# United Nations Office of Legal Affairs

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*The present article — originally published in 1998 in International Law: Theory and Practice, edited by K. Wellens — contains a presentation of the United Nations Office of Legal Affairs. The article focuses on the most salient issues with which the Office is concerned. It also touches briefly on the role of the Legal Counsel both with the respect to his legal functions and in relation to the present reform of the United Nations Secretariat. Even if som time has elapsed since it was written, the article is still up to date. It should be pointed out, however, that after its publication, the Codification Division successfullt served the five-week Conference that on 17 July 1998 adopted the Rome Statute of the International Criminal Court. Also the Legal Counsel assisted the Secretary-General in his meeting with President Saddam Hussein in February 1998, resulting in the Memorandum of Understanding between the United Nations and the Government of Iraq concerning, inter alia, UNSCOM´s inspections of the Presedential Palaces.*[1]

## I. Introduction

The Office of Legal Affairs (OLA) of the United Nations was established in 1946.[2] Originally, it was organized as a department, but in 1954 it was reorganized into an office to reflect more closely its role in providing legal advice to the Secretary-General and acting

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[1] The Legal Counsel was also in charge of the transfer, on 5 April 1999 after seven months of preparatory work, of the two Libyan suspects in the Lockerbie (Pan Am 103) case from Libya for trial by a Scottish court sitting in the Netherlands. Furthermore, the Security Council resolutions establishing the present United Nations missions in Kosovo and East Timor mean that the Organization must govern the two territories and exercise the legislative power within them. Needless to say, the legal questions related to these missions have put additional and unprecedented demands on the Office of Legal Affairs.

[2] UNGA Resolution 13(1) of 13 February 1946.

on his behalf in legal matters.[3] In 1946, the Legal Department was headed by an Assistant Secretary-General and consisted of the Office of this official, the Division of General Legal Problems, the Division for the Development and Codification of International Law and the Division of Immunities and Registration of Treaties.[4] In 1967, the International Trade Law Branch was established, and in 1992, the Office for Ocean Affairs and the Law of the Sea was integrated into OLA.

At present, OLA consists of six units: The Office of the Legal Counsel, the General Legal Division, the Codification Division, the Division for Ocean Affairs and the Law of the Sea, the International Trade Law Branch and the Treaty Section. The Secretariat of the United Nations Administrative Tribunal is also administratively connected to OLA. In 1996 a separate Executive Office was established.

The activities of OLA are governed by a number of General Assembly resolutions, a Secretary-General's bulletin,[5] the medium-term plan,[6] and the programme budget.[7] According to the medium-term plan for the period 1998–2001, OLA is responsible for programme 4, Legal Affairs.

The overall objectives of this programme are to provide a unified central legal service for the Secretariat and the principal and other organs of the United Nations, to contribute to the progressive development and codification of international public and trade law, to promote the strengthening and development as well as the effective implementation of the international legal order for the seas and oceans, to register and publish treaties, and to perform the depositary functions of the Secretary-General. OLA is headed by an Under-Secretary-General, who is also the Legal Counsel of the United Nations.

The present article is an attempt to outline, in a few broad strokes, the tasks of OLA and the most salient issues in which the Office is presently involved. It also touches upon the role of the Legal Counsel and offers some thoughts for the future. The broad approaches and direction of OLA's programme as reflected in the current medium-term plan are set out in the Annex. As it appears, OLA has a multifaceted agenda, focusing both on matters dealt with by the legislative organs of the United Nations and on the internal affairs of the Organization.

[3] The reorganization went into effect on 1 January 1955. See Yearbook of the United Nations 1954, pages 438 and 568–570.
[4] Yearbook of the United Nations 1946–47, page 630.
[5] Secretary-General's bulletin ST/SGB/1997/8.
[6] UN doc. A/51/6/Rev. 1 and Rev. 1/Corr. l.
[7] The proposed programme budget for the biennium 1998–1999 appears in UN doc. A/52/6 (Sect. 6).

## II. The Office of the Legal Counsel

The Office of the Legal Counsel (OLC) can in a sense be compared to an emergency ward; urgency and short notice characterize much of its work. The Office is responsible for assisting the Legal Counsel in providing overall direction, management and coordination of legal advice and services to the United Nations as a whole.[8] Its main objective is to assist the principal organs of the United Nations by providing legal advice. This applies in particular to the interpretation of the Charter, resolutions and regulations of the United Nations, treaties and questions of public international law. Peacekeeping and other operations, missions and good offices also present OLC with legal questions involving the use of force, and privileges and immunities. Legal services to meetings of the principal organs of the United Nations and the cycle of conferences is an important part of OLC's work, as is the preparation of draft rules of procedure and assistance in questions relating to the representation of states in the United Nations.

The Office also provides legal advice to the Organization to ensure compliance with relevant United Nations resolutions, decisions, rules and regulations as regards the administration of the International Tribunals for the former Yugoslavia and Rwanda. The Office maintains liaison with the International Court of Justice and discharges the legal responsibilities of the Secretary-General under the Statute of the Court. It also provides secretariat services to the Credentials Committee of the General Assembly and its Committee on Relations with the Host Country.

