GUIDANCE NOTE OF THE SECRETARY-GENERAL

UN Approach to Assistance for Strengthening the Rule of Law at the International Level
SUMMARY

The present Note provides guidance to departments, offices, funds, agencies and programmes within the United Nations system in their activities for the promotion of the rule of law in the relations between States, between States and international organizations and between international organizations. The ideal of the rule of law at the international level is at the foundation of the Charter of the United Nations.

This Guidance Note focuses on the rule of law at the international level, which includes issues related to the Charter of the United Nations, multilateral treaties, international dispute resolution mechanisms, international and hybrid justice mechanisms, and advocacy, training and education regarding international law. The efforts of the Organization in this area must be based on the core values and principles of the United Nations.

The Guidance Note of the Secretary-General on the United Nations approach to the rule of law assistance outlines the Organization’s support for strengthening the rule of law at the national level.

A. Guiding Principles

The activities of the United Nations aimed at strengthening the rule of law at the international level are framed by the well-established principles of international law which are enshrined in the Charter of the United Nations and further elaborated in subsequent international instruments. These documents provide the overall legal framework for the Organization’s approach to assistance for strengthening the rule of law at the international level.

B. Framework for the United Nations assistance for strengthening the rule of law at the international level

1. Promotion of the uniform and consistent application of international law
2. Promotion and awareness-raising of treaties
3. Assistance in the progressive development of international law and its codification
4. Teaching and dissemination of international law
5. Technical assistance on international law matters
6. Coordination and cooperation with other organizations active in international law matters
7. Support to international dispute settlement mechanisms
8. Establishment and assistance to the international and hybrid accountability and justice mechanisms and their successor residual mechanisms
9. Exercise of rights and obligations resulting from the international juridical personality of the Organization (privileges and immunities)
INTRODUCTION

The purpose of the present Guidance Note is to identify the guiding principles and framework for the United Nations’ approach to assistance for the strengthening of the rule of law at the international level. It is addressed to departments, offices, funds, agencies and programmes within the United Nations system, providing them with guidance in their activities for the promotion of the rule of law in the relations between States, between States and international organizations and between international organizations.

The present Guidance Note focuses on the rule of law at the international level, which includes issues related to the Charter of the United Nations, multilateral treaties, international dispute resolution mechanisms, international and hybrid justice mechanisms, and advocacy, training and education regarding international law. Activities for the promotion of the rule of law at the international level that the United Nations may undertake in specific fields (such as peacekeeping, the protection of children, human rights) or situations (such as conflict and post-conflict situations, including transitional justice) may also be covered by existing guidance notes or may be considered in future documents of the same kind.

The ideal of the rule of law at the international level is at the foundation of the Charter of the United Nations. In the preamble of the Charter, the Peoples of the United Nations expressed their determination “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. At the 2005 World Summit, the Heads of State and Government of States members of the United Nations acknowledged that “good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger”. They further recognized that human rights, the rule of law and democracy “are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations”, and reaffirmed their “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”.

In fulfilling its responsibilities under the Charter, the Organization must work towards achieving appropriate application at the international level of the rule of law, which aims at a society based on the supremacy of the law, equality before the law and accountability under the law.

The efforts of the Organization in this area must be based on the core values and principles of the United Nations. In identifying the guiding principles and framework for the United Nations approach to assistance for strengthening the rule of law at the international level, the Guidance Note therefore relies on the documents that govern the Organization’s action, namely the Charter itself and other relevant sources of international law. Declarations and resolutions of the main organs of the United Nations, as well as other relevant documents of the Organization, further constitute essential instruments to determine the guiding principles and framework.

In Part A, the Guidance Note identifies major documents that have declared the main legal principles providing guidance for the action of the Organization in the field. Part B describes
how those principles operate in specific areas of assistance for the strengthening of the rule of law at the international level in light of the relevant mandates constituting the basis for the Organization’s action in those areas.

A. GUIDING PRINCIPLES

The activities of the United Nations aimed at strengthening the rule of law at the international level are framed by the well-established principles of international law enshrined in the Charter of the United Nations and further elaborated in subsequent international instruments. These documents provide the overall legal framework for the Organization’s approach to assistance for strengthening the rule of law at the international level.

Article 2 of the Charter provides that, in pursuit of the Purposes stated in Article I, the Organization and its Members shall act in accordance with the Principles of the sovereign equality of States, the fulfillment in good faith of international obligations, the peaceful settlement of international disputes and the prohibition of the threat or use of force in international relations. The same Article further specifies that, without prejudice to the application of enforcement measures under Chapter VII, nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Other provisions of the Charter are also relevant in identifying the principles that guide the Organization’s action in specific areas of its mandate, such as the maintenance of international peace and security, the peaceful settlement of disputes, and the development of international economic and social co-operation. The Charter further establishes, in Chapter XV, that the Secretary-General and the staff shall, in the performance of their duties, act under the highest standards of efficiency, competence and integrity, as well as in conformity with the exclusively international character of their responsibilities.

