

Strategy for an Era of Application of International Law

Action Plan

A. Introduction

The Charter Mandate

The Charter envisages that the United Nations will take action to enhance respect for international law. The preamble of the Charter thus calls on Member States “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. An important aim of the United Nations is, therefore, to bring about the implementation both of treaties and of rules of customary international law.

Nature of the Action Plan

This Plan identifies actions which Secretariat units, Programmes, Funds and Agencies might take in order to promote the better implementation of international law.

For the most part, these actions:

- › Are already within the competence of the Secretariat, Programmes, Funds and Agencies and do not require any further mandate from any political organ or the voting of any additional resources;
- › Use and build upon existing mechanisms and practices; and
- › Engage and make use of the resources of civil society, in particular, of NGOs, given their ever more important role in the development and implementation of international law.

Some actions, however, would require a decision by a political organ, in order to provide either the necessary mandate or the necessary financial or human resources or both.

The Plan is action oriented and is meant to be a working tool that can be used in all sectors of the Organization. All actions are indicated in italics. It goes without saying that some of these actions are already being taken in certain parts of the Organization.

B. Suggested Actions

1. Encouraging Participation in Multilateral Treaties

Background

This Action Plan is directed towards promoting compliance by States with the treaties they have ratified. At the same time, it is beyond dispute that measures to promote wider and faster participation in multilateral treaties will both complement and reinforce a programme that is aimed at ensuring greater compliance with those same treaties.¹

Issue

Many multilateral treaties of potential global application remain unsigned by a large number of States or, though signed, unratified. The objective of creating a global framework of binding norms in the areas concerned is consequently frustrated, particularly in those cases in which the treaties are prevented from entering into force.

Action

A) The Secretary-General may wish to use his unique position to advocate the signature and ratification of treaties. The following suggestions are made with a view to enhancing the effectiveness of such advocacy:

- 3 *A list of a dozen or so key multilateral treaties should be compiled by EOSG, in consultation with relevant Secretariat units, Programmes, Funds and Agencies, which treaties should be the subject of a focused and sustained campaign;*
- 3 *The Secretary-General may wish to make it a standard practice to use the opportunities provided by bilateral contacts, such as country visits and meetings with Heads of State or Government, as well as multilateral meetings and statements to the press, to advocate signature and ratification of these key treaties;*
- 3 *Reports of the Secretary-General to political organs might also be used for this purpose;*
- 3 *The Secretary-General may, as and when appropriate, write directly to Heads of State or Government encouraging signature and ratification of the selected treaties;*

¹ OHCHR has already instituted a campaign, with the Secretary-General's support, aimed at achieving universal participation in the six main human rights treaties by 2003.

- 3 *Target audiences of the Secretary-General's advocacy should also include non-State actors, NGOs and other groups in civil society with a particular interest in specific treaties, with a view to enlisting their support.*

B) The following additional steps might also be taken to promote signature and ratification of the selected treaties that are the subject of the campaign:

- 3 *DPI, in collaboration with OLA and other relevant offices, might initiate a campaign to raise consciousness amongst parliamentarians, public policy research centres, legal professional associations and the public at large both of the selected treaties and of their status as to signature and ratification;*
- 3 *The assistance of the secretariats of the regional commissions, treaty secretariats and the secretariats of the specialized agencies should be sought for this campaign, as well as the assistance of Regional Centres, UNICs and UNDP country teams;*
- 3 *The assistance of particular NGOs working in relevant fields might be sought to encourage Governments to sign and ratify the treaties concerned;*
- 3 *Small, high-level missions might be sent to capitals to contact government officials with direct responsibility for the signature and ratification of the selected treaties;*
- 3 *A solemn ceremony might be organized in connection with the Millenium Summit to encourage visiting dignitaries to sign the treaties or, if possible, deposit their instruments of ratification or accession. In this connection:*
 - *Assistance in, and support for, this initiative should be sought from Permanent Missions, NGOs, the regional commissions, UN Programmes, Funds and Agencies, Regional Centres, UNICs and the specialized agencies;*
 - *The Treaty Section of OLA should take special measures to provide technical assistance to Permanent Missions regarding the completion of the necessary treaty formalities;*
 - *A book might be produced for distribution at the Summit, containing a list of conventions deposited with the Secretary-General highlighting the treaties that are the focus of the campaign, with a brief introduction to each treaty written by an internationally recognised personality closely associated with the treaties concerned explaining its importance.²*

² For example, Jody Williams on the Ottawa Convention and Nelson Mandela on the Convention against Racial Discrimination.