In recent years, the Office has experienced an unprecedented upsurge in its activities. This is due, primarily, to the fact that the size of the United Nations peacekeeping operations stood at its peak in 1995. In that year the Organization serviced 17 peacekeeping operations with 75,000 men and women in blue helmets in all. These operations gave rise to numerous legal questions, including the conclusion of Status of Forces Agreements and other agreements which have to be prepared or reviewed by OLC.

The Office was entrusted with the task of drafting the Statute of the International Criminal Tribunal for the former Yugoslavia.[9] Having done that, the Office became responsible for the establishment of the Tribunal, an unprecedented exercise. Later OLC was involved in the establishment of the International Criminal Tribunal for Rwanda. The Office was also charged with backstopping the United Nations Commission for the former Yugoslavia[10] and the Commission of Experts established pursuant to Security

[8] Subprogramme 4.1 of the current medium-term plan.
[9] See UN doc. S/25704.
[10] The report of this Commission is published in UN doc. S/1994/674.

Council resolution 935 (1994) concerning Rwanda.[11] The Office also elaborated together with ICRC, draft Guidelines for UN Forces Regarding Respect for International Humanitarian Law.

An important task which was entrusted to the Office of Legal Affairs, and in which OLC participated, was the negotiation of the Oil-for-Food Agreement with the Government of Iraq. These negotiations were held first on the basis of Security Council resolution 706 (1991). However, in July 1993, these negotiations failed, mainly because the political climate was yet not conducive to an agreement. The next round of negotiations were held in the spring of 1996 and were based on Security Council resolution 986 (1995). After four rounds of negotiations, comprising 50 sessions, between 6 February and 20 May 1996, it was possible to conclude a Memorandum of Understanding on which the present oil-for-food regime is based.[12]

In sum, it is fair to say that OLC has been actively involved in some of the most interesting UN activities over the last few years. Often, the Office has been involved in breaking new ground and finding constructive solutions in a difficult legal environment. With the reforms that lie ahead and the development that can be foreseen, there is no doubt that the Office will have important tasks to fulfil also in the future.

### III. The General Legal Division —The In-house Lawyers

The General Legal Division (GLD) is responsible for providing legal services and advise in support of the operations and activities of the Organization.[13] This comprises assistance to the Secretariat units at Headquarters, the Regional Commissions, other United Nations offices away from Headquarters, including peacekeeping, observer, humanitarian and other missions as well as what are referred to as the separate funds and programmes, such as UNDP, UNICEF and UNFPA, to ensure that ongoing operations and activities of these bodies comply with the policies and rules of the Organization as well as to minimize risk of loss and financial liability. The provision of such legal services involve, *inter alia,* interpretation of certain articles of the Charter, General Assembly resolutions and decisions, the regulations, rules and other administrative issuances of the Organization and the mandates of the various Secretariat units and offices, including the separate funds and programmes, as they bear on the operations and activities of those units and offices. It also involves participation in meetings of secretariat bodies, such as the Committee on Contracts, the Staff

[11] The report of this Commission is published in UN doc. S/1994/1405.
[12] See UN doc. S/1996/356*.
[13] Subprogramme 4.2 of the current medium-term plan.

Management Coordination Committee, the Property Survey Board and the Claims Board.

A considerable part of the activity of GLD has been focused on peacekeeping operations of the Organization in the contracting for air, land and sea transportation, equipment and supplies, rations and logistical support, as well as resolution of disputes resulting from such operations. Such disputes include not only commercial disputes relating to provision of goods and services to support these missions and their personnel but, more recently, claims by third parties who are injured or suffer losses as a result of the activities of the missions. Because of increased procurement to support peacekeeping and other missions and the large procurement requirements necessary to service Headquarters and other major offices of the Organization, the General Assembly and Member States have increased their focus on the Organization's contracting requirements and sought to reform the procurement regime, further increasing the demands on GLD. A considerable part of the activity of GLD consists of advice to the separate funds and programmes, particularly in connection with the negotiation with Member States of new agreements relating to cooperation for development as well as negotiations with intergovernmental and non-governmental organizations for the development of new institutional modalities to govern operational activities under development programmes and projects.

The upsurge in the peacekeeping operations has also meant that the workload for GLD has developed in an unprecedented way. A notable change is that the Organization for the first time has been substantially involved in litigation. A number of the large contracts that were concluded by the Organization to support the many peacekeeping operations has subsequently resulted in a rash of substantial claims being made against the Organization, including a significant number of requests for arbitration. While many of these claims have been amicably settled by GLD, a number have already resulted in arbitration with still others in the process or awaiting arbitration.

A continuing activity of GLD is the important task of representing the Organization before the United Nations Administrative Tribunal. The Tribunal deals with claims of non-observance of the rights of staff members under the Staff Regulations and Rules. In recent years, no doubt in great part as a result of the tumultuous and sometimes confusing changes that the Organization has gone or is going through, the yearly case load of the Tribunal has dramatically increased (see below).

