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## THE RULE OF LAW AND THE RULE OF JUSTICE IN INTERNATIONAL CONVENTIONS AND DECLARATIONS

SUMMARY: 1. Introduction. - 2. The Rule of Law and the Rule of Justice are accredited Principles and Goals in International Conventions and Declarations. - 2.1 Implicit and Modest Articulation in International Charters and Universal Declarations. - 2.2 Explicit Stipulations in the Regional Charters. - 3. Mechanisms and Tools for stipulating the Rule of Law and the Rule of Justice in International Charters and Declarations. - 3.1 Legislative Mechanisms. - 3.2 Practical Mechanisms and Processes.

### 1. Introduction

The terms of the title of this article refer to the two branches of public law: constitutional law for the rule of law<sup>1</sup> and the rule of justice, and the public international law for international conventions and declarations. However, it must be acknowledged that since the end of the Cold War, the barriers between the two branches of law have receded, and are at the moment overlapping each other to the extent of generating discourse about constitutionalizing the international law<sup>2</sup> and internationalizing constitutional law<sup>3</sup>. Many legal terms hitherto preserved for the Dictionary of Constitutional Law, such as rule of law, democracy and good governance, has become common terminology in public international law as well. The reasons for that are the transformation of international relations and the development of public international law.

Public International law, which has been consolidating the constitutional autonomy of States and their absolute sovereignty in the choice of their political, economic, social and cultural systems, and has been considering the question of the relationship between the

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<sup>1</sup> Rule of Law in English.

<sup>2</sup> A. PELLET, *Constitutionalisation of the UN law or triumph of dualism*, in <http://www.alainpellet.eu/Documents/Pellet%20-%202009%20%20Constitutionnalisation%20du%20droit%20des%20NU%20ou%20trionphe%20du%20dualisme.pdf>

<sup>3</sup> R. BEN ACHOUR, *The Rule of Law and International Law*, Leaders, October 6, 2010.

State and its two perspectives at the heart of its sovereignty, started to attach great importance to these issues and to see them as subject to the supervision of the international community. It exerts utmost keenness to strengthen and respect human rights and consolidates the rule of law and the rule of justice, considering them as fundamental principles of law.

The United Nations defines the rule of law as «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».

Justice is defined as «an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well being of society at large. It is a concept rooted in all national cultures and traditions»<sup>4</sup>.

All of the aforesaid leads us to reflect on how international charters and declarations have addressed the terms *rule of law and the rule of justice*. We shall highlight in the first section how the rule of law and the rule of justice have been coded in international conventions and declarations; and in the second section we shall point out the mechanisms devoted to the rule of law and the rule of justice in international charters and declarations. .

## *2. The Rule of Law and the Rule of Justice are accredited Principles and Goals in International Conventions and Declarations*

Regardless of the differences in the formulation of the expressions used, most international charters and declarations consider the rule of law and the rule of justice as targets, which countries aspire to achieve at national and international levels, or as a principle backed by national and international political and legal systems. Although the articulations of these principles are implicit or modest in most international conventions and universal declarations, regional conventions are more precise and better articulated in these matters.

### *2.1 Implicit and Modest Articulation in International Charters and Universal Declarations*

Although they have not explicitly and clearly mentioned the rule of law and the rule of justice, the majority of international conventions and universal declarations particularize the rule of law and the rule of justice as two principles and goals necessary to achieve respect for the rights of individuals and groups. The Universal Declaration of Human Rights, adopted on 10 December 1948, the two international covenants relating to human

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<sup>4</sup> Report of the Secretary General of the United Nations, 24 August 2004: *The rule of law and transitional justice in conflict and post-conflict societies*.

rights and the Charter of the United Nations Organization establishing the United Nations Educational, Scientific and Cultural Organization (UNESCO), evidences this.

*a) The Universal Declaration of Human Rights adopted on 10 December 1948*

Although included in a recommendation issued by the United Nations General Assembly, the Universal Declaration of Human Rights adopted on 10 December 1948 is considered the main reference for the legal system of human rights or the International Bill of Human Rights<sup>5</sup>. Due to its importance, it has been elevated to the status of a binding international customary law.

