

Keynote address

Opening of the New York International Arbitration Center (NYIAC)

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Ladies and Gentlemen,

It is a pleasure to be here today on the occasion of the opening of the New York International Arbitration Center. I would first like to thank Judge Kaye and the NYIAC Board of Directors for this invitation and for the honour to address this distinguished audience of arbitration practitioners.

The opening of an international arbitration center in New York comes at an important moment in the evolution of arbitration. At a time of significant change and tension in the world: a time requiring decisive action to foster peace and to diminish conflict; a time when the forces of dissension have gained ground in some regions of the world; such forces must be countered by models of peaceful resolution of disputes at all levels. Many of the disputes created by these conflicts require a wider range of more sophisticated mechanisms for their peaceful resolution.

The peaceful resolution of international disputes lies at the heart of the UN's agenda. As provided for in Article 1 of the UN Charter, one of the fundamental purposes of the United Nations is to bring about the settlement of international disputes by peaceful means and in conformity with the principles of justice and international law.

International arbitration, as a peaceful and reliable mechanism of resolving disputes, should be supported and promoted for its proven record in assisting to achieve that purpose and it should be commended for doing so. For that reason, the opening of a new international arbitration center, here in NY, should be celebrated as a step forward in the consolidation of the necessary institutions devoted to the peaceful resolution of disputes worldwide.

International arbitration provides the opportunity for businesses and commercial enterprises to resolve their disputes, across borders, around the world. In the investment context and often in the purely commercial context, it depoliticizes disputes and it assures neutrality in adjudicating disputes. International arbitration is perceived as economical, speedy, and flexible. Moreover, it offers the parties a considerable degree of control over the applicable procedures and ensures that awards are easily enforceable abroad, enhancing their effectiveness and legitimacy.

International arbitration enables parties in dispute to achieve recognition and enforcement of their property rights and binding commitments. These essential ingredients form the basis for any commercial activity.

But international arbitration has proved to also assist in the consolidation of the larger structure of the international rule of law. Instruments such as the 1958 New York Convention, the 1985 Model Law on International Commercial Arbitration, amended and updated in 2006, and the 1976 UNCITRAL Arbitration Rules have contributed decisively to the development and promotion of international standards in the field of international arbitration. These are standards that are a reflection of basic principles of fairness, accountability and transparency, principles which lie at the heart of the rule of law.

I would like to briefly address the issue of rule of law at the international level.

The rule of law plays a central role in the UN's agenda. It is at the heart of our mission and is a concept that my office works hard to promote and achieve, as a principle embedded in the UN Charter, and as a key to avoiding conflict and achieving sustainable peace.

As the Legal Counsel of the United Nations, I am charged with the task (and the honour frankly) of promoting and strengthening the rule of law, at the national and international levels, and to

support the Secretary-General's efforts in the pursuit of justice and the ending of impunity for war crimes, crimes against humanity, genocide and other serious violations of international law. It is my mission to help the UN to act in accordance with the rule of law. My Office plays an instrumental role within the UN in helping with the concrete and practical application of the rule of law.

In September last year, the first meeting of Heads of State and Government on the rule of law at the national and international levels was held in New York on the sidelines of the 67th session of the General Assembly. I participated in this historic meeting where the Heads of States and Government of the 193 Member States, reaffirmed their commitment to international law and justice, to an international order based on the rule of law, which are indispensable foundations to a more peaceful, prosperous and just world.

The draft declaration adopted at that meeting not only reaffirmed the Member States' commitment to the rule of law but recognized that the respect for and promotion of the rule of law should guide all of their activities and accord predictability and legitimacy to their actions. The draft declaration also recognized that all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws, and are entitled without any discrimination to equal protection of the law.

Most importantly, in the context of tonight's event, the draft declaration also recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship.

We can have no doubt that private international law has a critical role to play in establishing and reinforcing such legal order. Indeed, the legal certainty required for promoting entrepreneurship, investment and job creation is fundamental to the rule of law. Therefore, efforts towards international recognition and enforcement of property rights and contracts through reliable mechanisms of dispute resolution, such as arbitration, are significant steps in the establishment of this certainty.

