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Presentation by Ms. Patricia O'Brien
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Dear colleagues,

Let me, first of all, thank you for the invitation to address you this afternoon. This seminar provides me with a unique opportunity to inform you about the work of the Office of Legal Affairs, with a special focus on its relevance for you - our colleagues serving in United Nations peacekeeping operations in the field.

Given your responsibilities as senior managers in the field – you obviously have a particular interest in hearing about and discussing the legal aspects of peacekeeping operations and the assistance the Mission Legal Office and my Office, the Office of Legal Affairs, can render in that respect.

However, I did not just come to lecture you this afternoon. I also came to listen to you, to hear your concerns and suggestions on how we can improve and better serve you and support the important work that you are doing, oftentimes under difficult circumstances and in challenging duty stations. There will therefore be time at the end of my presentation for a dialogue on any issues you may wish to raise.

Part I: Peacekeeping operations and their legal basis

At the outset, a few words about the legal basis for United Nations peacekeeping operations would seem appropriate. Although the

term “peacekeeping” does not exist in the UN Charter, the authority for the UN’s peacekeeping operations derives from the UN’s responsibility for the maintenance of international peace and security in general (Preamble, Art. 1(1), 24 and 26 of the Charter). Peacekeeping operations were interpreted as falling between the Charter’s chapters VI (Pacific Settlement of Disputes) and VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) and were therefore often referred to as “Chapter VI ½ ” activities.

Peacekeeping operations are established by the Security Council, which holds the primary responsibility under the Charter for the maintenance of international peace and security. The Council provides the political mandate for such operations, whereas the General Assembly provides the necessary budget.

Peacekeeping, which is almost a 60-years old activity, has evolved rapidly in the last decades from a traditional military model of monitoring ceasefires and borders following inter-State wars, to incorporate complex military and civilian elements that collaborate in peacebuilding efforts in the aftermath of civil wars. Indeed, following the end of the cold war, United Nations peacekeeping has often combined with peacemaking, peacebuilding and even peace enforcement in complex operations in areas of intra-State conflict. Enforcement actions are authorized under Chapter VII of the Charter and may vary in scope and nature, and may relate to all or part of the mandate of the peacekeeping operation. Increasingly, operations with such complex and risky mandates have become the rule rather than the exception. These developments have, of course, affected the role and involvement of the Office of Legal Affairs in support of such operations.

Before I elaborate further on this point, I should say a few words about the Office of Legal Affairs and, in particular its structure and mission.

Part II: Structure and Mission of the Office of Legal Affairs

OLA structure

The Office of Legal Affairs (OLA) of the United Nations was established in 1946 by General Assembly resolution 13(I) of 13 February 1946. Like other offices and departments of the Secretariat, OLA's mandate has been further defined in successive Secretariat General's Bulletins over the years, the current one being ST/SGB/2008/13.

The Office is a centralized one, providing legal advice for the Secretary-General, for all the component parts of the Secretariat and for the organs of the United Nations. I would stress here the word "advice": Giving legal advice does not mean that OLA assumes or shares operational responsibilities for the issues it advises on: that would go beyond its mandate and capacity. Even in those instances where subsequent resolutions of the General Assembly or the Security Council dealing with specific subjects have assigned specific tasks to OLA, those tasks have, on the whole, been advisory in nature.

The Office consists of six substantive units and a coordination unit: 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 Division and the Treaty Section. My immediate Office, the Office of the Under-Secretary-General, coordinates the work of the substantive units.

OLA mission

The overall objectives of OLA 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's mission is very wide ranging, therefore, and includes the whole spectrum of public and private law issues and activities. For the purposes of this discussion, I will focus on issues that are particularly relevant to our peacekeeping colleagues in the field:

Part III: The relevance of OLA's work for Peacekeeping Operations

The Office of Legal Affairs supports peacekeeping missions in the field primarily through the provision of advice and legal support to the Headquarters Departments of Peacekeeping Operations and Field Support, as well as to other Departments at Headquarters, including the Department of Management, the Department of Safety and Security, the Department of Political Affairs, as well, of course, to the Secretary-General himself.

Consequently, my Office and the work it performs to keep your missions running smoothly may not be immediately visible to you as senior mission staff. Indeed, your immediate source of legal advice on a day-to-day basis will come from your own Mission Legal Office, whose role I will discuss a little later.

