

Challenges of globalisation

Edited by Charles Sampford and Carmel Connors
Griffith University, Australia

This series seeks to make systematic contributions to international debates over two intimately related issues:

- The values that should inform the governance of modern states and the globalising world in which they are increasingly enmeshed, in particular whether the liberal democratic values that sought to civilise the sovereign state need to be reconceived as global values.
- The institutions that are needed to realise those values, be they local, national, regional, international, transnational or global.

1 Globalisation and Equality

Edited by Keith Horton and Haig Patapan

2 Globalisation and the Rule of Law

Edited by Spencer Zifcak

3 Environmental Values in a Globalising World

Nature, justice and governance
Edited by Jouni Paavola and Ian Lowe

4 Globalisation and Citizenship

The transnational challenge
Edited by Wayne Hudson and Steven Slaughter

5 Global Democracy and its Difficulties

Edited by Anthony J. Langlois and Karol Edward Soltan

6 New Visions for Market Governance

Crisis and renewal
Edited by Kate MacDonald, Shelley Marshall and Sanjay Pinto

7 Shifting Global Powers and International Law

Challenges and opportunities
Edited by Rowena Maguire, Bridget Lewis and Charles Sampford

8 Institutional Supports for the International Rule of Law

Edited by Charles Sampford and Ramesh Thakur

9 Access to International Justice

Edited by Patrick Keyzer, Vesselin Popovski and Charles Sampford

10 Strengthening the Rule of Law through the UN Security Council

Edited by Jeremy Farrall and Hilary Charlesworth

Strengthening the Rule of Law through the UN Security Council

Edited by Jeremy Farrall and Hilary Charlesworth

First published 2016
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN
and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2016 Selection and editorial matter Jeremy Farrall and Hilary Charlesworth; individual chapters, the contributors

The right of the editors to be identified as the authors of the editorial matter, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Farrall, Jeremy Matam, editor. | Charlesworth, Hilary, editor.
Title: Strengthening the rule of law through the UN Security Council / edited by Jeremy Farrall and Hilary Charlesworth.
Description: Milton Park, Abingdon, Oxon : Routledge, 2016. |
Series: Routledge/challenges of globalisation | Includes bibliographical references and index.
Identifiers: LCCN 2015039248 | ISBN 9781138959033 (hardback) | ISBN 9781315660868 (ebook)
Subjects: LCSH: Rule of law. | United Nations. Security Council.
Classification: LCC KZ4992 .S77 2016 | DDC 340/.11--dc23
LC record available at <http://lcn.loc.gov/2015039248>

ISBN: 978-1-138-95903-3 (hbk)
ISBN: 978-1-315-66086-8 (ebk)

Typeset in Times New Roman
by Wearsset Ltd, Boldon, Tyne and Wear



Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Contents

<i>List of illustrations</i>	viii
<i>Notes on contributors</i>	ix
<i>Foreword</i>	xiv
ALAN RYAN	
<i>Preface</i>	xix
<i>List of abbreviations</i>	xxi
1 Regulating the rule of law through the Security Council	1
HILARY CHARLESWORTH AND JEREMY FARRALL	
PART I	
Theorising the rule of law	11
2 The Security Council and the rule of law: some conceptual reflections	13
MARTIN KRYGIER	
3 Big rule of lawSM™(pat.pending): branding and certifying the business of the rule of law	27
VERONICA L. TAYLOR	
4 Accounting for the absence of the rule of law: history, culture and causality	43
USHA NATARAJAN	
5 The rule of law begins at home	58
CHARLES SAMPFORD	
6 Humanity, law, force	72
GERRY SIMPSON	

