assembly resolutions, with due regard to the principles of sovereign equality, territorial integrity and non-interference.

73. **Mr. Tladi** (South Africa) said that, from one perspective, the rule of law simply referred to compliance with obligations under international law, whether flowing from treaty or from customary law. Far too many international obligations remained unfulfilled. Moreover, auto-interpretation had a negative impact on the advancement of the rule of law. In the absence of a compulsory system of judicial settlement of disputes, States interpreted their international law obligations in different, often conflicting ways. The problems caused by auto-interpretation could be remedied or greatly reduced by regular recourse to international mechanisms for the peaceful settlement of disputes, the International Court of Justice in particular or other, specialized dispute settlement mechanisms. Such mechanisms should be strengthened and not only States but international organizations as well should have recourse to them. His delegation was pleased that the General Assembly had not been reluctant to request advisory opinions from the International Court of Justice. It should be recalled that under Article 96 of the Charter the Security Council too was permitted to request advisory opinions from the Court and it should be encouraged to do so.

74. Equally important was compliance with the decisions of the Court. In that regard, it should be recalled that, although the Court's advisory opinions were not binding in the sense of Article 94 of the Charter, they were not without legal consequences; failure to comply indicated a violation of whatever rule the Court might have deemed to be at issue. His delegation was concerned that the Court's advisory opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* continued to be disregarded.

75. From another perspective, compliance with international law was not in itself sufficient. The content of the international law to be complied with must itself be fair, in both its substantive and procedural dimensions, in order to ensure the legitimacy of law. The Security Council, as both a product and a source of international law, provided an excellent illustration. From the formal perspective, decisions emanating from an undemocratic, unrepresentative organ such as the Security Council would constantly be attacked for lack of legitimacy, regardless of the content of the decisions, in other words, whether they were fair or not. In the course of the negotiations on reform of the Security Council, some had argued that the legitimacy

of the Council could not be questioned, since it was based on the Charter. However, there was a distinction between legitimacy and legality; while the Charter might confer legality on the Council, it would not necessarily confer legitimacy. It was widely agreed that the current configuration of the Council was unfair, especially with respect to Africa, which was both underrepresented overall and specifically unrepresented in the permanent category. His delegation therefore urgently advocated prompt reform of the Security Council to make it representative.

76. From a substantive or normative perspective, questions could be raised about the content of some Security Council decisions, for example, about selectivity in the adoption of resolutions as a result of the threat or use of the veto; the Security Council was quick to act in some instances but slow to act when it was politically inconvenient for some of its members. Questions could also be raised about due process in listing and de-listing procedures.

77. On a more positive note, despite some start-up problems, the international criminal justice system continued to make advances in the effort to put an end to impunity. His delegation believed that the right balance between peace and justice could be struck.

78. **Ms. Salasini** (Zambia) said that her delegation appreciated the work that the Rule of Law Coordination and Resource Group and the Rule of Law Unit were doing to promote the rule of law, particularly in assisting Member States to develop national laws incorporating international norms and standards. It was gratifying to note that United Nations rule of law promotion programmes, which, in addition to the above-mentioned function, helped Member States to strengthen their institutions of justice, governance, security and human rights and empowered individuals and civil society to access legal protection, currently covered more than 120 Member States in all regions of the world. Despite that great achievement, the United Nations continued to face challenges in its rule of law activities, including the shortage of skilled manpower and adequate funding for capacity-building of local staff in Member States, including her own.

79. Strengthening the rule of law at the international level was critical in order to address global challenges effectively, thereby ensuring sustainable development, peaceful coexistence and cooperation among States. Furthermore, Zambia subscribed to the principle that

the culture of impunity should not be allowed to prevail; justice must be impartial. For those reasons, Zambia intended to recognize the compulsory jurisdiction of the International Court of Justice and reaffirmed its commitment to combat impunity and strengthen universal justice through the International Criminal Court and ad hoc international tribunals.

80. The United Nations must instil confidence in its systems and enhance its credibility by ensuring that Security Council resolutions were implemented uniformly and without discrimination. Her delegation commended the Organization's efforts to establish a professional, independent and decentralized internal justice system in conformity with internationally recognized judicial standards.

81. Her delegation urged the international community, and especially those Member States with the ability to do so, to render more assistance to the United Nations in every way possible in creating a peaceful and orderly environment, based on the rule of law, which would ultimately be in every Member State's best interests.

82. **Mr. Holovka** (Serbia) recalled that Member States, at the 2005 World Summit, had identified the rule of law as one of the four key areas that demanded greater attention and had reaffirmed their commitment to an international order based on the rule of law as essential for peaceful coexistence and cooperation among States, and for sustained economic growth, sustainable development and the eradication of poverty and hunger. Supporting Member States in their efforts to strengthen the rule of law, ensuring that fair and effective legal, judicial, prison and police institutions were in place, was thus a key element in the work of the Organization. His delegation welcomed the Organization's activities in that regard and the actions taken to enhance system-wide coordination and coherence, and it stressed the importance of implementation of the Joint Strategic Plan.

83. From the national perspective, thanks to cooperation from the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe, Serbia had made significant progress in advancing the rule of law at the national level through the adoption of some 20 laws and the ratification of as many international conventions. A particularly significant achievement was a package of laws aimed at creating an independent, efficient,

accountable and transparent judiciary, as well as amendments to the Criminal Code and the Code of Criminal Procedure. Legislation had also been adopted in previously unregulated or under-regulated fields, such as anti-corruption measures, data protection and international legal assistance in criminal matters. In addition, judicial facilities had been modernized; the system for automatic case management had been improved; and training programmes and seminars had been organized for judges, prosecutors and employees in the judiciary.

