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International Law Commission

Seventy-second session (second part)

Provisional summary record of the 3540th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 14 July 2021, at 3 p.m.

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Statement by the Under-Secretary-General for Legal Affairs, United Nations Legal Counsel

Present:

Chair:	Mr. Hmoud
Members:	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Mr. Forteau
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 3 p.m.

Statement by the Under-Secretary-General for Legal Affairs, United Nations Legal Counsel

Mr. de Serpa Soares (Under-Secretary-General for Legal Affairs, United Nations Legal Counsel), speaking via video link, said that, over a year since the start of the coronavirus disease (COVID-19) pandemic, the situation remained difficult for humanity. Yet remarkably, the work of the United Nations had continued unabated. He commended the Commission for having adopted the hybrid meeting format that had enabled it to continue its important work in 2021. The events of the past year had reaffirmed the importance of international cooperation and the rule of law. The Commission's work therefore remained crucial, and he hoped that, as its work progressed, there might be some reflection on ways in which the Commission could contribute further to the challenges of modern life.

In keeping with past practice, he would provide an overview of the activities of the Office of Legal Affairs since the Commission's preceding session, starting with those of the Codification Division. The Division had continued and completed work on two publications related to the Commission's seventieth anniversary. It had also provided substantive servicing for the meetings of the Sixth Committee at the seventy-fourth and seventy-fifth sessions of the General Assembly. The organization of the meetings during the latter session had been particularly challenging, as most of the work involved had had to be carried out either remotely or in compliance with strict COVID-19 mitigation measures that had required delegations to be spread across three conference rooms instead of one. Despite the challenges, the events organized to commemorate the seventy-fifth anniversary of the United Nations had been a success.

In 2019, the Sixth Committee had considered the Commission's report on the work of its seventy-first session and had made the arrangements necessary for the postponement of the seventy-second session until 2021. In 2019 and 2020, the Committee had continued its consideration of items that had emerged from topics on the Commission's agenda, including the topic "Crimes against humanity". It would continue to examine the Commission's recommendation that an international conference should be convened to elaborate a convention on the basis of the draft articles on prevention and punishment of crimes against humanity. The Committee had also discussed other topics on which the Commission had adopted draft articles, but had essentially deferred any further action on them to future sessions.

The Codification Division had continued to implement the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which remained a priority for Member States. Unfortunately, while the United Nations Regional Course in International Law for Africa had been held in Ethiopia in early 2020, all in-person training events since then, including the Regional Courses in International Law for Latin America and the Caribbean and for Asia-Pacific, and the International Law Fellowship Programme in The Hague, had had to be cancelled owing to COVID-19-related risks. However, a number of projects had been developed and implemented to support capacity-building in international law in developing countries and countries with emerging economies. For example, the Codification Division had designed a self-paced remote curriculum, in English and French, that it had shared with all persons who had applied to take part in the in-person training programmes; online regional workshops on specific topics of interest had been organized; and new continuing education initiatives for alumni of training programmes had been successfully introduced. The Programme of Assistance remained indebted to those members of the Commission who continued to devote time and expertise to help shape the futures of young international lawyers from developing countries and countries with emerging economies.

The United Nations Audiovisual Library of International Law was another component of the Programme to which former and current Commission members had made significant contributions. The podcast component of the Library, which had been launched two years previously, had made all video lectures available in audio format. The podcasts had been a great success in facilitating access to the Library, particularly in regions where access to the videos had proved difficult.

In the two years since his last briefing, the Office of the Legal Counsel had continued to deal with a wide variety of legal questions and issues of public international law. Recent years had seen important developments in the area of accountability, with regard to both the judicial and the non-judicial international accountability mechanisms that the Office supported. In particular, 2020 had marked the tenth anniversary of the establishment of the International Residual Mechanism for Criminal Tribunals, whose work over the years, like that of its predecessors, had played a significant role in dispelling the notion that crimes such as genocide, war crimes and crimes against humanity could remain forever beyond the reach of international law.