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations constitutes an authoritative elaboration of the principles contained in the Charter. The General Assembly confirmed the intrinsic link between these principles and the rule of law at the international level, by expressing the conviction that this Declaration “would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter”.

The Declaration identifies seven principles, namely:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

(d) The duty of States to co-operate with one another in accordance with the Charter;

(e) The principle of equal rights and self-determination of peoples;

(f) The principle of sovereign equality of States; and

3 The scope and specific implementation of these provisions has further been elaborated in the relevant Secretary-General’s bulletins and administrative issuances.

4 See the preamble of General Assembly resolution 2625 (XXV) of 24 October 1970.
(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

The scope and content of these principles have also been addressed and developed in a number of international instruments, in which Member States have reaffirmed their commitment to the purposes and principles of the Charter.⁵

It is on the basis of this legal framework that the Secretary-General has recently stated that the United Nations’ engagement in fostering the rule of law at the international level is rooted in:

(a) Respect for the Charter of the United Nations and international law, which are indispensable foundations for a more peaceful, prosperous and just world;

(b) Recognition that peace and security, development, human rights, the rule of law and democracy are interlinked and mutually reinforcing, and that they form part of the universal and indivisible core values and principles of the United Nations;

(c) Recognition that an effective multilateral system in accordance with international law is essential to address the multifaceted and interconnected challenges and threats confronting our world, and that to achieve progress in the areas of peace and security, development and human rights requires a strong and effective United Nations playing a central role through the implementation of its decisions and resolutions;

(d) Respect for the sovereign equality of States and the need to promote the non-use or threat of use of force against the territorial integrity or political independence of any State in any manner inconsistent with the Charter of the United Nations;

(e) The need to resolve disputes by peaceful means in conformity with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and the principles of justice and international law;

(f) Respect for and protection of human rights and fundamental freedoms, the right of peoples to self-determination, and the equal rights of all, without distinction as to race, sex, language or religion;

(g) Recognition that protection from genocide, crimes against humanity, ethnic cleansing and war crimes is not only a responsibility owed by a State to its population, but also a responsibility of the international community (A/63/226, para. 25).

B. FRAMEWORK FOR THE UNITED NATIONS ASSISTANCE FOR STRENGTHENING THE RULE OF LAW AT THE INTERNATIONAL LEVEL

The present Part identifies, on the basis of the relevant mandates, the objectives and principles that guide the activities of the departments, offices, funds, agencies and programmes within the

⁵ See, in particular: the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (General Assembly resolution 2131 (XX) of 21 December 1965), the 1974 Declaration on the Definition of Aggression (General Assembly resolution 3314 (XXIX) of 14 December 1974), the 1982 Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10 of 15 November 1982), the 1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (General Assembly resolution 42/22 of 18 November 1987), the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51 of 5 December 1988). See also the Millennium Declaration (General Assembly resolution 55/2 of 8 September 2000) and the 2005 World Summit Outcome Document (General Assembly resolution 60/1 of 16 September 2005).
United Nations system in the various areas of their involvement in assistance for strengthening the rule of law at the international level.

1. **Promotion of the uniform and consistent application of international law**

The objective of the promotion of the uniform and consistent application of international law is to strengthen the legal regimes established by multilateral treaties and the integrity of the relevant international instruments, by contributing to an improved understanding of these instruments and facilitating their uniform interpretation and effective implementation. Action in this field thus facilitates the fulfillment in good faith of international obligations, as well as friendly relations and cooperation among States.

For these purposes, the United Nations should endeavour: (a) to ensure appropriate responses to requests of States, in particular developing countries, and other relevant actors for advice and assistance in interpreting, applying or implementing the provisions of relevant international instruments, including through partnerships with State and non-State actors, particularly through support for national, subregional and regional efforts to implement such instruments; (b) to aim at achieving a better understanding of the relevant international instruments, including through the convening of meetings of groups of experts and the undertaking of special studies; (c) to collect, compile and widely disseminate information related to the implementation of the relevant international instruments, including national legislation and case law as appropriate; (d) to report periodically on developments pertaining to the implementation of international instruments; and (e) to coordinate and cooperate with organizations active in the same or related fields to ensure consistency and alignment in advice or in other assistance provided, avoid undesirable duplication of efforts, and achieve efficiency and effectiveness.

