

ATTACHMENT TO ANNEX 1
DETAILED CLIENT COMMENTS FOR THE
RESPONSE AND IMPLEMENTATION OF RECOMMENDATIONS

Assignment No. AH2010/521/01:
Audit of the process for resolving procurement-related disputes
Referred to the Office of Legal Affairs

1. The following are detailed comments by the Office of Legal Affairs (“OLA”) to the recommendations set forth in the confidential draft of the Internal Audit Report of the Office of Internal Oversight Services referred to above (“Draft Audit Report”).

Recommendation at Paragraph 18:

2. Paragraph 18 of the above-referenced Draft Audit Report provides as follows:

“18. The Office of Legal Affairs, General Legal Division (GLD) should enhance the internal control system for resolving procurement-related disputes by documenting its policies and procedures to guide staff members, improving record-keeping of documents to facilitate retrieval, developing additional performance indicators to measure the effectiveness of GLD’s role in the process and implementing mechanisms to obtain feedback from clients.”

3. OLA accepts the recommendations contained in paragraph 18 of the Draft Audit Report, subject to the following comments and explanations.

4. Documentation of Policies and Procedures to Guide Staff: The General Legal Division (“GLD”) continues to seek to improve policies and procedures to provide guidance to staff, both in GLD and in other offices to which OLA provides legal support and service. The objective is to improve the consistency of legal practices intended to protect the legal interests of the Organization, and also to inform staff regarding the rationale for such practices. For example, GLD promulgates model legal documents, together with appropriate explanations regarding the use of such documents in protecting the Organization’s legal interests. Thus, in 2008, when promulgating revised versions of the UN General Conditions of Contract following consultations with the Legal Liaison Officers of the Funds and Programmes and other subsidiary organs of the UN, as well as with procurement officials throughout the UN, GLD also published a Guidebook on the use of the General Conditions, detailing information on a variety of “frequently asked questions” about legal policies concerning UN contracting and procurement activities.

5. In the same fashion, GLD will prepare and disseminate guidance on the procedures and practices best intended to protect the Organization’s legal interests with respect to resolving procurement related disputes. In addition, OLA has begun consultations with the Office of Central Support Services (“OCSS”), including the Procurement Division, and with the Controller’s Office in the Office of Programme Planning Budget and Accounts (“OPPBA”) with respect to the respective roles and responsibilities of those offices in resolving disputes and claims arising out of procurement

activities. Following those consultations, OLA will propose guidance on the respective roles of such offices in the process of resolving procurement related disputes. In addition to consulting with those offices, OLA will consult with the Legal Liaison Officers of the Funds and Programmes and other subsidiary organs of the United Nations on the appropriate procedures for resolving legal claims and liability. Finally, GLD has begun the process of drafting such guidance and will seek to obtain comments through the development process from the Procurement Division, from OCSS and OPPBA, and from the Legal Liaison Officers of the UN and its Funds and Programmes for a formal review and final consultations during the annual meeting of the Legal Liaison Officers in May 2012. Following such consultations, GLD intends to issue such guidance by end of 2012.

6. Improvement of Recordkeeping of Documents: Records and archives are the lifeblood of OLA's legal services and support. Without adequate records and archives, OLA would not be in a position to provide the comprehensive and consistent legal advice, services and support that its client offices expect and that are necessary to protect the legal interests of the Organization. For this reason, OLA has throughout its history maintained a comprehensive archives and record-keeping system for legal matters referred to OLA and the responses provided by OLA in respect of such matters. These records form the crucial repository of the legal practice of United Nations operations and activities. In implementing its archives and record-keeping practices over time, OLA has worked closely with the Archives and Records Management Section of OCSS.

7. When OIOS conducted the above-referenced audit, OLA was in the process of converting from a paper-based legal records management system to an electronic case management system, the Prodiagio software system, which is platformed on the Documentum software system that the Office of Information and Communications Technology ("OICT") has standardized for UN document storage and knowledge management systems. OLA is commissioning additional upgrades to its Prodiagio software for implementation by no later than 31 December 2011. In addition, OLA will continue to improve and refine the implementation of the Prodiagio system on an ongoing basis. Moreover, as OICT refines and implements the Documentum system on a wider basis within the Secretariat, OLA will remain flexible and will continue to work on an ongoing basis with OICT and ARMS to ensure that OLA's robust archiving practices remain consistent with standards and technology implemented in the Secretariat.