Recent developments of particular note included the appeal judgment handed down by the Residual Mechanism on 8 June 2021, which had upheld the verdict against General Ratko Mladić, one of the highest-ranking officials to be tried before the International Tribunal for the Former Yugoslavia. Mr. Mladić had been convicted of genocide in Srebrenica, crimes against humanity and violations of the laws or customs of war, and had been sentenced to life imprisonment. The Residual Mechanism had issued two further judgments in June 2021, including in the multi-accused contempt case formerly known as *Prosecutor v. Maximilien Turinabo et al.*, which, following the death of Mr. Turinabo, had been renamed *Prosecutor v. Anselme Nzabonimpa et al*. On 25 June, four of the five remaining defendants had been convicted on charges of contempt primarily related to interference with witnesses. On 30 June, in *Prosecutor v. Jovica Stanišić and Franko Simatović*, the first retrial held before the Residual Mechanism, the Trial Chamber had convicted two former senior Serbian security officials on charges of aiding and abetting crimes against humanity and violations of the laws or customs of war committed by Serbian forces in Bosnia and Herzegovina in April 1992. The proceedings had commenced in 2017, after the Appeals Chamber of the International Tribunal for the Former Yugoslavia had quashed the Trial Chamber's decision to acquit the two defendants and had ordered a retrial on all counts of the indictment. Another development of note was that pretrial proceedings had begun in the case against Félicien Kabuga following his arrest in France in May 2020, after some 23 years as a fugitive from justice.

A number of other tribunals had also reached milestones in their work. In August 2020 the Trial Chamber of the Special Tribunal for Lebanon had issued its judgment in the main case, unanimously finding Mr. Salim Jamil Ayyash, who had been tried *in absentia*, guilty as a co-perpetrator on all five counts with which he had been charged, including conspiracy aimed at committing a terrorist act, committing a terrorist act and intentional and attempted intentional homicide. The other three defendants had been acquitted and, on 11 December 2020, the Trial Chamber had unanimously sentenced Mr. Ayyash to life imprisonment. Earlier in 2021, the Appeals Chamber had ruled that the defence counsel assigned for Mr. Ayyash had no standing to appeal against a judgment issued *in absentia*, noting that that decision was not prejudicial to the convicted person, since the Tribunal's framework offered safeguards in the form of a general right to retrial, or an appeal in the event that the convicted person waived in writing his right to retrial.

At the Extraordinary Chambers in the Courts of Cambodia, in Case 004/02 against Ao An, the Pre-Trial Chamber had unanimously declared that the co-investigating judges' issuance of two conflicting closing orders had been illegal and that the Chamber had not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. On 10 August 2020, the Supreme Court Chamber had terminated the case against Ao An, having concluded that the Pre-Trial Chamber's unanimous finding meant that neither closing order was valid.

In Case 003, against Meas Muth, in which conflicting closing orders had also been issued, the Pre-Trial Chamber had again unanimously found the issuance of two separate orders to be illegal. However, in their attached opinions, the judges involved in the decision had set forth differing arguments. The national judges had taken the view that the two closing orders were of equal value and that both were valid, and had stated that the case should nevertheless be archived, since the act of one judge should not prevail over that of another, taking into account also the principle of presumption of innocence of the accused. The international judges, in contrast, had taken the view that only the indictment was valid, that the dismissal order was null and void and that the case should therefore be forwarded to the

Trial Chamber. The Office of Co-Investigating Judges had subsequently rejected a request from the international co-prosecutor for the case to be forwarded to the Trial Chamber. More recently, the international co-prosecutor had notified the Pre-Trial Chamber that she would file a request for it to issue a decision to conclude the pretrial stage of the proceedings in Case 003 in accordance with the Pre-Trial Chamber's findings and with the Extraordinary Chambers' legal framework, which, in her opinion, required that the case should proceed to trial.

