

**American Bar Association – Day at the United Nations
Tuesday, 3 March 2009, 9.30am,
Conference Room E**

**Statement by Ms. Patricia O’Brien
Under-Secretary-General for Legal Affairs, The Legal Counsel**

(Introduction)

President Wells,
Ladies and Gentlemen,

1. Good morning and welcome to UN Headquarters for your annual “Day at the United Nations”. Over the years, this event has become a well-established tradition between the American Bar Association and the Office of Legal Affairs. I greatly appreciate your interest in the work of my Office and in the United Nations in general. The American Bar Association has always been a steadfast supporter of the United Nations. We are very much aware of this and grateful for your support and it is a great pleasure for me to address you for the first time since I took up office as Legal Counsel in August of last year.

(My background)

2. Before becoming Legal Counsel of the UN, and since 2003, I have served as Legal Adviser to the Department of Foreign Affairs of Ireland. In this capacity, I have advised on legal issues arising in Irish foreign policy, in particular public international law, human rights law and EU law. And prior to this, I have served as a Senior Legal Adviser to the Irish Attorney General and as Legal Counsellor at the Irish Permanent Representation to the European Union, in Brussels.

3. At the outset, let me briefly outline the programme that we have put together for you. After my briefing on current issues which the Office of Legal Affairs is dealing with, Mr. Douglas Gardner will provide you with an overview of the challenges the Bureau of Development Policy of the United Nations Programme for Development (UNDP) is facing.

4. At 10.30, Mr. Kiyoo Akasaka, the Under-Secretary-General for Communications and Public Information, will brief you on the work of his Department. At 11.30, USG Alain LeRoy will brief you on Peacekeeping.

5. After that, ASG Bob Orr will brief you on the work of the Secretary-General's Policy Committee and at 12.30 the Deputy-Secretary-General, Ms. Asha-Rose Migiro, will brief you on the work of the United Nations with regard to strengthening the rule of law. And finally, the head of the Delegation of the European Commission to the UN, Mr. Valenzuela, will address you at lunch.

6. I will try to attend as much as possible but you will certainly understand that I have some other commitments this morning. When I am absent, Ms. Maria Vicien-Milburn, the Director of my General Legal Division, whom most of you will know, will replace me in chairing the meeting.

7. That said, let me now brief you on some current issues the Office of Legal Affairs is dealing with. In light of the limited time available, I will focus on the following topics:

- Our efforts to advance the new concept of the “responsibility to protect”;
- Our assistance to the International Court of Justice with respect to the Kosovo advisory opinion;
- Our work to encourage the teaching, study, dissemination and wider appreciation of international law using the example of the recently launched audio-visual library; and our efforts to promote the rule of law;
- An update on our cooperation with the International Criminal Court; and
- The opening of the Special Tribunal for Lebanon.

(R2P)

8. Let me start with our efforts regarding the concept of the “responsibility to protect”.

9. As you may know, the Office of Legal Affairs has been engaged in the preparation of the Secretary-General's Report of 12 January 2009 on "Implementing the responsibility to protect". The Report was prepared in response to the 2005 World Summit Outcome at which the Heads of State and Government unanimously affirmed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity".
10. The Report underscores the need to develop a UN strategy, standards, processes, tools and practices to implement the responsibility to protect. This represents the UN's vision of how it can best encourage States to live up to their duty to protect their populations, and discourage States or groups of States from misusing the responsibility to protect for inappropriate purposes. The report emphasises, for example, that the responsibility to protect does not provide any additional basis for the use of force under international law. On the contrary, it reinforces the prohibition of the use of force, and the limited exceptions to that prohibition, set out in the UN Charter [self-defence, and authorisation by the Security Council].
11. The Report outlines three pillars for advancing the World Summit's agenda: Pillar One on the responsibility of States to protect their own population; Pillar Two on "International assistance and capacity-building" to assist States to protect their population; and Pillar Three on a "Timely and decisive response" where States are not able or willing to protect their population.
12. The strategy set out in the Report stresses the value of prevention and, when it fails, of early and flexible response tailored to the specific circumstances of each case.
13. I would refer this group in particular to the four explicit references to the rule of law in the Secretary-General's Report. This topic will be addressed by the DSG later in the morning. Under the first pillar on the "protection responsibilities of the State", the Report addresses the need for States to become parties to relevant international instruments on human rights, international humanitarian law and refugee law, and the Rome Statute of the International Criminal Court. These core international standards need to be faithfully embodied in national legislation.

14. The Report notes that, as part of an overall effort to strengthen the rule of law, individuals in different segments of society need to be afforded equal access to justice and to judicial redress for violations of their fundamental rights. The presence of a strong culture of rule of law in a society may, after all, prevent or minimize the risk of that society's deterioration into an "RtoP" situation.

15. The Report, in its discussion of the second pillar on "international assistance and capacity-building", stresses the need for assistance programmes that are carefully targeted to build specific capacities within societies that would make them less likely to travel the path to crimes relating to the responsibility to protect. It suggests that the elements of what is commonly accepted as good governance tend to serve objectives relating to the responsibility to protect as well. The Report provides a list of such elements, including the rule of law, a competent and independent judiciary, human rights, and security sector reform.