8. Adoption of Additional Performance Indicators: For purposes of reporting its performance under the results-based budgeting system, OLA's current indicator of achievement as to whether GLD effectively protects the legal interests of the United Nations is a comparison of the total value of claims asserted against the Organization and the ultimate amount for which the United Nations resolves such claims, whether by arbitration or agreed settlement. OLA strongly considers that such a performance measure is an objective and effective measurement of the value that its legal services provide to the Organization. This performance measure has been accepted by OPPBA as well as the Committee on Programme Coordination of the General Assembly as an appropriate performance measure for results-based budgeting purposes pursuant to and in accordance with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation adopted by the General Assembly, pursuant to its resolutions 53/207, of 18 December 1998, 54/236, of 23 December 1999, and its decision 54/474, of 7 April 2000. OLA has no plans to alter that performance measure.

9. At the same time, OLA accepts the recommendation that it should seek to identify and utilize additional performance indicators concerning the way it handles claims and disputes arising out of the Organization's procurement activities, including for self-evaluation and client-feedback purposes. In this regard, OLA will consult with the Legal Advisors of the UN System organizations to see what other possible performance indicators have been used for these purposes. OLA intends to put this matter on the agenda for the next meeting of the Legal Advisers in May 2012 for discussion and review. Following such consultations, if any suitable additional performance indicators are identified, OLA will seek to implement them by the end of 2012. If no suitable performance indicators are identified through such process, OLA will consult with the Inspection and Evaluation Division of OIOS to determine how potential additional performance indicators suitable to measuring legal services could be identified.

Recommendation at Paragraph 20:

10. Paragraph 20 of the above-referenced Draft Audit Report provides as follows:

“20. The Office of Legal Affairs, General Legal Division (GLD) should communicate the respective roles and responsibilities of clients and GLD in the process for resolving procurement-related disputes.”

11. OLA accepts the recommendations contained in paragraph 20 of the Draft Audit Report, subject to the following comments and explanations.

12. As noted in paragraph 5, above, OLA has begun consultations with OCSS and with OPPBA on the respective roles of the offices in the resolution of disputes, controversies and claims arising out of procurement matters. In addition, as further noted in paragraph 5, above, OLA will consult with the Legal Liaison Officers of the Funds and Programmes and other subsidiary organs of the United Nations on such roles and responsibilities. GLD will submit guidance on such roles and responsibilities for review and consultations during the next meeting of the Legal Liaison Officers in May 2012.

Recommendation at Paragraph 23:

13. Paragraph 23 of the above-referenced Draft Audit Report provides as follows:

“20. The Office of Legal Affairs, General Legal Division, in collaboration with the Procurement Division, should develop mechanisms to periodically identify and communicate in an appropriate format, lessons that can be learned from resolved procurement-related disputes relevant to staff members.”

14. OLA accepts the recommendations contained in paragraph 23 of the Draft Audit Report, subject to the following comments and explanations.

15. As was recognized in paragraphs 25 and 26 of the OIOS In-Depth Evaluation of the Office of Legal Affairs, E/AC.51/2002/5, of 9 April 2002, one of the ways to disseminate lessons learned from disputes and claims, including those arising out of procurement actions were the round-table discussions that GLD had organized with the Procurement Division and the Legal Liaison Officers of the Funds and Programmes and other subsidiary organs of the United Nations. GLD will work with the Procurement

Division and the Legal Liaison Officers of the Funds and Programmes and other subsidiary organs of the United Nations in order to conduct such lessons-learned round-table discussions on a periodic basis. GLD intends to include such discussions regularly as part of annual meetings of the Legal Liaison Officers, beginning with the next meeting in May 2012, at which the Procurement Division and its counterparts from the Funds and Programmes and other subsidiary organs of the UN will be invited to participate for that agenda item. In addition, GLD will seek to enhance the distribution of outcomes of such round-table discussions via the UN's Intranet and/or Extranet.

20 June 2011

Prepared by the General Legal Division, OLA