Many constitutions have taken cognizance of this Declaration. Despite the non-availability of the terminology of *rule of law and the rule of justice* when the Declaration was adopted at the end of World War II, the declaration included references to the two terms of the subject of our research. The preamble indicated in reference to the rule of law that «it is necessary that the law shall protect human rights in order not to push the person at the end of the matter to revolt against tyranny and injustice».

As regards the rule of justice, the Universal Declaration was more detailed. It says in the eighth article: «Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law». Moreover, Article X states «Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him». Thus, the Universal Declaration laid the foundations that subsequent mechanisms will build upon, particularly those relating to the two International Covenants on Human Rights.

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<sup>5</sup> The Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948, as a result of what the world went through in terms of the scourge of World War II. After the establishment of the United Nations, world leaders decided to complement the Charter of the United Nations with a road map to guarantee the rights of every individual in any place or at any time. The document envisaged by these leaders was considered at the first session of the General Assembly in 1946. The General Assembly reviewed the draft declaration of human rights and fundamental freedoms and forwarded same to the Economic and Social Council «with a view to submitting them to the Commission on Human Rights for consideration ... in preparing the International Bill of Rights". The Committee, at its first session in early 1947, authorized its members to formulate what has been termed "a preliminary draft International Bill of Human Rights». Subsequently, the work was taken over by a formal drafting committee, consisting of members of the Committee selected from eight countries with due regard for geographical representation. The Committee on Human Rights was composed of 18 members drawn from various political, cultural and religious backgrounds. Madam Eleanor Roosevelt, widow of US President Franklin D. Roosevelt, was chair of the drafting committee for the Universal Declaration of Human Rights, and with her was Mr. René Cassin of France, who composed the first draft of the declaration, and the rapporteur of the Committee was Mr. Charles Malik of Lebanon; the Vice-Chairpersons were Mr. Peng Chung Chang of China, and Mr. John Humphrey of Canada, and Director of the United Nations Division of Human Rights, who prepared the Declaration's blueprint. However, Mrs. Roosevelt was recognized as the driving force behind the submission of the declaration. The preliminary draft of the Declaration was proposed in September 1948 with more than 50 Member States participating in the preparation of the final version. By Resolution 217 A (III) of 10 December 1948, the General Assembly unanimously adopted the Universal Declaration of Human Rights in Paris, but with eight abstentions; and the development of the full text of the Universal Declaration of Human Rights took less than two years. At a time when the world was divided into Eastern and Western blocs, it was clear that finding a common ground on what should constitute the essence of the document was a colossal task.

b) *The two International Covenants on Human Rights*

The Universal Declaration was not, despite its importance, fully responsive to the needs and aspirations of humankind. It was a foundation s but not the whole building. Since it was published and until 1966, it did not have binding legal value as it was a recommendation of the United Nations General Assembly and it lacked the punitive mechanism for enforcement on the parties that violate the rights and freedoms proclaimed therein.

To give legal force and mandatory obligation to the principles enshrined in the Universal Declaration, the United Nations deployed efforts towards the adoption of a new Bill of Human Rights through a draft Charter and international treaties with provisions to enhance human rights protection and define in detail the binding limits that States must adhere to in the application of rights and freedoms, such as some kind of international oversight and control over the application of the Conventions.

It was against this background that the two International Covenants on Human Rights were adopted. *The first Covenant* was reserved for the protection of Civil and Political Rights, and *the second Covenant* was devoted to the protection of economic, social and cultural rights<sup>6</sup>. By adoption of these Covenants, the rights and freedoms enshrined in the Universal Declaration turned into legal obligations the source of which is conventional international law. Thus, the debate over the legal value of these rights and freedoms came to an end.

The two Covenants are binding international treaties, with legal obligations for the States parties. These Conventions have also instituted an international monitoring system to ensure the application of the rights and freedoms contained therein, and designed to provide various safeguards to protect the rights and freedoms.

With regard to the Covenant on Civil and Political Rights<sup>7</sup>, the phrase *rule of law* was not explicitly stated therein, but it was clearly spelt out that the rights and freedoms can be exercised only within the scope of the law. For example, the right to life is the first of all rights and the law should protect it; just as the right to equality before the law without discrimination or the principle of *no crime and no punishment* except in accordance with the law. The frequency with which the term “Law” was mentioned denotes the supremacy of the law and the need to abide by it and respect its provisions.