16. The third and fourth references to the rule of law occur in paragraph 47 of the Report, which states that: "[t]he rule of law is fundamental to preventing the perpetration of crimes relating to the responsibility to protect. The United Nations system, including through the engagement of donor countries, should increase the rule of law assistance it offers to Member States". This confirms that our goal is not to add a new layer of bureaucracy, or to re-label existing United Nations programmes; it is to incorporate the responsibility to protect as a perspective into ongoing efforts, including those on the promotion of the rule of law.

17. The Secretariat looks forward to the Member States' views in response to the Secretary-General's January Report. As the United Nations moves forward with the implementation of the responsibility to protect, the Office of Legal Affairs will ensure that the rule of law is at the heart of the considerations.

(Assisting the ICJ with regard to the Kosovo Advisory Opinion)

18. Let me now turn to the assistance we are extending to the International Court of Justice with regard to the Kosovo Advisory Opinion.

19. You will recall that on 8 October 2008, the General Assembly adopted resolution 63/3 requesting the International Court of Justice to provide an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”

20. Pursuant to the Order of the Court of 17 October 2008 and Article 65(2) of the Statute of the Court, my Office finalized the so-called “Dossier” for the Court with documents “likely to throw light upon the question” posed to the Court. In doing so, my staff reviewed relevant documents from March 1998 to the present. The Dossier consists of approximately 2,900 pages and has been submitted to the Court in both English and French.

21. We have also prepared an Introductory Note to the Dossier, which explains its structure and content and lists the documents in chronological order.

22. In considering the scope of the Dossier and the selection of documents for inclusion, we have been guided by the Organization’s “status neutral” position and the need to provide the Court with a comprehensive but relevant collection of material. Some sections of the Note are prefaced by an explanation of the selection of documents included in that section. In doing so, we have refrained from providing any legal analysis, and, in describing the documents, have sought to use language that would not imply any value judgment.

23. We have now submitted the Dossier to the Court in line with the established time-periods. I expect this information will be made available by the Court on its website. In its order, the Court has fixed 17 April as the time-limit within which written statements on the question may be presented to the Court and 17 July as the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements.

(Audiovisual Library of International Law)

24. Let me now turn briefly to our work to encourage the teaching, study,

dissemination and wider appreciation of international law using the example of the Audiovisual Library of International Law which was launched in late October 2008 and which can be accessed on the United Nations website.

25. I wish to encourage you to help us advertise this new and powerful tool that the Office of Legal Affairs has developed to support studies of international law.

26. The Audiovisual Library is a unique, multimedia resource which provides the United Nations with the unprecedented capacity to provide high quality international law training and research materials to an unlimited number of recipients on a global level.

27. As you know, the United Nations Decade of International Law from 1990 to 1999 led to the development of an Action Plan for an Era of Application of International Law. Elements of this plan include:

- Firstly, the training of judges, practicing lawyers and others who are involved in the application of the law, and
- Secondly, the educating and informing of the general public about international law and about means of recourse against violations of this law.

28. Over the years, my predecessors have made great strides in assisting universities, in particular in the developing world, in elaborating suitable curricula for courses in international law and in identifying relevant teaching materials.

29. To give you a brief overview, the Library consists of three elements:
(1) the Historic Archives;
(2) the Lecture Series; and
(3) the Research Library.

30. The Audiovisual Library is available to all individuals and institutions around the world for free via the Internet. We are actually quite excited and proud of this new tool. If I might quote Judge Owada “one should not underestimate the importance of this evolution but it goes even beyond national and regional courts: international law has now become part of our everyday lives such that to be ignorant of its basic principles undermines the empowerment of every citizen of the world community. We may all benefit from what one may describe as the ‘personalization’ of international law, in

which more and more rights are vested directly in the individual. So everyone should have access to the tools enabling him or her to understand international law, invoke it, and contribute to its development, for it is a salient part of the ‘common heritage of mankind’.”

31. This, I would suggest to you, is the extraordinary added value which this new tool promises.

(UN-ICC cooperation)

32. The creation of the International Criminal Court represents one of the major achievements in international law during the past century. Since the entry into force of the Rome Statute in July 2002, the Court has completed an important transition from the set-up phase to the commencement of its judicial functions to put an end to impunity for the perpetrators of the most heinous crimes of concern to the international community as a whole.

33. The United Nations cooperates with the International Criminal Court on the basis of a Relationship Agreement. Ever since, UN-ICC cooperation has expanded steadily to the point that by now, our two independent institutions fully complement each other’s work.

34. The Office of the Prosecutor has decided to open a formal investigation into the situation in the Central African Republic, where there are in particular many allegations of rape and other acts of sexual violence against women. The arrest and surrender to the seat of the Court at The Hague of Jean-Pierre Bemba Gombo by Belgian law enforcement authorities on 3 July 2008 has been a major success of the Court. Mr. Bemba is since awaiting his trial.