Since he had last addressed the Commission, the three non-judicial accountability mechanisms – namely, the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant and the Independent Investigative Mechanism for Myanmar – had become fully operational. They had been investigating the most serious international crimes and violations of international law, compiling case files and sharing information for use in legal proceedings before international and national courts and tribunals, including the International Criminal Court and the International Court of Justice.

In recent times, Member States had shown a clear preference for the establishment of non-judicial accountability mechanisms that focused on supporting national and international prosecution efforts rather than conducting their own prosecutions. The significant activity seen in connection with the sharing of information with national tribunals, in particular by the International, Impartial and Independent Mechanism and the United Nations Investigative Team, had further bolstered Member States' support for such mechanisms, resulting in greater interest in either establishing new entities or empowering existing ones, by means of "evidence collection" mandates, to deal with difficult situations in which there appeared to be little immediate prospect of accountability.

As the number of entities that had mandates to collect evidence grew, several important considerations had come to the fore. The first was that the collection of evidence was a task of a legal and technical nature that required criminal investigation and prosecutorial expertise in order to ensure that the evidence collected could be admitted in legal proceedings before courts or tribunals. It was thus distinct from fact-finding. The second consideration was that, as the collection and preservation of information had moved onto digital platforms and online channels, particularly in the light of the COVID-19 pandemic, it was crucial that the entities concerned should have the information technology and cybersecurity frameworks they needed to ensure the safety and security of the information collected and of their interlocutors. A third consideration was that the focus on the creation of evidence collection mandates, as opposed to judicial functions, had reinforced the fact that the main responsibility for the fight against impunity rested with States. Thus, the support of the international community for nationally owned efforts to ensure accountability for serious crimes under international law remained essential.

Turning to efforts and challenges relating to the status, privileges and immunities of the United Nations and its personnel, he said that the pandemic had generated novel questions and demands in respect of the related legal framework. While each situation required a case-by-case analysis, the Organization's approach had generally been to cooperate with Member States, on a voluntary basis and without prejudice to its privileges and immunities, in the implementation of national measures related to public health such as restrictions on movement, quarantine requirements and contact tracing. The Office of Legal Affairs had dealt with a wide range of related legal issues, including in support of arrangements for the evacuation of United Nations personnel for medical reasons and the distribution of vaccines.

On a related point, each year the United Nations concluded with Member States numerous host country agreements that facilitated the implementation of its mandate. For the most part, those agreements related either to United Nations events, ranging from small meetings to major conferences, or to the establishment of United Nations offices away from headquarters. Such agreements were needed to ensure that United Nations privileges and immunities were fully respected. Sometimes, Governments were reluctant to recognize the full range of privileges, immunities and facilities and their applicability to all participants in an event or all personnel working at a United Nations office, particularly if the persons in

question were nationals of the host State. Most of the United Nations conferences that had been held away from headquarters during the pandemic had been conducted entirely in virtual format, and that fact had necessitated changes to the standard host country arrangements. For events that involved in-person participation, host country agreements had had to be amended to cover matters such as sanitary requirements, liability, cancellation and postponement.

Labour claims brought against the United Nations continued to pose significant challenges. Labour courts in a number of countries were refusing to recognize the Organization's immunity from such lawsuits, particularly when they were brought by non-staff personnel. Increasingly, such claims had resulted in the seizure of United Nations funds pursuant to judgments issued by labour courts, despite the Organization's absolute immunity from measures of execution under the 1946 Convention on the Privileges and Immunities of the United Nations and relevant host country agreements.

United Nations Headquarters in New York had been experiencing increasing difficulties with respect to delays in the issuance of visas and the imposition of travel restrictions on Secretariat personnel of certain nationalities and representatives of certain Member States. In view of growing concerns about the impact of those restrictions on the work of the United Nations, the affected Member States had engaged in a sustained effort to have the Secretary-General invoke section 21 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. The Office of Legal Affairs was working diligently towards achieving a meaningful improvement in the situation that would preclude the need to invoke section 21, which was not in the interests of either party.