2. **Promotion and awareness-raising of treaties**

The various activities of promotion and awareness-raising of treaties aim at ensuring that treaties are concluded and enter into force in a timely manner and that they are adhered to by all relevant parties. The Secretariat of the United Nations further performs activities for the registration and publication of treaties, under Article 102 of the Charter, and depositary tasks entrusted to the Secretary-General, in accordance with Article 98 of the Charter. These activities ensure that treaties are given adequate publicity, that all treaty actions are properly executed and that information on official texts and on treaty participation is made available to all. They thus contribute to enhancing awareness of international obligations, facilitating the fulfillment of such obligations in good faith and encouraging the use of treaties in the peaceful settlement of international disputes.

In the conduct of these activities, the United Nations should endeavour: (a) to make multilateral treaties generally known and available, through their widest distribution, including by raising awareness on the UN Treaty Collection database and the organization of various events, such as treaty events, signing ceremonies, commemorative meetings and other conferences; (b) to respond to the needs of States, particularly developing countries, for capacity-building and technical assistance in treaty-related matters; (c) to secure a balance among various geographical regions, in capacity-building and technical assistance; (d) to provide, as required, assistance with adoption, implementation, application and interpretation of international law instruments; and (e) to collaborate and coordinate where appropriate with other relevant organizations, in order to ensure mutual support, consistency and alignment of respective programmes.

3. **Assistance in the progressive development of international law and its codification**

Assistance in the progressive development of international law and its codification aims at facilitating the implementation of the mandate of the General Assembly under Article 13, paragraph 1(a), of the Charter, by means of the preparation of draft conventions and other
international instruments on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States, as well as the formulation and systematization of existing international rules. Action in this field contributes to the consolidation and strengthening of the legal foundations of international relations, the interpretation and application of international legal norms and the fulfillment in good faith of international obligations.

In assisting the General Assembly and other United Nations bodies, as well as diplomatic conferences, in this field, the United Nations should: (a) facilitate the selection of topics for progressive development and codification that are concrete and feasible for that purpose and reflect new developments in international law and pressing concerns of the international community; (b) enable these bodies to perform their roles in this field in a coherent manner and in accordance with the current interests and needs of States and the international community as a whole, taking into account the different social and legal systems and giving special consideration to the interests of developing countries; (c) facilitate the cooperation of the relevant bodies with Governments and international or national organizations, including regional legal bodies; (d) facilitate participation of States in the progressive development and codification process, to ensure representation of all regions and various legal and economic systems in an equitable manner; and (e) disseminate information concerning the progressive development of international law and its codification.

4. Teaching and dissemination of international law

Teaching and dissemination aim at promoting a better knowledge and understanding of international law, in general or in specific areas, as a means of strengthening international peace and security, promoting friendly relations and co-operation among States, and facilitating the fulfillment in good faith of international obligations.

In its activities of teaching and dissemination of international law, the United Nations should endeavour: (a) to adequately respond to the needs of States, in the selection of topics, types of trainings (e.g., seminars, workshops, regional courses), participants (e.g., judiciary, diplomats and parliamentarians); (b) to ensure access by developing countries, by facilitating participation of persons from such countries (including through fellowships and travel grants, use of electronic media; providing United Nations legal publications in those countries; (c) to secure the representation of major legal systems and balance among various geographical regions as appropriate, notably in the selection of lecturers, participants and interns; (d) to attain gender balance, notably in the selection of lecturers, participants in seminars and interns; (e) to seek partnerships with State and non-State actors in order to avoid unnecessary duplication and facilitate the effective implementation of the mandated activities; and (f) to ensure the continuity of the mandated activities.

5. Technical assistance on international law matters

Technical assistance on international law matters is aimed at facilitating adoption, effective use, uniform and consistent application and, where appropriate, interpretation of international law instruments, as well as increasing awareness about the law-making process within the United Nations and the legal standards resulting therefrom.

By providing technical assistance on these matters, the United Nations should endeavour: (a) to meet the needs of States, bearing in mind the various geographical regions and paying special regard to the needs of developing countries; (b) to act in collaboration and coordination with other organizations, entities and individuals, in order to ensure mutual support, consistency and alignment of the relevant programmes, including through joint programmes, fellowship programmes, trust funds and the use of partnerships with State and non-State actors in
accordance with applicable principles and guidelines; (c) to ensure sustainability of technical assistance programmes; and (d) where appropriate, to assist in the identification of additional sources of support for national, subregional and regional efforts to implement international instruments.