PART II	
The Security Council, peacekeeping and the rule of law	87
7 Rule-of-law assistance in UN peace operations: securitisation, sectorisation and goal displacement RICHARD ZAJAC SANNERHOLM AND FRIDA WALL	89
8 Human rights <i>vis-à-vis</i> the rule of law: unruly cousin or bedrock of the family? ANNEMARIE DEVEREUX	105
9 The UN and ‘rule-of-law constitutions’ LAURA GRENFELL	120
10 Strengthening the local accountability of UN peacekeeping JENI WHALAN	135
11 Robust peacekeeping, gender and the protection of civilians GINA HEATHCOTE	150
12 Protection of civilians and the rule of law: building synergies between the agendas PETER THOMSON	164
PART III	
The Security Council, sanctions and the rule of law	179
13 The Office of the Ombudsperson: a case for fair process KIMBERLY PROST	181
14 Judicial challenges to the Security Council’s use of sanctions ERIKA DE WET	193
PART IV	
The Security Council, use of force and the rule of law	207
15 Between flexibility and accountability: how can the Security Council strengthen oversight of use-of-force mandates? KARINE BANNELIER AND THEODORE CHRISTAKIS	209

16 Use of force, rule-of-law restraints and process: unfinished business for the responsibility to protect concept JOANNA HARRINGTON	224
17 The Force Intervention Brigade and UN peace operations: some legal issues BRUCE ‘OSSIE’ OSWALD	239
18 Peace through law and the Security Council: modelling law compliance MARY ELLEN O’CONNELL	255
19 Protecting responsibly: the Security Council and the use of force for human protection purposes ALEX J. BELLAMY	270
PART V	
Strengthening the rule of law through the Security Council	285
20 The UN Security Council as regulator and subject of the rule of law: conflict or confluence of interest? JEREMY FARRALL AND MARIE-EVE LOISELLE	287
<i>Index</i>	299

Illustrations

Figures

3.1	Logo for the former Australian development agency 'AusAID'	36
7.1	Total number of UN peace operations and missions providing rule-of-law reform assistance in Africa, 1989–2010	90
7.2	UN peace operations involved in rule-of-law reform in Africa, 1989–2010	94
7.3	Scope and reach of UN peace operations and rule-of-law assistance in Africa	98

Tables

7.1	Number of UN peace operations in relation to rule-of-law areas	96
19.1	Proposed criteria for armed interventions for humanitarian protection	277

Contributors

Karine Bannelier holds a PhD in International Law from the University of Paris Panthéon-Sorbonne. She is Associate Professor of International Law at the Faculty of Law of the University of Grenoble-Alpes (France) and Director of the Master's Degree on International Security and Defence Studies. She has published seven books, including as co-editor of *Use of Force under UN Security Council Mandates: Issues of Law and Responsibility* (Pedone, 2014) and *The Protection of the Environment in Time of Armed Conflicts* (Pedone, 2001). She is also author of more than 25 articles and book chapters on international law.

Alex J. Bellamy is Professor of International Security at the Griffith Asia Institute, Griffith University, Australia, and Non-Resident Senior Adviser at the International Peace Institute, New York. He is also Honorary Professor of International Relations at the University of Queensland, where he serves as Director (International) of the Asia Pacific Centre for the Responsibility to Protect. His recent books include *Massacres and Morality: Mass Killing in an Age of Civilian Immunity* (Oxford University Press, 2012), which won the 2012 International Studies Association Ethics Section prize for best book, and *Understanding Peacekeeping* (2nd edition, Polity, 2010), with Paul D. Williams.

Théodore Christakis is Professor of International Law at the Faculty of Law of the University of Grenoble-Alpes, France, since 2002, and also teaches International Law at the Paris School of International Affairs, Sciences Po, since 2006. In 2015 he was appointed as a Senior Member at the Institut Universitaire de France. He is Director of the Centre for International Security and European Studies, CESICE, Grenoble, and Director of the Master's degree in International and European Law offered by the Grenoble Faculty of Law. He has published or edited eight books and more than 55 articles and book chapters on international law.

Annemarie Devereux is an international and constitutional lawyer whose major practice has been with the United Nations and the Australian Government. She undertook Law and Arts honours degrees at the Australian National

University, an LLM at Columbia University, and a PhD at the Australian National University. Her engagements with the United Nations (2000–2009, and since 2011) have included working in human rights components of three peacekeeping missions, heading up the Legal Unit for OHCHR–Nepal, and working as a legal adviser for the International Commissions of Inquiry for Libya and Timor-Leste.

