United Nations and the Rule of Law
Between General Assembly and Security Council
Paper submitted
To
Qatar Law Forum
29-31 May 2009
By
Bassil Yousef Boujok

Executive Summary
This paper has been prepared in view of Global commitment to the Rule of Law for Qatar Law Forum. Since the UN is interested in promoting the Rule of Law, nationally and internationally. This paper would shed light on the process of the chief organs of UN i.e. the General Assembly and the Security Council to emphasize the Rule of Law within the international political environment of Globalization, which was set within challenges of justice in the 21st century, on the agenda of the first general session of the Forum.

This paper contents the following subjects:
1- The Rule of Law in UN Charter and international instruments.
2- Aspects of difference between General Assembly and Security Council concerning the obligation of the Rule of Law.
3- The influence of the development of international political environment and Globalization on UN trends towards the implementation of Rule of Law.
4- General Assembly and Rule of Law
5- Security Council and Rule of Law.

The First Subject
The Rule of Law in UN Charter and international instruments

The Rule of Law has met wide acclaim both on the national and international levels, without accurate definition of the meaning of this term. On the national level, the Rule of Law requires the existence of government based on system of law, the supremacy of law and equality before the law. On the international level it means basically submitting the relations among States to the international law, mainly the UN Charter and the commitment of the International Organization to legal referential principles that would serve as a basis to the legality of its decisions.

In 2004 UN Secretary-General Kofi Annan provided an expansive definition of the rule of law as "a concept at the very heart of the Organization’s mission. It refers to 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 UN Charter does not include literal text regarding the Rule of Law. But the first and second article about the aims of UN solving international conflicts in accordance with the principles of justice and international law and developing friendly relations and cooperation among States in accordance with the Charter of UN. All these texts establish the basis for the rule of law in UN.

Taking into consideration the important role of ICJ as a main legal instrument of UN according to article 92 of the Charter. And the permission of asking advisory opinion from ICJ according to article 96, we could stress the fact the UN Charter has embodied the principles of rule of law, and adopted the relevant institutions.

When the UN issued the international instruments relevant to international law, the rule of law was part of the commitment of the states.

For example the General Assembly issued in 1970 the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. The paragraph 4 of the preamble emphasize on the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations.

At the end of the Cold War, and cessation of the dual authority period, a new political atmosphere on one popularity has prevailed. Thereupon, new resolutions issued, starting from 1990s which stressed the need for commitment to the rule of law on both national and international levels. The call to globalization was one of the results of the end of the Cold War. It adds another factor to the interest of the UN in the influence of globalization on Human Rights, one of which is justice since it is a practice of Human Rights.

That is why this period was abundant with adopting many instruments and international resolutions that emphasize the implementation of the rule of law, both nationally and internationally. In view of the importance of this period in the history of the UN, we have assigned.

The Second Subject

Aspects of difference between General Assembly and Security Council concerning the obligation of Rule of Law.

The commitment of the UN organs to the rule of law is expressed in the following criteria combined:

1- Legal authority in issuing resolutions.
2- The nature of membership in Organs, the mechanism of issuing resolutions and the extent of commitment of states to it.
3- The extent to which organ resolutions submitted to legal revision, and the permission of seeking Advisory Opinion of ICJ.

This is because the rule of law requires submitting any organ to a clear legal authority. The membership to this organ should be open to all members states in the UN, without permitting any member special privilege in adopting resolutions. Are its
resolutions to be considered as recommendations to the states or commitments to its purport? And finally, the permission to resort to contest the legality of those resolutions before International legal Organ, i.e. ICJ, or seeking advisory opinion from the said court concerning the legal aspects of cases raised on the resolutions issued by of UN organs.

By applying these criteria to the GA and SC we would notice the points of difference as follows:

1- The legal authority of the resolutions of the GA is represented in the UN Charter and the principles of international law, and in international conventions, whereas the SC is not committed to definite sources of international law. Instead its resolutions establish legal future precedents. We will survey this point in detail later.

2- Membership to the GA is open to all UN members. They all have equal votes, without privilege to any member, in accordance with article 18 of the Charter, while membership to the SC is restricted to 15 members, 5 of them hold permanent membership and have the right to veto adopting the draft resolutions, in accordance with article 27 of the Charter. GA resolutions are considered as recommendations directed to states in accordance with article 12 of the Charter. They are not obligatory, but the states, according to article 25 of the Charter are committed to accepting resolutions of the SC and act accordingly. The resolution is issued under Chapter seven of the Charter, its implementation is authorized by coercion, and imposing sanctions on the state that abstains from executing that resolution or restoring to force against it.

3- The resolutions adopted by GA or SC can not submitted to jurisdiction revision by ICJ. While may ask of Advisory Opinion by ICJ according article 96 of UN Charter. But the resolution to ask this opinion differs between the two organs according the mechanism of adopted the resolutions and the political will of the members.

