

Highlights from the Office of the Chief State Law Adviser (international law)

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Chief State Law Adviser (international law)

1 Introduction

The Office of the Chief State Law Adviser (International Law) is privileged to share this overview of its work in 2012 with the wider South African and international law community. As with previous contributions, it will broadly follow the contours of the strategic foreign policy objectives of the South African government. It will both focus on the ongoing projects that the Office is dealing with, and highlight some of the more interesting and classic international law topics that the Law Advisers had to address in opinions, and which again illustrate the close relationship between contemporary international developments, and the work of advisers on international law in foreign ministries. South Africa was a non-permanent member of the United Nations Security Council in 2012, and this necessitated a close working relationship between the Office and the Legal Counsellor to the South African Permanent Mission to the United Nations in New York, especially where statements to the Security Council on matters serving before it had to be compiled and approved, often on an urgent basis.

At this juncture, a reminder of the Office's organisational structure is appropriate. The Law Advisers provide advice on all questions of international law for the Department of International Relations and Cooperation (DIRCO), other government departments, the Presidency, and parliament. This includes opinions on all treaties concluded by the Republic, as well as their certification before final approval is given under section 231 of the Constitution of the Republic of South Africa, 1996. The Law Advisers further manage all litigation against the department, and deal with and advise on all contractual and labour law matters involving the department.

The South African Treaty Section is officially the custodian of all treaties to

which South Africa is a party. Its responsibilities include binding all treaties before signature, and facilitating access to all treaties.¹

2 Consolidation of the African Agenda

A Law Adviser was part of the South African delegation that attended a meeting of the African Union Legal Experts at the AU headquarters in Addis Ababa. The main agenda item was the negotiation of a Protocol on amendments to the Protocol on the African Court of Justice and Human and Peoples' Rights, to extend the jurisdiction of the court to include an international criminal law jurisdiction. The meeting also dealt with amendments to the Protocol on the Pan African Parliament, a draft African Union Model Law on Universal Jurisdiction over International Crimes, and the issue of the implementation of Assembly decisions with regard to the International Criminal Court.

The Law Adviser also attended two meetings of the SADC Senior Legal Officials, followed by meetings of the Ministers of Justice/Attorneys-General, in Luanda and Maputo respectively, where a new draft Protocol on the SADC Tribunal was negotiated and certain other legal matters considered. The most important issues with respect to the new draft Protocol were individual access to the Tribunal, its human rights jurisdiction, and the status of cases pending before the Tribunal when it was suspended by a decision of the AU Summit. Inputs were made both during the plenary meetings of Senior Legal Officials, as well as in several drafting groups. The South African position was that individual access and human rights jurisdiction should be maintained, and that cases pending before the Tribunal should be heard upon its being reconstituted. The draft text of an amended Protocol, which was adopted by the meeting of Ministers/Attorneys-General and submitted to the Council of Ministers for approval, allowed for individual access and the preservation of existing cases, and for a somewhat diluted human rights jurisdiction. However, the draft Protocol was not approved by the Council of Ministers and Summit, which referred the matter back to the Committee of Ministers of Justice/Attorneys-General with a renewed and more limited mandate.

A legal opinion was given on the interpretation of the Rules of Procedure of the Assembly of Heads of State and Government of the African Union regarding the election of the Chair of the AU Commission. The opinion assessed whether the South African candidate in the election for AU Chair, could again contest the election despite having withdrawn from the first, inconclusive round. Inputs on legal issues on the agenda of the two AU Summits were made to the briefing documents provided by the Department to

¹Which can now be accessed on the DIRCO website (www.dirco.gov.za).

the political principals attending the summit meetings and dealt with during the meeting of the AU Legal Experts.

The intention of South Africa to host a number of African Union institutions as well as other African international organisations, resulted in research and opinions, as well as negotiations on host agreements for the African Commission on Nuclear Energy, the Secretariat of the African Peer Review Mechanism, the office of the NEPAD Planning and Co-ordinating Authority, and the African Tax Administration Forum (ATAF).