Laura Grenfell is an Associate Professor at the University of Adelaide Law School where she teaches and researches in public law. She is also Director of the Law School's Human Rights Internship Programme. Before joining academia in 2002, she practised constitutional law with the Crown Solicitor's Office of South Australia and was an associate in the Supreme Court of South Australia. In December 2009 she was awarded a Doctor of Philosophy from the Australian National University. Her book, *Promoting the Rule of Law in Post-conflict States*, was published by Cambridge University Press in 2013.

Joanna Harrington is a Professor in the University of Alberta Faculty of Law. Co-author of the Canadian text *International Law: Doctrine, Practice and Theory* (2nd edition), she has combined an academic career with experience as a legal adviser and university administrator, serving from 2006 to 2008 as Scholar-in-Residence with the Legal Affairs Bureau of Canada's Department of Foreign Affairs and International Trade, and from 2010 to 2015 as Associate Dean with the University of Alberta's Faculty of Graduate Studies and Research. She holds a BA from the University of British Columbia, a JD from the University of Victoria, and a PhD in Law from the University of Cambridge, where she was a Tapp Scholar.

Gina Heathcote is a Senior Lecturer in International Law and Gender Studies at SOAS University of London. She has published in the areas of collective security, feminist perspectives, the prohibition on the use of force, the war on terror and human rights. She is the author of *The Law on the Use of Force: A Feminist Analysis* (Routledge, 2012), and co-editor with Dianne Otto of *Peacekeeping, Gender Equality and Collective Security* (Palgrave, 2014). She is currently writing her second book on the role of feminist perspectives in twenty-first-century international law, entitled *Feminist Dialogues on International Law: Successes, Tensions, Futures*.

Martin Krygier is Professor of Law and Co-Director of the European Law Centre, University of New South Wales. His work overlaps legal, social and political theory. He is interested in exploring variations in the characters, consequences and worth of large institutions, and the interrelations between such variations and morally justifiable social practices. His latest book is *Philip Selznick: Ideals in the World* (Stanford University Press, 2012). He has also written extensively on the prospect of rule of law, especially in post-communist Europe. He holds a BA and LLB with honours from the University of Sydney, and a PhD from the Australian National University.

Marie-Eve Loiselle is a doctoral scholar in the Centre for International Governance and Justice, RegNet, at the Australian National University. She holds a Bachelor of Laws from the University of Montreal, a certificate in Transnational Law from the University of Geneva, and a Master in Strategic Studies from the Australian National University. She worked as an external collaborator at the International Training Centre of the International Labor Organisation, and interned with the Office of the Legal Adviser to the NATO Communication and Information Systems Services Agency, and has two years' corporate law experience with a firm in Montreal.

Usha Natarajan is Assistant Professor of International Law at the American University in Cairo. Her research engages postcolonial approaches to international law, the laws of the use of force, law and development, and sustainable development. Her recent publications examine different facets of the ongoing Arab revolutions. Her PhD dissertation examined the role of international law in the 2003 Iraq invasion. She has worked with UNDP, UNESCO and the World Bank on law reform initiatives in Asia and the Arab world, including Indonesia during its democratic transition, post-independence Timor-Leste and constitutional reform during the Arab uprisings.

Mary Ellen O'Connell holds the Robert and Marion Short Chair in Law and is Research Professor of International Dispute Resolution, Kroc Institute, University of Notre Dame. She is author or editor of numerous books and articles on international law on the use of force and international legal theory. She was a Vice President of the American Society of International Law (2010–2012), chaired the Use of Force Committee of the International Law Association (2005–2010) and has been a faculty member at the Ohio State University, Johns Hopkins University and Indiana University. She holds a JD from Columbia Law School.

Bruce 'Ossie' Oswald is Associate Professor in the Melbourne Law School at the University of Melbourne. In 2012–2013 he was a Jennings Randolph Senior Fellow at the United States Institute of Peace. His interests in law and practice are in the areas of international humanitarian law, peace operations, state building, accountability and responsibility, and the application of human rights law to military operations. Ossie has served in the Regular Australian Army as a legal officer. He has seen operational service in Rwanda, the Former Yugoslavia, Timor Leste, Iraq and Afghanistan.