We notice that the GA adopted 15 resolutions asked the Advisory Opinion from the first session until now. While the SC adopted only one resolution No 284/1970 concerning Namibia. This fact reflects the political will by GA to implement the international law. Contrary the members of SC especially the decision making members – the permanent members who did not have the political will to implement the international law.

The Third Subject

The influence of the development of international political environment and Globalization on UN trends towards the implementation of Rule of Law.

The first subject

The development of international political environment and UN trends A new era in the history of International Politics started in 1990.s. Its repercussions on explaining and implementing International Law, especially by SC, which represented the legal dimensions of the Unitary Polaris, by issuing a number of resolutions that imposed legal doubts on the extent of commitment of the UN, especially the SC to the rule of law. The series of resolutions issued on the item "The situation between Iraq and Kuwait" is a clear example on this point. Starting by resolution 660/1990, which dealt with Iraqi occupation of Kuwait, under to chapter seven of the Charter, without reference to chapter

www.icj.org

3
six, contrary to the resolutions issued concerning the Israeli occupation of territories of three Arab States in 1967, which were issued under chapter six. Four days later it was followed by resolution 661/1990, which imposed a number of sanctions against Iraq that was a precedent in the history of UN. Also resolution 678/1990 that permitted a group of states under the leadership of the USA to use force against Iraq to implement resolution 660 and et al. The SC held summit meeting in 31January 1992 adopted a note on the development of international politics which push the SC to new responsibilities. We will refer to this note later.
The GA and the international conferences started to emphasize among their resolutions and recommendations, the importance of rule of law nationally and internationally.
The Summit of Millennium held in the 55th session of GA and adopted the Millennium Declaration dated 8 September 2000. The Par 9 of this Declaration stresses the following:

- To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by Member States with the decisions of the International Court of Justice, in compliance with the Charter of the United Nations, in cases to which they are parties.

After the US occupation of Iraq – March 2003 and the resolution 1483/2003 adopted by SC with the international voices on illegality of the war and occupation of Iraq and the position of SC on de facto legality of the war.

The previous Secretary General on UN Mr. Anan has declared that the US war against Iraq was not legal.

The SG asks to High-level Panel to study the Threats, Challenges and Change, entitled “A more secure world: our shared responsibility.”

The High-level Panel submitted his report to SG in 2/12/2004 within the documents of 59 session of GA.

Under the issue of a more effective United Nations for the twenty-first century. The report provides as follows:
- The General Assembly has lost vitality and often fails to focus effectively on the Most compelling issues of the day.
- The Security Council will need to be more proactive in the future. For this to Happen, those who contribute most to the Organization financially, militarily and Diplomatically should participate more in Council decision-making, and those Who participate in Council decision-making should contribute more to the Organization. The Security Council needs greater credibility, legitimacy and Representation to do all that we demand of it.

---

44 BBC Interview with UN Secretary-General Kofi Annan, by Owen Bennett-Jones, September 16, 2004.
The Par 204 of the report deal to the question of legitimacy as follows:

204. The effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy — their being made on solid evidentiary grounds and for the right reasons, morally as well as legally.

When the GA adopted in 16/9/2005 the Declaration of World Summit. The Par 134 of the Declaration deals the Rule of Law as follows:

134. Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels, we:

(a) Reaffirm our commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States;

(e) Support the idea of establishing a rule of law assistance unit within the Secretariat, in accordance with existing relevant procedures, subject to a report by the Secretary-General to the General Assembly, so as to strengthen United Nations Activities to promote the rule of law, including through technical assistance and Capacity-building;

(f) Recognize the important role of the International Court of Justice, the Principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work, call upon States that have not yet done so to consider Accepting the jurisdiction of the Court in accordance with its Statute and consider Means of strengthening the Court’s work, including by supporting the Secretary-General’s Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis.

The Second sub-subject
Globalization and UN trend

Globalization in its both positive and negative aspects has drawn the attention of the UN. One of the most important instruments that dealt with it was the Declaration issued by the World Summit Conference in 2005 that stressed in its Para 19 and 47 on the urgency of work towards strengthening just globalization, and developing productive sectors in developing countries, so as take part more effectively in the act of globalization.

The GA emphasized in its resolutions, the last is Res 63/176 dated 18/12/2008 on Globalization and its impacts on the enjoyment of Human Rights.

The Resolution underline that globalization is not merely an economic process, but that it also has social, political, environmental, cultural and legal dimensions, which have an impact on the full enjoyment of all human rights.