The Division has also been deeply involved in the ongoing work on the reform of the Organization. The main responsibility of

drafting of the new Code of Conduct for UN Personnel was entrusted to GLD. The Code was submitted to the General Assembly in October 1997.[14]

Also, when the present Legal Counsel took up his position in March 1994, the Division was entrusted with elaborating a new system for the promulgation of administrative issuances within the Organization. This work resulted in a proposal in March 1995. However, it was not until the present Secretary-General took office that this reform was formally introduced.[15] The reform will mean a radical change in the way in which rules are utilized to govem the Organization. Obsolete issuances will be abolished.[16] In the course of the reform all existing regulations, rules and other issuances will be reviewed with the aim of reducing the total body of imperatives governing the Organization, since it is overregulated and much too bureaucratic. One of the most prominent elements of this reform will be to delegate administrative powers to programme managers.

## IV. The Codification Division

The Codification Division (COD) is responsible for the progressive development and codification of international law.[17] This includes: to promote the acceptance of and respect for the principles of international law; to encourage the progressive development and codification of international law; and to encourage the dissemination and wider appreciation of international law. Consequently, the Division provides substantive support to the Sixth (Legal) Committee of the General Assembly, the International Law Commission, codification conferences and special committees established on the recommendation of the Sixth Committee. The support includes, *inter alia*, the conduct of research on topics of international law, the compiling of background documentation, the preparation of draft reports of a substantive nature of the bodies concerned, and also assistance in the conduct of proceedings, including the drafting of resolutions, decisions, amendments and proposals.

Over the past few years, the Division has experienced an increased focus on its activities. There are many reasons for this. First of all, it is fair to say that the interrelationship between the Sixth Committee and the International Law Commission has developed in a positive direction. The Commission has elaborated on its working methods and introduced new methods to become more

[14] See UN doc. A/52/488.
[15] See UN doc. A/51/950, Secretary-General's bulletin ST/SGB/1997/1 and Information circular ST/IC/1997/43.
[16] A first step was taken in Secretary-General's bulletin ST/SGB/1997/4, where over 20% of the titles in the index of Secretary-General's bulletins were abolished as obsolete or unnecessary.
[17] Subprogramme 4.3 of the current medium-term plan.

productive. In 1996, the Commission devoted a portion of its session to these issues.[18] The fact that the Commission was able to produce, within a relatively short time, a fullfledged draft statute of an international criminal court also contributed to this development.[19]

The Division is presently servicing the Preparatory Commission for an International Criminal Court, and is actively preparing for a diplomatic conference on this topic to be held in Rome from 15 June to 17 July 1998. If this conference is successful, it will no doubt be one of the most important international conferences in the legal field during the twentieth century.

Another achievement lately is the adoption by the General Assembly in May 1997 of a Convention on the Law of Non-navigational Uses of International Watercourses.[20]

One of the most important tasks of the Division presently is the work on measures to eliminate international terrorism. In December 1997, the General Assembly adopted a Convention for the Suppression of Terrorist Bombings."[21] An international convention for the suppression of acts of nuclear terrorism is next on the agenda of the Sixth Committee.[22] All this work is based on the Declaration on Measures to Eliminate Terrorism,[23] and in order to implement General Assembly resolutions 49/60, 50/53 and 51/210.

The Division is also responsible for the implementation of the United Nations Decade of International Law. In this context the United Nations Congress on Public International Law was organized in March 1995. The proceedings were also published.[24] In April 1997, a collection of essays by members of the International Law Commission was published as a contribution by the Commission to the Decade.[25] Also, on 28 and 29 October 1997, the Division organized a Colloquium to celebrate the fiftieth anniversary of the International Law Commission to strengthen the Commission and to enhance its capability to contribute to the progressive development of international law and its codification. In addition, the Division is also assisting the International Law Commission to organize a seminar in April 1998 at Geneva. The theme of the seminar is to provide a critical review of the work of

[18] See UN doc. A/51/10, paras. 141—273.
[19] See UN doc. A/49/10.
[20] See UNGA res. 51/229.
[21] See UNGA res. 52/164 of 15 December 1997.
[22] See UNGA res. 52/165 of 15 December 1997.
[23] See UNGA res. 49/60 of 9 December 1994.
[24] United Nations. International Law as a Language for International Relations. Proceedings, from the United Nations Congress on Public International Law. Kluwer Law International (1996). 675 pp.
[25] International Law on the Eve of the Twenty-first Century: Views from the International Law Commission.

the Commission in dealing with such questions as state responsibility, international liability and the Draft Code of Crimes against the Peace and Security of Mankind.

Furthermore, the Division is preparing a collection containing some thirty essays by legal advisers of States, legal advisers of intergovernmental organizations and practitioners in the field of international law. These essays will provide a perspective on international law as viewed from the practical standpoint of those who are involved in the actual practice of international law. The publication is scheduled for 1999. The Division has also been entrusted to set up and administer an audio-visual library on international law. The library would collect, catalogue, distribute and loan audio and audio-visual tapes on various subjects of international law.

COD is also responsible for publishing: *Yearbook of the International Law Commission,* the *United Nations Juridical Yearbook,* the *Legislative Series* and the *Reports of International Arbitral Awards.* Efforts are being made to expedite the publication of *Supplements to the Repertory of Practice of United Nations Organs.*[26] In cooperation with the International Court of Justice and its Registry, the *Summaries of the Judgements, Advisory Opinions and Orders of the International Court of Justice* 1948–1991 and 1992–1996 have been published.