Kimberly Prost is the Ombudsperson for the Security Council Al-Qaida Sanctions Committee. Before that she served as an *ad litem* judge of the International Criminal Tribunal for the former Yugoslavia (2006–2010). She has also served as Chief of the Legal Advisory Section of the UN Office on Drugs and Crime, as Head of the Criminal Law Section of the Commonwealth Secretariat, and as a Federal Prosecutor with the Canadian Department of Justice. She was also a member of the Canadian delegation for the negotiation of the

Convention against Transnational Organized Crime, the Convention against Corruption and the Rome Statute of the International Criminal Court.

Charles Sampford is the Director of the Institute for Ethics, Governance and Law. He is also President of the International Institute for Public Ethics, and Foundation Dean and Professor of Law and Research Professor in Ethics at Griffith, as well as Adjunct Professor at QUT and York. He holds a DPhil from Oxford University. In 1999 he became Foundation Director of the Key Centre for Ethics, Law, Justice and Governance. He has published numerous articles and essays and completed 28 books and edited collections. He won a Senior Research Fellowship at St John's College Oxford and a Fulbright Senior Award to Harvard.

Richard Zajac Sannerholm heads the Rule of Law Programme at the Folke Bernadotte Academy, and conducts research on measuring rule of law in public administration, monitoring administrative justice, rule of law and security sector reform, and an empirical project on mapping UN rule-of-law reform in post-conflict settings. His previous assignments include research and programming on legal education, public administration reform, rule of law training, customary law and issues of harmonisation and human rights. His most recent publication is *Rule of Law after War and Crisis: Ideologies, Norms and Methods* (Intersentia, 2012).

Gerry Simpson holds the Kenneth Bailey Chair of International Law at Melbourne Law School. He is also a Visiting Professor of International Law at the London School of Economics, where he held a chair until 2009, and a Soros Fellow, based in Tbilisi, Georgia. He has been a Senior Lecturer at the Australian National University (1996–1998) and a Visiting Scholar at Harvard Law School (1999). His most recent book is a collection of essays entitled *The Margins of International Law* (CMP, 2014). He is currently working on a book about the literary life of international law.

Veronica L. Taylor joined RegNet at the Australian National University in 2010 as Professor and was Director until 2014. She now serves as Dean of ANU College of Asia and the Pacific. She was also Director of the Asian Law Center, University of Washington (2001–2010), and remains an Affiliate Professor of Law and Senior Adviser there. In 2010 she was inaugural Hague Visiting Professor in Rule of Law, hosted by the Hague Institute for the Internationalization of Law and Leiden University's Van Vollenhoven Institute. She also has over 25 years' experience designing and leading rule of law and governance projects.

Peter Thomson is a Principal Legal Officer at the Australian Government's Attorney-General's Department. Previously he was seconded as Governance and Rule of Law Adviser at the Australian Civil-Military Centre. During this time, Peter was the designer and co-facilitator of the Centre's Rule of Law Roundtable in post-conflict situations, held in October 2010. He also was

project-lead for two training documentaries developed by the Centre in partnership with the UN, and event-lead and Co-Chair of the 'Protection of Civilians: AU Drafting Workshop' held in Queanbeyan in 2009 on drafting Guidelines for the Protection of Civilians in African Union Peace Support Operations.

Frida Wall works as Desk Officer, Rule of Law Programme, Folke Bernadotte Academy. She holds a Degree of Science with Law as her main field of study. Together with Richard Zajac Sannerholm, she has operational lead on the Academy's research project on UN Peace Operations and Rule of Law Assistance. She also works on a project on Local Self-Government and Rule of Law in Ukraine, where she is responsible for issues in relation to rule of law, public administration and gender. She also has a strong interest in the Swedish feminist foreign policy and gender in post-conflict justice and security.