Recognizing that globalization should be guided by the fundamental principles that underpin the corpus of human rights, such as equity, participation, Accountability, non-discrimination at both the national and the international levels,
Respect for diversity, tolerance and international cooperation and solidarity, The OP Par 10 affirms that globalization is a complex process of structural transformation, with numerous interdisciplinary aspects, which has an impact on the enjoyment of civil, political, economic, social and cultural rights, including the right to development;
The OP Par 11 affirms that the international community should strive to respond to the challenges and opportunities posed by globalization in a manner that ensures respect for the cultural diversity of all;
Taking on consideration that the justice is practice of article 14 of International Covenant of Civil and Political Rights. The impacts of Globalization on Human Rights include the right to justice.
The justice nationally and internationally need a democratic and equitable international order as reaffirmed the GA resolution 63/189 dated 18/12.2008 which ask in the 7 OP Par all the parties in the international level to create international democratic order based on the justice, equitable, human integrity, understanding and respect the cultural diversity and the human rights including the fight against the racial discrimination.

The Fourth subject
General Assembly and Rule of Law

The rule of law assumed a permanent importance in GA resolutions. The rule of law issue has undergone two objective stages relevant to international declarations approved by the GA. The first stage is characterized by emphasis on the rule of law nationally, and in the consultative services of the Human Rights Center, while the second stage comprises the rule of law nationally as well as internationally.

The First stage, since 1993 to 2002 based on Declaration and Plan of Action of Vienna proclaimed by World Conference of Human Right, held in June 1993. The paragraph 69 of Plan of Action recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law.

The GA adopted resolutions under the Item-Promotion of Rule of Law, in the agenda of third committee. The first resolution was Res 44/122 dated 20/12/1993 which ask from SG to submit to 49 session of GA concretes propositions of the program. The GA adopted many resolutions in the same item. The last resolution was Res 57/221 dated 18/12/2002 .The resolutions of GA were combined with resolutions adopted by Human Rights Commission related the links between promotion of democracy, human rights and rule of law.

The second stage: Since 2006 based on the Declaration of UN Summit in 2005. The GA adopted many resolutions under the Item – Rule of Law at the national and international level in the agenda of six committee. The last resolution was Res 63/128 dated 18/12/2008

A/CONF.157/24

RES 60/1 Dated 18/9/2005
The secretariat of UN created in 2006 according the paragraph 134 of Declaration of UN Summit, the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General. The Group’s role is to ensure coherence and minimize fragmentation across all thematic areas, including justice, security, prison and penal reform, legal reform, Constitution-making, and transitional justice. The mission of its members is to work together and in support of one another, in the spirit of shared values and principles, to ensure effective and coherent United Nations rule of law efforts that are aligned with the aspirations of our partners at the international and national levels. The membership of the Group consists of the Department of Political Affairs, the Department of Peacekeeping Operations, OHCHR, the Office of Legal Affairs, UNDP, UNICEF, UNHCR, and the United Nations Development Fund for Women (UNIFEM) and the United Nations Office on Drugs and Crime (UNODC).

In view of expansion in topics related to the rule of law on the national and international levels. The tenth operative paragraph of Resolution 63/128 dated on 11/12/2008 provides that the GA calls on members states to lay emphasis in their comments in future discussions of the sixth committee on the sub-topics relevant to the strengthening of the rule of law on the international level (session 64) as well as the laws and practices of member states in executing international law (session 65) as well as the rule of law and transitional justice in cases of conflict, and after war without conflict situations” (sixty-sixth session), without prejudice to the consideration of the item as a whole.

It is observed that the GA resolutions and the formation of the team concerning with coordinating and supporting the implementation the rule of law, by the General Secretariat, do not include a recommendation to or asking SC to apply the rule of law, in spite of the fact that the discussion during the two sessions 64 and 65 of the sixth committee are supposed to deal with the extent of commitment of the SC to the rule of law, especially on the part of the permanents members of the Council.

The fifth subject
Security Council and Rule of Law

The SC use the first time (the reference of rule of law) in its resolution 161/1961 concerning the situation in Congo. The second Preamble Par provided that the SC noting with deep regret and concern the systematic violations of human rights and fundamental freedoms and the general absence of the rule of law in the Congo.

We notice that the French version of the same resolution has used (absence général de légalité au Congo) instead of the rule of law.

The SC adopted the resolution 1040/1996 which expresses its consideration to SG on his efforts to maintain the conciliation, democracy and rule of law in Burundi

The SC created many peacekeeping actions, with the responsibility of promotion the rule of law, as in Guatemala in 1977, Congo 1999, Liberia 2003, Cote d, ivoire 2004 and Haiti 2004.
In view the importance of dealing with the extent of SC commitment to the rule of law depending on the mandates it has, and following the wide scale alterations in international political environment, since the nineties of the previous century. The legal research centers and experts of law, as well as a few states have called for a study of the commitment of the SC of the rule of law and UN Charter, so as to rich certain recommendations regarding enhancing the rule of law in the SC process. Furthermore, the SC has held certain meetings on this subject. Therefore this subject involves an attempt to expose the legal and research efforts regarding the commitment of SC and the need to disclose the legal and opinions on this topic. This subject involves the following sub- subjects:
1- Extent of obligation of the SC toward the principles of international law and UN Charter.
2- The Austrian initiative to study the topic of SC and the Rule of Law.
3- Security Council Summit and its processing its meetings to the discussion the Rule of Law.