84. Violations of international law continued to occur in the form of unilateralism, in disregard of the basic principles of the Charter of the United Nations. Opting for a legal resolution of the future status of its southern province of Kosovo, Serbia had demonstrated its belief in international law and international judicial institutions, in particular the International Court of Justice, the most appropriate recourse in such cases.

85. With respect to international criminal justice, renewed efforts to combat impunity required increased assistance to Member States in order to enable them to hold perpetrators to account and provide victims with redress. Serbia supported all transitional justice mechanisms and the exercise of universal jurisdiction as appropriate.

86. **Ms. Aitimova** (Kazakhstan) welcomed the emphasis placed in the United Nations on implementing the principle of the rule of law. She supported the annual adoption of a resolution on the rule of law at the national and international levels. Her country endeavoured to incorporate international legal rules promptly into its legal system and to place the potential of international law at the service of the country's people. Those priorities were being implemented through its legislative plan for 2010-2020 and work would continue to bring national legislation into line with international standards. In anticipation of Kazakhstan's chairmanship in 2010 of the Organization for Security and Cooperation in Europe (OSCE), the national programme "Pathway to Europe" had established basic guidelines for developing a model of political and governance structure, aimed at democratizing and liberalizing political life. The guidelines took account of policy decisions within OSCE and of United Nations treaty instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Kazakhstan had taken steps

to promote the rule of law with regard to respect for human rights and had recognized the competence of the United Nations Committee on Human Rights. It had also adhered to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia, which had entered into force in March 2009. Kazakhstan was a party to the 1949 Geneva Conventions and the Additional Protocols thereto, as well as to international documents prohibiting or restricting the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Kazakhstan had also ratified the Kyoto Protocol and looked forward to the possible adoption of a Copenhagen outcome document on climate change. It would welcome any contribution by the United Nations to protect the Aral Sea Basin. It would continue to uphold the rule of law, including through the Conference on Interaction and Confidence-building Measures in Asia, the Commonwealth of Independent States, the Collective Security Treaty Organization and the Shanghai Cooperation Organization. The United Nations was best placed to encourage and assist States in developing and strengthening their national rule of law capacity, and she called on all Member States to work consistently in that area.

87. **Mr. Tun** (Myanmar) said that the international and national levels of the rule of law were complementary and interdependent. The rule of law was essential for international peace and security and also for economic development and social progress. The commonly agreed international principles on which the rule of law rested, including the pacific settlement of disputes and the maintenance of international peace and security in conformity with international law, were embodied in the Charter of the United Nations. The Charter and the principles of international law must be upheld.

88. Turning to the report of the Secretary-General (A/64/298), he noted with interest that at least 40 United Nations entities were conducting rule of law operations and programmes, in over 110 countries. At the national level, promotion of the rule of law rested with the national authorities. His country shared the view that the international community should encourage and support them when requested to do so. In that connection, the principles of sovereignty and respect for the domestic jurisdiction of Member States must be upheld, in accordance with Article 2 of the Charter. He hoped that the Rule of Law Coordination

and Resource Group and the Rule of Law Unit would play an active role in coordinating and rationalizing United Nations rule of law activities.

89. Myanmar was aware that national laws must be in conformity with international law and with treaties to which the country concerned had adhered. Its Office of the Attorney General was responsible for vetting domestic legislation to that effect. Thus, its Anti-Trafficking in Persons Law had been enacted pursuant to the Trafficking in Persons Protocol, supplementing the United Nations Convention against Transnational Organized Crime. Its law on mutual legal assistance in criminal matters derived from the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and from the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

90. In conclusion, he confirmed his country's willingness to cooperate with the United Nations in promoting rule of law activities at both national and international levels.

91. **Mr. Adi** (Syrian Arab Republic) said that the current discussion was extremely important, coinciding as it did with the need to emphasize the principles and purposes of the United Nations insofar as the Security Council continued to encroach upon the mandate of the General Assembly, thereby diminishing the rule of law at the international level and impairing the mechanisms for application of the Charter. The General Assembly had emphasized the need for observance of the rule of law at both the international and national levels, given the alarming proliferation of acts involving the use or threat of use of force, the occupation of sovereign States or their territories, and such other newly contrived concepts as pre-emptive war, relative sovereignty, responsibility for protection and the linkage of security, development and democracy with human rights. In that regard, unilateral measures had an adverse impact on the rule of law at the international level and on international relations.

92. All States were bound to respect and apply the principles of international law without selectivity. The sovereignty and independence of States were also to be respected, together with the right of peoples under occupation to fight for self-determination, independence and liberation. Further principles supported by his country were the settlement of disputes by peaceful means, non-interference in the internal affairs of States and

respect for the equal rights of all, without distinction on any basis.

93. In the field of international relations, the rule of law was still far from established owing to continuing exceptions from the rule, double standards and imposition of the will of the strong on the weak, which stemmed from the lack of effective deterrents and failures to treat States equally. With regard to the rule of law at the national level, it assumed a variety of forms as a function of the unique political, historical and cultural features characterizing individual States and methods for the provision of technical and financial assistance should be developed with those features in mind and not turned into a tool for political pressure or a pretext for interfering in the affairs of States or diminishing their sovereignty. The rule of law was furthermore intertwined with human rights and democracy. Each of those elements should therefore be applied and strengthened in a balanced manner and each State must fulfil its obligations to promote and protect all human rights and fundamental freedoms.

*The meeting rose at 1 p.m.*