Several legal opinions were also prepared at the request of ATAF, which has been established on the initiative of the South African Revenue Service which has also provided the staff for its Interim Secretariat. The opinions dealt with the process of ratification of the agreement establishing ATAF, its entry into force, ATAF's host agreement with the South African government, and the status of African states participating in ATAF proceedings before formally ratifying the agreement establishing ATAF. The Treaty Section of the office also offered valuable guidance to the Interim Secretariat on treaty practice, and the procedures to be followed for ATAF to ensure recognition by the government as an international organisation in terms of the Diplomatic Immunities and Privileges Act 37 of 2001.

A Law Adviser attended a meeting in South Africa, as well as one in Harare, and participated in negotiations on an agreement to facilitate a 'North-South Trade and Transport Corridor', to stretch from Durban harbour in South Africa, to Dar-es-Salaam harbour in Tanzania. Inputs during the negotiations and by means of legal opinions, were specifically focused on the design of a management structure for such a corridor. Inputs were also made in a briefing document for the Minister of Transport in preparation for a meeting of Southern African Ministers of Transport to discuss the corridor.

The Office drafted background papers for the South African delegations relating to the legal topics on the agendas of the summit meetings of SADC and the AU.

With respect to Communications to the African Commission on Human and People's Rights, the Office drafted a written submission on admissibility in respect to Communication 377/09,² and a Law Adviser presented oral arguments on the merits in respect of Communication 335/2006³ during the 51st Ordinary Session of the Commission held in Banjul in April 2012.

²*Mendukazi Patricia Monakali v the Republic of South Africa.*

³*Dabalorivhuwa Patriotic Front v the Republic of South Africa.*

The Office was closely involved in the SADC mediation process in Madagascar – in particular while South Africa chaired the Troika. A Law Adviser formed part of the SADC legal team which advised on issues of amnesty, provided recommendations to Madagascar on their amnesty legislation, and advised on which crimes would not benefit from amnesty under international law.

The Office also played an important role in the negotiations and also drafted a Record of Understanding which sought to move the process forward and contribute to the resolution of the crisis in Madagascar.

The role of the Office in the mediation process illustrates that there is an increasing awareness and acknowledgement of the importance of finding solutions which seek both peace and justice so as to promote sustainable, lasting solutions.

Outside of the mediation process, the Office also monitored developments within South Africa after the National Prosecuting Authority found that there was a basis at least to open investigations into crimes against humanity allegedly committed by former President Ravalomanana in Madagascar. The extraterritorial application of the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 provides that non-South African nationals can be prosecuted in South Africa, for crimes against humanity, war crimes, and genocide committed outside of South Africa, provided they are present on South African territory.

3 Global system of governance

The United Nations hosted a High Level Meeting on the Rule of Law at the National and International Level. The Office, through its Legal Counsellor in New York, was engaged in the process of negotiating the modalities for the meeting, as well as the process for negotiating the outcome document of the meeting. The South African President participated in the meeting and outlined South Africa's vision for the rule of law. As a side event, South Africa hosted a High Level Meeting on the Rule of Law and Women's Access to Justice.

The meeting adopted the High Level Declaration on the Rule of Law at the National and International Level which emphasises, *inter alia*, the importance of the rule of law for the maintenance of international peace and security and for development, and which also contains numerous provisions on the role of courts such as the International Court of Justice and the International Criminal Court. Key provisions that South Africa was instrumental in securing, included the link between the rule of law and the reform of global institutions such as the Security Council.

3.1 *UNIDROIT*

UNIDROIT, the International Institute for the Unification of Private Law, is an independent intergovernmental organisation with its seat in Rome. Its purpose is to study the need to and methods for modernising, harmonising, and coordinating private and commercial law as applicable between states and groups of states, and to formulate uniform law instruments, principles and rules.