As for *the rule of justice*, the International Covenant on Civil and Political Rights was more elaborate. By virtue of the Covenant, «Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant». States also undertake «to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity»; and «to ensure that any person claiming such a remedy shall have

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<sup>6</sup> The International Covenant on Civil and Political Rights: adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200 A (-21) of 16 December 1966; entry into force: 23 March 1976; and currently has 117 States Parties. The International Covenant on Economic, Social and Cultural Rights: officially adopted and published by General Assembly resolution 217 A (3) of 10 December 1984. Entry into force: January 3, 1976.

<sup>7</sup> Arabic Boumediene. *A study on the International Covenant on Civil and Political Rights and the First Optional Protocol thereto*, <http://www.m.ahewar.org/s.asp?aid=344218&r=0>.

his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy<sup>8</sup>»; The Covenant also recognizes the right of everyone to the determination of any criminal charge against him, or of his rights and obligations in a suit at law, and everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

*c) Human Rights sectorial conventions*

The International Bill of Human Rights consists, in addition to the Universal Declaration and the two International Covenants, of a number of sectorial conventions for the protection of the rights of certain groups of people (women, child, migrant workers) or for protection against certain behaviours (racial discrimination, torture).

And these agreements contain references to the rule of law or the rule of justice.

*The International Convention on the Elimination of All Forms of Racial Discrimination*<sup>9</sup> states in Article 5 that States Parties pledge «to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law». Equality before the law without discrimination whatever its source and whatever the form it takes is a basic component of the principle of the rule of law.

As for the rule of justice, the Convention is quite clear. In Article 5 (a), it sets forth «the right to equal treatment before the tribunals and all other organs administering justice». Article 6 added the right to a fair trial without discrimination in the following terms: «States Parties shall ensure for every person within their jurisdiction the right of recourse to national courts and other competent state institutions to protect and effectively remedy them in respect of any act of racial discrimination which is a violation» of his human rights and fundamental freedoms and is contrary to this Convention, as well as the right of recourse to the courts to seek fair and adequate compensation or any appropriate and just reparation for any damage suffered as a result of such discrimination.

*The Convention on the Elimination of All Forms of Discrimination against Women*<sup>10</sup> followed the same path. Article 2 (c) states the need to «establish legal protection of the rights of women on an equal footing with men, and to ensure the effective protection for women through competent courts and other public institutions in the country, against any act of discrimination». Article 15, paragraph 1, stressed the principle of equality before the law in the following words: «States Parties shall accord to women the equality with men before the law».

There is no doubt that the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment*<sup>11</sup> and punishment for this crime is foremost of all the agreements, which have placed emphasis on the rule of law and the rule of justice. This agreement addresses one of the most important human rights and the most vulnerable to

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<sup>8</sup> Article 2, para 3 (b).

<sup>9</sup> Adopted by the United Nations General Assembly resolution 2106 (D-20) in January 21, 1965 and entered into force on 4 December 1969.

<sup>10</sup> Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981.

<sup>11</sup> Adopted by the General Assembly resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.



violations, that is, the right to physical integrity. The agreement devotes articles 4<sup>12</sup> and 6, paragraph 1, to the principle of the rule of law. Article 4 upholds «the need to criminalize torture» while Article 6, paragraph 1<sup>13</sup>, evokes the principle that a foreigner should not be put under detention unless in accordance with the law and with the necessity of guaranteeing the defence and the media.

With respect to the virtue of justice, the Convention on the Prevention of Torture makes it a central principle, especially in Articles 5<sup>14</sup>, 7<sup>15</sup> and 9<sup>16</sup>.

*d) The United Nations Charter, signed on 26 June 1945<sup>17</sup>*

Like all international charters and declarations signed after World War II, there are no explicit statements devoted to the rule of law and the rule of justice in the Charter of the United Nations. However, the consolidation of the rule of law and human rights is seen as an essential element in bringing lasting peace and international security in an effective manner and in achieving progress and development in the economic field. The same applies to the principle of accountability before openly enacted and equally enforced laws applied and invoked in the context of an independent judiciary. In other words, the rule of law and the rule of justice are perceived as contributing to the achievement of the United Nations mission and the goal for which it was established.