The issues that arise and on which we advise at the Headquarters level cover such matters as:

- Questions affecting the Privileges and Immunities and legal status of the Mission, its personnel and property
- The interpretation of Mission mandates
- Relations between the Mission and the host government

For instance, the Office provides advice at the Headquarters level on a day-to-day basis regarding on-going operations, including with respect to the application and enforcement of SOFA/SOMA provisions, privileges and immunities, interpretation of Security Council mandates, security and safety, conduct and discipline, and the application of international humanitarian law in respect of UN operations.

The Office also assists in the legal arrangements for the establishment of new missions, including operations conducted co-operatively between the United Nations and other international partners (e.g., in Chad and the Central African Republic, where the Security Council authorized the deployment of an international presence consisting of MINURCAT, a UN mission, and EUFOR, a European Union force, and in Darfur, where the Security Council authorized the joint UN-AU mission in Darfur - UNAMID); integrated missions (e.g. for Timor-Leste and Burundi, where the peacekeeping operation's mandate is carried out in very close coordination with the programmes of the UN Country Team – i.e. funds and programmes and specialized agencies – all under the direction of the SRSG/Head of Mission), missions where the United Nations has both an executive administration as well as a peacekeeping mandate (e.g., the mission in Kosovo), as well as the expansion and/or transition of existing missions, such as in Lebanon and Chad.. In this respect, the Office of legal Affairs prepares status of mission and status of forces agreements with governments, as well as assists with all other legal arrangements

- The accountability of Mission personnel

Thus, the Office of Legal Affairs has been heavily involved in the reform of personnel policies, and in particular with respect with respect to eliminating sexual exploitation and abuse in peacekeeping operations and ensuring accountability of members of peacekeeping operations for crimes committed in the mission area.

- The interpretation of UN regulations and rules
- The review of major procurement contracts and other agreements
- Situations giving rise to potential liability on the part of the Mission
- Legal issues relating to the Organization's internal review processes and procedures, such as Boards of Inquiry (BOI), the local property survey and claims review process.

As you may know, the Office of Legal Affairs is frequently called upon to advise on and review the application of the Organization's rules and policies, particularly as they relate to major procurement issues and other situations that could give rise to liability on the part of the Organization. In this regard, the Office of Legal Affairs also participates in a number of standing review boards and committees at the Headquarters level, e.g. the Headquarters Committee on Contracts, the Headquarters Property Survey Board and the Claims Review Board.

As you can see, the nature of the work is extremely varied, and often raises novel legal questions, particularly given the ever increasing size and complexity of peacekeeping operations.

In addition, the Office of Legal Affairs is also deeply engaged in other developments that have a direct impact on the activities of peacekeeping operations, such as the work of the International Criminal Court in particular with respect to Darfur and the DRC.

In this connection, the Office of Legal Affairs has provided advice to DPKO on issues, such as the implementation of the “Relationship Agreement between the United Nations and the International Criminal Court”; the handling of requests addressed to DPKO for assistance from the ICC Prosecutor; advising peacekeeping missions on cooperation matters; negotiating and implementing memoranda of understanding; and advising and assisting peacekeeping personnel interviewed by or testifying before the Court. As the work of the ICC continues to expand, we expect to see a corresponding increase in such requests for advice from DPKO and individual peacekeeping missions.

The Office of Legal Affairs also assists DPKO’s interaction with the ICTY, ICTR and Special Court for Sierra Leone with respect to requests for documents, and information from former members, of UNPROFOR, UNAMIR and UNAMSIL.

Part IV: Role and Function of the Field Legal Office

Let me now turn to the role and function of the Field Legal Office in peacekeeping operations

The Field Legal Office provides the centralized legal service for the Mission covering all aspects of the Mission’s activities, during all stages of the Mission’s life. In this connection, I wish to emphasize how important it is that the Mission plans and implements its activities in a manner that is consistent with the legal parameters of its mandate, the laws of the host country and in accordance with applicable international legal norms. Ensuring the legality of its actions brings legitimacy to a Mission’s operations. Your Mission Legal Adviser is therefore an important player in the success of your Missions.

Headed by the Mission's Legal Adviser, the Field Legal Office is one of the substantive Offices reporting directly to the Head of Mission and depending on the size and complexity of the Mission, the Field Legal Office may be staffed by several Field Legal Officers specialized in various substantive areas such as public international law or administrative support issues. In some cases, Mission Legal Officers may even be out-posted to other Offices such as the Administration. Nevertheless, the Mission's Legal Adviser coordinates all legal advice to ensure the quality and consistency of the advice given and that all components of the Mission (e.g. both substantive and support) are adequately serviced.