A Law Adviser participated as part of the South African delegation in the Diplomatic Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (Space Assets Protocol) held in Berlin in March 2012. The adoption of the Final Act of the Space Assets Protocol, brought to an end a process started by UNIDROIT more than twenty years ago to develop innovative asset lease financing tools – in particular for emerging nations. The framework Cape Town Convention was adopted in 2001 and regulates innovative methods for asset financing of mobile equipment and provides for a central registry for such equipment. This was followed by the Aircraft Protocol which regulates aircraft and related equipment, the Railway Protocol (also known as the Luxembourg Protocol) which caters for railway rolling stock, and the Space Protocol which caters for space assets such as satellites and payload.

3.2 *WIPO*

The World Intellectual Property Organisation (WIPO) was established in 1970 with a mandate from its member states to promote the protection of intellectual property throughout the world, through cooperation among states, and in collaboration with other international organisations. WIPO organises its work via specialised committees. A Law Adviser made inputs with respect to the work of the Standing Committee on the Law of Copyright and Related Rights, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and the Standing Committee on Trademarks, Industrial Designs and Geographical Indications. The Office also provided the South African delegation with advice on international law at the June 2012 Beijing Diplomatic Conference on the WIPO Treaty on Audiovisual Performances.

A Law Adviser attended WIPO's 50th General Assembly held in Geneva in October 2012, assisting the South African delegation during the meeting. This also provided the opportunity for the Law Adviser to attend the First Annual Conference on South-South Cooperation in Intellectual Property and Development, which analysed the outcomes of the First Inter-regional Meeting on South-South Cooperation on Intellectual Property Governance, Genetic Resources, Traditional Knowledge, and Folklore – a Brazilian initiative.

WIPO is very active in developing new international instruments in line with its agenda of creating a global, rule-based intellectual property system. In this regard, the Office has been providing international law advice in relation to the following draft WIPO international instruments: the Designs Treaty; the Treaty on the Protection of Broadcasting Organisations; the treaty on Intellectual Property and the Protection of Genetic Resources and Associated Traditional Knowledge and Traditional Cultural Expressions; and the Treaty on Exceptions and Limitations for Persons with Disabilities, Educational and Research Institutions, Libraries and Archives, and Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities. In addition, the Office provided legal advice on copyright issues relating to works of art in South Africa House in London.

3.3 *FAO*

Two meetings on the Voluntary Guidelines on the Responsible Tenure of Land, Fisheries and Forests in the Context of National Food Security, were held under the auspices of the Food and Agriculture Organisation in Rome. A Law Adviser assisted the South African delegation, participated in the work of a language harmonisation group, and also served as a friend of the chair with a view to securing consensus among delegations on controversial text. The original document that served as basis for negotiations, was the product of wide consultation, and consequently was complicated, too long, and contained extensive inconsistencies and contradictions which required considerable backroom redrafting and negotiation if there was to be progress at the plenary session.

3.4 *International Criminal Court*

The International Criminal Court remained an area of focus for the Office and its legal counsellors at the missions in New York and The Hague. Activities in this regard included the management of requests for cooperation from the court, the writing of background papers for political principals, participation in meetings of the Bureau of the Assembly of States Parties (ASP), and in negotiating resolutions for adoption by the eleventh meeting of the ASP that took place in The Hague in November 2012, and the drafting and coordination of background documents and position papers for the South African delegation to the ASP meeting. In light of the AU's increased focus on the field of international criminal law and its application on the African continent, positions also had to be coordinated with the South African mission to the AU. During the meeting of the ASP, the South African delegation assumed a high profile. The leader of the delegation, the Deputy Minister of Justice and Constitutional Development, co-chaired a plenary session on complementarity together with a representative from Denmark (South Africa and Denmark

being the ASP's focal points on complementarity), while the Deputy Minister and the Legal Counsellor to the Permanent Mission to the United Nations in New York, also participated as speakers in side events.

The Office also facilitated a visit by the prosecutor to South Africa, during which she met with the Minister and Deputy Minister of Justice and Constitutional Development.