Switching his focus to the activities of the General Legal Division, he said that European Union data protection law, including the General Data Protection Regulation, continued to have an adverse impact on the ability of United Nations system organizations to deliver their mandated activities, including those in support of refugees and other vulnerable populations, to contract for key goods and services and to share critical data in furtherance of their respective mandates. For the most part, such difficulties arose because European Union member States and institutions, and also private entities, continued to seek to impose substantive obligations emanating from European Union data protection law on United Nations system organizations in contracts, cooperation agreements and funding and other arrangements. At the request of the legal advisers of those organizations, he had been engaged in discussions with European Union entities, including the European Commission and the European Data Protection Board, for over three years. Notably, in May 2020, the United Nations Secretariat had made a publicly available submission to the European Data Protection Board that outlined the position of United Nations system organizations under international law and their concerns about the soft enforcement of European data protection law.

Despite those efforts, there had been no satisfactory resolution to date. In particular, neither the European Data Protection Board nor the European Commission had issued any public declaration or guidelines that would address the concerns of United Nations system organizations, in keeping with their status, privileges and immunities and regulatory frameworks, and would reassure parties that were subject to European Union data protection laws that they could transfer data to and receive data from United Nations system organizations without fear of running afoul of European Union data protection laws and facing significant penalties or fines. The Office of Legal Affairs would continue to engage with the European Union, as a solution needed to be found in the very near future.

Against that backdrop, he wished to mention also that, in accordance with the Data Strategy of the Secretary-General for Action by Everyone, Everywhere, the United Nations Secretariat was continuing its efforts to strengthen its own data protection and privacy framework, including mechanisms for enhanced governance, oversight and accountability.

Turning to the work of the International Trade Law Division, and in particular its ongoing work on investor-State dispute settlement reform, mediation, rules for expedited arbitration, and identity management and digital trade, he said that Working Group III of the United Nations Commission on International Trade Law (UNCITRAL) had made considerable progress in its work towards a potential reform of the investor-State dispute

settlement system. It continued to work simultaneously on reform options pertaining to structural reform, on the one hand, and those pertaining to non-structural or procedural reform, on the other. Structural reform options included the establishment of a multilateral advisory centre, an appellate mechanism and a multilateral permanent investment court, while procedural reform options included alternative dispute resolution and dispute prevention mechanisms, the selection and appointment of adjudicators, a code of conduct and the amendment of procedural rules such as those regulating third-party funding and treaty interpretation.

Working Group III was considering the possibility of preparing a multilateral instrument to implement the reforms, which might be modelled on the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, in order to make the investor-State dispute settlement reform applicable to the more than 3,000 existing international investment agreements. It had completed the preliminary consideration of the reform options, in many cases on the basis of specific draft provisions. At its February 2021 session, it had discussed the selection and appointment of adjudicators in a standing mechanism, as well as draft provisions on an appellate mechanism and enforcement issues. In May 2021, the Secretariat had published a second version of the draft Code of Conduct for Adjudicators, drawn up in conjunction with the secretariat of the International Centre for Settlement of Investment Disputes, which the Working Group would consider at its November 2021 session. The Working Group had prepared a request for additional resources that would enable it to hold an additional week of meetings each year and to conclude the reform process by 2026.

With regard to mediation-related texts, he noted that the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation, had entered into force on 12 September 2020. The Singapore Convention offered an effective mechanism for the enforcement of international settlement agreements resulting from mediation and, accordingly, would serve to facilitate international trade and promote mediation as an effective alternative method of resolving commercial disputes. On 7 August 2019, the day on which the Convention had been opened for signature, 46 States had signed, and that number had since risen to 53. The Convention had been ratified by six States, most recently by Ecuador, which had deposited its instrument of ratification on 9 September 2020.

