Security Council Open Debate on Rule of Law
Tuesday, 29th June 2010, Security Council Chamber (GA-TSC-01)

Statement by Ambassador Gómez Robledo, Permanent Representative of Mexico to the United Nations

Strengthening the rule of law in the work of the United Nations is a priority for Mexico. We thus welcome the fact that, four years after the Council's most recent open debate on this subject, which was organized by the Danish presidency, today we can come together to build on and discuss the progress achieved and the challenges we still face.

The promotion and strengthening of the rule of law in the maintenance of international peace and security represents two different, though closely interrelated, notions. On the one hand, it entails the idea of integrating international law to a greater degree in the daily work of the Security Council. On the other, it refers to the tools at the Council's disposal with which it can enhance compliance with international law in its various areas of competence. Both components are essential for the Council to fulfil its primary responsibilities.

Given today's ever-changing global challenges, the Council has learned to respond effectively, using the discretion it has under Article 39 of the Charter, in expanding, on a case-by-case basis, the very concept of a threat to peace. At the same time, however, it is very important to recall that, according to Article 24, paragraph 2, of the Charter, the Council is bound to discharge its duties in accordance with the purposes and principles of the United Nations. These include essential components of the rule of law, such as respect for the principles of justice and adherence to international law and human rights.

Four years ago, it was stressed that many controversies spring from disputes of a legal nature. If — as has often happened — such disputes give rise to situations that constitute a threat to or a breach of the peace or an act of aggression, we can logically suppose that both the determinations made by the Council pursuant to Article 39 and the actions that it decides to take should be grounded in and motivated by international law. In the past four years, there have certainly been important improvements in this regard, as demonstrated by resolutions on, for example, non-proliferation or the most recent one, on Iran.

Nevertheless, much remains to be done. In this context, I would like to recall the words of the then President of the International Court of Justice, Judge Rosalyn Higgins. At a 2006 debate on this subject, she reminded us that: "International law is, of course, the law that governs relations between States and between States and international organizations. It is the law of each and every one of us. In a world often divided by politics, it is our common language." (S/PV.5474, p. 5)

Now, in 2010, we can note with satisfaction the progress that has been achieved with respect to effective compliance with international law. Suffice it to mention the series of Security Council resolutions urging the parties to armed conflicts to comply with international humanitarian law. There has also been marked progress in the area of the protection of vulnerable groups, such as **women** and children. Indeed, the Council has become the collective guarantor of international humanitarian law, as provided for in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts — Protocol I.

However, we recall that compliance with, and enforcing compliance with, international law are mutually reinforcing objectives. Those who promote respect for the law must strengthen it with their own actions. The primary responsibility conferred on the Security Council carries broad powers designed to guarantee its effectiveness, which is viable only to the extent that the Council and its Member States conduct themselves in accordance with those norms. That is not only an ethical imperative, but also the most important premise of the rule of law in its most fundamental concept. It has been reflected in a series of concrete measures, many of which have been articulated in previous debates. One useful guideline in that respect is, for example, the 2008 final report and recommendations emerging from the Austrian initiative on the Security Council and the rule of law.

The Security Council can play a key role in promoting a fundamental principle of the Organization. That is to achieve

the settlement of disputes through peaceful means and in conformity with the principles of justice and international law. That dual responsibility — the obligation to settle disputes by peaceful means and the power of the Council to promote that outcome — should be exercised more often in practice. In particular, in cases in which a dispute has its origins in divergent interpretations of the law, the Council can promote a legal solution by investigating a dispute or a situation pursuant to Article 34.

In recent years, we have been pleased to note a tendency to have more frequent recourse to the International Court of Justice, in particular through special arrangements between parties, but its potential has not been fully exploited and its advisory role could be put to greater use. For many years, Mexico has supported and advocated the idea that the General Assembly should authorize the Secretary-General to request advisory opinions on matters related to its functions in order to also strengthen the role of the Secretary-General, and thereby that of the Organization. However, we should bear in mind the fact that the Council also has the power to request advisory opinions on any legal matter, which would lead to strengthening international law in the its daily work in cases where that is required.

A separate issue is the role that the Council should play in the execution of a decision of the Court. There have been situations of non-compliance with the Court's rulings in the past, and these could continue to arise. In cases of non-compliance, paragraph 2 of Article 94 sets out the path to follow. However, we know and experience shows that States have rarely activated that mechanism. By contrast, we can encourage the Secretary-General's good offices to facilitate and ensure the implementation of a decision, as has already happened in some cases. Mexico reiterates its call on States that have not done so to draw up declarations of acceptance of the compulsory jurisdiction of the Court, and on those that have lodged reservations of a non-technical nature to consider withdrawing them.

While we have much to do to ensure the entry into force of the amendment that has just materialized at the Kampala Review Conference of the Rome Statute, which established the International Criminal Court, we already have a definition of the crime of aggression that allows us to fit the conduct being tried with the principles of international law. More important, the due relationship that should exist between the Security Council and the International Criminal Court has been preserved, with full respect for the Charter.

We welcome the fact that the Kampala Conference resolved the judicial mechanism that the International Criminal Court must activate in those cases in which the Council refrains from determining the existence of an act of aggression. That will allow the Court to exercise its jurisdiction and ensure that such serious acts as that of aggression do not remain unpunished.

Mediation is one of the most effective ways to resolve conflicts peacefully that can be resorted to once a conflict has started or in the post-conflict phase, with great peacebuilding potential. I wish to recall the presidential statement (S/PRST/2009/8) that the Council adopted in 2009, during Mexico's first presidency, which underscores the need to put mediation processes in place from the earliest stages of conflicts through the peacebuilding phase. Thus, Mexico believes that an essential task of the Council in establishing mandates for peacekeeping operations is to contribute to strengthening the rule of law in countries affected by conflicts or in the immediate aftermath when they are emerging from them. My delegation recognizes that the Council has increasingly used that idea in its decisions.

Reviewing the developments that the Council has seen since 2006 with regard to the rule of law, it is clear to us that there has also been progress in the area of sanctions. The sanctions regimes concerning Al-Qaida and the Taliban, in accordance with resolution 1267 (1999), have seen fundamental changes. Resolutions 1822 (2008) and 1904 (2009) are very important steps in that direction, and we therefore welcome the recent appointment of the Ombudsperson, which constitutes a change in the area of targeted sanctions. However, we believe that the right to an effective remedy is still pending. We are on the right path, but we still need to strengthen the delicate balance between effectiveness and legitimacy.

I conclude by recalling the brilliant jurist Hersch Lauterpacht, who reminded us that the principal function of international law is "the subjection of the totality of international relations to the rule of law". By promoting compliance

with international law through its actions and decisions and by functioning within the framework of international law, the Security Council helps to fulfil its primary responsibility.