This would initiative would require funding.

2. Assisting States to Prepare Necessary Implementing Legislation

Background

In many national legal systems, at least certain of the rules of international law that are binding upon the State automatically become part of national law without the necessity for any further action on the part of State institutions. In most systems, though, further institutional action is needed in order to create new national laws which will ensure that the State's international obligations are implemented.

Issue

Many States have very limited resources or expertise at their disposal for the purpose of preparing legislation to implement their international obligations. Situations may consequently arise in which a State's international obligations are not properly implemented, or are even not implemented at all, with the result that individuals and corporations are not accorded the rights and benefits for which international law provides.³

Present Practice

To address this problem, a number of Secretariat units, Programmes, Funds and Agencies provide assistance to Governments in drafting or reviewing national laws to implement their international obligations. These measures include:

- The organization of seminars or briefing sessions for Government officials on the implementation of specific multilateral treaties.

Examples:

The International Trade Law Branch (ITLB) of OLA runs seminars and briefing sessions on UNCITRAL conventions for government officials and for legislators.

An NGO, with the assistance of OLA, recently organized an informal briefing on the implementation of the Rome Statute of the ICC for delegations attending the ICC Preparatory Commission.

³ The adoption of national laws aimed at implementing a treaty is, in many national legal systems, a step which is taken before proceeding to ratify that treaty. The inability of a State to allocate appropriate resources to preparing the necessary implementing legislation may consequently prevent that State from ever proceeding to ratify a treaty. Action by the Secretariat to assist States in preparing the legislation needed to implement treaties will therefore contribute to promoting the faster and more widespread ratification of those treaties, as well as securing their better implementation.

- The provision of technical assistance to States, at their request, in particular, by providing them with experts who either undertake the drafting of their national laws for them or give their Government officials advice and assistance in that task.

Examples:

The International Trade Law Branch (ITLB) of OLA provides services by technical consultants to particular States that wish to implement specific uniform commercial laws or conventions, in particular by reviewing draft legislation which has been prepared by national authorities or by providing those authorities with assistance in the actual preparation of their drafts.

UNDP organizes the provision of technical assistance to States in the drafting of national laws regulating judicial administration, legal procedure and access to justice.

UNHCR provides technical assistance to States in preparing legislation to implement the 1951 Geneva Convention and its 1967 Protocol. OHCHR and UNICEF also provide technical assistance of this type within the particular areas of their mandates.

Action

- 3 *The Secretariat, Programmes, Funds and Agencies should take steps towards providing such assistance on a more systematic and widespread basis;*⁴
- 3 *In furtherance of this objective, the Secretariat should take stock of the experience of those units that are already involved in providing Governments with assistance of this type with a view to identifying those approaches which have proved most efficacious and cost-effective (“lessons learned”);*
- 3 *The Secretariat units, Programmes, Funds and Agencies which provide technical assistance in the preparation of legislation to implement international obligations should better coordinate their activities with a view to maximizing their effectiveness and avoiding duplication.*⁵ *In particular:*
 - *If several agencies or organizations are providing assistance in respect of the same subject matter, they should endeavour to coordinate their programmes.*

⁴ For Secretariat units themselves to run seminars would require a mandate, if one does not already exist, together with funding. Programme managers should pay attention to this in the elaboration of the next medium-term plan.

⁵ OHCHR has already conducted a review of UN technical assistance programmes in the field of human rights, further to the decision in the Secretary-General's reform programme for the Organization.

Example:

The programmes run by UNDP, OHCHR, ODCCP, UNV, UNOPS, UNICEF, ILO and UNCTAD on access to justice and good governance may benefit if more coordination could be achieved.

- *Units which run programmes of assistance in fields to which the programmes of other units are relevant should share their expertise.*

Example:

The International Trade Law Branch (ITLB) of OLA has taken steps to ensure that UNCITRAL texts are taken into account in programmes of technical legal assistance that are run by development agencies.

- 3 *The Secretariat, Programmes, Funds and Agencies, with the assistance of relevant treaty bodies, should ensure that government officers are provided with training on a more sustained and general basis in the drafting of domestic legislation to implement treaty commitments (“capacity building”). This might be done through the direct provision of such training or by developing national capacity to provide such training (“training trainers”);⁶*
- 3 *The International Law homepage on the UN Website should include a new sub-site entitled “Technical Assistance to States”, clearly identifying all UN offices that provide assistance to Governments in the preparation of legislation to implement international obligations;⁷*
- 3 *Wherever feasible, websites and sub-sites maintained by Secretariat units, Funds, Programmes and Agencies should include, amongst the information on any treaties that are featured on the site, the texts of relevant implementing legislation adopted by States and reported to the Secretariat;*
- 3 *The Secretariat, Programmes, Funds and Agencies, should, where they are not themselves in a position to provide technical assistance, explore the possibility of enlisting the assistance of relevant IGOs or NGOs, as appropriate.*

⁶ This would require a mandate, together with funding, where none currently exists. Programme managers should pay attention to this in the elaboration of the next medium-term plan.

