

Provisional

**For participants only**

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**International Law Commission**  
**Seventy-fourth session (first part)**

**Provisional summary record of the 3622nd meeting**

Held at the Palais des Nations, Geneva, on Thursday, 11 May 2023, at 10 a.m.

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***Present:***

*Chair:* Ms. Oral

*Members:* Mr. Akande  
Mr. Argüello Gómez  
Mr. Asada  
Mr. Fathalla  
Mr. Fife  
Mr. Forteau  
Mr. Galindo  
Ms. Galvão Teles  
Mr. Grossman Guiloff  
Mr. Huang  
Mr. Jalloh  
Mr. Laraba  
Mr. Lee  
Ms. Mangklatanakul  
Mr. Mavroyiannis  
Mr. Mingashang  
Mr. Nesi  
Mr. Nguyen  
Ms. Okowa  
Mr. Ouazzani Chahdi  
Mr. Oyarzábal  
Mr. Paparinskis  
Mr. Patel  
Mr. Reinisch  
Ms. Ridings  
Mr. Ruda Santolaria  
Mr. Sall  
Mr. Savadogo  
Mr. Tsend  
Mr. Vázquez-Bermúdez

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 10.05 a.m.*

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

**Mr. de Serpa Soares** (United Nations Legal Counsel) said that his oral report would focus mainly on the activities of the Office of Legal Affairs during what had been a very busy period. The full written report would be posted on his website.

For almost 75 years, the International Law Commission had played a pivotal role in the progressive development of international law and its codification. He wished to congratulate all members on their election or re-election and convey to them the best wishes of the Secretary-General for a successful first session of the new quinquennium. The fact that the Commission would be chaired by two outstanding women in the field of international law at the current session was a clear demonstration of its efforts to adapt and innovate in an ever-changing environment in which questions of equality, equity and inclusiveness were central.

The Office of Legal Affairs had continued to provide advice on issues arising from the Russian military offensive in Ukraine, ranging from issues relating to legal terminology to legal support in connection with the global food insecurity situation that the conflict had aggravated. In particular, the Secretary-General had been seeking the Office's guidance regarding the conclusion and implementation of two instruments signed on 22 July 2022, namely, the Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports and the memorandum of understanding between the Russian Federation and the Secretariat of the United Nations on promoting Russian food products and fertilizers to the world markets. The Office had also continued to provide assistance to the President of the General Assembly on procedural matters relating to its eleventh emergency special session, at which it had adopted resolution ES-11/6 on the principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine.

While the Organization was generally granted the privileges and immunities that it and its officials needed to effectively fulfil its purposes, in some areas it continued to face challenges in securing full respect for them. Particularly alarming were cases in which criminal action was taken against officials of the United Nations in connection with matters that fell squarely within the exercise of their official functions with the Organization and were thus covered by immunity from legal process.

The Organization would cooperate with Member States to facilitate the proper administration of justice and waive immunities where appropriate. However, if the Organization was not able to waive immunity, it was for Member States to ensure that it was fully respected and that criminal action was not taken against the Organization's officials. Challenges were occasionally encountered in that regard. On the basis of the well-established rules and principles of the law of treaties, as reflected in the 1969 Vienna Convention on the Law of Treaties, the Organization must insist that the provisions of internal law could not be invoked as justification for failure to assert immunity from legal process in accordance with the obligations established under the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations.

In the past year, the Office of the Under-Secretary-General for Legal Affairs had continued to deal with a wide range of issues relating to privileges and immunities that went beyond immunity from legal process. Some of those issues reflected the impact of ongoing armed conflicts. For example, the exemption of officials of the United Nations from national service obligations, including military obligations, had been an important issue in several contexts, including the situation in Ukraine.

Host country agreements were an important tool for ensuring that the full range of privileges and immunities, as well as related facilities, were granted to the Organization and its personnel. The Organization routinely entered into such agreements for United Nations offices, conferences and other events held away from Headquarters. The task of ensuring that the necessary provisions were included in such agreements and that all legal requirements were met accounted for a significant portion of his Office's work. As the number of United Nations offices had grown, so too had the number of host country agreements, sometimes leading to situations in which dozens of such agreements applied to United Nations offices

in the same location. The task of replacing that web of agreements with a single one had proved difficult, despite the clear benefits that it would bring. In September 2022, the United Nations and Denmark had entered into one such overarching agreement, and he hoped that similar agreements would be concluded in the future.

