UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA
NEW YORK, N.Y. 10017-3505

Statement of the United States of America
71st General Assembly Sixth Committee
Agenda Item 84: Rule of Law
Statement by Stephen Townley, Counsellor
October 5, 2016

Thank you Mr. Chairman. We also thank the Secretary General for his report on the UN's activities. We would like to thank the rule of law unit in particular, and the various Missions and partners that have joined them, for organizing informative briefings on particular rule of law topics throughout the year.

We take note with interest of the information provided on the Secretariat's review of the regulations giving effect to Article 102 of the UN Charter and on recent developments in and practices in the discharge of the Secretary General's function as depositary of multilateral treaties. In this regard, we welcome the steps the Secretary General has taken to use new technologies to increase the efficiency of the UN's work on treaty matters and to expand access to information. On the question of potential changes to regulations giving effect to Article 102 of the Charter, we believe this Committee should focus its attention on proposals that could further contribute to efficiency, particularly through the effective use of information technology, and make the most productive use of available resources. This said, we believe consideration of any such changes should proceed cautiously, and that the Committee should take careful account of the views of the Secretariat with regard to any implementation issues or challenges that might be posed by particular proposals. We also very much support the UN's work, described in this report, to advance transitional justice.

We are also pleased to discuss our two topics this year: national practices of states in the implementation of multilateral treaties and practical measures to facilitate access to justice for all, including the poorest and most vulnerable.

With respect to national practices of states in the implementation of multilateral treaties, I would like to offer thoughts on how the United States approaches implementation of multilateral treaties. Implementation is a critical focus for the United States beginning at the earliest stages of treaty negotiation. Before the United States begins negotiations on a treaty, it gives careful consideration to what obligations the treaty is likely to contain, and how the United States would give effect to them. The United States follows a formal process, coordinated by the Department of State, designed to ensure that all agencies that will be responsible for implementing the agreement understand what it will provide for and what actions they will be called upon to take to give it effect. Such early engagement also gives relevant agencies early visibility into, and a stake in, the project, and a role in developing the U.S. position during the negotiation, so that the instrument itself is clear, and more readily susceptible of national implementation.

An important part of the U.S. review process is a legal analysis of the agreement, which identifies the laws and authorities that the United States will rely on to implement the agreement, and confirms that these will be sufficient to allow the United States to meet all the obligations it will assume. If authority is lacking to allow implementation of any obligations, such gaps are identified and plans are developed to secure the additional authority needed to allow the United States to implement the obligations before the United States becomes a party to the treaty, which in some cases will require enactment of new laws by the U.S. Congress. This analysis is repeated after negotiations are completed to confirm that the United States will be able to implement the agreement in its final form, including any provisions that may have been added or changed during the course of the negotiations. This process is designed to ensure that the United States will be able to meet its obligations under a treaty from the moment it becomes a party, in accordance with the principle of pacta sunt servanda.

As a federal system, U.S. implementation of some treaties may involve actions by state and local officials. Where this is the case, the federal government makes efforts to coordinate with such officials on implementation issues both during the negotiation of treaties and after the United States has become a party. This has included, for example, participation by state and local officials as part of U.S. delegations that appear before human rights treaty bodies to make periodic reports on U.S. implementation of such instruments. In addition, the United States seeks to engage relevant private sector and civil society stakeholders at appropriate points both before and after the conclusion of treaties to benefit from their perspectives on how treaties might be most effectively crafted and implemented.

We welcome the opportunity to discuss these important issues and are interested in hearing more about how other states approach treaty implementation and promote their compliance with treaty obligations.

Turning now to our second topic this year – one in which the United States is keenly interested -- I'd like to focus first on legal aid – both civil and criminal. Last year, President Obama signed a presidential memorandum establishing the White House Legal Aid Interagency Roundtable (WH-LAIR) with a mandate to integrate civil legal aid into a wide array of Federal programs, policies, and initiatives where doing so can improve their effectiveness and enhance justice in our communities. In doing so, federal programs designed to improve access to housing, health care services, employment and education, and enhance family stability and public safety are strengthened and objectives better met. To give examples: a 2014 study from the University of California's Berkeley School of Law indicates that legal interventions, such as expungement of a criminal record, stems the decline in earnings and may even boost the earnings of individuals reentering society; and legal aid can improve patient health by, for example, addressing substandard housing conditions such as mold or rodent or insect infestations that increase use of costly emergency room visits for asthma attacks. In fact, legal aid can *reduce* cost to governments, for instance by reducing the time children may have to spend in foster care, or driving down healthcare costs.

And, while recognizing the resource constraints we face, and recognizing just how much work we have to do in a country where one in five Americans qualifies for legal aid but more than half of those seeking it are turned away because of a lack of funds, we have taken action.

For instance, our Department of Health and Human Services has clarified that community health centers can provide health-related legal aid. Subsequently, a number of community health centers across the country received supplemental funding to establish partnerships between the medical and legal communities.

Moreover, some of our programs are specially designed to meet the needs of particular populations, such as indigenous communities. For instance, there are federally-funded legal aid programs that work in Indian Country to provide specialized legal services for our indigenous communities.

On the criminal side, we welcome the recent adoption by the United Nations Commission on Crime Prevention and Criminal Justice of a resolution sponsored by the United States to promote access to criminal legal aid. This resolution helped translate Sustainable Development Goal 16 into new resources and tools for national experts, including by supporting the concept of a new global network for legal aid practitioners. We look forward to participating in the second international criminal legal aid conference, taking place in Buenos Aires in November 2016, which follows on the first conference in South Africa in 2014. We understand that at that conference, a global network for defenders as contemplated in the resolution will be further developed. At the national level, efforts are underway to strengthen the right to criminal legal aid at all levels of government – and later this month the U.S. Department of Justice will host the second Right to Counsel Consortium, which will solicit recommendations to improve implementation of this right at the federal, state, and local levels.

The last thing I would like to highlight is one element of the recent CCPCJ resolution – and one that is also at the root of our discussion today: the need to share best practices and exchange views. Such exchanges permit critical peer-to-peer learning. We must accelerate such efforts.

But related to exchanges of practice, we need to better understand what works, and what doesn't. And that brings me to another key aspect of this discussion: measurement. Measurement is not some abstruse political yardstick. It's a tool for improvement. We need granular information to understand vulnerabilities in our system. Just last month, at a high-level event on Goal 16, our Department of Justice announced the United States' commitment to identifying national indicators for Target 16.3 of the SDGs through a working group comprised of over 20 federal agencies. And we know that the government can't identify criminal and civil access to justice indicators alone. In September, the federal working group participated in a civil society consultation with over 30 experts on access to justice from across the country. Measuring justice is difficult, but essential, because access to justice is the foundation for more inclusive societies.

Only once we learn the lessons of our experience, once we know what it is that we need to work harder to change, and also what bright spots we deserve the spotlight, will we be well positioned to improve what we do to facilitate access to justice for all.

Thank you.