**V. Law of the Sea**

The Division for Ocean Affairs and the Law of the Sea (DOALOS) is responsible for the subprogramme Law of the Sea and Ocean Affairs.[27] The mandate for this subprogramme lies in the United Nations Convention on the Law of the Sea, the implementing agreements, the decisions of meetings of States Parties to the Convention, and in particular in General Assembly resolution 49/28 of 6 December 1994. The first objective of the subprogramme is to promote the universal acceptance of the Convention and its uniform and consistent application. Further, the Division assists States and international organizations in the development of legal instruments in the field of the law of the sea and ocean affairs. The effective functioffing of the treaty system of institutions is also important. Servicing of the meetings of States Parties and of the Commission on the Limits of the Continental Shelf form part of this task, as does the providing of legal assistance to the International Seabed Authority and the International Tribunal for the Law of the Sea. A particularly important issue is identifying emerging aspects of marine affairs within the framework of the Convention, which may call for action by the international community. For example, in the case of high seas fisheries, a confe-

[26] See UNGA res. 51/209 and UN doc. A/52/6(Sect. 6), para. 6.8.
[27] Subprogramme 4.4 of the current medium-term plan.

rence under the auspices of the United Nations succeeded in adopting and implementing an agreement in 1995. Assistance to Member States in their efforts to derive practical benefits from the international legal regime for the oceans is also among the tasks of DOALOS. The preparation of the annual report to the General Assembly on developments related to the law of the sea and ocean affairs is one of its most important duties.[28]

In this area the most dramatic change was in November 1994, when the Convention on the Law of the Sea entered into force. Since then the International Seabed Authority was established in November 1995, and from june 1996 the Authority is now functioning independently in its Office in Kingston, Jamaica. Some support is still provided by DOALOS. After the election in August 1996 of the 21 judges of the International Tribunal for the Law of the Sea, the members of this Tribunal met for the first time on 1 October 1996 in Hamburg. Serviced by representatives of DOALOS, the judges held their first meetings until the formal inauguration in the City Hall of Hamburg on 18 October 1996. The Tribunal has since then held five meetings, and in October 1997 the Tribunal adopted its Rules of Procedure. In November 1997 it received its first case.

In March 1997, the 21 members of the Commission on the Limits of the Continental Shelf were elected. This Commission held its first meeting in june 1997, serviced by DOALOS, which is its secretariat. A second meeting was held in September 1997. The rules of procedure have been adopted, and the Commission is now ready to receive its first application. In accordance with article 4 of Annex II to the Convention, applications by coastal States intending to establish the outer limits of their continental shelves beyond 200 nautical miles, must be made as soon as possible but in any case within 10 years of the entry into force of the Convention for that State. No doubt, the work of this Commission will be of great significance in the years to come.

Following the commencement of the effective functioning of the treaty system institutions, for which DOALOS' services were indispensable, it was necessary to take a fresh look at the organization of DOALOS and to design it to meet new demands. It was decided to organize the work of the Division in four clusters, each responsible for a distinct part of its responsibilities. The manning plan has been reduced somewhat. Among the new tasks will be the depositary services required by the Convention, i. e. maintenance and further development of the facilities for the deposits by States of charts and geographical coordinates concerning baselines and limits of national maritime zones, and of the system for their

[28] UN doc. A/52/487 contains the latest report in this respect.

recording, including a cartographic system. Another important task vill be the operating of a specialized data base on the limits on the continental shelf, integrating, *inter alia,* scientific and technical data in the fields of marine geology, geophysics, geochemistry and hydrography pertaining to the application of the Convention related to the continental shelf.

Of particular importance is the computerized information system, available on Internet World Wide Web home page on the law of the sea and ocean affairs[29] and the Internet Gopher menu on the law of the sea. The information system is being developed as a centralized system in cooperation with relevant international organizations, for providing coordinated information and advice on marine policy and legislation. DOALOS is also responsible for publishing *the Law of the Sea Bulletin, Practice of States,* and *Bibliography of the Law of the Sea.* A number of handbooks and brochures have also been elaborated by the Division. A training programme on the law of the sea encompasses the train-sea-coast programme which is supported from UNDP.

## VI. The International Trade Law Branch—Secretariat of UNCITRAL

The International Trade Law Branch (ITLB) is responsible for the progressive harmonization and unification of the law of international trade.[30] It serves as the secretariat of the United Nations Commission on International Trade Law (UNCITRAL), which is the core legal body of the United Nations system responsible for the progressive harmonization and unification of the law of international trade. By preparing uniform laws that are aimed at removing or reducing obstacles to the flow of international trade created by disparities in national laws, the Commission plays an important role in the facilitation of international trade.

A major objective of this subprogramme is to provide governments and legislators with universally acceptable, modern and harmonized conventions and model laws in areas where harmonization of trade law is desirable and feasible. It should also provide trade parties with non-legislative texts, such as model contractual clauses, rules and legal guides, to assist them in implementing international trade transactions.