Sub- subject one

Extent of obligation of the Security Council toward the principles of International Law and UN Charter.

With reference to a study by Dr Mohamed Bedjaoui

The first jurisprudent researcher on the influence of international political environment on the legality of SC acts as well as the commitment SC to the rule of law and the UN Charter is Dr Mohamed Bedjaoui, vice president of ICJ. In 1994 he wrote a book in French titled:

**Nouvel ordre mondial et control de la légalité des actes du conseil de sécurité-Mohamed Bedjaoui – Bryllant 1994.**

In this Sub- subject we review some legal aspects of the acts of SC mainly the extent to which it is committed to the international law and the UN Charter starting from the above mentioned book.

**Does the SC commit itself to the international law?**

The question may see somewhat queer, however the answer to it may remove that queerness. The return to the statements of those who shared in the preparatory work of the UN Charter on those who were in charge of decision making in the major states in the first years of the UN history. And that of the SC over a period of over half a century, without permitting appeal of the council resolutions before a legal organ. All make "No" answer more likely.

In his book, Dr Bedjaoui quotes John Foster Dullus, ex US secretary of state in the 1950s as saying:

(The SC is not an organ that simply applies the appropriate law. The SC itself is the law, it makes the law. If it consider a certain situation a threat to peace. It could decide on taking any measures. There are no legal principles to direct or guide it. It could decide whatever measures it thinks appropriate. It could be as an instrument vested with certain authority to enhance self prominence at the expense of another) 12

---

John FOSTER DULLES. War or Peace. The MacMillan Company. New York 1950 12 12
Dr Bedjaoui proceeds to say: This expresses how major powers were competing to promote SC influence long ago. It also reflects an idea that has yet taken a somewhat organized forum. Within its context the SC could apply specific rules of an autonomous law most which has been instituted by the council itself, with full assessment to curtail its obligations toward peace and security in the world. The suggestions that evolutes the SC as a decider which imposes its any law regardless of its validity, raises the question whether the SC through its career as a decider is exempt from paying respect to the rules of the UN Charter, on the one hand, and the rule of international law on the other. These points are vitally important, but hardly new since they were raised in San Francisco conference implementing and in SC implementing them in the numerous situations which it has encountered.

During the crisis of the Gulf War and other occurrences, the legal concern took increasing importance in processing international relations. In a letter to the Congress on 11/9/1990 President Bush announced (A new age has been born in which the supremacy of law rather than the law of jungle). President Mitterrand in a speech before the GA on 24/9/1990 also stressed the supremacy of law. When the Gulf War broke out he described it as a war of law. Many politicians, lawyers, and international officials think that our world will depend on the prevalence of international law, and honoring its principles. At the dawn of this new age, leaders of public opinion expressed their uneasiness about what they called (double standard) under which states honor law selectively according to their interests. Their uneasiness increased when the SC practiced the privileges according to the Charter through forty-five years of struggle among major powers in the world, in which the SC played the (mute party).

Another legal researcher supports the viewpoint of Dr Bedjaoui, and, in addition he says: Is it now high time that the SC becomes a creator of law? Reviewing other viewpoints that support the urgency of the SC commitment to the international law, including the first Par of the first article of UN Charter which provides, within the aims of the UN, maintain peace and international security, in accordance with principles of justice and international law.

Whereas, in fact, actual practice of the UN and the unlawfulness of appealing against the legality of its decisions has extended under present international environment the margin by which the SC has avoided commitment to the international law and through actual practice, has created a set of rules since 1990, quite different from the established rules of the international law, wither traditional or conventional.

**Is the SC committed to honoring the Charter?**

Such inquiry seems irrational, since it would inevitably receive a positive answer. However it is obvious that the legislators who instituted the Charter have purposed ignored including an unequivocal text relating to supervising its

---

Le nouvel ordre mondial et contrôle des actes du Conseil de Sécurité – Mohammed BEDJAOUI –
BRUYLANT – BRUXELLES 1994 p 13

The same reference p 14-15

The Control of the legality of the acts of the United Nations Security Council – Stevan Djordjevic

FACTA UNIVERITATIS – Series Law and Politics Vol 1 No 4, 2000 pp 371-387
legality. The absence of such a text has not prohibited bringing this topic about. Applied examples point to that end.

**Appropriate rules in the Charter, and the certainly of ambiguous submission of SC to the Charter.**

The organ established by a Convention naturally submits to the document that established its duties and efficiency. The SC should honor the Charter ruling in its mission to serve the UN. This is evident in Para 2 of the article 24 of the Charter that provides that the SC in discharging its duties in accordance with the Purposes and Principles of UN. It is not, however, in way of pedantry to notice the difference between the expression (to act in accordance with the aims and principles of the UN) and the expression (to act according the rules of the Charter), since the SC may concentrate more in the aims of the UN such as maintain world peace and security, as well as friendly relations among states and international cooperation, as provided in the first article of the Charter.