The Singapore Convention was part of a broader legal framework developed under the umbrella of UNCITRAL, which in 1980 had taken the first international step towards the harmonization of rules for mediation by adopting the Conciliation Rules. Those Rules had been followed by the 2002 Model Law on International Commercial Conciliation, the 2018 update of the Model Law and, finally, the Singapore Convention. UNCITRAL was currently in the process of updating the Conciliation Rules to reflect current practice and ensure consistency with the Singapore Convention and the 2018 version of the Model Law.

UNCITRAL had drawn up a set of rules on expedited arbitration, involving a streamlined and simplified procedure that would give parties to a dispute a cost- and time-effective means of achieving a definitive resolution. Presented as an appendix to the generic UNCITRAL Arbitration Rules, the UNCITRAL Expedited Arbitration Rules offered an alternative that struck a balance between the efficiency of arbitral proceedings and respect for the parties' rights to due process and fair treatment.

UNCITRAL continued to work in the field of identity management and digital trade. Its Working Group IV was currently finalizing a model law on identity management and trust services that was expected to be adopted in 2022. UNCITRAL was actively considering new topics in that area and had asked the Secretariat to explore legal issues related to a range of digital tools, including data transactions, artificial intelligence, digital assets and online platforms, with a view to preparing proposals for future legislative work. To guide that work, the Secretariat was preparing a legal taxonomy that might also be relevant to other areas of the United Nations system tackling pressing questions related to digital transformation, including in other areas of international law-making. UNCITRAL was also studying the manner in which disputes were being settled in the digital economy, analysing the changing practices and evolving technologies and the consequent need to transform the legal framework.

Turning to the field of micro-, small and medium-sized enterprises, he said that, since 2013, UNCITRAL had been working to reduce the legal obstacles faced by such enterprises, particularly those located in developing countries, throughout their life cycle, beginning with the legal issues surrounding the simplification of incorporation. Its work had resulted in the publication of two legislative guides: one on business registration, adopted in 2018, and the other on limited liability enterprises, adopted in June 2021 at its fifty-fourth session. The two guides were intended to simplify the formation and operation of micro-, small and medium-sized enterprises, thus encouraging enterprises in that category that were currently operating in the informal sector to migrate to the formal sector, which, among other benefits, would help to raise their public profile. Such simplification might also facilitate the economic inclusion of women and other entrepreneurs facing cultural, institutional or regulatory obstacles, such as young persons and persons belonging to ethnic minorities. Through those legislative guides, UNCITRAL was helping to support productive activities, job creation and sustainable and inclusive entrepreneurship, in line with Sustainable Development Goals 8 and 9. Lastly, also at its fifty-fourth session, UNCITRAL had adopted draft recommendations on a simplified insolvency regime for micro- and small enterprises and had approved, in principle, the draft commentary thereto.

With regard to the activities of the Division for Ocean Affairs and the Law of the Sea, while the pandemic might have reduced some of the pressures on the marine environment, it had also caused severe disruption to production and to global supply and value chains in ocean-based economies, which had particularly affected small island developing States and the shipping and fishing sectors. In addition, many ocean-related meetings and conferences had had to be postponed or cancelled.

Every year, in its resolution on oceans and the law of the sea, the General Assembly recognized the universal and unified character of the United Nations Convention on the Law of the Sea, reaffirmed that the Convention set out the legal framework within which all activities in the oceans and seas must be carried out and underscored the need for the integrity of the Convention to be maintained. The International Law Commission should keep those elements at the forefront of its work on the topic “Sea-level rise in relation to international law”. Of particular relevance to that topic was the practice of States and the Secretary-General with regard to the deposit of information on baselines and outer limits of maritime zones. At the request of both the Meeting of States Parties to the Convention and the General Assembly, the Secretariat had prepared a note on the practice of the Secretary-General in respect of the deposit of charts and/or lists of geographical coordinates of points under the Convention (SPLOS/30/12) and a publication containing guidelines to assist States with regard to the deposit of such information.