In its thirty-year history, ITLB has assisted UNCITRAL in preparing and adopting sixteen major legal texts (conventions, model laws, guides or contractual rules) and several recommendations. Some of those texts have achieved worldwide acceptance. For example, the United Nations Convention on Contracts for the International Sale of Goods has become the world's international

[29] Can be accessed at http://www.un.org.
[30] Subprogramme 4.5 of the current medium-term plan.

sales law, adopted by 48 States with almost 70 per cent of world trade. Similarly, the UNCITRAL Model Law on International Commercial Arbitration, together with the UNCITRAL Arbitration Rules, has become a pillar of modern international commercial arbitration, with legislation based on the Model Law enacted in 27 States covering one fourth of the earth's territory.

Only in the last five years, since its Congress on "Uniform Commercial Law in the 21st Century", the Commission has adopted the UNCITRAL Model Law on International Credit Transfers (forming the basis of a European Union Directive), the UNCITRAL Model Law on Procurement of Goods, Construction and Services, the United Nations Convention on Independent Guarantees and Standby Letters of Credit, the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Notes on Organizing Arbitral Proceedings and the UNCITRAL Model Law on Cross-Border Insolvency. Current projects of the Commission in its constant quest of modernizing commercial laws relate to digital signatures and certification authorities, private financing of public infrastructure projects and enhancement of availability of international credit through the use of assignments of receivables.

Another major objective of ITLB is to meet the increased demand of governments for training and technical assistance in relation to their law reform projects aimed at the adoption of an UNCITRAL legal text. At present, ITLB organizes an average of ten seminars on international trade law each year and has to respond every year to a large number of requests for technical assistance in the form of preparing or reviewing draft legislation, or of briefing legislators, judges, arbitrators, academics and law practitioners. The degree of support that this programme enjoys both in the public and private sector is indicated by special contributions to a trust fund for symposia or by frequent offers of host organizations of conferences to finance the participation of ITLB staff.

ITLB has to respond to dramatically increasing demands for training and technical assistance on the part of developing countries and countries in transition. In addition, the upsurge in commercial law reform projects represents a good opportunity for ITLB to significantly further the objectives of substantial coordination and acceleration of the process of harmonization and unification of international trade law, as envisaged by the General Assembly resolution establishing UNCITRAL.[31]

In an effort to promote international awareness of the legal texts formulated by the Commission and to facilitate their uniform interpretation and application, ITLB operates a system for collect-

[31] UNGA res. 2205 (XXI) of 17 December 1966.

ing and disseminating information on court decisions and arbitral awards relating to legislative texts prepared by the Commission (Case Law on UNCITRAL Texts, "CLOUT"). Summaries of court decisions, prepared by National Correspondents and edited by ITLB staff, are published in all six official languages of the Organization, as are all other items of ITLB's extensive publications programme.

An average of fifteen to twenty reports or working papers are prepared and submitted to the Commission and its three Working Groups each year. All those reports and working papers, as well as the annual report of the Commission, the reports of the Working Groups and a number of other useful documents are printed each year in the UNCITRAL Yearbook. Legal Guides prepared by the Commission are published as United Nations sales publications, and all conventions and model laws prepared by the Commission are published in brochures along with a note explaining the salient features of each text. CLOUT documents and most, legal texts emanating from the work of the Commission are made available on Internet.[32]

## VII. The Treaty Section

The Treaty Section is in charge of an activity which is directly mandated by the Charter of the United Nations (Art. 102), namely the registration, custody and publication of treaties.[33] The Section also performs the Secretary-General's functions as depositary for multilateral treaties deposited with him. The constant expansion of the Organization's membership and the rapid multiplication of international legislative activity has resulted in an increase in the nature, quantity and complexity of the tasks performed by the Section.

In addition, the Section provides information, assistance and legal advice to a range of clients, including the UN Secretariat, members of the UN system, intergovernmental negotiating bodies, permanent missions and private entities on matters relating to its two responsibilities and on general questions of treaty law. Legal advice is also provided on the drafting of bilateral and multilateral treaties. For example, the Treaty Section was — together with OLC — closely involved in the lead-up to and during the negotiations of the Oslo Agreement on the prohibition of land mines.

A major effort has been made over the past two years to provide better access to the public to treaty related information, including to the authentic texts of treaties through the electronic medium. It is hoped that this would contribute to their wider dissemination and consequently, in keeping with the objectives of the Charter, to

[32] http://www.un.or.at/uncitral.
[33] Subprogramme 4.6 of the current medium-term plan.

the development of the international legal order and principles of international law.

The published volumes of the *United Nations Treaty Series* (i. e., a publication including the texts of about 30,000 treaties and international agreements and a similar number of related subsequent actions in over 140 languages registered with the Secretariat between 1946 and 1986) are now available on the UN web site.[34] This collection of over 1450 printed volumes published in the original languages plus English and French, is currently being accessed by users around the world over 26,000 times a week. The publication *Multilateral Treaties Deposited with the Secretary-General,* which provides the status of those treaties deposited with the Secretary-General (486 as at 31 September 1997*),* has been made available on the Internet since November 1995*,* and continues to be a popular electronic document.

A new workflow/database system is being established with a view to introducing a comprehensive document management and publication process, including desktop publishing. It is hoped that it will considerably assist in providing treaty related information to the public and speeding up treaty processing and publication, thereby ensuring better access to this important source of international law.