In affirming this point, reference is made to fact that the San Francisco conference refused amendment submitted by Norway to the Para 2 of article 24 of the Charter, to add the clause (and in accordance with the rules of the Charter) Czechoslovakia also submitted draft amendment which was not approved by the conference as a result of opinion shared by several delegates to the effect that realizing international peace and security may require taking exceptional measures, unprovided in the Charter. This project submitted the following:

When the SC finds it impossible to realize world peace and security without taking measures incompatible with the basic principles, especially in making alterations in territorial borders, the case should be submitted to the GA16. The aims and principles of the Charter which are the only items that limit the authority of the Council, are extremely large. Without claim to comprehensiveness they point to: maintaining international peace and security, international cooperation, equality, not resorting to force, non – interference, etc. But the main target that binds the SC to all aims and purposes is maintaining peace17. Ever since that time, every activity is related to this purpose which justifies all others. All means are considered appropriate toward maintaining and restoring peace, The concept of "threat to peace which seems autonomous, abstract and uncontrollable, because it does not involve, definite and limited aspects of the functions and authority of the international guardian which the SC embodies. Depending on its sovereignty it estimates independently whether its intervention in a certain case is in conformity with the first chapter of the Charter18.

An advisory opinion of ICJ issued on 20 July 1962 in connection with financing international forces by the UN adopted the view that considers the aim of the
SC measure or the GA more important than the measures them selves. If such a view taken absolutely it will lead to surmounting the process of the aim destinies the means over SC practices, especially if the estimation measure contrary to Jus Cogens – Imperative norm in international law, such as for instance the principles of non –discrimination or Human Rights. So if the SC finds through his independent estimation that a certain case constitutes a threat to the international peace and security, which makes it intervene under implementation of chapter seven of the Charter. While it faces a clear case of aggression or occupation without including it under the seventh chapter, could we say that the autonomous estimation of the SC conforms to the international law and the UN Charter?

In all cases, within absence of judicial revision of SC resolutions. The issue of commitment or no commitment by the SC to the international law and the UN Charter a matter for legal jurisprudence. It does not affect visibly the efficacy of SC acts and their actual implementation. This requires reinforcing the legal opinions which affirms the incongruity of its resolutions with international law, so as to constitute through civil and social organizations a public opinion that puts pressure and affects decision making on the national level in preparation to escalate to the international level. This is far- fetched in the foreseeable future. It requires a mutation in the international political framework.

**With the assumption that the SC is committed in principles to the Charter rules what is the extent to its commitment?**

The Charter did not oblige the commitment of the SC in its general rules, except in one text providing in article 24 that the SC acts in accordance with the aims and principles of the UN, and no more.

Article 24 of the Charter provides as follow:

1- In order to ensure prompt and effective action by UN, its Members confer on the SC primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the SC acts on their behalf.

2- In discharging these duties the SC shall act in accordance with the Purposes and of these duties are laid down in Chapters VI, VII, VIII, and XII.

It is well known that the aims of the UN have been provided in article one of the Charter, and the principles in its second article.

**The main legal principles derived from aims and principles of the Charter**

In light of the first and second articles of the Charter, we may point at the main international legal principles which are to be implemented by the SC, since they constitute Imperative Norm in international relations and international law. The main principles are:

1- The principle of equality and non discrimination among states, peoples, and situations that are submitted to the SC. And consequently avoiding double standards. Starting with qualification the situation and dealing with it according to six or seven chapter of the UN Charter, and ending with the measures to be taken.
2- The right of peoples of self – determination, and the right to independence, and preserving their independence and the safety of their territories, as well as the freedom in choosing the political system without external intervention.

3- Refraining from threat or use of force in international relations and non-interference in the internal affairs of the states.

4- Settling international dispute by peaceful means, maintaining international peace and security as well as suppressing acts of aggression.

5- Enjoying all civil, political, economic, social and cultural rights, without discrimination among peoples, individuals, women or men.

Depending on these imperative norms in the international law. We could define the extent of SC commitment to the rules of UN Charter, and imperative norms depending on absence of implementing these rules.

We may remind of what has already been mentioned regarding differentiation between the SC commitment to act in accordance with the UN Charter and commitment to act in accordance with the aims and principles of the Charter, and the legal consequences of this differentiation which impose political aspects on SC practices, away from commitment to the Charter rules or international law. We conduct of the Austrian initiative would support this explanation.

Sub – subject two

Austrian initiative on "The role of the Security Council in strengthening rules based International system"

The consecutive international developments at the end of the 20th century and in the first decade of the 21st century have urged states and the research centers to study the process of action of the SC and the urgency of its commitment to the Rule of Law. We have encroached upon Dr Mohamed Bedjaoui study with its involvement deeply in legal matters and investigation of the background of duties of the SC from legal perspective.

Austria has begin since 2004 to study The role of Security Council in strengthening rules based International system. The Austrian delegation at UN held, with the cooperation with Law and Justice Institute in International Law and Justice at New York University School of Law, convened a series of seven panel discussions on various aspects of the central theme, as well as.