He understood that informal exchanges had already taken place between the Division for Ocean Affairs and the Law of the Sea and representatives of the open-ended Study Group established by the International Law Commission. The Division could provide the Commission with information on technical aspects of the Convention. The twenty-first meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, which had been scheduled to take place in 2020, had been held virtually from 14 to 18 June 2021. It had focused on sea-level rise and its impacts, a topic of great importance to Member States. The General Assembly, in identifying the topic of focus of the meeting, had taken note of the Commission’s decision to include the topic “Sea-level rise in relation to international law” in its programme of work. The Assembly had consistently recognized that the adverse impacts of climate change, including those related to sea-level rise, undermined countries’ ability to eradicate poverty and food insecurity and to achieve sustainable development. Cooperation and coordination of efforts under relevant global and regional instruments and frameworks therefore needed to be increased. He wished to recall that the United Nations Decade of Ocean Science for Sustainable Development provided an important opportunity to address gaps in ocean science, increase knowledge, improve synergies and support the sustainable conservation and management of marine resources.

Owing to the pandemic, the thirtieth Meeting of States Parties to the United Nations Convention on the Law of the Sea had taken place in a hybrid format over the period from 6 July to 9 December 2020. In August 2020, the States parties had met in person at United Nations Headquarters to elect seven judges of the International Tribunal for the Law of the

Sea. In December 2020, the States parties had approved the budget of the Tribunal for the period 2021–2022. Participants in the Meeting had received an update from the three bodies established under the Convention and had considered general issues relevant to States parties under article 319 thereof.

The thirty-first Meeting of States Parties to the Convention had been held in a hybrid format from 21 to 25 June 2021. Owing to the pandemic, the participants had decided, on an exceptional basis, to extend the term of office of the current members of the Commission on the Limits of the Continental Shelf by one year, until 15 June 2023. The decision had been taken without prejudice to article 2 (4) of annex II to the Convention and would not constitute a precedent either for that Commission or for other elected bodies established under the Convention or by the United Nations. Notwithstanding that decision, the next election of members of the Commission on the Limits of the Continental Shelf would take place as planned at the thirty-second Meeting of States Parties in 2022.

Since the start of the pandemic, the Commission on the Limits of the Continental Shelf had not held any in-person sessions. Owing to, *inter alia*, the need to ensure the confidentiality of its deliberations and of the data and information contained in submissions by States parties, it had also ruled out the option of meeting virtually. Its sessions were expected to resume when conditions allowed for the holding of in-person meetings. That Commission and its subcommissions had continued to engage in organizational activities by means of informal virtual meetings.

The Commission on the Limits of the Continental Shelf continued to experience challenges related to its significant workload and the conditions of service of its members. It had received a total of 96 individual or joint submissions, including 8 revised submissions, from 74 States parties. It had issued 35 sets of recommendations, including for 4 revised submissions, but 49 submissions were still awaiting consideration. Currently, the delay between the receipt of a submission and the establishment of a subcommission was almost 12 years and was likely to increase further. The year-long hiatus imposed by the pandemic had prevented the adoption of additional recommendations. It was for that reason that a group of States had proposed that members' five-year term of office should be extended until 2023.

The third session of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, convened pursuant to General Assembly resolution 72/249, had taken place in New York from 19 to 30 August 2019. Discussions had focused on the draft agreement prepared by the President of the intergovernmental conference with the assistance of the Division for Ocean Affairs and the Law of the Sea. Owing to the pandemic, the fourth session had been postponed to 2022. To maintain the momentum of the discussions, the President and Bureau of the intergovernmental conference had organized intersessional work in the form of webinars and online discussion forums over the period from September 2020 to March 2021. Additional intersessional work might well take place in 2021.