In this context, we note that the Secretary-General of the United Nations strongly recognizes the principle of supremacy and the rule of law, as demonstrated in the various

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<sup>12</sup> 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

<sup>13</sup> Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

<sup>14</sup> 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate. 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

<sup>15</sup> 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1. 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

<sup>16</sup> 1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings. 2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

<sup>17</sup> Entered into force in October 24, 1945.

reports, which we will analyse, and study later in the second part of the research. This is also evidenced by the large number of General Assembly recommendations on strengthening the rule of law, most recent of which is resolution 69/123 entitled «The rule of law at the national and international levels».

*e) The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted on 16 November 1945*

The objective of establishing UNESCO was «to contribute to the maintenance of international peace and security by working through education, science and culture on closer cooperation between nations to ensure universal respect for justice, law, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion as established by the Charter of the United Nations for all peoples». UNESCO's Constitution is considered as a pioneer in highlighting the importance of the rule of law and the rule of justice. However, the reference in the Preamble to the Constitution was not enough to make the rule of law and the rule of justice legally binding rules.

It may thus be concluded that the most important international conventions and declarations do not represent appropriate mechanisms to consolidate and strengthen the rule of law and the rule of justice, in view of the prevailing international circumstances and the general context which gave rise to their enactment and adoption. Nevertheless, this modest consideration has been rectified and their shortcomings overcome in regional conventions and treaties.

## *2.2 Explicit Stipulations in the Regional Charters*

Unlike international conventions, many regional conventions have set forth their adherence to the rule of law and the rule of justice as a principle and a goal.

*a) Charter of the Organization of American States concluded on 30 April 1948*

This Charter entered into force on 13 December 1951. The Organization of American States is a regional organization within the United Nations, which seeks to achieve collective self-defense, regional cooperation and peaceful settlement of disputes. The Charter of the Organization defines the guiding principles of the group, namely: respect for international law, social justice and rule of law; economic cooperation and equality of all peoples.

The fifth chapter of the Charter stipulates the need for the political institutions of American States to be built on actual practice of parliamentary democracy. This was emphasized in the third chapter of the Democratic Charter of American States concluded on 11 September 2001 which determines the essential elements of representative democracy, including respect for human rights and fundamental freedoms, access to and exercise of power in accordance with the rule of law, the conduct of free and fair elections on the basis of secret voting as an expression of popular sovereignty, and multiparty system, political parties and organizations and the separation and independence of public authorities.

*b) Statute of the Council of Europe concluded on 5 May 1949*

The Council of Europe is the first international organization to accord utmost importance to the issue of the rule of law and the rule of justice, and to make them the

centrality of the organization, the goal of which is not only to achieve, but also to strengthen these rules, given the fact that the interest of this organization is positioned entirely on respect for human rights and the propagation of democracy in Europe.

The preamble to the Statute of the Council of Europe states that Member States are attached to the moral and spiritual values which are considered a common heritage of their people, and which is the source of the principles of individual freedom, political freedom and the supremacy of law, all of which constitute the bases of the principles of true democracy.

Chapter III also stipulates the need for each Member State of the Council of Europe to recognize the principle of the rule of law. Moreover, Chapter VIII acknowledges that each Member State representation will be subject to suspension and the possibility of withdrawing its membership in the case of non-respect of the provisions Chapter III. This means that any European country can become a member of the Council of Europe if it accepts the principle of the rule of law, the rule of justice and democracy and vows to ensure human rights for all persons under its jurisdiction.

*c) The Constitutive Act of the African Union adopted on 11 July 2001*

The African Union replaced the Organization of African Unity, which was established in 1963 when many African countries were gaining independence. Paradoxically, the Charter, which was signed on 22 May 1963 did not give the issue of the rule of law any attention given the fact that the primary goal at that time was to support the independence and sovereignty of States and the elimination of economic backwardness, as well as consolidate African solidarity and promote the continent to assume its proper position on the scene of international decision-making.