South Africa continued to play a constructive role within the Assembly of States Parties on the topic of complementarity. A high level plenary session was held during the ASP – attended by Mary Robinson, former UN Human Rights Commissioner – at which initiatives to build the domestic capabilities of states to investigate and prosecute serious crimes was encouraged. The issue of complementarity remains firmly on the agenda of states, and the Secretariat was tasked with undertaking further work on this topic. In particular, states were encouraged to exchange information on their capacity needs so as to find ways of addressing these challenges.

3.5 Permanent Court of Arbitration and Hague Conference on Private International Law

The Office, in conjunction with the South African embassy in The Hague, continued to play an active role in both the Permanent Court of Arbitration (PCA), and the Hague Conference on Private International Law (Hcch), two Hague-based organisations dedicated to private international law matters.

2012 saw the implementation of the PCA's Financial Regulations and Rules (FRR) which were adopted in December 2011. South Africa formed part of the committee which drafted the FRR, and played an instrumental role in ensuring its adoption. The FRR provides the PCA with an updated, transparent, and modern legal framework for its budgetary process and financial management which encourages greater accountability and transparency in the functioning of the FRR.

In terms of the Hague Conference, and in collaboration with the HCCH, South Africa hosted a seminar on the Hague Securities Convention in Johannesburg in May 2012. The Office, also in May 2012, hosted a meeting on general HCCH matters with government stakeholders at which the Deputy Secretary-General of the HCCH delivered an address. The organisation is currently engaged in a number of projects such as the Choice of Law in International Contracts, recognition and enforcement of foreign civil protection orders, and private international law issues regarding the status of children – including issues arising from international surrogacy arrangements.

The Office also played a pivotal role in reviewing the selection process for the Secretary-General of the HCCH. This was transformed into an open and transparent process, taking into account the membership of the organisation. A Law Adviser participated in the recruitment process for the current Secretary-General.

3.6 Commission on Crime Prevention and Criminal Justice

The Office participated in the 21st session of the Commission on Crime Prevention and Criminal Justice held in Vienna during April 2012. The Commission's theme was 'Violence against migrants, migrant workers and their families'. The South African delegation played an active role in the negotiations, and a leading role in co-sponsoring a resolution on 'United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems'.

The South African delegation also used the Commission platform to promote awareness of illegal mining activities and links with transnational organised crime, and hosted a side event on the issue. Resolutions were adopted on, *inter alia*, crime and criminal justice statistics; cooperation in combating transnational organised crime; Standard Minimum Rules for the Treatment of Prisoners; the elimination of violence against migrants, migrant workers and their families; reform of criminal justice institutions – particularly with respect to fighting transnational organised crime and drug trafficking; strengthening government oversight of civilian private security services and the contribution of such services to crime prevention and community safety; countering maritime piracy – especially off the coast of Somalia and in the Gulf of Guinea; and international cooperation on the links that may exist between transnational organised criminal activities and terrorist activities.

3.7 International Humanitarian Law

An opinion was given on the situation in Syria against the backdrop of a draft Security Council resolution on Syria. The opinion addressed issues relating to International Humanitarian Law as applicable to the conflict in Syria, and dealt with concepts such as self-defence by non-state groups, the conditions for the cessation of hostilities by both the government forces and armed opposition groups, and how the Security Council should deal with these opposing forces in calling for a ceasefire in the resolution.

A Law Adviser attended the 35th Round Table on Current Issues on International Humanitarian Law in San Remo, Italy, which addressed the regulation of private military and security companies, and drafted a position paper on the South African system of regulation delivered by the Permanent Representative to the United Nations in Geneva.

4 Environment, science and technology

4.1 Climate change

As host to the 17th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC), and the 7th Conference of the parties serving as the Meeting of the Parties to the Kyoto Protocol (COP17/CMP7) in November/December 2011 in Durban, South Africa brokered an agreement among the 195 parties to the Convention on a comprehensive package of decisions which included agreement that industrialised parties to the Kyoto Protocol would commit to a second round of commitments under the Protocol; agreement to launch a process to develop a protocol, a further legal instrument, or an agreed outcome with legal force under the Convention, applicable to all parties, to improve action in addressing the challenge of climate change; the establishment of the Green Climate Fund as an operating entity of the financial mechanism of the Convention; as well as a set of decisions on long-term cooperative action under the Convention which addresses a shared vision for long-term cooperative action, mitigation, adaptation, technology development and transfer, and the provision of financial resources.