35. In the situation in the Democratic Republic of the Congo, where the Court relies heavily on cooperation from the United Nations, former Ituri warlords Germain Katanga and Mathieu Chui have been surrendered to the Court and the arrest warrant against Bosco Ntaganda has been unsealed. Katanga and Chui are currently awaiting their trials. On 26 January 2009, the Prosecutor’s case against Thomas Lubanga entered the trial phase. This trial is the first in the history of the International Criminal Court and has been widely hailed as an historic event.

36. This trial would not have been possible without the steadfast and unwavering support of the United Nations.

37. With regard to the situation in Darfur, Pre-Trial Chamber I of the Court will hand down its decision on whether to issue an arrest warrant against President Al-Bashir of Sudan tomorrow. As you will understand, I do not wish to comment on this sensitive matter.

38. There has been a lot of development with regard to the situation in Northern Uganda, which the Prosecutor formally investigates at the request of the Government of Uganda. Within the framework of the so-called “Juba Peace Process”, the Lord’s Resistance Army (LRA) and the Government of Uganda have concluded a series of agreements with a view to ending an over 20-years old conflict that has devastated the northern parts of Uganda and affected many neighbouring countries. Although it is true that the fact that LRA leader Joseph Kony did not sign the framework “Final Peace Agreement” as scheduled must be seen as a setback to the peace process, this does not mean that the Juba process has failed. After an inconclusive military campaign mounted by the armed forces of Uganda, the DRC and Southern Sudan, that cost the lives of hundreds of civilians diplomacy is back to take centre stage. In the case of Northern Uganda a solution must be found where both the desire for a sustainable peace and the duty to pursue justice can be satisfied.

39. In addition to the Court’s activities in those four situations, the Prosecutor has publicly indicated that he is monitoring the situation in two other countries, Colombia and Afghanistan.

40. The International Criminal Court has emerged as the centrepiece of our international system of criminal justice. It will advance on its purely judicial mission. And the United Nations will accompany and support it on this mission.

(Special Tribunal for Lebanon)

41. And finally, allow me to say a few words about the Special Tribunal for Lebanon, which commenced its functioning two days ago, on 1 March 2009.

42. The establishment of the Special Tribunal for Lebanon is a landmark event in the international community's common goal of ending impunity in Lebanon for the terrible crimes that tragically took the life of the former Lebanese Prime Minister Rafiq Hariri and others in the attack of 14 February 2005, and related attacks.

43. The Special Tribunal is a joint endeavor between the Government of Lebanon and the United Nations. We have been working tirelessly over the last two years to establish a tribunal of international character based on the highest international standards of criminal justice, pursuant to Security Council resolution 1757 of 30 May 2007 and the Agreement between the Government of Lebanon and the United Nations annexed thereto.

44. The Special Tribunal for Lebanon is distinguished from other international criminal tribunals established or assisted by the United Nations in three respects: (a) in the conduct of the trial process, more elements of civil law are evident than of common law; (b) the International Independent Investigation Commission has constituted the core nascent Prosecutor's office; and c) the Defence Office is established as a separate organ of the Tribunal.

45. Within its jurisdiction, the Special Tribunal will have primacy over the national courts of Lebanon. The relevant Lebanese criminal law and international criminal law standards will apply to all indictees regardless of their nationality.

46. The Tribunal will be an independent and impartial institution. The main goal of the Tribunal is to try those responsible for the attacks because the international community believes that justice is needed for lasting peace.

47. The Tribunal is to be funded by voluntary contributions by Member States of the United Nations, of which 49% shall be provided by Lebanon. A Management Committee composed of interested states and main donors has been established to assist the Registrar in obtaining adequate funding and to provide the Tribunal with policy direction and advice on all administrative aspects of its operations, including questions of efficiency.

The Management Committee will not have any judicial competence or any role in the judicial activities of the Tribunal.

48. The appointment of the Judges, Prosecutor, Deputy Prosecutor, Registrar and the selection of the Head of the Defence Office has been completed. As regards the Judges, four Lebanese Judges and seven international Judges have been appointed by the Secretary-General to serve in the Trial and Appeals Chambers, as Pre-Trial Judge and alternate Judges.

49. A key element for the success of the Special Tribunal is not only that justice be done, but also that “justice must be seen to be done”. As the Special Tribunal’s seat is located outside Lebanon, the development of an effective and comprehensive outreach programme bringing the activities of the Special Tribunal closer to the population of Lebanon and the wider region is a priority.

50. The creation of the Special Tribunal has already attracted significant interest in both Lebanon and the international community. This interest will only increase now that the Tribunal is operational. The Lebanese people will be kept informed, as appropriate, and will have access to accurate information on the role, activities and proceedings before the Special Tribunal. It is critical that the people of Lebanon see that this Tribunal is an independent and impartial institution. Its establishment constitutes a strong signal that such assassinations and other terrorist acts will not be tolerated and that impunity cannot be allowed to persist.

51. The United Nations will continue its endeavors to ensure that the Tribunal will be able to achieve its mandate in the most effective manner. The cooperation of all Member States will remain crucial in this regard.

(Conclusion)

Ladies and Gentlemen,

52. Due to time constraints I have to leave it at that. Let me thank you once again for coming to the United Nations today and for your support for my Office and for the United Nations.

Thank you.