⁷ This would require the allocation of additional resources.

3. Training of Judges and Practising Lawyers

Background

Just because a national legal system contains rules which are designed to ensure the implementation of the State's obligations under international law does not mean that those obligations will be complied with. Those rules of national law need themselves to be observed. In particular, they need to be implemented in a manner that is consistent with the State's international obligations.

For this to occur, it is important that those who administer and apply the law — particularly, the judiciary — and those who give advice on the application of the law — typically, lawyers — are familiar with international law and know how to research, understand and work in that field.

Issue

Judges and lawyers at the national level frequently display a lack of familiarity with international law, together with a lack of facility in researching, interpreting and applying it. As a result, international law is often misapplied and is sometimes not applied at all.

It is, therefore, highly desirable that practising lawyers and judges receive training in international law, so that they know how to research and interpret international law when the occasion demands and so ensure that international law is properly applied.

Actions

- 3 *The Secretariat, Programmes, Funds and Agencies might take steps to promote the better training of lawyers and judges in international law. In particular they should:*
 - *Promote courses in international law which sitting judges and practising lawyers may take on a voluntary basis;*
 - *Advocate the adoption of a qualifying requirement for the judiciary and for practising lawyers that they have taken a course in international law during their professional training; and*
 - *In jurisdictions where there is a requirement that practitioners undertake continuing legal education, encourage recognition of courses in international law as fulfilling applicable requirements in that regard;*

- 3 *In pursuit of this objective, the Secretariat, Programmes, Funds and Agencies might enlist the assistance of international and national associations of lawyers who are active in the field of international law,⁸ encouraging them to:*
- *Organise panels at their conferences on the topic of the implementation of international law in national law;*
 - *Invite (from a provided list) key-note speakers from the Organization;*
- 3 *The Secretariat, Programmes, Funds and Agencies should take up opportunities to address international meetings of the judiciary whenever possible. Efforts should be made to identify further appropriate opportunities for contacting and addressing national judiciaries and professional lawyers associations;*
- 3 *In those cases in which the Organization is itself engaged in the training of the national judiciary, basic training in international law should be built into the programmes concerned;*

Examples:

It is assumed that this is done in missions, such as MICIVIH, which run training programmes for lawyers and the judiciary in the rule of law, in UNDP programmes to promote access to justice and good governance and in OHCHR's technical assistance programmes and field operations.

- 3 *The Secretariat should aim to make available to a State, upon its request, training for its national judiciary in the implementation of specific treaties or groups of treaties which have been, or are about to be, ratified by that State.⁹*

Examples:

The briefings which are organized and run for judges and arbitrators by the International Trade Law Branch (ITLB) of OLA on the implementation of UNCITRAL texts which have been incorporated into national legislation.

The training programmes which UNHCR runs for members of national refugee commissions in the implementation of refugee conventions which have been incorporated into national law.

⁸ Such as the African Society of International Law, the American Bar Association (ABA), the American Society of International Law (ASIL), the British Institute of International and Comparative Law (BIICL), the Canadian Society of International Law, the International Bar Association (IBA) and the Société française pour le droit international (SFDI).

⁹ This would require a mandate, together with funding, where none currently exists.

4. Training of Others who are Involved in the Application of the Law

Background

The Organization currently runs a considerable number of training programmes in specific aspects of international law. These include the training of law-enforcement officers in aspects of human rights concerning the rights of suspects, the training of prison officers in the human rights of detainees, the training of social workers in aspects of human rights concerning juvenile justice and the training of immigration officers in refugee law.

Issue

As the Organization strengthens its training activities, it becomes increasingly important to adopt a co-ordinated approach.

In order to avoid duplication, mixed messages and confusion on the relevance of the different bodies of international law, training programmes must be devised, organised and run in such a way as to ensure that those involved in the application of law at the national level understand their obligations under the full range of the various domains of international law, including Human Rights Law, International Humanitarian Law and International Refugee Law.

