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TAKING THE INTERNATIONAL RULE OF LAW SERIOUSLY: ECONOMIC INSTRUMENTS AND COLLECTIVE SECURITY

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- In recent years, the Security Council has adopted an increasing number of economic reconstruction measures aimed at contributing to the restoration of peace in war-torn territories. These measures have brought to light the limitations of the existing United Nations (UN) collective security system to deal with economic issues that concern international peace and security. As it stands, Security Council actions are mainly reviewed in accordance with the UN Charter, and with human rights and humanitarian law principles.
- The growing convergence between collective security and economic issues suggests that a broader set of principles and rules of international law are applicable to collective security decisions. The interdependence of security and economic concerns was most recently acknowledged by the UN Member States at the 2005 World Summit of 14–16 September, at which they endorsed the establishment of a Peacebuilding Commission. Yet, much uncertainty remains as to the international legal principles applicable to economic measures adopted within the collective security framework. The question posed is whether and how principles and rules of international economic law, including international trade law, find material application in this context.
- This paper argues that respect for the international rule of law should not be based solely on adherence to the UN Charter when reviewing collective security measures of an economic nature. The promotion and integration of principles such as fair competition, non-discrimination and transparency, would help enhance the legitimacy of the UN Security Council. While upholding the rule of law at national and international levels has been hailed as a key UN objective, such rhetoric is undermined by the reluctance of the Security Council to adopt regulatory mechanisms.

ECONOMIC RECONSTRUCTION AND COLLECTIVE SECURITY: AN EMERGING PRACTICE

- Recent peace operations mandated by the Security Council have often included specific measures on economic reconstruction. For example, Resolution 1244 (1999), establishing the UN Mission in Kosovo (UNMIK), makes specific reference to these objectives, and several UNMIK regulations have addressed questions of economic governance, such as the creation of a council on economic policy and of a Central Fiscal Authority. However, there is no mention of applicable principles of international economic law in Security Council decisions, while references are now commonly made to relevant principles of international human rights and humanitarian law.
- International financial and economic development institutions rely on economic principles and rules in their activities. Specific mention of the applicability of these principles and rules to questions of government procurement, competition in the field of reconstruction, and international trade would help clarify the legal criteria under which these institutions operate. Key issues such as openness and equity, which find application through well-established principles of fair competition and transparency, would

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- These questions became particularly significant in the Security Council's handling of the Iraq situation after the adoption of Resolution 1483 (2003), which stated that the legal regime of military occupation applied in Iraq, and that the occupying power was to be exercised by the Provisional Authority. While the Provisional Authority granted itself wide prerogatives subject to vague international oversight, the role of the UN was limited to the right to be informed of economic policies. The apparent marginalization of existing principles of international economic law was particularly regrettable in light of the fact that the international legal regime of military occupation remains laconic on questions related to the management of economic affairs. Crucial economic activities, such as the negotiation of investment contracts, are not envisaged under international humanitarian law.
- Thus, while there is still much controversy regarding the regulatory role of the Security Council in the economic realm, recent Iraq resolutions point to the emergence of practice, standards and criteria on economic activities that deserve greater scrutiny. In particular, such issues should be incorporated into the current discussions on the

mandate and status of the Peacebuilding Commission. It is also important to emphasize that this emerging practice is relevant not only to cases of military occupation, but also in "traditional" peacekeeping missions, such as in the cases of Sierra Leone and Liberia.

LINKING COLLECTIVE SECURITY AND THE INTERNATIONAL ECONOMIC ORDER

- Article 103 of the UN Charter establishes the primacy of the Charter over other international treaties. However, there are customary principles of international economic law that should also be considered, including in the context of collective security decision-making. Principles of transparency, fair competition, and non-discrimination are fundamental norms that should underpin measures of economic reconstruction. The principle of fair competition has gained stronger normative status through procurement processes while the principle of transparency is receiving increased recognition, as reflected in publication requirements and oversight activities. Yet, while fundamental within the World Trade Organization (WTO) system, the standing of non-discrimination as a principle of international customary law is still uncertain.
- The disconnect between collective security and the international economic order is also apparent in the rule of deference that exists under current WTO law. Under the present system, international peace and security measures benefit from a regime of full legal obedience. In other words, Member States may evade their obligations arising from the 1994 General Agreement on Tariffs and Trade (GATT) if this would "prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security." Similar provisions can be found under other multilateral trade agreements, where, unlike unilateral measures adopted by States for security reasons, no condition of necessity is required, thereby limiting the possibility of international ruling on the justifiability of the decision.
- What is not yet clear is whether this exception applies exclusively to Security Council decisions, or whether it extends to measures adopted by the General Assembly in the pursuance of its collective security mandate. The latter seems to be correct, based on recent WTO practice. The question arose in connection with decisions by the General Assembly and the Security Council to support the Kimberly Process regulating the trade of rough diamonds, which led the WTO General Council to waive the application of several articles of GATT 1994.
- Of special concern is the applicability of the Agreement on Government Procurement, a plurilateral agreement that binds a smaller number of States and also includes an exception clause covering security aspects

without referring to the UN Charter. This provision was recently invoked by the United States (U.S.) government in order to limit the competition for contracts for economic reconstruction in Iraq to certain States only. Doubts remain as to whether the U.S., through the Provisional Authority, was in a position to benefit from the exception clause of the Agreement on Government Procurement by arguing that the decisions are taken in the framework of a regime ratified by the Security

Council in application of Chapter VII and, as a result, enjoy an exceptional status.

- If the United Nations and its Member States are serious about upholding the international rule of law and strengthening the legitimacy of the Security Council, considerable thought should be given to clarifying the international legal principles applicable to economic measures adopted in the context of collective security.

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