Similarly, we should of course be mindful of the relevance of national laws. Whilst the resolution of international disputes provides a framework for the development of international best practice that may be incorporated domestically, a sound basis in national law and practice for the resolution of disputes equally promotes a strong and durable judicial infrastructure. A solid judiciary is indispensable for the good functioning of arbitration and of the rule of law in general.

As was put by the then Secretary-General, in his report of 2005 entitled "In Larger Freedom":

“Every nation that proclaims the rule of law at home must respect it abroad and every nation that insists on it abroad must enforce it at home.”

And this brings me back “home” to NY, where a new international arbitration center is opening its doors and has given us the opportunity to gather here today.

New York has traditionally been at the forefront of international arbitration. Together with Paris, London and Geneva it has been consistently ranked as one of the most important arbitration hubs in the world. New York’s appeal in this respect is due to a combination of factors: (i) it has a well-developed and predictable legal framework that embodies a policy in favor of international arbitration; (ii) it offers a network of courts experienced in complex commercial disputes; and (iii) it is one of the financial and commercial capitals of the world. New York offers a wide array of international arbitration resources, including a vast pool of arbitrators, lawyers, experts and arbitral institutions. The addition of the New York International Arbitration Center to such resources will certainly bolster these salient features that make New York one of the leading arbitration forums in the world.

Recent surveys relating to arbitration fora and preferred seats of arbitration consistently suggest –interestingly for me – that a stable and predictable legal framework, based on internationally acceptable rules and standards, features at the heart of what generally drives decisions as to the seat of the arbitration. Not

surprisingly, parties want to have arbitrations to take place in places where the rule of law is ensured and protected.

In spite of the tensions to which I made reference earlier in my speech, I am glad to report that the rule of law is a principle that has gained universal acceptance, and it has been universally embraced, as a concept, by business parties and governments alike. This is due to the efforts of people like you in this audience to work on building institutions and legal structures that would secure and promote the rule of law. Opening a new center, such as the NYIAC, to assist parties in resolving disputes through peaceful means should be commended and welcome.

In the course of my years as the Legal Counsel of the United Nations, it has become clear to me that institution building plays a vital role in establishing and reinforcing the rule of law at all levels in the world legal order. The activities of the United Nations show this on a daily basis.

To take one example; in recent years, considerable efforts have been devoted to building the rule of law in the wake of armed conflicts in many parts of the world. Increasingly, international and domestic actors have come to appreciate that the long-term solutions to security and humanitarian problems depend on building fair and independent legal institutions which will help strengthen the rule of law. The work of the various international justice mechanisms, which we assist and support, is a testimony to such trend.

The ICTY, ICTR, SCSL and ECCC have reaffirmed, and continue to reaffirm, the central principle established long ago in Nuremberg: that those who commit, or authorize the commission of, war crimes and other serious violations of international humanitarian law are individually accountable for their crimes and will be brought to justice, in accordance with the due process of law. These institutions have made a valuable contribution to the rule of law at the international level, including through the development of an impressive body of jurisprudence. But they have also had an impact at the local level. They have acted as a catalyst for the reinforcement of the rule of law in their respective regions. In a similar fashion, arbitration has contributed also to the consolidation of the rule of law at the local level.

And of course, the ICC as the centrepiece of the system of international criminal justice and as the only permanent international criminal court, is at the heart of the international community's efforts to ensure accountability and end impunity while also seeking to strengthen the rule of law. As a justice mechanism based on the concept of complementarity, the ICC exercises jurisdiction in cases where the State concerned is unable or unwilling to investigate or prosecute the crimes. This idea of complementarity has heavily contributed to the success of the ICC. To a certain extent, complementarity is also key for the success of arbitration. As I said earlier, the courts are indispensable for the good functioning of arbitration and of the rule of law in general.

Let me conclude by reiterating the importance of institution building. Experience shows that widely accessible forums for resolving disputes are instrumental in building the rule of law and ensuring stability and justice. Thus, the NYIAC, as a new center that will offer services and infrastructure in aid of the settlement of international disputes, is certainly a very positive development. I am confident that the Center's dispute resolution services and facilities will enhance New York's position at the forefront of international arbitration worldwide. I certainly hope that the New York International Arbitration Center will contribute to a culture of peaceful resolution of disputes more broadly and to help ensure the ultimate success of our common effort in enhancing the rule of law worldwide.

Thank you very much.