However, by the end of the nineties, things changed radically as African rulers understood the lesson by the end of the Cold War and decided to abandon the legacy of the historical organization and establish a new organization to keep pace with the time.

The preamble of the Constitutive Act of the Union stipulates the objectives, the most important of which are «promotion and protection of human and peoples' rights and support the institutions, culture, democracy and ensure good governance and the rule of law». The Constitutive Act also acknowledged that among the principles on which the Union is based is «respect for democracy, human rights and the rule of law, good governance and the promotion of social justice to ensure balanced economic development»<sup>18</sup>. The Constitutive Act also added in Article 30 that governments that come to power through unconstitutional means would not be allowed to participate in the activities of the Union.

Perhaps, the most striking aspect of the new trend in the African Union was the adoption of the *African Charter on Democracy, Elections and Good Governance* on 30 January 2007 by African Heads of State and Government, which entered into force on 15 February 2012. The Charter aims at strengthening Member States' commitment to the principles and universal values of democracy and respect for human rights and also the promotion of commitment to the principle of the rule of law based on the supremacy of the Constitution and the constitutional order in the political organization of Member States.

As for the principles of the Charter, they are based on the universal values of democracy, respect for human rights, the rule of law and supremacy of the Constitution

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<sup>18</sup>Article 4, para M of the Constitutive Act of the African Union.



and the constitutional order in the political arrangements of the States. The Charter stresses the importance of monitoring elections by electoral observer missions and special advisory missions as well as the need to create an enabling environment for independent and impartial national monitoring mechanisms.

*d) EU Treaty*

The European Union inherited the European Economic Community, which was constituted under the Treaty of Rome in 1957, and political issues were not part of its jurisdiction. However, with the development and expansion<sup>19</sup> of the European structure, the European Union was transformed from a purely economic community into an economic and political union following the conclusion of the Maastricht Treaty signed on 7 February 1992<sup>20</sup>, and revised several times. Subsequently in 1997, the Maastricht Treaty was replaced by the Amsterdam Treaty, which introduced significant changes to the former treaty. The Treaty of Amsterdam was concerned with increasing emphasis on citizenship, the rights of individuals and more democracy in the form of enhancing the powers of the European Parliament<sup>21</sup>.

The preamble of the Treaty confirms the adherence of European Union States to the principles of freedom, democracy and respect for human rights and fundamental freedoms and for the rule of law. In Chapter II, the Union acknowledged that it is based on respect for the principles and values of human freedom and democracy, justice and the rule of law, human dignity as well as respect for human rights, including respect for minority rights and that it seeks to promote and support democracy, the rule of law and human rights, justice and the general principles of international law in its foreign policy and achieve common security.

*e) The Charter of the Organization of Islamic Cooperation<sup>22</sup>*

The Dakar Charter, which was signed on 14 March 2008, confirms in its preamble that it aims to preserve the noble Islamic values of peace, compassion, tolerance, equality, justice and human dignity. It also aims at promotion of human rights and fundamental freedoms, good governance and the rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems.

The seventh paragraph of Chapter II enumerated the principles that Member States undertake to adopt and adhere to, the most important of which are Member States' support and promotion of good governance, democracy, human rights and fundamental freedoms and the rule of law.

### *3. Mechanisms and Tools for stipulating the Rule of Law and the Rule of Justice in International Charters and Declarations*

Stipulating the principles of the rule of law and the rule of justice is not enough to make them a reality, neither is it enough to provide the necessary effectiveness. It is

<sup>19</sup> The Union is composed of 28 states.

<sup>20</sup> Entered into force on 1 November 1993.

<sup>21</sup> The treaty was signed on 2 October 1997 and entered into force on 1 May 1999.

<sup>22</sup> The Organization of Islamic Cooperation, formerly the Organization of Islamic Conference, is an international organization with 57 Member States.

therefore important to conduct continued monitoring through the adoption of effective mechanisms (a) at the legislative level, on the one hand (a) and the operational level, on the other.

### 3.1 Legislative Mechanisms

United Nations organs play a vital role as derived from the Charter. According to the stipulations in the United Nations Charter, the General Assembly initiates studies and does not hesitate to make specific recommendations on issues related to the general principles of cooperation in the maintenance of international peace and security with the aim of promoting international cooperation in the political field and encouraging the progressive development of international law<sup>23</sup>.

