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STATEMENT BY THE PERMANENT REPRESENTATIVE OF GUATEMALA TO THE UNITED NATIONS IN THE SECURITY COUNCIL OPEN DEBATE: “THE PROMOTION AND STRENGTHENING OF THE RULE OF LAW IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY”

(19 January, 2012)

Mr. President:

We thank you for convening this open debate. We also thank the Secretary-General for presenting his report contained in document S/2011/634. Justice and the rule of law are pillars of the United Nations that form the basis for social interaction, respect for human rights, development and democratic governance. This matter has been the focus of attention by both the Security Council and the General Assembly and it received a renewed impetus at the highest level during the Millennium Declaration of 2000 and later in the Outcome Document of 2005. We believe that the conceptual and practical progress achieved regarding the strengthening of the rule of law has been significant, especially since the Secretary-General’s watershed report S/2004/616 in which concepts like “justice”, the “rule of law” and “transitional justice” were clarified, including the manner in which they interact with each other, at the national and international levels.

From our national perspective, the strengthening of the rule of law and democratic institutions are priorities that find their source in the Peace Accords signed at the end of 1996, which are State commitments. In fact, only five days ago a new Administration took office in my country. In his inaugural speech, the new President, Otto Pérez Molina said the following: *“our commitment with the rule of law in all its aspects will lead us to accede the Rome Statute in order to join the International Criminal Court as evidence of our aspiration to transition towards a future governed by the law and respect for human rights of all peoples and nations.”* In that sense, our position is not based on ideals, but rather responds to specific considerations that condition our future as an inclusive and democratic society.

It is well known that Guatemala emerged from a protracted internal conflict after signing our Peace Accords. We were left with fragile institutions, particularly in the security and justice sectors. Those Accords incorporated very concrete proposals to tackle these deficits. In addition to the conflict, we inherited a culture of impunity that to this day has not been entirely overcome. On the contrary, one may argue that the situation has deteriorated with the appearance in the country of cartels with links to transnational crime that infiltrated these weak institutions with officials willing to break the law.

A novel response, first conceived in the Peace Accords, is the International Commission against Impunity in Guatemala (CICIG), representing an important partnership between the United Nations and the Government of Guatemala, launched in 2007, and generously supported by various donor sources. In its four years of existence the Commission, referred to in paragraph 30 of the Secretary-General’s report, has had tangible successes in its areas of competence, which include prosecuting emblematic criminal cases, technical assistance and promoting laws to strengthen the State’s ability to fight impunity. Last year the Secretary-General agreed to renew the mandate of the Commission for two additional years until September 2013. The General Assembly took note of this fact in its resolution A/RES/65/181.

CICIG constitutes an innovative, effective and substantive model for institution- building. By allowing the Secretary-General to appoint a Commissioner, an atypical form of intrusion on the part of an international body in areas that are normally exclusively reserved for the domestic sphere. However, this “intrusion” comes at the request of our Government as a bold attempt to perfect the rule of law in our country by overcoming structural obstacles. Thanks to this initiative our national institutions have been professionalized, partly due to the activities promoted by the Commission.

Mr. President:

The Guatemalan experience is consistent with the Secretary-General’s assertion included in the above-mentioned 2004 report indicating that the main role of the Organization “is not to build international substitutes for national structures, but to help build domestic justice capacities.” This brings me to the considerations proposed by the Secretary-General in his recent report (S/2011/634) regarding the next steps to promote the rule of law. I will refer particularly to part A contained in Section IX of said report.

- First, we believe that the matter of national ownership is not sufficiently taken into account despite being central to any successful transition. Concerning the provision of assistance, we support examining ways to enhance rule of law capacities whenever it is so requested by the interested State, in close coordination with the local authorities and with the aim of fostering national capacities. In relation to transitional justice this does not pertain exclusively to any particular type of community; therefore, any measure must reflect the unique needs of the affected communities. Avoiding the importation of external models is not just a mere policy, but rather should reflect one of the lessons learned by the international community.
- Second, we believe that the peaceful settlement of disputes is the main guarantor of international peace and security. In fact, the Council should develop its institutional capacity to prevent the eruption of situations that threaten peace and particularly strive to help the involved parties to settle their differences in accordance with the means set forth in the Charter. More efforts should be placed on calling on parties to submit their disputes of a legal nature to the International Court of Justice.
- Third, situations must be examined on a case-by-case basis. Although we expect progress and effectiveness through rule of law indicators, we wonder how they would contribute to reflect the rule of law in conflict and post-conflict societies. What are the objective criteria to develop and assess them? How can these indicators be reconciled with the overall objectives and parameters of the performance of a peacekeeping operation that has other mandated tasks?
- Fourth, we support further promoting the strict observance of international law and accountability for those responsible of the gravest violations of human rights. The question of amnesty continues to be a great challenge producing obvious sensitivities. On the one hand it is not possible to start with a clean slate, as neither is it possible to simply ask for forgiveness. A balance must be stricken between the excess of memory and responsibility, factors that could prevent the necessary reconciliation to sustain peace and strengthen democracy. In any case, we acknowledge this matter presents juridical, moral, ethical and practical dilemmas that are difficult to resolve.
- Finally, this year the United Nations will hold a high-level meeting on the rule of law. We believe that this will be a unique opportunity for Member States to advance the rule of law as one of the fundamental contributions for the consolidation of peace, justice and an end to impunity. When reviewing the status of this matter we find that much remains to be done. We propose the timeliness of elaborating a declaration of guiding principles on the rule of law. Without a doubt, if the Charter were drafted today the rule of law would be at the heart of the principles and purposes of the Organization. **Thank you.**