Before submitting the recommendations concerning the mandates of Security Council, we emphasize the two first recommendations:

Recommendation 1

The Security Council should emphasize of the rule of law in dealing with matters on its agenda. This embraces reference to upholding and promoting international law, and ensuring that its own decisions are firmly rooted in that body of law, including the Charter of the United Nations, general principles of law,
international human rights law, international humanitarian law, and international criminal law.

Recommendation 2
Acknowledging that the Council’s powers derive from and are implemented through law will ensure greater respect for Council decisions. As part of commitment to the rule of law, the Council should adopt formal rules of procedure rather than continuing to rely on provisional rules.

We summarize the study by underlining the most important sections concerning the Security Council as a creature of law. The Security Council as Legislator and the Security Council as Judge.

The Security Council as Creature of law

The Para-29-30 of this section has shed analytic lights on the legal personality of Security Council.

29. It is generally acknowledged that the Security Council’s powers are subject to the UN Charter and norms of jus cogens. The absence of formal review mechanisms may nevertheless appear to be a prohibitive problem to establishing any practical check on the Council’s expansive interpretation of its powers. Some checks do exist, however. First, at the very least, the Council’s own voting rules are a check on the unfettered exercise of those powers. Secondly, the General Assembly could challenge the Council’s actions through a censure resolution, question them through a request for an advisory opinion of the ICJ, or curtail them through its control of the United Nations budget²¹. Thirdly, the issue happened in the Lockerbie case before the ICJ, the Tadic case before the International Criminal Tribunal for the former Yugoslavia (ICTY), and the cases concerning targeted financial sanctions before the European Court of First Instance and the European Court of Justice.²² And finally, ultimate accountability lies in the respect accorded to the Council’s decisions: if the Council’s powers were stretched beyond credibility, States might simply ignore the expression of those powers and refuse to comply.

30. Accountability is intended to bolster the legitimacy of the Council’s decisions. It may be helpful, therefore, to distinguish between appropriately “political” functions and those where more structured forms of accountability are possible. In the latter situation, having and giving reasons for decisions — including, as appropriate, input from States and other actors not on the Council prior to decisions and responding to challenges after them — would be a useful first step.

The recommendation concerning this issue.

Recommendation 10.

The Council should limit itself to using its extraordinary powers for extraordinary purposes. The exercise of such powers should be limited in time and it should be subject to periodic review; as a rule the Council should allow for representations by affected States (such as under Articles 31 and 32 of the UN Charter) and, where possible, individuals. In general the Council should not decide that which does not need to be decided; it

According to article 10 of the UN Charter. The GA may discuss any questions or any matters, except the article 12 which the GA shall not make any recommendations with regard to the dispute or situation under the agenda of SC, unless the SC so requests.
should err on the side of provisional responses rather than permanent solutions.

The Security Council as Legislator

We underline on the Par. 31-35

31. The scope of the Council’s expanding powers will not be determined by a constitutional court, but through the tension between ends-driven demands of responding effectively to perceived threats to peace and security, and means-focused requirements of legitimacy.

32. That tension between effectiveness and legitimacy plays out most clearly in the passage of quasi-legislative resolutions. The most prominent such resolutions were adopted in response to a specific crisis, but drafted in language of general application: resolution 1373 (2001) on terrorism was passed in response to the September 11, 2001, attacks on the United States; resolution 1540 (2004) on proliferation of weapons of mass destruction came after revelations concerning the A.Q. Khan network; and resolution 1566 (2004) on terrorism followed the terrorist attack in Beslan, Russia.

33. Legislation by Council decisions under Chapter VII of the UN Charter is a tantalizing short-cut to law. Years of negotiations over international instruments related to the prevention and suppression of international terrorism and the proliferation of weapons of mass destruction may be contrasted with the swift adoption of resolutions 1373 (2001), 1540 (2004) and 1566 (2004). The same holds true for the Rome Statute establishing the International Criminal Court as compared to the swift creation of the ICTY and its counterpart for Rwanda, or the establishment of the Special Tribunal for Lebanon. Unlike the ICTY and ICTR, resolution 1757 (2007) provided for the Lebanon tribunal to be created by Council authority under Chapter VII in the event that Lebanon did not execute within eleven days an “agreement” with the United Nations to establish that tribunal.

34. The temptations of legislation by Council fiat must be balanced, however, by a recognition that implementation depends on compliance by Member States. And if the effectiveness of the implementation of Council decisions depends on participation by Member States, the legitimacy of those decisions may depend on participation by Member States through their involvement in the decision-making process.

35. The Charter established the Council as an organ to deter instability, to police breaches of the peace, and to act swiftly to achieve these ends. These virtues of the Council as a police officer are precisely its vices as a legislator. As the Council is not a representative body, any “legislative” resolution should be adopted only after a process that seeks to address the legitimate concerns of the wider membership of the United Nations. Any such resolution should, moreover, be acknowledged by the Council as an exception to the normal law-making process.