In this context, the United Nations General Assembly has continued to consider the issue of the rule of law and the rule of justice as a standing item on its agenda since 1992, and it has taken several decisions on the matter. For example, on the occasion of reaffirming the importance of developing a comprehensive global development agenda beyond 2010 as a way to establish a democratic and equitable international order, and to demonstrate its determination to take all the measures within its power to ensure the establishment of a democratic and equitable international order, the UN General Assembly «declares that democracy includes respect for all human rights and fundamental freedoms and it is a universal value based on the will of the people expressed freely in determining their political, economic, social, cultural and full participation in all aspects of their lives, and reaffirms the need for *universal adherence to the principle of the rule of law* and the implementation of this principle at the national and international levels<sup>24</sup>».

In application of its agenda, the General Assembly adopted a series of resolutions on «the rule of law at the national and international levels» the most recent of which is resolution No. 69/123 of 10 December 2014, in which the General Assembly affirms that the human rights and the rule of law and democracy are interdependent issues, mutually reinforcing and fall within the values of the United Nations and its basic principles which are indivisible and stresses the need to support the rule of law at the international level and promote it according to the principles of the Charter of the United Nations. The General Assembly also expresses its full support for the role played by the Panel on coordination and advice in the field of the rule of law in order to coordinate efforts and achieve overall consistency in the United Nations system.

Within the framework of existing mandates and invites the panel to interact with the Member States, especially in the informal briefing sessions.

As part of its support for the rule of law and the rule of justice, the plenary calls upon the United Nations system to systematically address the aspects related to the rule of law as appropriate in the relevant activities in this field, as a recognition of the importance of the rule of law in most of the areas where the United Nations is involved. The General Assembly also requests the Secretary-General to submit an updated inventory of the activities carried out by the various organs and bodies, offices and departments, funds and programs affiliated to the United Nations system and devoted to strengthening the rule of law at the national and international levels. The Secretary-General is further required to

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<sup>23</sup>Articles 11 and 13 of the United Nations Charter.

<sup>24</sup>A decision taken by the General Assembly on 18 December 2014, to establish an international democratic and fair system.

prepare after seeking the views of Member States, a report defining the ways and means to promote and coordinate the activities listed in the inventory to be prepared, with particular attention to the effectiveness of the assistance that some countries may request for capacity-building which may require it to strengthen the rule of law at the national and international levels. In addition, the General Assembly calls upon the International Court of Justice and the United Nations Commission on International Trade Law and International Law Commission to provide in their reports to be submitted by each of them to the General Assembly, some comments on the current roles played by each of them in the promotion of the rule of law.

The General Assembly takes note with appreciation of the report of the Secretary-General entitled «Uniting our strengths to enhance the support provided by the United Nations for the rule of law», and supports the Panel on coordination and resources in the field of the rule of law, which receives support from the Rule of Law Unit in the Executive Office of the Secretary-General, led by Deputy Secretary-General and requests the Secretary-General to submit to the General Assembly without delay the details of the needs of this Unit in terms of jobs and other needs for its consideration<sup>25</sup>.

Through these sample decisions, it is crystal clear that the plenary emphasizes the need for universal adherence to the rule of law, implements this need equally at the national and international levels and their solemn commitment to an international system based on the rule of law and international law, a system that is considered, alongside with the principles of justice, indispensable for the peaceful coexistence, international cooperation and express the conviction that the United Nations and Member States should be guided in its activities to promote and respect the rule of law at the national and international levels, as well as justice and good governance<sup>26</sup>.

On the occasion of the United Nations Conference on Crime Prevention and Criminal Justice on 15 April 2015, the chairperson of the General Assembly stated that «If we do not have the rule of law, peace and security cannot be achieved, and if there is no peace and security, development will not be realized».