Erika de Wet is Co-Director of the Institute for International and Comparative Law in Africa and Professor of International Law at the University of Pretoria. She also holds a part-time position as Professor of International Constitutional Law at the Amsterdam Center for International Law, University of Amsterdam, and lectures at the University of Zurich and the University of Bonn. Her *Habilitationsschrift*, completed at the University of Zurich in 2002, was published as *The Chapter VII Powers of the UN Security Council* (Hart, 2004). Her most recent book (with Jure Vidmar) is *Hierarchy in International Law: The Place of Human Rights* (Oxford University Press, 2012).

Jeni Whalan is Lecturer in International Security and Development at the University of New South Wales, and a Research Associate of the Global Economic Governance Programme at the University of Oxford. Her research focuses on peacekeeping, the United Nations, fragile states, post-conflict economies, and international security governance. Her book *How Peace Operations Work* (Oxford University Press, 2013) investigates what helps and hinders peacekeepers in achieving the change they want in post-conflict societies. Jeni holds a DPhil and MPhil in International Relations from the University of Oxford, where she studied as a Rhodes Scholar.

Foreword

Alan Ryan

This is an important book, but not perhaps, dear reader, as you might imagine. It arises from a collaboration between an arm of the Australian Government, the Australian Civil-Military Centre, and a diverse and brilliant group of scholars. The excellent scholarship, I should emphasise, is all down to the contributors. Professor Hilary Charlesworth and Dr Jeremy Farrall have done a brilliant job of shepherding this work through a process of collective engagement with some of the most noted and emerging international scholars in the field. They are to be congratulated on this, the product of their labours.

This genesis is not perhaps unique – what is truly interesting is the engagement that this book represents between the academic world and that of the practitioner of international relations. More to the point, it deals with the issues faced by participants in the highly charged political processes that provide the context in which United Nations Security Council (UNSC) members work.

Which, reader, brings us back to you. It is more than likely that you are reading this text as part of your academic studies. You may be an academic seeking for proofs to advance a thesis. It is highly unlikely that you will be a government official seeking enlightenment as you seek to develop a brief or determine a course of action. Unfortunately, that is a fact little appreciated outside government. John Lewis Gaddis diagnosed the problem when he wrote that:

Part of the problem is that policymakers almost never build into the schedules time to think about fresh approaches to what they do. Leaders rarely ‘gain in profundity while they gain in experience’, Henry Kissinger has reminded us; the convictions that high officials form before reaching their positions tend to be ‘the intellectual capital they will consume as long as they are in office’.¹

He did not close out the quote though. Kissinger famously concluded: ‘There is little time for leaders to reflect. They are locked in an endless battle in which the urgent constantly gains on the important.’² It is entirely possible that you will pursue a career in which you will consume the intellectual capital contained in these pages. You may have to live with the frustration of never knowing enough and the responsibility of having to provide advice without adequate reflection.

So the value of this collection lies in the sense that you will take away from it, of a dynamic and evolving notion of the role of the UNSC in upholding concepts of a rule of law (ROL) for which there is no authoritative definition, much less consensual support.

Too often, scholars, particularly legal scholars, focus on admiring the fragile beauty of the law. At the same time, practitioners seem doomed to constant disappointment as international organisations, states and individuals conspire to frustrate common application of laws that meet even the most basic notions of human rights norms and standards.

It would be easy to become cynical – and too many have fallen into that trap.

This collection reminds us that the realisation of humanity’s aspirations is a matter of hard work, intellectual rigour, and international commitment. It requires states, particularly great powers, to hold to the standards they profess.

The UNSC might exist to serve the higher aspirations of the UN Charter, but it was founded to attempt to do what its high-minded predecessors in the League of Nations could not – to take action ‘to maintain or restore international peace and security’.

The UNSC is ultimately a political institution that serves a vital function, operating on political rather than purely legal norms. It is not wholly representative, transparent, accountable or subject to judicial review.³ It can confer legitimacy on the use of force or the application of sanctions in support of international legal norms, but it is not obliged to. The UNSC is more than the sum of its parts, but it is grounded in political reality.

Successive UNSC statements have reiterated its commitment to ‘an international order based on the ROL and international law, which is essential for peaceful coexistence and cooperation among States in addressing common challenges’.⁴ The UNSC has called upon member states to comply with their obligations to end impunity for those responsible for serious breaches of international law and to settle their disputes by peaceful means.