In more complex missions, some substantive offices have their own legal components, e.g. Human Rights/Rule of Law/Elections. These substantive offices report directly to the Head of Mission and their legal components are not supervised by the Mission's Legal Adviser. Nevertheless, the Mission's Legal Adviser, as a member of the Senior Management Team, has the responsibility for ensuring that all programme delivery operates within the overall legal framework of the Mission.

The Field Legal Office has often been said to have two main roles:

A proactive/forward-looking role: Where the Field Legal Office is called upon to help put in place arrangements that will make it possible for certain activities to take place to ensure that those activities are carried out within the applicable legal rules.

And a reactive role: Where the Field Legal Office is called in to address problems and crises, as and when they arise, in order to help solve them or to try to limit possible damage.

In its role as the central source of legal advice to the Head of Mission, therefore, the Field Legal Office

- is a useful resource in policy development and Mission management.
- provides valuable preemptive input which avoids crisis development.
- utilized at early stages in decision making the Field Legal Office will enhance the quality of the Mission's programme delivery.

Accordingly, in order to ensure that the maximum benefit is obtained from the Field Legal Office, I would recommend that the following elements be put into place:

- The Mission's Legal Adviser should have a direct reporting line to the Head of Mission. This ensures both the independence of advice from other mission components and operational independence from UN Headquarters on day to day legal matters.
- The Mission's Legal Adviser should be part of the Senior Management Team. In that way, the Field Legal Office will be aware of issues as they arise and can ensure that the advice given is both well informed and proactive. For legal advice to be effective, involving the Legal Office at an early stage is vital.
- The grade levels of Mission Legal Advisers should reflect their participation in the Senior Management Team. This will ensure parity of advice with the Heads of other substantive offices.

Examples of issues that require coordination with the Field Legal Office

I would now like to turn to some examples of issues and situations that require coordination with the Mission Legal Office.

Given the huge volume and complexity of issues that can arise, it is impossible to give a definitive list of issues on which the Mission Legal Office should be consulted. However, the following issues are usually handled by or handled in consultation with the Mission Legal Office:

- Questions affecting the Privileges and Immunities of the Mission and its personnel e.g.
 - (i) Relations and agreements with Host Country
 - (ii) Compliance with SOFA obligations, e.g. freedom of movement, exemption from taxation, jurisdictional immunity of Mission personnel.
 - (iii) Conduct and discipline issues.
- Implementation and interpretation of the Mission mandate
 - (i) Questions involving mandate generally
 - (ii) Rules of engagement (RoE)
- Situations giving rise to potential liability on the part of the Mission
 - (i) Third party claims,
 - (ii) Commercial contract disputes
- Interpretation of UN rules and regulations
- Review of procurement contracts and other agreements
- Legal input to the Board of Inquiry (BOI) process
- Participation as members of Mission standing review boards, including the Local Committee on Contracts, the Local Claims Review Board (LCRB) and the Local Property Survey Board (LPSB).

I should also mention that while the Field Legal Adviser has the full latitude to provide legal advice to the head of Mission and the mission as a whole, care should be taken to ensure that matters that do not fall within the delegated authority of the mission should be

referred to UN Headquarters and may in turn be forwarded by the substantive Headquarters Department to OLA for advice. This is obviously the case, for example, with regard to contracts that exceed the threshold amounts delegated to the field. It is also the case with regard to certain types of issues which involve legal principles that have implications beyond the particular mission, such as, for example, a decision to waive immunity of the UN/mission or of its official, which is vested in the Secretary-General and is exercised based on a determination by OLA. Similarly, ST/SGB/2001/7 requires that drafts of treaties and international agreements to be entered into by the United Nations be submitted to OLA for review and comment before finalization. Thus any international agreements contemplated in the field may not be finalized without referral to OLA.

Conclusion

This brings me to the end of my presentation. Allow me to perhaps mention one final issue: the network of Field Legal Officers which we have established last year. In addition to the two networks of Legal Advisers that OLA coordinates – namely the network of Legal Advisers of Offices, Funds and Programmes and the network of Legal Advisers to the Specialized and Related Agencies – OLA has led the creation of a network of Field Legal Advisers. As with the other two networks, the purpose of the Field Legal Advisers' network is to facilitate contacts, exchange of information, best practices and networking between Field Legal Offices, thereby facilitating a common approach to similar issues. In 2008, we had a first meeting of the network and we are planning to continue this practice.

In this connection, I very much hope that you as senior mission officials will facilitate the participation of your respective Legal Advisers and their staff in these meetings.

Thank you very much for your attention. I would now like to hear your comments, thoughts or questions.