The recommendations concerning this issue.

Recommendation 11.

When the Council adopts a resolution of a legislative character that is general rather than particular in effect, the legitimacy of and respect for that resolution will be enhanced by a process that ensures transparency, participation, and accountability. This should include:

(I) the holding of open debates on any such proposals;
(ii) Wide consultation with the membership of the United Nations and other specially affected parties; and
(iii) a procedure to review the resolution within an appropriate timeframe.

Recommendation 12.

As any “legislative resolution” is an exceptional matter, it should, as a rule, terminate after a period of time set by the Council in the resolution (a “sunset clause”) unless there is an affirmative decision by the Council to renew it.24

**The Security Council as Judge**

The Para- 36-40

36. As the Security Council’s powers have expanded it is arguable that it has also taken on judicial functions. Among other things, the Council has established international tribunals with criminal jurisdiction over individuals, created exceptions to the jurisdiction of the International Criminal Court, ruled on border disputes between Iraq and Kuwait and established a compensation commission to award damages suffered due Iraq’s invasion, and set up an international criminal investigation commission. This increasing scope of its powers raises a number of questions: of competence, of applicable safeguards, and of the Security Council’s relationship to other bodies.

37. As indicated earlier, the Council’s powers are subject to the UN Charter and norms of *jus cogens*. While the UN Charter establishes the ICJ as the “principal judicial organ” of the United Nations, the Charter is not conclusive as to whether the Security Council, in carrying out its specific duties under its primary responsibility to maintain international peace and security, might also assume judicial functions, or as to its relationship to international courts. The lack of a separation of powers in the Charter is compounded by the fact that each UN organ determines the scope of its own competence under the Charter. The ICTY confirmed in the 1995 *Tadic* case the Security Council’s competence to create a tribunal of its kind; today it is generally accepted that the Security Council has the power to establish such tribunals.

38. On the question of safeguards, the need for a swift and effective response to a threat to international peace and security might require broad measures and generally preclude the application of the same safeguards that would apply to domestic courts. This raises questions of legitimacy in two discrete areas: when the Council intercedes in the exercise of jurisdiction by duly constituted tribunals, and when the Council itself acts in a manner that affects the rights and obligations of individuals or States.

39. Distinct problems arise when considering the relationship between the Security Council and its creations. Once a judicial tribunal comes into being, it enjoys certain powers of its own that make it independent of the organ that created it. This has raised special concerns in hybrid tribunals — in Sierra Leone, Cambodia, and Lebanon — that enjoy an ambiguous relationship to both the domestic and international jurisdictions. Other concerns arise with respect to the International Criminal Court: set up as a separate international organization independent from the United Nations, its independence was tested by efforts by the Security Council to create exemptions from its jurisdiction through the operation of resolutions 1422 (2002) and 1487 (2003). The role of the Security Council with regard to the definition of the crime of aggression, eventually to be included in the Rome Statute at the upcoming ICC Review Conference, is still under discussion.
40. The tendency to create new, ad hoc institutions has not always been effective and has certainly been inefficient. It has also contributed to the fragmentation of international law. There are existing institutions to which the Council could turn, but in each case it has done so only once: only once referring a matter to the ICJ, in the Corfu Channel case through resolution 22 (1947); only once requesting an advisory opinion from that Court, in relation to Namibia in resolution 284 (1970); and only once referring a matter to the International Criminal Court in resolution 1593 (2003) on Darfur, Sudan. Despite the paucity of practice, these establish clear precedent for further action by the Council.

Recommendation 13.
The Council should support and draw more frequently on existing judicial institutions of international law. This includes:
(i) promoting peaceful settlement of disputes before the International Court of Justice (ICJ);
(ii) Requesting advisory opinions from the ICJ; and
(iii) Referring matters to the International Criminal Court.

Recommendation 14.
The Council should establish ad hoc judicial institutions only in exceptional circumstances in order to avoid the proliferation of costly new courts and tribunals and the fragmentation of international law.

Sub- subject three
The summit of Security Council and its meetings to discussions of Rule of Law
The Security Council held at the level of Heads of State and Government on 31 January 1992. The President of SC has public a note on behalf the Members as follows:

A time of change
This meeting takes places at the time of momentous change. The ending of the cold war has raised hopes for a safer, more equitable and more human world.
Last year, under the authority of the United Nations, the international community succeeded in enabling Kuwait to regain its sovereignty and territorial integrity, which it had lost as a result of Iraqi aggression. The resolutions adopted by the Security Council remain essential to the restoration of peace and stability in the region and must be fully implemented.
The members of the Council note that United Nations peace-keeping tasks have increased and broadened considerably in recent years. Elections monitoring, human rights verification and the repatriation of refugees have in the settlement of some regional conflicts, at the request or with the agreement of the parties concerned, been integral parts of the Security Council's efforts to maintain international peace and security. They welcome these developments.
The members of the Council also recognize that change, however welcome, has brought new risks for stability and security. Some of the most acute problems result from changes to State structures. The members of the council will encourage all efforts to help achieve peace, stability and cooperation during these changes.
The international community therefore faces new challenges in the search for peace. All member States expect the United Nations to play a central role at this crucial stage.