Coordination is also essential in order to assure that the particular roles of such institutions as the International Committee of the Red Cross and the High Commissioner for Refugees are respected and strengthened.

Action

The Secretariat should take steps to encourage the coordination of training activities for those involved in the application of the law at the national level. To this end:

- 3 *The Secretariat might encourage the High Commissioner for Human Rights, the International Committee of the Red Cross, the High Commissioner for Refugees and other relevant institutions, including NGOs, to establish a forum for coordinating their various training activities for those involved in the application of law at the national level with a view to ensuring that those training activities appropriately complement each other;*
- 3 *The Secretariat might, through appropriate channels, request UN Resident Co-ordinators and Country Teams in regions of internal tension or conflict to design joint strategies and programmes for the training of those involved in the application of law at the national level, including, where appropriate, relevant non-State actors.*

5. Education

Background

It is desirable that lawyers and administrators be aware of international law and have some familiarity with its basic concepts and methodology. While the training courses referred to under the preceding headings may increase awareness of international law among these groups, a longer term strategy is needed to ensure that international law is more widely and better known.

Issue

International law is not taught in all law schools. Where it is taught, it is usually not a “core”, or compulsory, subject of study — though the law of human rights in some form often is. The subject is generally not taught in courses in public administration or in business schools.

Action

The Secretariat, Programmes, Funds and Agencies should take steps to encourage the wider teaching of international law at universities and at other institutions of higher education, in law courses and in courses on international relations, business and public administration. To this end:

- 3 *The Secretariat, Programmes, Funds and Agencies might establish direct contact with academic institutions, providing them with relevant background materials and specialists to participate in occasional seminars and workshops;*
- 3 *The Secretariat, with the assistance of experts and relevant institutions, might devise and encourage the adoption of a framework model curriculum for such courses;*
- 3 *The Secretariat might commission, coordinate or arrange for the production of a textbook or of teaching materials for use together with that curriculum;¹⁰*
- 3 *The Secretariat might consider creating a forum on the International Law website for the exchange of ideas among educators on the better teaching of international law;*
- 3 *DPI, in consultation with OLA, might devise a campaign to raise consciousness among educators and students of the importance of international law.*

¹⁰ The latter would require a mandate and funding.

6. Informing the General Public about International Law and about Means of Recourse Against Violations of this Law

Background

The best guarantee of the application of international law is a general public which is informed about at least the most significant of the rules of international law that have been developed for their benefit. The general public should, therefore, have readily available to it the necessary information to be able to advocate and secure its proper implementation. Electronic communications are increasingly facilitating the realisation of this objective.

Issue

The UN maintains a large number of webpages containing information on treaties and other international legal matters. They may not be sufficiently interlinked and may not contain links to the sites of the specialized agencies or of other UN-system organizations. In general, they do not contain links to outside, non-UN sources.

Action

- 3 *The Secretariat, Programmes, Funds and Agencies should include on their websites treaty texts and other instruments and documents of international legal significance. This might be done, inter alia, by interlinking those sites, as well as by linking them, to the extent possible and permissible, with the sites of UN-system organizations and of relevant NGOs enjoying consultative status with ECOSOC;¹¹*
- 3 *To the extent possible, the Organization's websites should aim to provide pertinent information and assistance to those who wish to know how to take steps towards securing the rights and benefits for which international law provides or obtaining redress for violations of those rights or denial of those benefits;*
- 3 *The international law homepage on the UN Website should include ;*
 - *A new sub-site entitled "Calendar of Events" linking to UN-system conferences, meetings, workshops being organized in all parts of the world;*
 - *A new sub-site entitled "Proceedings of meetings and conferences", which would post major presentations or reports presented at conferences or meetings organized by the UN Secretariat, Programmes, Funds and Agencies;*

¹¹ This would require a short-term allocation of additional resources.

- 3 *Public information campaigns should be launched on a country-specific basis to promote awareness of specific treaties, in particular those that are the subject of the campaign described in Section 1 of this Plan;*
- 3 *Seminars and briefing sessions on specific treaties might be organized and run for the private sector, where appropriate.*

7. Encouraging Acceptance of Dispute-Resolution Mechanisms

Background

Under general international law, there is no duty upon States to refer disputes to any particular method of settlement, in particular, to settlement by a third party or body. Some treaties provide for a compulsory third-party dispute settlement mechanism. However, in many cases, States parties are only bound to accept resolution of their disputes through that method if, in addition to ratifying the treaty, they have specifically accepted the obligation to resolve their disputes in that way. In other cases, they must ratify a separate protocol in order to be so bound.