## VII. The Secretariat of the United Nations Administrative Tribunal

As previously mentioned, the secretariat of the United Nations Administrative Tribunal is administratively connected to OLA.[35] This secretariat provides substantive, technical and administrative servicing of the Tribunal. It also provides legal research, analysis of legal precedents, preparation of draft summaries of facts and contentions of parties for judgements to be rendered by the Tribunal, as well as analysis and research of documentation relevant to cases on appeal to the Tribunal. The secretariat is responsible for the publication of *Judgements of the Administrative Tribunal.*

With the increase in litigation, due to the expansion of the Tribunal's jurisdiction to include the local staff of UNRWA with effect from 1 January 1991, the number of judgements rendered by the tribunal has taken a significant leap. In the years 1980–1990, the

[34] http://www.un.org/Depts/Treaty.

[35] The Tribunal was established by the General Assembly in its resolution 351A(IV) of 24 November 1949.1t is composed of seven members, no two of whom may be nationals of the same State, who are appointed by the General Assembly initially for three years and may be reappointed. The competence of the Tribunal extends to the secretariats of associated programmes that are financed from voluntary contributions, such as UNDP, UNICEF, UNFPA, UNHCR and UNRWA. The competence of the Tribunal has also been extended to IMO and ICAO. Furthermore, as of 1 January 1998, the Tribunal will be competent to deal with cases concerning the staff of the Registry of the International Court of Justice.

Tribunal rendered an average of 22 judgements per year. In the years 1991–1994, the Tribunal rendered an average of more than 44 judgements per year, and in 1995 and 1996 the Tribunal rendered 58 and 61 judgements respectively.

**VIII. The Legal Counsel**

The role of the Head of the Office of Legal Affairs is not only to manage an office which has grown to its present size of some 160 staff members, of whom over 90 are professionals. The role also includes that of Legal Counsel of the Organization.[36]

No doubt the role of the Legal Counsel has changed over the years, although the basic function as legal adviser is the same. Initially, it is fair to assume, important ingredients were issues relating to the establishment of the Organization and the creation of precedents where there were none before. Also, advising an Organization of some 50 Members in an international atmosphere determined by the Cold War must have been quite different from the present situation with the Berlin Wall down and the Organization numbering 185 Members.[37] The responsibilities of the Legal Counsel are presently formulated as follows:[38]

The Legal Counsel

– is responsible for all the activities of the Office of Legal Affairs, as well as its administration;

– represents the Secretary-General at meetings and conferences of a legal nature;

– represents the Secretary-General in judicial and arbitral proceedings;

– certifies legal instruments issued on behalf of the United Nations; and

[36] Since its establishment, the following persons have held the position of Head of the Office of Legal Affairs and the United Nations Legal Counsel: Ivan Kerno (Czechoslovakia) 1946–1952; Constantin Stavropoulos (Greece) (acting 1953–54) 1955–1974; Eric Suy (Belgium) 1974–1983; Carl August Fleischhauer (Germany) 1983–1994 (January); Hans Corell (Sweden) 1994 (March) – present. In 1946–1952 Abraham Feller (United States of America) served as General Counsel in Mr. Kerno's Office.

[37] An interesting insight in the work of the Legal Department in its early days appears in Oscar Schachter, The Development of International Law Through the Legal Opinions of the United Nations Secretariat. In: The British Year Book of International Law (1948, XXV): 91–132. The situation some 30 years later is described in Gerold Herrmann, Das Justitiariat der Vereinten Nationen. In: Vereinte Nationen 6/79: 210–213. See also Merrillat, H.C.L., (1966), Legal Advisers and International Organizations, Oceana, 125 pp.

[38] Secretary-General's bulletin ST/SGB/1997/8, section 3.

– convenes meetings of the legal advisers of the United Nations system and represents the United Nations at such meetings.

Under the new system of management established by Secretary-General Kofi Annan, the Legal Counsel is also a member of the Senior Management Group[39] and the Executive Committee for Peace and Security.

Much could be said about the role of the Legal Counsel, but the present article is not the place to develop such thoughts in any detail. Suffice it to say that his or her clients are many within the Organization, the most important being the General Assembly, the Security Council and the Secretary-General. However, the great majority of requests for advice come from miscellaneous Secretariat offices and from other parts of the United Nations system, including the Specialized Agencies. Requests from subsidiary and treaty organs are also quite frequent.

The Legal Counsel of course also tries to assist Member States as much as possible. However, individual States are never given formal legal advice, since this would not be appropriate. Many questions that arise are highly contentious, and Member States are often divided on both law and policy. It is therefore important that the Legal Counsel not get involved in such matters unless asked by a competent organ to give advice; the Legal Counsel must be able to provide impartial and objective opinions on questions that often and sometimes even sharply divide governments. It is interesting to note that questions asked are not always purely ”legal”; the impression is that Member States also in those situations find it helpful to seek the opinion of an institution which is recognized as objective. Opinions given are always documented and form part of the practice of the Organization. The most important ones are reproduced in *the United Nations Juridical Yearbook*.