The Security Council for its part does not differ much from the General Assembly. It supports the rule of law and the rule of justice. It has also conducted many thematic discussions on them and adopted resolutions emphasizing the importance of these matters in the context of issues pertaining to women, security, children and armed conflicts and the protection of civilians in armed conflicts. For example, the statement of the President of the Security Council during the meeting held on 19 January 2015 concerning the Council's consideration of the item entitled «Maintenance of international peace and security: Inclusive development for the maintenance of international peace and security», where he confirmed that it is necessary to help any country to come out from conflict in a sustainable manner through a comprehensive and integrated approach, taking into account the correlation between political, security and development activities as well as human rights activities and the rule of law, reinforcing the handling of the reasons underlying the conflicts including the strengthening of the rule of law at the national and international levels and promotion of economic growth and development of sustainable political, religious and cultural tolerance and poverty eradication.

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<sup>25</sup>A decision taken by the General Assembly on 11 December 2008 on «the rule of law at national and international levels».

<sup>26</sup>A decision taken by the General Assembly on 4 December 2006.

On the same issue, the Security Council stressed that security sector reform is an essential element in any process to achieve stability in post-conflict and underscored the close link between this reform and the rule of law and the administration of justice in the transitional phase, and the disarmament, demobilization, reintegration and protection of civilians<sup>27</sup>. The rule of law and the rule of justice are considered the key elements in conflict prevention, peacekeeping, conflict resolution and peace-building.

Thus, the Security Council attaches great importance to the promotion of justice and the rule of law as indispensable elements for achieving lasting peace. Activities for promoting the rule of law are very important in the peace-building strategies in the communities emerging from conflict. Thus, it emphasizes the role of the Peace Building Commission in this regard. It also supports the idea of establishing a unit within the Secretariat to assist in establishing the rule of law<sup>28</sup>.

The Secretary-General of the United Nations stressed in his report entitled the rule of law and transitional justice in conflict and post conflict societies, stating that «The United Nations will support the local departments concerned with the reform and will assist in the building of the national institutions of justice sector to facilitate the procedures of national consultations on justice reform and transitional justice and help in filling the vacuum in the field of rule of law, apparently clear in a number of many post-conflict societies»<sup>29</sup>.

Thus, we realize that in spite of the silence of the United Nations Charter and its failure to consecrate the rule of law and the rule of justice, its principal organs have not ceased to show their support to the extent that the rule of law and the rule of justice have become international rules for which the United Nations mobilizes all available means to consolidate on the ground.

### *3.2 Practical mechanisms and Processes*

The United Nations continues to promote justice and the rule of law through the three pillars of its work, as previously explained: international peace and security, progress and social and economic development; and respect for human rights and fundamental freedoms. In this regard, it relies for its support and consolidation of the rule of law and justice on practical mechanisms, the most important of which are peacekeeping operations, the efforts of which the department concerned is striving to organize.

To assist Member States and the Secretary General in their efforts to maintain international peace and security, the Department of Peacekeeping Operations provides political and executive direction to the operations of the United Nations peacekeeping operations around the world, and stays in touch with the Security Council and both the

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<sup>27</sup>A statement of the president of the Security Council, July 12, 2005, at the consideration of the item entitled “Maintenance of international peace and security, the role of the security council in the humanitarian crisis, challenges, lessons learnt and the way forward”. In the same context, the decision of the security council in its session No. 7161 on April 28, 2014, which states “provide a security sector, which is efficient, effective, professional, accountable, without discrimination and full respect of human rights and rule of law which form the corner stone in peace and sustainable development and considered an important factor in conflict prevention.

<sup>28</sup>A statement of the president of the Security Council, 22 June 2006, during consideration of the item entitled “consolidating international law, rule of law and maintaining international peace and security”.

<sup>29</sup> Report of the UN Secretary General on 23/08/2004 entitled: Rule of law and transitional justice in conflict and post conflict societies.

troops contributors as well as financial resources contributors, and the parties to the conflict for implementation of Security Council mandates<sup>30</sup>.

The support provided for both sides in matters of the rule of law and the rule of justice within the framework of peacekeeping operations includes needs assessment and mission planning, selection and deployment of specialists, provision of guidance and support for the rule of law elements in the missions. It also strengthens law enforcement, supports the justice institutions at the local level, facilitates the holding of national consultations on justice reform, coordinates international assistance in the sphere of the rule of law and monitoring of court procedures and submits reports thereon, trains national justice sector staff, provides support to local bodies for judicial reforms and proffers advice to the rule of law institutions of the host countries.