**Commitment to collective security**
The members of the Council pledge their commitment to international law and the United Nations Charter. All disputes between states should be peacefully resolved in accordance with the provisions of the Charter. The members of the council reaffirm their commitment to the collective security system of the Charter to deal with threats to peace and reverse acts of aggression.

**Peacemaking and peace-keeping**
To strengthen the effectiveness of this commitments, they invite the Secretary-General to prepare, for circulation to the Members of the United Nations by 1 July 1992, his analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy for peacemaking and for peace-keeping.

**Disarmament, arms control and weapons of mass destruction**
The members of the Council underline the need for all Member States to fulfill their obligations in relation to arms control and disarmament, to prevent the proliferation in all its aspects of all weapons of mass destruction, to avoid excessive and destabilizing accumulations and transfers of arms threatening or disrupting the maintenance of regional and global stability. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.

It is known that the second paragraph on this note underline on commitment of Members of international law and UN Charter within general style without clear commitment of the Council Members to adopted the Acts of Council with International Law and UN Charter.

**Thematic meetings of Security Council on Rule of Law**
The Security Council held many thematic meetings on Rule of Law and the role of UN or promotion of Rule of Law within the measures of transitional justice.

“The Security Council met at Ministerial level on 24 September 2003 to Consider ‘Justice and the Rule of Law: the United Nations Role’. Ministers Expressed their respective views and understandings on, and reaffirmed the Vital importance of these issues, recalling the repeated emphasis given to them In the work of the Council, for example in the context of the protection of Civilians in armed conflict, in relation to peacekeeping operations and in Connection with international criminal justice.

“The statements made on 24 September demonstrated the abundant Wealth of relevant experience and expertise that exists within the United Nations system and in the Member States. Ministers considered that it would Be appropriate to examine further how to harness and direct this expertise and Experience so that it was more readily accessible to the Council, to the wider United Nations membership and to the international community as a whole, so That the lessons and experience of the past could be, as appropriate, learned And built on. The Council welcomed in particular the offer by the Secretary-General to provide a report which could guide and inform further consideration Of these matters.
“The Council invites all Members of the United Nations, and other parts of the United Nations system with relevant experience and expertise, to contribute to this process of reflection and analysis on these matters, beginning with the further meeting on this subject which will be convened on 30 September 2003."

The SC held on 26 January 2004 in connection with the Council’s consideration of the item entitled "Post-conflict national reconciliation: role of UN." The SC invites the SG to give consideration to the relevant views expressed in the debate in preparation of his on "Justice and the Rule of Law: UN role." The SG submitted his report on the rule of law and transitional justice in conflict and post-conflict societies.

At the 5474th meeting of the Security Council, held on 22 June 2006, in connection with the Council’s consideration of the item entitled “Strengthening International law: rule of law and maintenance of international peace and security”, the President of the Security Council made the following statement on behalf of the Council:

“The Security Council reaffirms its commitment to the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world. The Council underscores 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.

“The Security Council is committed to and actively supports the peaceful settlement of disputes and reiterates its call upon the Member States to settle their disputes by peaceful means as set forth in Chapter VI of the Charter of the United Nations, including by use of regional preventive mechanisms and the International Court of Justice. The Council emphasizes the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States.

“The Security Council attaches vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace. The Council considers enhancement of the rule of law activities as crucial in the peace building strategies in post-conflict societies and emphasizes the role of the Peace building Commission in this regard. The Council supports the idea of establishing a rule of law assistance unit within the Secretariat and looks forward to receiving the Secretariat’s proposals for implementation of the recommendations set out in paragraph 65 of the Secretary-General’s report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The Council urges Member States which are interested in doing so to contribute national expertise and materials to these developments within their means, and to improve their capacities in these areas.

“The Security Council emphasizes 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 law, it is clear that this Statement underlines the commitment of Security Council of International Law and UN Charter, but this approach is not implemented by concretes acts as the Austrian recommendations proposed.

The Security Council did not held any meeting on Rule of Law in 2007, 2008 and 2009

**Conclusion**

This paper attempts to reflect the trends of international community to deal with the commitment of Rule of Law on national and international levels. Whoever if the volume of the topic related to the SC and Rule of Law within the whole paper, exceeds the rest, it is because of the vital role of the SC in the international community within the actual political and international environment, as well as all studies and researches issued on the topic so far.

The orientations of states and research centers to propose recommendations that would enhance the Rule if Law and avoiding the influences of unary polarity expresses anxiety of the international community concerning the lack of interest of SC in the Rule of Law, that organ which is the most effective in the UN.