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Statement of the United States of America
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Rule of Law
Agenda Item 85
Statement by Stephen Townley, Counsellor
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Thank you, Mr. Chairman. We welcome this opportunity once again to address the rule of law at the national and international levels.

Before turning to our particular topic this year, I would note that, in line with resolution 69/123, the United States submitted information to the Rule of Law Unit on its practices with regard to promoting civil legal aid. As we explained last year, civil legal aid can play a hugely important role in improving outcomes for some of the most vulnerable. For example, in housing cases, a randomized control trial in the U.S. found that 51% of tenants in eviction proceedings without lawyers lost their homes, while only 21% of tenants with lawyers lost possession. Likewise, the research of two economists indicates that the only public service that reduces domestic abuse in the long term is women's access to legal assistance. Most recently, on September 24, the President signed a directive (called a Presidential Memorandum) permanently creating the legal aid interagency roundtable, to foster work within the U.S. government – across 20 federal agencies – on legal aid. We hope that civil legal aid can be further discussed in the context of this agenda item.

We have also updated the Rule of Law Unit on our progress in implementing one of our key pledges from the 2012 high-level meeting on the rule of law, regarding violence against women. We hope others will do the same, to foster a robust discussion and permit us to learn from one another. To give just one example from our update on U.S. activities, certain jurisdictions within the U.S. are pioneering techniques such as specialized domestic violence courts where all of a family's related cases, civil and criminal, are handled within one court.

Finally, we would reiterate the critical importance we attach to Goal 16 of the 2030 agenda. Its implementation is absolutely key to the achievement of successful development outcomes across the remainder of the Agenda and we look forward to working together to find the most effective ways of achieving that.

Turning now to our subject for this year, we welcome the opportunity to discuss the role of multilateral treaties in promoting and advancing the rule of law.

Multilateral treaties play important roles in promoting and advancing the rule of law across a broad range of subjects. To give just a handful of examples, they promote transparent and predictable rules that advance international trade, investment, communications, and travel; they facilitate cooperation in the investigation and prosecution of serious crimes and help countries work together to prevent and punish conduct that threatens our common interests; and they outline fundamental human rights the protection of which is a critical imperative.

The breadth of the topics addressed by multilateral treaties brings with it, though, a proliferation of *kinds* of multilateral treaties, not only with regard to their substance, but also with regard to the processes by which they are negotiated and concluded.

Yet even before one can speak of such processes, it is also useful to bear in mind that treaties are not the only tools at the international community's disposal for advancing common interests, including the rule of law. Treaties have the capacity to create binding obligations under international law. But in many areas, non-binding instruments can serve as effective means for promoting international cooperation and shaping state conduct. They may also provide advantages – including greater flexibility and potential for faster implementation – that may make them preferable to treaties in some circumstances. For these reasons, when it comes to addressing the antecedent question of whether, in fact, a treaty is the best solution to a particular problem that international cooperation might be helpful in addressing, we respectfully submit that it is not enough to suggest that the responsive instrument should be legally binding, as the -- in the view of some -- 'highest form' of norm setting. In our view, the question is a much more nuanced one, and, taking into account for instance the difficulty of negotiating and forging support for a treaty, sometimes a different answer may be the appropriate one.

When it comes specifically to treaties, though, we think two particularly important considerations must be born in mind in whatever forum and by whatever means the treaty is to be negotiated: clarity of drafting and a commitment to implementation.

Clarity of drafting is important to ensuring that the broad range of actors who will be responsible for giving effect to treaty obligations understand and are able to apply the treaty's provisions. These actors may include members of national legislatures who may have to approve a state joining a treaty, national court judges and private parties who may be called upon to interpret and apply the treaty, or may invoke it in litigation, respectively, and members of the media who may have a role in the public's understanding of the treaty and its requirements.

With these considerations in mind, we strive to pay careful attention during treaty negotiations to the clarity of treaty text. Ensuring that treaty terms are clearly defined and that the nature and

scope of treaty obligations is clearly stated can contribute significantly to the treaty's ultimate effectiveness. In addition, where treaties are concluded in multiple languages, it is important to consider how treaty terms may be translated so that they clearly convey the intended meaning in each language version of the treaty. During treaty negotiations, U.S. negotiators will often make proposals designed to improve the clarity of treaty provisions in these and other respects. Such changes may sometimes appear technical in nature, but they can produce important benefits in helping the treaty to achieve its intended objectives. We would be interested in how others approach issues of clarity in treaty provisions under negotiation.

A second critically important consideration is treaty implementation. Consistent with the principle of "pacta sunt servanda" every treaty is binding upon the parties to it and must be performed by them in good faith. States can maximize the effectiveness of treaties, and ensure compliance with their legal obligations, by giving careful consideration to the steps that will be required to implement treaty obligations before becoming party to a treaty. In the United States, we employ a standardized process through which interested agencies across the U.S. Government carefully review treaties before the United States joins them. Among the most important issues we consider through this process is how we would expect to implement the treaty's various obligations. For each treaty we might join, we carefully consider whether any new legislation would be required for us to be able to implement it, and adopt any such legislation before becoming party. We would be interested to hear more about other states' processes for addressing treaty implementation. It may also be useful to examine further how treaties themselves have addressed the need for effective implementation, and to identify factors and mechanisms that have proven most useful in promoting such implementation

But it is not just states that can help achieve clarity and ensure implementation. An increasingly salient aspect of the multilateral negotiation process, also identified in this year's Secretary General's report, is the involvement of non-governmental actors such as civil society or the private sector in treaty processes. While it must be states that develop international law, we believe non-governmental actors can sometimes play a useful role, both with regard to providing input during the negotiation of an instrument, and after the fact, in helping to hold us collectively to account to our obligations.

And the UN of course, can itself make a critical contribution to both clarity and implementation.

With regard to clarity in treaty drafting, the Secretary General, and the UN Office of Legal Affairs, can serve as a repository of treaty practice. In this role, they may assist negotiators in formulating treaty provisions, drawing on relevant similar provisions in other instruments. This, in turn, may result in a clearer understanding of how an eventually-adopted provision should be understood.

With regard to treaty implementation, this Committee can play an important role in allowing states to exchange information and identify best practices with a view to helping states strengthen their approaches, and their commitment to, treaty implementation.

And, of course, it goes without saying that states need to be able to participate in multilateral treaty regimes once they have been negotiated and once states are in position to implement them. In that regard, we would also like to highlight and commend the Office of Legal Affairs for its work in support of the Secretary General's depositary function, and to encourage an update to the Guide to Depositary Practice, within existing resources. This Guide is an extremely useful resource for states and helps facilitate their effective participation in multilateral treaty regimes.

Finally, in addition to considerations relating to clarity and implementation, we also believe that the effectiveness of treaties can be advanced by greater public understanding and awareness. We recognize and commend OLA's work to expand access to information about treaties, including its excellent UN treaty collection website and its organization of the annual treaty event. From our perspective, we have recently sought to publicize to state and local officials the human rights treaties to which the U.S. is party. And, of course, the Geneva Conventions include an obligation to disseminate them. But it would be useful to understand what the practice in other instruments has been, and how states themselves have gone about making treaties known, not only to other states, but internally While Article 102 of the Charter concerned the importance of other states understanding the legal regimes in place, today, it is equally key that our citizens understand the obligations their governments are preparing to undertake or have undertaken. We think it would be very useful to discuss further how best to achieve this.

Mr. Chairman, this topic is an especially rich one and we look forward to its consideration during this session of the Sixth Committee.

Thank you.