COP18/CMP8, which took place in Doha, Qatar at the end of 2012, represented the end of an era in the climate negotiations, which started in 2005 when parties initiated negotiations on further commitments for Annex I parties to the Kyoto Protocol, and continued in 2007 when the responsibility of non-Kyoto Annex I parties and developing countries, were taken up under the Bali Action Plan. The outcomes of the Doha Conference – widely criticised for its lack of ambition – largely implemented the Durban package of decisions, including adopting formal amendments to the Kyoto Protocol to give effect to a second commitment period. Law Advisers from the Office together with officials from DIRCO, formed part of the South African delegation to COP18/CMP8 and undertook the preparatory work for these meetings.

The UNFCCC process is followed closely by international environmental law scholars and practitioners, as it touches on core international law issues such as transboundary harm, the polluter pays principle, and even issues concerning the socio-economic rights of citizens in developing countries.

The issues of transboundary harm resulting from climate change and the polluter pays principle, were taken a step further at Doha, through decision 3/CP.18 ‘Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity’ which, *inter alia*, mandates COP19 institutional arrangements, such as an international mechanism to address loss and damage.

Another central debate at Doha involved the entry into force of the second commitment period under the Kyoto Protocol. As the first commitment period ended on 31 December 2012, developing countries, in particular, were concerned about a legal hiatus from 2013 pending the ratification by parties of the amendments to the Protocol. Many countries insisted that the Kyoto amendments be applied provisionally⁴ by those developed countries that had identified targets under the Protocol's Annex B. European Union (EU) negotiators, however, argued that certain EU members could not, in terms of their domestic constitutional requirements, agree to provisional application. The compromise finally agreed to provided that

... Parties may provisionally apply the amendment pending its entry into force in accordance with Articles 20 and 21 of the Kyoto Protocol, and ... Parties will provide notification of any such provisional application to the Depositary; [and] ... that Parties that do not provisionally apply the amendment under paragraph 5, will implement their commitments and other responsibilities in relation to the second commitment period, in a manner consistent with their national legislation or domestic processes, as of 1 January 2013 and pending the entry into force of the amendment in accordance with Articles 20 and 21 of the Kyoto Protocol.

Looking forward, it is anticipated that the work on a new legal instrument under the Durban Platform for Enhanced Action, will consider how the lessons learned from the Kyoto experience, can assist in the design of a legal regime which will be more flexible, effective, and equitable in addressing the challenge of climate change.

While it is hoped that adjustments to countries' commitments under the new instrument can follow a more streamlined process, the benefits of flexibility will need to be weighed against the desire to have legally binding commitments for individual countries – something which is feasible only through a process of domestic ratification.

An effective climate change regime must be responsive to the levels of action recommended by science. While it may be comparatively easy to determine the aggregate global level of emission reductions required to 'prevent dangerous anthropogenic interference with the climate system',⁵ it is a far more complex task to apportion this global effort equitably among countries with widely divergent profiles of historical and current responsibility and capability. This task can be seen as an attempt to operationalise the universally accepted

⁴Article 25 of the 1969 Vienna Convention on the Law of Treaties provides that: 'A treaty or a part of a treaty is applied provisionally pending its entry into force if: (a) the treaty itself so provides; or (b) the negotiating States have in some other manner so agreed'.

⁵Article 2 of the United Nations Framework Convention on Climate Change.

Convention principles of equity and common but differentiated responsibility, and respective capacity (CBDR&RC).