The importance for the United Nations of having a Legal Counsel providing, with the assistance of the legal experts of OLA, a unified legal service to the Organization must be stressed. Even a relatively short experience of servicing the Organization makes it abundantly clear that without such unified legal service, there is a great risk that components of the Organization would take off in different directions, thus creating legal uncertainty and also risks, including for economic losses, for the Organization. It is also important to note that in negotiations with other organizations and Member States, different branches of the United Nations might be tempted to act in different ways to the detriment of the common interest. It is therefore important that a unified legal

[39] Secretary-General's bulletin ST/SGB/1997/3.

service closely follows such negotiations. Otherwise agreements might be negotiated that, although creating no immediate difficulties, might be harmful to the overall interest of the Organization, if invoked as a precedent in other situations. An important example is the necessity of upholding common standard with respect to privileges and immunities. It is also important that the central legal function is provided by lawyers who have an intimate knowledge of the Organization and the peculiarities of such a multifaceted international legal entity.

Also, it goes without saying that additional responsibilities for OLA, the latest being law of the sea and ocean affairs, add new dimensions to the functions of the Legal Counsel. The establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda have also entailed new responsibilities. However, it should in this context be emphasized that OLA, contrary to what some believe, does not have any responsibility for the way in which the Tribunals discharge their judicial, prosecutorial or administrative functions. Once the Tribunals are established, they are in the same relation to OLA as any other subsidiary body of the General Assembly or the Security Council.

There is, however, one area where most probably the role of the Legal Counsel has undergone a considerable change over the last few years, as is certainly the case with the role of other heads of departments/offices of the Secretariat: management. The increased focus at the national level in many Member States on the managerial responsibility of heads of departments/offices has now also reached the United Nations. More emphasis is being put on the planning and monitoring functions, including in the preparations of medium-term plans and budget proposals. Also, with the introduction of the new Performance Appraisal System (PAS), the role of workplans and monitoring of the work of every staff member plays a more prominent part in the work of the Secretariat than before. Certainly, there are those who are critical of PAS in its present form (the author is one of them; the system is too bureaucratic). However, the merit of the system is the additional focus on efficiency and effectiveness in the work of the Organization, both necessary ingredients if it shall be able to respond to the challenges ahead. These aspects of the work of the Secretariat will now be further developed in the course of the reform programme launched by Secretary-General Kofi Annan.[40] No doubt, demonstrated managerial ability will be a *sine qua non* for appointments to higher positions within the Secretariat in the future — as it should be. Also, to manage at the international level requires extra skills, given the complexity of the United Nations system and the fact

[40] See UN doc. A/51/950.

that the staff have divers backgrounds (and maybe also different working habits).

The reform work which can be expected to take place over the next few years will also significantly affect the daily work of the Legal Counsel. In particular, the reform of the regulations and rules of the Organization will mean that OLA will be more closely involved in this work in the future. The author found it extraordinary that OLA was asked to give advice on a wide variety of issues within the Organization, including documents of a relatively limited importance, while internal rule-making seems to have taken place quite independently from this Office. In the view of the author, this is not satisfactory, and from now on, no administrative issuances will be promulgated without OLA clearance.[41]

Another novelty is the collaboration which has developed among legal advisers of the ministries for foreign affairs of Member States, and in which the Legal Counsel takes an informal part. For the past few years, these legal advisers have met on the margin of the meetings of the Sixth Committee of the General Assembly to discuss matters of common concern. The meetings are informal (there is no established agenda) and are highly appreciated. It has been suggested that an *esprit de corps is* emerging among colleagues.[42] It is hoped that this cooperation can continue, in particular since the role of the legal adviser in the ministries for foreign affairs will be of increasing importance in the years of come.[43]

In this context it should also be mentioned that the Legal Counsel convenes and chairs meetings of the legal advisers of the different components of the United Nations system. These meetings of some 30 colleagues now take place in Geneva annually in the beginning of the year. The agenda consists of a number of issues of common concern, both in the field of public international law and internal administrative law.

## IX. Looking to the future

As it appears from Secretary-General Kofi Annan's proposal for reform,[44] OLA will have a central function also in the future. In the

[41] See Secretary-General's bulletin ST/SGB/1997/1, section 6.2.

[42] See articles on the meetings held so far in: American Journal of International Law (Vol. 85 No. 2 April 1991: 371–373; Vol. 87 No. 2 April 1993: 323–328; Vol. 88 No. 2 April 1994: 379–382; Vol. 89 No. 3 July 1995: 644–649); Nordic Journal of International Law (Vol. 61, 1992: 3–6; Vol. 66, 1997: 393–399); Indian Journal of International Law, Vol. 36 No. 4 October–December 1996: 75–79.

[43] See inter alia Corell, Cooperation Among Legal Advisers on Public International Law. In: Essays on International Law, Asian-African Legal Consultative Committee, Fortieth Anniversary Commemorative Volume 1, New Delhi (1997). This writing also includes a list of literature on "the role of the legal adviser".

[44] See UN doc. A/51/950, III. A new United Nations for the New Century (including organigramme).

report, the Office is mentioned among the servicing organs with the explanation that entities are placed under the sector to which they principally contribute and that a number of entities contribute to the work of more than one. Because of the fact that most of the Secretariat interrelates with OLC and GLD, it is sometimes forgotten that OLA is not only an internal servicing entity; it is also in charge of substantive programmes of the Organization directed outwards. No doubt, these programmes will be of great importance also in the future.