Peacekeeping Operations also help actors to sort out and select police officers, judges and national prosecutors, provide assistance in the drafting of new constitutions, revising legislations, informing and educating the public, developing human rights commissions and in build the capacity of the civil society to monitor the justice sector. Peace missions further help host countries to address past human rights violations through the establishment of courts and fact-finding and national reconciliation mechanisms.

It is noteworthy that approximately forty the United Nations structures are active in the area of rule of law, and the Organization is working on implementation of the rule of law programs and operations in nearly 110 countries all over the world, mostly in Africa.

There is no doubt that the great development of international criminal justice today is the best guarantor of the rule of law and justice. The various international courts (tribunals) established for the former Yugoslavia<sup>31</sup> or Rwanda<sup>32</sup> or Sierra Leone<sup>33</sup> or in Cambodia or Lebanon contribute to the fight against impunity, thus enhancing accountability for the most serious crimes.

In 2013, the International Criminal Tribunal for Rwanda concluded its work and is now at the stage of closure, while the International Tribunal for the former Yugoslavia is continuing its trials of senior political and military figures, and the Extraordinary Chambers of the Courts of Cambodia are still working on the trial of the major leaders of the Khmer Rouge movement. The Special Tribunal for Lebanon is also still working within the framework of key actions of the court, which began practically in June 2014.

If the establishment of international criminal tribunals constitutes a significant development in consolidating the rule of law and the rule of justice, the establishment of

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<sup>30</sup>Currently, there are 16 peace keeping operations: In Africa: The United Nations Integrated Mission multidimensional to achieve stability in the Central African Republic; The United Nations multidimensional Integrated Mission to achieve stability in Mali; United Nations Mission in the Republic of South Sudan-Temporary UN Security mission in Abyei; The United Nations multidimensional Integrated Mission to achieve stability in the Democratic Republic of the Congo; The United Nations and African Union Hybrid Operation in Darfur; The United Nations Operation in Cote d'Ivoire; The United Nations Mission in Liberia; The United Nations Mission for the Referendum in Western Sahara. In the Americas: The United Nations Stabilization Mission in Haiti. Asia-Pacific: The United Nations Observer Group militaries in India and Pakistan. Europe: The United Nations Peacekeeping Force in Cyprus; The United Nations Interim Administration Mission valuable Kosovo. Middle east: United Nations Disengagement Observer Force (UNDOF); The United Nations Interim Force in Lebanon; The United Nations Truce Supervision Organization.

<sup>31</sup>In 1993, by a decision of the UN Security Council.

<sup>32</sup>In 1994, by a decision of the UN Security Council.

<sup>33</sup>Established in 2002, according to an agreement between the United Nations and Sierra Leone.



the International Criminal Court<sup>34</sup> in 2002 to investigate war crimes, crimes against humanity, the crime of genocide and other serious violations of human rights constitutes undisputedly the most prominent legal achievement in the field of the rule of law and the rule of justice. The International Criminal Court exercises a role complementary to national judicial organs. It cannot perform its judicial function unless the national courts have shown interest in it or have been unable to investigate matters, given the fact that the responsibility of conducting investigations rests with the Member States of the Court in the sense that the primary responsibility is heading towards the same countries.

The International Criminal Court has opened investigations in four cases in Northern Uganda, the Democratic Republic of Congo, and the Central African Republic and in Darfur. It had issued nine arrest warrants and detained two suspects awaiting trial<sup>35</sup> including in the following countries: Kenya, Libya and Côte d'Ivoire and Mali.

All of these mechanisms, regardless of their individual effectiveness, contribute in supporting and establishing the principles of the rule of law and the rule of justice, which have become well-established international legal principles and basic standards of international relations.

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<sup>34</sup>The Rome Statute of the International Criminal Court. [http://www.icc-cpi.int/FR\\_Menu/icc/Pages/default.aspx](http://www.icc-cpi.int/FR_Menu/icc/Pages/default.aspx).

<sup>35</sup>The official website of the International Criminal Court - <http://www.un.org/law/icc>.