During the negotiations leading to the Kyoto Protocol, Brazil proposed a method of distributing the mitigation burden among countries on the basis of their contributions to atmospheric warming. Acknowledging the significance of the timing of emissions to their effect on the atmosphere, this method claims to be more robust than a model based on countries' contributions to the concentration of greenhouse gases (GHGs). An alternate approach advocates the use of an equity reference framework (ERF), involving countries' total efforts in terms of mitigation, adaptation, and the provision of finance, technology transfer, and capacity building in addressing climate change. As it was agreed in Durban that the new legal instrument will address all these aspects, an ERF would have the advantage of adopting an holistic approach, as well as providing countries the space to take their specific domestic circumstances into account in determining where to focus their efforts.

The negotiations on a new legal instrument addressing climate change will no doubt have a ripple effect on the broader post-2015 development agenda which encompasses the current processes dealing with sustainable development under the United Nations – including the development of sustainable development goals and the future of the Millennium Development Goals.

4.2 *Air law*

ICAO created a sub-committee to the Legal Sub-committee to study legal aspects of how to deal with unruly passengers so as to update the Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo 1963). South Africa is one of 25 states invited to serve on this Special Sub-committee, and a South African delegation participated in the First Meeting held during May 2012 in Montreal, Canada, where a Law Adviser advised the South African delegation on international law and international aviation law issues. The meeting resolved that further study and data-gathering are needed; questions will be addressed in a further study; states must consult with passenger carriers in their individual jurisdictions; and an Additional Protocol in the form of International Instrument that may have to be considered (but without prejudice to the final decision still to be taken). The Law Adviser assisted in preparing the South African delegation to the Second Meeting of the Special Sub-Committee of the Legal Sub-Committee of ICAO held in Montreal in December 2012.

4.3 *Space law*

The United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), is a subsidiary body of the UN General Assembly and the focal

point for international cooperation in civilian space activities. The task of COPUOS is to review the scope of international cooperation in the peaceful uses of outer space; to devise programmes in this field to be undertaken under the auspices of the United Nations; and to encourage research, disseminate information on research, and to study legal problems arising from the exploration of outer space. South Africa is a party to the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Bodies; the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; the 1972 Convention on International Liability for Damages Caused by Space Objects; and the 1975 Convention on Registration of Objects Launched into Outer Space. South Africa is not yet a party to the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.

The Office participated in the 51st Session of the Legal Sub-Committee of COPUOS held during April 2012 in Vienna. The Legal Sub-Committee discussed and debated International Space Law issues such as the delimitation of airspace and outer space, the status of the five United Nations treaties on outer space, geostationary orbits for satellites, capacity building in space law, the Final Act of the Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment, the use of nuclear power sources, national legislation dealing with outer space issues, and the mitigation of space debris. During the afternoon of the first day, the International Institute of Space Law (IISL) and the European Centre for Space Law (ECSL) held a very informative symposium on the ‘Transfer of Ownership of Space Objects: Issues of Responsibility, Liability and Registration’.

The Office also participated in the 55th Session of COPUOS held in Vienna in June 2012. As has now become tradition, the United Nations Office for Outer Space (UNOOSA) arranged a round-table programme for the first afternoon. The topic this year was on the Special 40th Anniversary LANDSAT Programme, and the Worldwide Evolution of Remote Sensing from Space. The 55th Session discussed and debated the Reports of its Legal and Scientific and Technical Sub-Committees; ways and means of maintaining outer space for peaceful purposes; implementation of the recommendations of UNISPACE III; space and society; space and water; space and climate change; the use of space technology in the UN system; spin-off benefits of space technology; the future of COPUOS and its report to the General Assembly. COPUOS is a multilateral organisation that works on the basis of consensus, and, to the surprise of many delegations, the 55th Session was contentious, with acrimonious debate around the application for membership by Armenia, the draft EU Code of Conduct in Outer Space, and the proposed Resolution on National Legislation.

In June 2012, the Office was invited to take part in the deliberations of Expert Group D (Regulatory Regimes and Guidance for Actors in the Space Arena) of the Working Group on the Long-Term Sustainability of Outer Space Activities, of the Scientific and Technical Subcommittee of COPUOS.

