

**OPEN DEBATE OF THE
SECURITY COUNCIL:
JUSTICE AND THE RULE OF LAW:
THE UNITED NATIONS ROLE**

STATEMENT

BY

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NEW YORK, 30 SEPTEMBER 2003

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Mr. President,

I would like to thank you for initiating this open debate on an issue that is topical for a wide range of issues on the agenda of the Council, including conflict prevention and post-conflict peace-building. The observance of the rule of law is an essential element for the effective functioning of States and the promotion and protection of the rights of individuals. At the same time, it is also a crucial ingredient of the relationship between States and thus of a functional multilateral system. Indeed, the Council is instrumental in upholding the rule of law and must therefore continue to act on the basis of clear rules in carrying out the tasks it is entrusted with under the UN Charter, as well as to observe the principle of legality.

Mr. President,

It is hard to imagine an effective application of the rule of law without having permanent Courts in place that enforce it: As far as the relations between States are concerned, the primary competent body is obviously the International Court of Justice, one of the main organs of the United Nations. When it comes to dealing with individuals that violate rules of international law applicable to them, the situation is slightly more complex. The principle of complementarity is a central concept in this respect: It is always preferable that States have an independent and effective judiciary in place that brings those individuals to justice who have committed serious crimes under existing international law. The United Nations can play – and on many occasions has played – a decisive role in assisting States to enhance their national capacities to this end. This important function of the United Nations – both in post-conflict situations and in the context of conflict prevention – must be continued and enhanced. One important measure to enhance the relevant capacities of the organization is the proposed establishment of a pool of legal experts, including in the area of criminal justice, that can be called upon to provide legal assistance in the context of operations mandated by the Security Council, but also in the context of other activities, such as those carried out by specialized agencies and programmes.

Mr. President,

Over the past decade, the Council has established ad hoc tribunals to deal with serious violations of international humanitarian and human rights law committed in the former Yugoslavia and in Rwanda – both instances where the Council had previously failed to effectively prevent a humanitarian crisis of major proportions. The ad hoc tribunals have played a valuable role in bringing those to justice who had committed most serious crimes. At the same time, however, they have been plagued by a variety of problems rooted in the ad hoc character of the undertaking, ranging from managerial to credibility issues, and their costs turned out to be way out of proportion. It was clear in particular from this experience that only a permanent international tribunal could serve the cause of international criminal justice while upholding the necessary efficiency and credibility. Such a permanent body was established in 1998, when the Diplomatic Conference in Rome adopted the Statute of the International Criminal Court. This Court, the product of a process extending over several decades of work, is based on the very principle of complementarity that I mentioned before. It is first and foremost meant to ensure that States have effective and independent judiciaries in place to deal with the most serious crimes under international law. Only in the absence of such a judiciary – be it due to the unwillingness or inability of States to fulfill their obligations to deal with such crimes – the International Criminal Court should step in to deliver justice.

Mr. President,

The International Criminal Court poses a challenge and an opportunity for the United Nations system to continue and enhance its activities in the area of justice and the rule of law. Specialized agencies and programmes can play an invaluable role in helping States to build or solidify strong national judiciaries. In cases where States are in no position to do so, the ICC can step in and bring criminals to justice. It is therefore clear that the Court can play a twofold role: First, in motivating States to strengthen their judicial mechanisms, and second to assist States – especially

weakened States, for instance during or after a conflict – in delivering justice in accordance with the Rome Statute.

The Council, of course, is given a particular role under the Rome Statute. In fact, the relationship between the Court and the Security Council is one of the most carefully crafted aspects of the Rome Statute. Specifically, the Council is given the possibility to refer situations to the Court – a function that can be of particular relevance in situations of conflict or post-conflict transition, where States are most likely not to be in a position to deal with the crimes in question through their national mechanisms.

Mr. President,

The vast experience of the United Nations makes it clear that justice and the rule of law are of central importance in conflict and post-conflict situations. Ending the climate of impunity and restoring the confidence of the people concerned can be an indispensable element in securing a peaceful transition in a conflict or post-conflict situation. The United Nations system as a whole and the Security Council in particular, with its primary responsibility for matters of peace and security, should therefore further develop the instruments available to enhance the rule of law and avail itself of existing institutions to this end.

I thank you, Mr. President.