Turning to the activities of the Treaty Section, he said that a number of important multilateral treaties in the areas of environmental protection, international trade and disarmament that had been deposited with the Secretary-General of the United Nations had entered into force over the preceding two years. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) had entered into force on 22 April 2021. It was the first treaty to include specific provisions on the protection and promotion of the rights of human rights defenders in environmental matters. In addition, the Doha Amendment to the Kyoto Protocol, a key instrument in the fight against climate change, had entered into force on 31 December 2020. Those important developments in environmental law had followed the entry into force, in 2019, of the 2012 amendment of the text and annexes II to IX to the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone and the addition of new annexes X and XI, and the 1995 amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

In the area of international trade law, in addition to the Singapore Convention, the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific had entered into force, on 20 February 2021. Lastly, in the field of disarmament, the Treaty on the Prohibition of Nuclear Weapons, the first multilateral nuclear disarmament treaty in more than two decades, had entered into force on 22 January 2021.

The adoption by the General Assembly, in 2018, of amendments to the regulations to give effect to Article 102 of the Charter of the United Nations had given rise to a discussion of treaty law-related topics among Member States. As members would recall, the Sixth Committee had taken up the item "Strengthening and promoting the international treaty framework" again in 2020. In resolution 75/144, the General Assembly had reaffirmed the importance of the registration and publication of treaties, as well as their accessibility, highlighted the significance of electronic submissions of treaties for registration and welcomed the continued organization of workshops on treaty law and practice as an important capacity-building initiative.

The efforts of the General Assembly had built on the foundation established by the Vienna Convention on the Law of Treaties, the outcome of the International Law Commission's monumental work on the progressive development and codification of the law of treaties. The Convention had gained in importance over the years, as most of its provisions had come to be widely regarded as customary international law. The versatile legal regime established by the Convention now lay at the centre of treaty relations between subjects of international law. More recently, the Commission had adopted several important instruments clarifying provisions of the Vienna Convention, such as the Guide to Practice on Reservations to Treaties and the conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, which had been of great value to practitioners. He wished the Commission every success with its current session and, in particular, with its second reading of the draft Guide to Provisional Application of Treaties and its future work on the draft conclusions on peremptory norms of general international law (*jus cogens*). The Office of Legal Affairs would continue to serve the Commission with the highest standards of diligence, professionalism and dedication.

The term of office of the incumbent members of the Commission would expire at the end of 2022. The next election of members of the Commission was scheduled to take place in November 2021. He wished those members seeking re-election the best of luck and was grateful to all members for their contribution to the work of the Commission and to international law in general.

The Chair, speaking via video link, said that he was grateful to the Under-Secretary-General for the information that he had provided and for his interest in and support for the work of the Commission. On behalf of the Commission, he also wished to thank the Codification Division of the Office of Legal Affairs for its invaluable assistance.

Mr. Murase said that he was pleased to hear that the Office of Legal Affairs had been able to overcome some of the difficulties caused by the pandemic. He wondered whether, in view of the current exceptional circumstances, the Office might consider asking the General Assembly to assign a pandemic-related topic to the Commission in accordance with article 16 of the statute of the International Law Commission. In the past, the General Assembly had requested the Commission to prepare draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. The Working Group established for that purpose had quickly prepared a set of draft articles, which had formed the basis of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. He also wished to recall that the draft statute for an international criminal court, which had likewise been prepared by a Working Group established by the Commission, had eventually become the Rome Statute of the International Criminal Court.

In March 2020, he had proposed that the Commission should take up the topic of epidemics and international law as a matter of priority. That proposal had not found much support among the members and it had been suggested that the regular procedure for introducing new topics should be followed. However, it would take at least a few years for such a topic to be placed on the Commission's agenda and another several years for the

second reading of any draft articles prepared by the Commission to be completed, which would do little to address the current pressing needs of the international community. While the World Health Organization (WHO) played a central role in preventing and controlling epidemics, there were issues relevant to international law that needed to be considered within the framework of general international law. He had thus withdrawn his proposal to the Commission and had submitted it instead to the Institute of International Law, which had worked tirelessly between April and December 2020 to prepare a set of draft articles on epidemics and international law. Those draft articles would be discussed and hopefully adopted at the Institute's conference in Beijing in August 2021. He would welcome comments from the Under-Secretary-General on that subject.