The codification of international law has far from stopped. Even if there are those who argue that the prime days of this activity are over, the development in this field over the last couple of years has been significant. No doubt, the Orgarnization will view with great expectations the result of the future work of the International Law Commission. ITLB will have to respond to new challenges, including an increasing demand for services from developing States and States in transition that have realized that development is dependent on a proper commercial law. The work of DOALOS is only in its initial stages. With the entry into force of the United Nations Convention on the Law of the Sea, the work of this Division has entered a new phase. The three institutions established by the Convention will, in the view of this author, be of great importance. When the first application concerning the limits of the continental shelf is submitted, it will be discovered how important OLA's services are in this particular field. In a few years time, the International Tribunal for the Law of the Sea may be one of the most important international dispute solving mechanisms, which will also affect OLA. With advanced technology deep seabed mining might develop. The activities of the International Seabed Authority will have an impact on the work of OLA. An increase in the workload of the Treaty Section is almost axiomatic. As a matter of fact, one of the questions that is being studied presently is whether one can continue to register treaties in the same way as has been done in the past. New information technology certainly makes it easier to disseminate this information, but one must also find methods to register and index the information which meets contemporary needs.

The functions of OLC and GLD will always be at the center of the Office of Legal Affairs. Depending on how Member States will reform the United Nations system, we may experience dramatic changes. Irrespective of the nature of these changes, they will certainly affect the legal work within the Organization. The breaking of new ground in the work of the Organization will also mean that there will be new issues that need to be analyzed and assessed from a legal point of view. Modern concepts of administration, responsi-

bility and accountability will also entail work on the legal side. And, also in the future, it is important that the Organization is served by a legal office which constitutes a living institutional memory and which can give advice that provides consistency and consequence to the work of the Organization. The role of a legal office of any organization is more often than not to act in an advisory function behind the scenes. In the United Nations there is a good tradition of maintaining an Office of Legal Affairs and also to seek advice from this Office before important decisions are taken. It is to be hoped that this tradition will continue also in the future to the benefit of the Organization. At the same time this entails great responsibility for those that provide the central legal services within the Organization.

It is also important to see the work of OLA in the larger perspective – as a contribution to the development of international law. No doubt, this law will become increasingly important in the years to come. The following quotation of two eminent authors and internationalists may be an appropriate conclusion of this article:[45]

”International law, only yesterday a seemingly quiet backwater in human affairs, is reaching into hitherto unimagined fields. The nations of the world have acceded to an unprecedented number of agreements in virtually all branches of human activity – from the ocean- floor to the planet's climate to outer space – in only the last forty years. There has been a truly astonishing growth of public international law which will accelerate into the coming century. The pressing need for an international system based on law has never been so evident.”

Annex

Programme 4. Legal Affairs: Broad approaches and direction according to the medium-term plan for 1998–2001

The broad approaches and direction which OLA will follow during the coming few years will be to:

– Ensure the rule of law in and through the United Nations and the proper and orderly conduct of business by its organs;

– Provide legal services to and liaison between Headquarters and United Nations organs, United Nations offices and field and pea-

[45] Urquhart, Brian and Childers, Erskin, (1996), A World in Need of Leadership: Tomorrow's United Nations, Dag Hammarskjöld Foundation, Uppsala, Sweden, page 13.

cekeeping missions, including maintaining respect for privileges and immunities and the legal status of the Organization;

– Discharge the Secretary-General's responsibilities under the Statute of the International Court of Justice (except those of a budgetary nature);

– Provide legal assistance and advice to Secretariat staff worldwide relating to the provision of goods, services and facilities to the Organization and its missions, and the resolution of legal disputes involving the Organization, including the representation of the Secretary-General in judicial proceedings, negotiations or other procedures;

– Provide secretariat services for the Sixth Committee of the General Assembly, the International Law Commission, the United Nations Commission on International Trade Law and other committees or conferences dealing with legal matters;

– Prepare publications on legal matters and studies to assist the progressive development and codification of international law and the law of international trade;

– Provide assistance in the teaching, study, dissemination and wider appreciation of international law and the law of international trade;

– Provide information, analysis, advice and assistance to States on law of the sea and ocean affairs, consistent with the United Nations Convention on the Law of the Sea;

– Monitor, review and analyze and report on developments relating to the law of the sea and ocean affairs, including persistent and emerging issues, as well as the formulation of recommendations thereon;

– Provide substantive servicing of the relevant institutions and intergovernmental bodies as mandated by the United Nations Convention on the Law of the Sea and the General Assembly and the fulfillment of the Secretary-General's responsibilities with respect to dispute settlement;

– Strengthen and expand cooperation and coordination among relevant international organizations in the field of the law of the sea and ocean affairs;

– Discharge the Secretariat's responsibilities under Article 102 of the Charter of the United Nations on the registration and publication of treaties, including through the adoption of electronic publishing techniques, and the Secretary-General's responsibilities as the depositary for multilateral conventions.