

7 April 2008

**Statement of H.E. Mr. Srgjan Kerim,
President of the 62nd Session of the General Assembly,
at the Presentation of the Final Report on “The UN Security Council
and the Rule of Law”**

H.E. State Secretary Winkler,
Excellencies,
Ladies and gentlemen,

It is my pleasure to welcome you to this event to receive the report and recommendations on the United Nations Security Council and the Rule of Law. I would like to thank the organisers, the Permanent Mission of Austria in co-operation with the Institute for International Law and Justice at the New York University School of Law.

I would also like to take this opportunity to commend His Excellency State Secretary Hans Winkler and His Excellency Ambassador Gerhard Pfanzelter for promoting this important initiative.

Since November 2004, the Austrian Mission has arranged a series of panel discussions touching upon various aspects of the role of the Security Council and the rule of law.

These considered discussions involving Member States, international experts and civil society stimulated lively debates and contributed to the analysis and conclusions in the report being presented today.

Excellencies,

The universal value of the rule of law, the founding principle of the Charter of this Organisation, is essential for building mutual trust and strengthening the multilateral system.

The great Aristotle once said:

“... the rule of the law, it is argued, is preferable to that of any individual. On the same principle, even if it be better for certain individuals to govern, they should be made only guardians and ministers of the law.”

Respect for the rights and sovereignty of other States - based on the rule of law – is the basis for a well-functioning society of States. Each state in turn has a responsibility to protect and promote the human rights and dignity of their people, and support participatory decision making at the national level.

The principal organs of the United Nations such as the General Assembly and the Security Council must also act in a way that bolsters international relations based on clear and agreed rules.

At the 2005 World Summit, Heads of State and Government reaffirmed their commitment to “an international order based on the rule of law” as an essential component for peaceful coexistence and cooperation among States, as well as, the protection of human rights, sustained economic growth and prosperity.

The General Assembly has reaffirmed that the promotion of and respect for the rule of law at the national and international levels should guide the activities of the United Nations and its Member States.

In this regard, I call on the Sixth Committee to reinvigorate efforts during the 63rd session to consider specific ways to promote and extend the rule of law.

The Assembly has also reached out to important partners. In 2007 the Parliamentary Hearing was held for the first time as a joint UN-IPU event, focusing on the role of parliaments in advancing the rule of law both nationally and internationally. The conclusions of this event were transmitted to all Member States.

The Secretariat through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit, has also strengthened efforts to support the rule of law.

It is however, important to ensure that these efforts are sustained and supported by all principal organs of the United Nations. In this regard, the Security Council has an important role in promoting justice and the rule of law as an indispensable element of lasting peace.

Member States should therefore consider carefully the recommendations in the Report to establish closer cooperation between the Security Council and the Coordination and Resource Group; and, the recommendation for the Council, working together with the International Criminal Court, to act with greater resolve to prosecute international crimes.

Excellencies,

Let me now offer you some personal reflections on some of the other recommendations in the Report.

On several occasions I have highlighted the gradual accentuation and acceptance of not only rights but responsibilities. By accepting the concept of the ‘responsibility to protect’ member States must be willing and able to act in the face of flagrant breaches of international law.

The United Nations, including the Security Council, must act to protect individuals and communities from threats and challenges.

However, in order to give substance to this principle we need to flesh out clearer rules. Therefore, I support the recommendation in the Report for the Council to be prepared to act ‘for the international community’ in exercising the responsibility to protect.

I also agree with the recommendation in the Report that calls for caution regarding the adoption of Security Council resolutions that have an overtly legislative character.

Inclusiveness in decision making ultimately forms the basis and legitimacy of the international rule of law. It also fosters the promotion of the rule of law at the national level.

However, “quasi legislative” resolutions can, in some instances, strengthen the international legal framework and provide additional political incentives. For example, as we have seen through the increased ratification of anti-terrorism conventions after the adoption of Resolution 1373.

Beyond the recommendations in the report there are broader systemic issues that also need to be addressed.

In my view the United Nations is caught between two competing approaches to international law. Between those that emphasise that what is legal under international law can become legitimate; and, those that believe that what is legitimate has a legal force of its own.

The UN seems to be increasingly caught in the middle of this controversy; between the notion of legality and legitimacy.

A more detailed debate among Member States is needed to clarify this issue, including consideration of a full evaluation of the Charter provisions, within the broader context of the United Nations reform agenda, to better reflect the challenges of a globalized world.

Excellencies,

I would like, once again, to express my gratitude to the Permanent Mission of Austria and the Institute for International Law and Justice at the New York University School of Law for the important contribution they have made to our debate on ‘the Security Council and the Rule of Law’.

I am confident that this report and its recommendations will spur a lively discussion among Member States today, and will have a broader impact on future debates on these important issues at the United Nations.

Thank you.