At the same time, the UNSC has accepted its own responsibility to construct mandates for operations that will promote peacebuilding through observance of domestic and international law. But the tenor of these statements from the UNSC over the past decade leaves us with a strong sense that the UNSC cannot do it alone, that it requires a level of assurance, currently lacking, that states and international organisations will be able to coordinate their efforts at least to the point where they are not acting at cross-purposes to each other.

A recent UNSC presidential statement on the ROL captured this problem, expressing ‘its commitment to ensure that all UN efforts to restore peace and security themselves respect and promote the rule of law’.⁵ This was followed two years later by another presidential statement emphasising that the success of the UNSC’s efforts was ultimately reliant on achieving greater international civil–military–police coordination than is currently possible:

sustainable peace requires an integrated approach based on coherence between political, security, development, human rights, including gender

equality, and rule of law.... In this regard the Council emphasizes the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peace building.⁶

The UNSC might agree to take action to support the ROL between or within states by taking action under the UN Charter to keep or enforce the peace. It takes steps to protect civilians, to highlight gender and children's issues. Ultimately, however, the international community must rely on the commitment of communities and national authorities to achieve these objectives. The UNSC does not, by itself, have the tools or the span of control to react to all breaches of the ROL at the national or sub-state level – and it is unreasonable to judge it on that basis.

If the UNSC cannot, by itself, ensure respect for the ROL within states, then in the international domain it seems unrealistic that we should hold it responsible for enforcing the notion of an infeasible concept of international law. It is a body that was never designed, nor constructed, to do so. What we can expect, or at least investigate, is the possibility of how participating states and international organisations can coordinate their efforts to achieve a more consistent and coherent recognition of the value of an international legal order.

To assist the UNSC to support the international ROL, we must first have a clear appreciation of how states behave in their relations to the UNSC and to each other. The composition and operation of the UNSC, with permanent and non-permanent members, a challenging agenda and a dynamic international situation, does not lend itself to the disinterested contemplation of black letter law. Rather, UNSC member states are challenged to formulate considered positions on the vast body of work that confronts them on a daily basis. National interests are clearly in play – as they must be – because solutions need to be based on the practical consideration of possibilities and values as well as those understandings that have been absorbed into international law through agreement and observance. Common interests are also relevant as states work, through political negotiation, to form reasonable and reasoned positions that can be agreed by 15 varied member states – five of whom hold the veto power.

We also need to understand the complex web of relationships between the over 40 UN agencies involved in rule-of-law issues. Responsibility for the coordination of ROL work within the UN does not lie with the UNSC, but is essentially a function of non-political delivery agencies. The UN Rule of Law Coordination and Resource Group (ROLCREG) is chaired by the Deputy Secretary-General and includes representatives from 19 agencies.⁷ It does not include representatives of the UNSC, though the UNSC has recorded its support for the establishment of ROLCREG and has urged 'greater efforts by the Group to ensure a coordinated and coherent response by the UN system to issues on the Council's agenda related to the rule of law'.⁸

Most of the work that is done by these agencies focuses on capacity building for the ROL at the national level and is most often involved in crisis-affected

states. These agencies, and the UNSC, have to deal with what 'is' rather than what 'ought' to be. The UN as a whole is still a long way from realising an objectively agreed and understood legal regime to apply to the full range of crises and contingencies that evolve faster than the international community can possibly expect to coordinate a response.

The problem is perhaps not that the UNSC, as an imperfectly representative body, cannot ensure the international ROL, but that it finds it difficult to agree to act in ways that are always consistent with a contested international legal regime. If it is to do so, it must build capacity from the very basis of international understanding.

We need to imagine what a UNSC that always supports the ROL might look like on the ground in New York. The well-constructed theories of legal scholars need to be robust enough to survive contact with that reality. To do that we need to start with a practical conception of what is possible.

