

**OPEN DEBATE OF THE
SECURITY COUNCIL**

**THE PROMOTION AND STRENGTHENING OF THE RULE OF LAW
IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY**

STATEMENT

BY

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TO THE UNITED NATIONS**

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CHECK AGAINST DELIVERY

Mr. President

Liechtenstein warmly welcomes your initiative to hold an open debate on the strengthening of the rule of law. This is a good opportunity to take stock of past achievements and to look at challenges ahead. We would like to do so on the basis of the comments our delegation made at the debate in 2006, taking into account the significant developments that have occurred since.

Our principled approach to this issue has not changed. We remain convinced that the best way for the Security Council to promote international law and the rule of law is to lead by example. We challenge the view that regards the Council as a purely “political body”. Its authority is based on the world’s supreme international treaty, the United Nations Charter. The Council is legally bound by applicable rules of the Charter and of international law. Those rules leave the Council much room to take decisions based on political, legal and other considerations – but that room is not without limits. It is both a legal necessity and a wise policy choice for the Council to respect and promote international law and the rule of law.

The Security Council must respect **human rights**, in particular when taking action with direct impact on the rights of individuals. Our 2006 statement focused strongly on the need to improve sanctions procedures. We commend the Council for the tremendous progress made in this regard by reforming the sanctions regime against the Taliban and Al-Qaida. We welcome the appointment of Judge Kimberly Prost as the first Ombudsperson. The approach taken by resolution 1904 may not be perfect and not take relevant standards of due process to their ultimate consequence, but we recognize the strong political will within the Council to address legitimate criticisms expressed against the old system. We hope that, on the basis of the experience with the new system, the discussions on the scope of the Council’s human rights obligations under international law will reach new levels.

The Security Council must furthermore remain vigilant in ensuring that its work remains within the **legal bounds and spirit of its constitution, the United Nations Charter**. Council decisions that are to be implemented by Member States in accordance with article 25 of the Charter must have a clear legal foundation. In particular, such decisions must take into account the power balance between the main organs. The Security Council should be particularly sensitive to the General Assembly’s prerogatives as the United Nations’ prime “legislative” organ, and to the need to enhance the perceived legitimacy of its decisions through greater inclusion and transparency. We recognize that since 2006, the Council has taken significant steps to improve its working methods. At the same time, we call on the Council to take further measures to improve its working methods, and we recall the multiple contributions made by the S-5 in this regard.¹

Cooperation with courts and tribunals, in particular the International Criminal Court, remains an essential tool for the Security Council in the promotion of the rule of law. Since 2006, the Council has further acknowledged this fact by establishing the Special Tribunal for Lebanon and, more recently, by moving to address the problem of impunity for the universal crime of piracy. The last four years have also seen a further consolidation

¹ S-5 members are Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland.

and strengthening of the work of the International Criminal Court. In 2006, we stated that Council referrals to the ICC must be accompanied by sustained political support throughout all phases of the judicial proceedings. Today, the need for such follow-up is more important than ever, as evidenced by the Court's recent decision on the lack of cooperation in the situation in Darfur. This decision comes after five years of resource-intensive judicial work on this situation and requires the Council's serious attention.

A further relevant development is the historic decision taken by ICC States Parties at the Review Conference in Kampala. By consensus, the Conference adopted a definition of the **crime of aggression** for the purpose of the Rome Statute as well as the conditions under which the Court may – no earlier than 2017 – exercise jurisdiction over this crime. Once formally activated, the Court's jurisdiction over the crime of aggression will give the Council a new policy option to address the most serious forms of the illegal use of force in contravention of the Charter.

During the last four years, the **Security Council's commitment to promote both peace and justice in conflict and post-conflict situations** has received significant new institutional support within the United Nations. The establishment of the Peacebuilding Commission, the establishment of the Rule of Law Coordination and Resource Group, and the strengthening of the Secretariat's mediation capacities have greatly contributed to a more holistic approach in this regard. The Security Council should continue to support efforts to strengthen domestic judicial capacities, in particular by devising appropriate mandates and structures for missions on the ground. The ICC Review Conference in Kampala has strongly underlined the need to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious international crimes, pursuant to the principle of complementarity.

Nevertheless, the Council's commitment to pursuing both **peace and justice** has also been tested in recent years. These developments show that the paradigm shift toward a positive relationship between peace and justice has yet to take full effect and requires sustained political support. Legally, permanent amnesties for genocide, crimes against humanity and war crimes are no longer viable. No such promise of amnesty can effectively be made. Both the Security Council and the Secretary-General, in their activities aimed at preventing and ending conflicts, should continue to strengthen the implementation of this important principle. This will require in particular a stronger engagement of mediators and other conflict intermediaries with justice issues.

Mr. President

The topic of today's debate is extremely rich and complex and can hardly be addressed appropriately in a short statement. We hope that the Council's work on this agenda will continue, including on the basis of a new report by the Secretary-General which could be submitted both to the Council and the General Assembly at its next session.

I thank you.