6. **Coordination and cooperation with other organizations active in international law matters**

Coordination and cooperation with other organizations active in international law matters aim at ensuring efficiency, consistency and coherence in the related activities. In so doing, the United Nations contributes to the achievement of international cooperation, to a coherent and generally accepted system of international law, and to the fulfillment by States in good faith of the obligations assumed by them in accordance with the Charter.

The United Nations should engage in cooperation and coordination with other organizations in the legal field: (a) in forms that are suited to each specific situation, in accordance with the Charter of the United Nations; (b) with due respect to the distinct objectives and mandates of the organizations concerned and any other applicable terms and conditions; (c) taking into account the legal, administrative and financial implications for the United Nations; and (d) bearing in mind the need to ensure, as appropriate, a just, balanced, effective and genuine involvement of organizations from all regions and areas of the world, particularly from developing countries and countries with economies in transition, in the work of the United Nations, (e) with a view to maximizing effectiveness by leveraging the relative expertise of each organization involved.

7. **Support to international dispute settlement mechanisms**

Support to international dispute settlement mechanisms aims at ensuring the proper performance of the tasks entrusted to the Secretary-General in relation to the establishment and renewal of such mechanisms (e.g., maintenance of lists of arbitrators and conciliators under multilateral treaties), at assisting such mechanisms in the exercise of their functions (e.g., technical assistance to arbitration or fact-finding commissions), and at encouraging the recourse by the parties to an international dispute to such mechanisms (e.g., administration of trust funds of the Secretary-General to assist States to have recourse to international tribunals). It also aims at assisting the Secretary-General in the functions entrusted to him as a third party in the peaceful settlement of international disputes. Action in this area contributes to the settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

In supporting international dispute settlement mechanisms, the United Nations should: (a) provide professional assistance for the proper functioning of such mechanisms, while respecting their independence; (b) facilitate the prompt and effective recourse to such mechanisms by the parties to an international dispute, while respecting their freedom of choice of the means of settlement; (c) act in such a manner as not to prejudice the settlement of the international dispute at stake; and (d) ensure access, as appropriate, to reliable information regarding the jurisprudence of such mechanisms, particularly through the collection, publication and dissemination of judgments, arbitral awards and other decisions of organs entrusted with dispute settlement functions.

8. **Establishment and assistance to the international and hybrid accountability and justice mechanisms and their successor residual mechanisms**

By participating in the establishment of international and hybrid accountability and justice mechanisms (particularly criminal tribunals), the United Nations contributes to bringing to justice persons responsible for serious breaches of international humanitarian law and other crimes, in order to ensure that such violations are halted and effectively addressed, thereby
putting an end to impunity. Ensuring accountability for these crimes aims at the restoration and maintenance of international peace and security and may contribute to national reconciliation processes.

In establishing and assisting international and hybrid accountability and justice mechanisms and their successor residual mechanisms, the United Nations should ensure that: (a) the application of the law is entrusted to persons with the necessary integrity, independence and impartiality; (b) there is no penalty of capital punishment; (c) there is no amnesty for genocide, war crimes, and crimes against humanity including those relating to ethnic, gender and sexual violence; (d) there are safeguards for persons to be investigated and brought to trial in accordance with international standards of justice, fairness and due process of law; (e) legal assistance is provided to suspects and accused persons who do not have sufficient means to pay for it; (f) there are appropriate safeguards for the protection of victims and witnesses; (g) there is no prejudice to the right of victims to seek compensation for damages; (h) children should not be held criminally responsible – if they are subject to judicial proceedings, they should be treated in accordance with the applicable international norms; (i) due consideration is given to the completion strategy, residual functions and legacy of the mechanism; and (j) it cooperates to the maximum possible extent with the international tribunals, their residual mechanisms, and the prosecutors and defence counsel appearing before them.

9. Exercise of rights and obligations resulting from the international juridical personality of the Organization (privileges and immunities)

The juridical personality and privileges and immunities of the Organization are derived from the Charter, which provides that “[t]he Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes”; that “[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes”; and that “[r]epresentatives of the Members of the United Nations and officials of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.” These general principles are further elaborated in the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly in 1946 (the “General Convention”) and other relevant instruments.

Within the framework of the General Convention, the United Nations: (a) shall cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the Organization’s privileges, immunities and facilities; and (b) in considering in this context requests, by the appropriate authorities of Member States, for cooperation involving access to United Nations officials or United Nations documentation and archives, waives the immunity of any official and voluntarily produces United Nations documentation where the Secretary-General considers that the immunity enjoyed by its officials or the inviolability of its documentation and archives would impede the course of justice and can be waived without prejudice to the interests of the United Nations.