To go forward, then, we need to consider the extent to which all members of the UNSC understand and agree on their common objectives, the tools at their disposal and the way that those tools will be used. To achieve that, the UNSC needs the active assistance of all UN member states to build common understanding of peacebuilding efforts, of lexicons, and of the lessons of our recent past. This collection represents a valuable contribution to that understanding.

The UNSC cannot be the author of its own transformation. It needs first- and second-track collaborative efforts to work through potential responses to contingencies; to build agreement on what can be achieved and what cannot; and to establish pragmatic links between those national and international organisations that support the UNSC's ability to observe and apply the ROL.

In a 2013 report on the effectiveness of the UN's support of the promotion of the ROL, the UN Secretary-General made clear that the '[r]ule of law is central to the challenges facing the global community'; not only do '[s]tates need support in strengthening national institutions and the rule of law', but '[e]qually, given the transnational nature of many challenges, normative and operational tools at regional and global levels are a crucial complement to nation-state responses'.⁹

This collection provides practical considerations and tools to promote that more robust international conception of the ROL. I implore readers not to see it as merely an intellectual exercise. Hopefully in the years ahead, the aspirations contained in these pages will be realised, at least in part. If they are, it will be in no small part due to the efforts of those who made this work possible.

Notes

- 1 John Lewis Gaddis, 'Expanding the Data Base: Historians, Political Scientists, and the Enrichment of Security Studies' (1987) 12(12) *International Security* 3–21.
- 2 Henry A. Kissinger, *The White House Years* (Boston, Little, Brown and Company, 1979), p. 54.
- 3 Erik Voeten, 'The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force' (2005) 59(3) *International Organisation* 527–57.

4 UN Doc. S/PRST/2010/11 (29 June 2010), para. 1. See also UN Doc. S/PRST/2003/15 (24 September 2003); UN Doc. S/PRST/2004/2 (26 January 2004); UN Doc. S/PRST/2005/30 (12 July 2005); UN Doc. S/PRST/2006/28 (22 June 2006).

5 UN Doc. S/PRST/2010/11 (29 June 2010), para. 9.

6 UN Doc. S/PRST/2012/1 (19 January 2012), para. 6. See also references in note 4.

7 UN Rule of Law, 'Rule of Law Coordination and Resource Group': www.unrol.org/article.aspx?article_id=6.

8 UN Doc. S/PRST/2010/11, para. 11.

9 UN Doc. S/2013/341 (11 June 2013), *Report of the Secretary-General on Measuring the Effectiveness of the United Nations System's Support to the Promotion of the Rule of Law*.

Preface

This book brings together contributions from well-established academics and newer scholars. Through the lenses of their own discipline, the authors approach the relationship between the Security Council (UNSC) and the rule of law from a range of perspectives, and advance new ways of thinking about how the UNSC might better promote and respect the rule of law. The papers that make up this collection were originally presented in a series of workshops held from 2011 to 2013 at the Australian National University (Canberra) and the Australian Permanent Mission to the United Nations (New York). Each Canberra workshop, and its mirror workshop in New York, concentrated on one of three themes: peacekeeping, sanctions and the use of force. We found that these subjects best reflect the areas where the relationship between the UNSC and rule of law is manifest. For this reason, we structured this collection according to the same three themes. The chapters that follow convey hope, and sometimes doubt, about the potential for the UNSC to strengthen the rule of law through its activities for the maintenance of peace and security. Overall they carry the message that achieving a greater respect for the rule of law at the international level is achievable.

We express our gratitude to all participants to the workshops and contributors to this volume. Not all papers presented at the workshops are reproduced in the following pages; notwithstanding, these contributions were valuable to our analysis of the UNSC functions and working methods. They also proved useful in understanding the practical implications of peacekeeping, sanctions, and use of force activities for the rule of law at the national and international level.

The financial support of both the Australian Research Council (ARC) and our partner organisation, the Australian Civil-Military Centre (ACMC), supported the research project and workshops that led to the publication of this book (ARC Linkage Project LP110100708). We are particularly grateful for the dedicated support of the ACMC. A special thanks goes to Dr Alan Ryan, Executive Director of the ACMC, as well as his predecessor, General (retired) Michael G. Smith, and all their ACMC colleagues, including in particular Dr Jeni Whalan, Kelisiana Thynne and Olivia Cribb.