Issue

Treaty provisions of this type are often not accepted and such protocols not ratified. If disputes arise concerning the application and implementation of the treaty, States are consequently able to avoid impartial third-party evaluation of their conduct in terms of the applicable rules of international law. Those rules may then fail to be implemented.

Action

The Secretariat should initiate a sustained campaign to widen the circle of States accepting the competence of compulsory third-party dispute-settlement mechanisms. To this end:

- 3 *A limited number of these mechanisms should be identified which should be the subject of a campaign (these mechanisms should include the International Fact-Finding Commission provided for in Article 90 of the First Additional Protocol to the Geneva Conventions);*
- 3 *The campaign should be conducted along the lines outlined with regard to participation in multilateral treaties (see Section 1 of this Plan).*

8. Education of United Nations Staff

Background

If the Secretariat, Programmes, Funds and Agencies are to take effective steps to promote the better application of international law, it is essential that staff members be aware of international law and appreciate its central place in the work of the Organization.

Issue

No general programme currently exists to promote awareness and understanding of international law among staff members. Such measures are undertaken by certain Secretariat units only. Such awareness seems to be limited to staff directly involved in the application of international law in their activities.

Action

- 3 *The Secretariat should identify:*
 - *The basic level of knowledge of international law and pertinent legal instruments that is required or that is desirable for all those who work in the Organization;*
 - *The particular level of knowledge of international law and pertinent legal instruments that is required or desirable for those working in specific fields of the Organization;*
- 3 *Staff members should, at the time of their appointment, be briefed and provided with training and reference materials, ensuring that they possess the relevant level of knowledge of international law and are familiar with the pertinent legal instruments;*
- 3 *Training courses in international law should be developed and run as part of the staff development programme to ensure that staff members possess and maintain the relevant level of knowledge of international law and are kept up to date with pertinent developments in their fields. (Law schools and private law firms might be approached with a view to their providing such courses on a pro bono basis.)*

9. Advocacy for Better Implementation of International Law

Action

A) *The Secretary-General might wish to make use of his unique position to advocate the better implementation or application of international law. In order to enhance the effectiveness of this advocacy:*

- 3 *Particular attention should be drawn to the fact that there is a core group of human rights which must be respected at all times and in all circumstances and from which no derogation is permitted;*
- 3 *Whenever possible and appropriate, implementation of relevant obligations under international law should be made an issue in UN-brokered peace talks. Where feasible, mechanisms for monitoring compliance should be included in pertinent peace agreements;*
- 3 *Ensuring respect for international law, in particular for human rights and humanitarian law, should be an important element in peace-keeping operations and should, whenever possible and appropriate, be included in their mandates;*
- 3 *Where advocacy is undertaken in respect of concrete cases of non-compliance, reference should be made to the specific obligation respect for which is in question;*
- 3 *Advocacy should be undertaken in response, and with reference, to cases of actual or anticipated non-compliance, as well as in the abstract;*
- 3 *Besides Governments, target audiences should include, where relevant, non-State actors, including non-State parties to armed conflicts, and the private sector;*
- 3 *Advocacy should be consistent and should be seen to be principled and not to favour or disfavour particular States or groups of States.*

B) *In order better to coordinate the Secretary-General's initiatives with theirs, EOSG should strengthen arrangements with other offices, programmes and organizations which are involved in advocacy of this type (e.g. in the field of international humanitarian law, OHCHR, UNHCR, UNICEF and the ICRC).*

C) *Others could assist in this campaign. In particular:*

- 3 *The assistance of particular NGOs might be sought:*
- *To monitor compliance with treaties;*

- *To draw the attention of the Secretariat and of Member States to cases of (anticipated) non-compliance;*
- *To lobby Governments (and factions with de facto power) to implement their obligations under treaties;*
- *To assist affected individuals and groups in taking legal action to secure compliance;*

Example:

Useful models are provided by the cooperation that exists between NGOs and the Organization's human rights treaty bodies and the Commission on Human Rights.

- » *As a corollary, the Secretariat, Programmes, Funds and Agencies should uphold the right of NGOs, as well as of individuals, groups and associations, to take action to promote and secure the implementation of treaties;*

Note:

Relevant rights are largely set out in the recently adopted Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to General Assembly resolution 53/144 of 9 December 1998.

- » *DPI might mobilise the news media to publicise significant breakthroughs in compliance with international law;*
- » *The Secretariat, Funds, Programmes and Agencies should, wherever possible, encourage States to incorporate appropriate transparency and monitoring mechanisms into treaty texts that they are negotiating.*