Mr. de Serpa Soares (Under-Secretary-General for Legal Affairs, United Nations Legal Counsel) said that, following the adoption of the declaration on the commemoration of the seventy-fifth anniversary of the United Nations, the Secretariat had begun work on a draft common agenda, which would be submitted to Member States in the near future. One of the issues that had been included in the chapter on international law and justice related to the process of identifying normative gaps in the international legal order and defining adequate processes to fill those gaps, including the initiation of an emergency legislative process, if appropriate. The role of Member States was to trigger and to lead such processes. The year 2020 had shown that international cooperation was the key to effectively combating pandemics. Whether such cooperation should take place under existing international health regulations issued by WHO or under a new multilateral treaty drafted for that purpose was a crucial question which, as he understood it, was currently being discussed by the States members of WHO. If those discussions led to a decision to commence negotiations on a new multilateral treaty, that would raise the question of how useful it would be for the Commission to work in parallel on the same issue. It was his understanding that Mr. Grossman Guiloff and Mr. Jalloh had submitted a new paper on a possible treaty on epidemics and that the topic was being considered for inclusion in the Commission's long-term programme of work. He agreed that it was important for members to continue to consider the issue until such time as the WHO member States decided whether to start negotiations on a multilateral treaty.

He wished to clarify, however, that the role of the Legal Counsel was not to endorse or not endorse a given proposal, but to support processes previously defined by Member States. Discussions on a new multilateral treaty to address the current situation were also under way at the regional level, including within the European Union. If a specific request was submitted by Member States, the Office of Legal Affairs would support whatever process they defined.

Mr. Rajput said that he was grateful to the Under-Secretary-General for his useful update on the activities of the Office of Legal Affairs. He wondered whether the Office might be able to make some observations on how the outputs of the Commission had been received and the reasons why sufficient action had not been taken on them by the Member States.

Mr. de Serpa Soares (Under-Secretary-General for Legal Affairs, United Nations Legal Counsel) said that, as members were aware, the Office of Legal Affairs provided secretariat services to some 14 bodies, including the Sixth Committee. It was therefore well informed about developments within that body and reported back on them accordingly. He wished to recall that, at the 2019 informal meeting of legal advisers of ministries of foreign affairs, frustrated by the discussions on the draft articles on prevention and punishment of crimes against humanity, he had undiplomatically expressed the wish that the Sixth Committee should not merely become the "graveyard" of the drafts submitted to it by the International Law Commission. While his statement might not have been politically correct, the sentiment behind it remained valid. The Sixth Committee worked by consensus; as he was not a member of the Sixth Committee, he could only hope that it would come to interact more closely with the Commission and that the Commission's drafts would be considered more expeditiously in the future.

Mr. Forteau said that he was grateful to the Under-Secretary-General for having drawn members' attention to the note by the Secretariat on the practice of the Secretary-General in respect of the deposit of charts and/or lists of geographical coordinates of points under the United Nations Convention on the Law of the Sea (SPLOS/30/12), which was

directly relevant to the Commission's work on the topic "Sea-level rise in relation to international law". However, it was his impression that very few States had submitted comments on that document. It would be useful to hear more about its current status and whether States parties to the Convention intended to hold further discussions on it or to add to it.

Mr. de Serpa Soares (Under-Secretary-General for Legal Affairs, United Nations Legal Counsel) said that he would need to consult colleagues who were better acquainted with the processes that had led to the preparation of that document. He would provide an answer to Mr. Forteau's question in writing.

The meeting rose at 4.20 p.m.