We would like to underline the outstanding research assistance and administrative support that Marie-Eve Loiselle and Shane Chalmers provided at different times throughout the life of the project. Their support in the conduct of work-

shops and the preparation of the manuscript for publication was invaluable. Jane McCosker meticulously proofread and offered insightful feedback on the contributions contained in this volume. We also thank Charlotte Endersby, Andrew Taylor and their colleagues at Routledge for their work towards the publication of this book.

Finally we would like to thank our colleagues at the ANU Centre for International Governance and Justice, the Regulatory Institutions Network, the Asia-Pacific College of Diplomacy and the Coral Bell School of Asia Pacific Affairs, as well as our families. Jeremy thanks Lyn, Jemma and Maya, and Hilary thanks Charles, Stephanie and Will.

Abbreviations

ACT	Accountability, Coherence and Transparency
ANP	Afghan National Police
AU	African Union
BRICS	Brazil, Russia, India, China, South Africa
CAR	Central African Republic
CFI	Court of First Instance
CIDA	Canadian International Development Agency
CJEU	Court of Justice of the European Union
CNDP	Congress for the Defence of the People
CPI	Corruption Perceptions Index
DDR	disarmament, demobilisation and reintegration
DDRRR	disarmament, demobilisation, reintegration, resettlement and repatriation
DPA	UN Department of Political Affairs
DPKO	UN Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
FARDC	Forces Armées de la République du Congo
FBA	Folke Bernadotte Academy
FIB	UN Force Intervention Brigade
GC	General Court of Europe
GFP	UN Global Focal Point
HAP	Humanitarian Accountability Partnership
HRDDP	UN Human Rights Due Diligence Policy
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICGLR	International Conference on the Great Lakes Region
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross

ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	internally displaced person
IEMF	Interim Emergency Multinational Force
IHL	international humanitarian law
IHRL	international human rights law
ISAF	International Security Assistance Force
LOAC	law of armed conflict
M23	March 23 Movement (DRC)
MINUSCA	UN Multidimensional Integrated Stabilization Mission in CAR
MINUSMA	UN Multidimensional Integrated Stabilization Mission in Mali
MINUSTAH	UN Stabilization Mission in Haiti
MONUC	UN Mission in the DRC
MONUSCO	UN Stabilization Mission in the DRC
NATO	North Atlantic Treaty Organization
NDS	National Directorate of Security
NGO	non-governmental organisation
NIF	Neutral International Force
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	UN Office of the High Commissioner for Human Rights
ONUC	Opération des Nations Unies au Congo
POC	protection of civilians in armed conflict
R2P	responsibility to protect
RAMSI	Regional Assistance Mission to the Solomon Islands
ROE	rules of engagement
ROL	rule of law
ROLCREG	UN Rule of Law Coordination and Resource Group
RWP	responsibility while protecting
SADC	Southern African Development Community
SML	Senior Mission Leadership
SRSG	Special Representative of the UN Secretary-General
SSR	security sector reform
TCC	troop-contributing country
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	UN Assistance Mission in Afghanistan
UNAMIR	UN Assistance Mission for Rwanda
UNAMSIL	UN Mission in Sierra Leone
UNDP	UN Development Programme
UNEF	UN Emergency Force
UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UNIOSIL	UN Integrated Office in Sierra Leone
UNIPSIL	UN Integrated Peacebuilding Office in Sierra Leone
UNMIK	UN Mission in Kosovo

UNMIS	UN Mission in Sudan
UNMISS	UN Mission in the Republic of South Sudan
UNMIT	UN Integrated Mission in Timor-Leste
UNODC	UN Office on Drugs and Crime
UNPROFOR	UN Protection Force (former Yugoslavia)
UNSC	UN Security Council
UNSG	UN Secretary-General
UNSMIS	UN Supervision Mission in Syria
UNTAC	UN Transitional Authority in Cambodia
UNTAET	UN Transitional Administration in East Timor
USAID	United States Agency for International Development
WJP	World Justice Project
WPS	women, peace and security