The Office also participated in a Stakeholder Consultative Meeting on a study leading to the review of the South African Space Affairs Act 8 of 1993 as amended in 1995, hosted by the Department of Trade and Industry's (DTI) Aerospace Industry Support Initiative (AISI) and the University of Pretoria's Institute for International and Comparative Law in Africa.

The Office was also privileged to attend the send-off ceremony of ZACUBE-1, South Africa's first nano-satellite type CubeSat, in Cape Town in August 2012. This is South Africa's first nano-satellite and thus represents a significant technological achievement.

4.4 Communications and telecommunications

The Office provided international law advice to the South African delegation that attended the Pan African Postal Union (PAPU) Plenipotentiary Conference held in Ethiopia, the 25th Universal Postal (UPU) Congress in Doha, Qatar, and the International Telecommunications Union (ITU) World Conference on International Telecommunications (WCIT-12) held in Dubai, United Arab Emirates. The Office also provided assistance with the ratification of the Amendment to the Agreement Relating to the International Telecommunications Satellite Organisation (ITSO).

4.5 Law of the sea

A Law Adviser from the Office, and the Legal Counsel to the Permanent Mission to the United Nations in New York, attended two meetings held under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS), namely the *ad hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, and the 13th Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea, both held at United Nations Headquarters in New York.

During the Working Group meeting, the South African delegation emphasised the need to find a solution to the question of marine biodiversity in areas beyond national jurisdiction, including the question of the sharing of benefits from exploitation of marine genetic resources. For that reason, South Africa stressed that the issues of conservation and benefit sharing are linked by the concept of the common heritage of mankind. South Africa indicated that the

gaps and uncertainties that exist in high seas governance, including conservation areas, emphasised the need for an implementing agreement to the UNCLOS to give effect to the common heritage of mankind.

The meeting of the Open-ended Informal Consultative Process focused on 'Marine Renewable Energies' with panels considering the types, uses, and role in sustainable development, ongoing or planned marine renewable energies projects and work at the global and regional levels and opportunities and challenges in the development of marine renewable energies, including for cooperation and coordination.

South Africa's position is that marine renewable energies may contribute significantly to the electricity production from renewable energy sources and also play a crucial role in cutting greenhouse gases.

A South African delegation, including a Law Adviser, also participated in the twenty-second meeting of state parties to the UNCLOS held at the United Nations Headquarters, which received and considered reports of the International Tribunal for the Law of the Sea and the International Seabed Authority, and elected Members of the Commission on the Limits of the Continental Shelf.

5 Political and economic relations

Classic international law topics were explored in a number of legal opinions produced in the course of 2012. These include an analysis of the boundaries of the state of Israel as recognised by the international community, which explored both the process leading to the creation of the state of Israel, and its collective recognition by the United Nations within specific borders, and the applicable international law principles on statehood and recognition. An opinion to serve as a background document for the South African delegation to the Fifth Conference of African Ministers in Charge of Integration, explored the concept of state sovereignty and the limits that can be placed on sovereignty by the powers allocated to international organisations, and also briefly analysed the scope of authority that the African Union has been allocated by its member states.

6 Public diplomacy

The Office drafted replies to a number of parliamentary questions on international law topics. A Law Adviser participated in a roundtable meeting hosted by the Institute for Security Studies on 'The Responsibility to Protect: Views from South Africa, Brazil, India and Germany'.

7 Concluding remarks

As in the past, the Law Advisers again spread their wings into the wider world of international law, publishing a number of articles and book reviews in accredited journals, while also presenting lectures and presentations on international law topics at universities and fora both in South Africa and abroad. The year again illustrated the complex nature of international law that requires a high level of training and experience from practitioners of international law. Especially valuable in enhancing the quality of work of the Office, is the hands-on experience of Law Advisers of the Office who have served as Legal Counsellors abroad at the missions to the United Nations in New York, the African Union in Addis Ababa, and the Embassy in The Hague and who have since returned to the Office.