His Office provided legal support to a number of international criminal courts and tribunals established by or with the assistance of the United Nations.

The International Residual Mechanism for Criminal Tribunals remained seized of appeal proceedings in the *Stanišić and Simatović* case and trial proceedings in the *Kabuga* case, its last two main cases relating to core crimes. Once pronounced, the appeal judgment in the *Stanišić and Simatović* case would mark the end of the proceedings that had first been brought before the International Tribunal for the Former Yugoslavia and, following the decision by the Appeals Chamber of the International Tribunal that Mr. Stanišić and Mr. Simatović should be retried, had come under the Mechanism's jurisdiction in 2015.

The trial in the *Kabuga* case had commenced in September 2022. Mr. Kabuga was charged with genocide and crimes against humanity in connection with events in Rwanda in 1994. He had been arrested in Paris in 2020, having spent more than two decades as a fugitive. Since Mr. Kabuga's transfer to the Mechanism's custody, the Trial Chamber had dealt with a number of motions concerning his health. It was currently reassessing Mr. Kabuga's fitness to stand trial in view of the findings of the latest medical report, which indicated a serious deterioration in his cognitive capacity.

Alongside its judicial caseload, the Mechanism had made important strides with regard to ensuring accountability for the fugitives indicted by the International Criminal Tribunal for Rwanda. Only four fugitives remained at large following confirmation of the death of Protais Mpiranya and the termination of proceedings against him in September 2022. They were all expected to be tried in Rwanda.

With those developments in mind, the new President of the International Residual Mechanism for Criminal Tribunals, Judge Gatti Santana, had indicated that one of her core priorities was to lead the process of developing a comprehensive strategy to guide the Mechanism's ongoing transition from an operational court to a truly residual institution.

Other tribunals had also reached defining stages of their work. In July 2022, following the completion of judicial proceedings in the main *Ayyash* case, the Special Tribunal for Lebanon had entered its residual phase. In view of the limited scope of the Tribunal's residual functions, and mindful of the financial difficulties that it was facing, the United Nations and Lebanon had agreed on a completion plan under which the Tribunal would perform limited residual functions until 31 December 2023. Accordingly, the Secretary-General had recently extended the mandate of the Special Tribunal up to that date to enable the completion of its non-judicial residual functions and its orderly closure. In September 2022, the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia had delivered its judgment in case No. 002/02, with the full written judgment issued on 23 December 2022. The Supreme Court Chamber had affirmed the convictions and life sentence against Khieu Samphan for genocide against the Vietnamese, crimes against humanity and grave breaches of the Geneva Conventions committed across various locations in Cambodia between 1975 and 1979. With that decision, the Extraordinary Chambers had completed its last case. It had entered its residual phase on 1 January 2023.

With those developments, all the tribunals established by or with the assistance of the United Nations had entered their residual stages, almost exactly 30 years after the creation of the first *ad hoc* tribunal in 1993.

Of course, criminal accountability efforts were not limited to the various entities and processes established by the United Nations. Indeed, judicial cooperation requests arose in various areas of the Organization's activities and accounted for a large volume of his Office's work. The United Nations was under a general obligation to cooperate with judicial authorities to facilitate the administration of justice.

His Office provided support as part of the ongoing cooperation of the United Nations with the Kosovo Specialist Chambers and with the European Union's Special Investigative Task Force and its successor, the Specialist Prosecutor's Office. The Special Investigative Task Force had been established by the European Union in September 2011 to conduct a criminal investigation into allegations of war crimes and organized criminal activity against former leaders of the Kosovo Liberation Army between 1998 and 2000 and to handle any resulting prosecutions. The Specialist Prosecutor's Office was a judicial institution of Kosovo established pursuant to Act No. 05/L053 of 3 August 2015 to assume the mandate and personnel of the Special Investigative Task Force.

In its cooperation with the Task Force and the Specialist Prosecutor's Office, the United Nations had been guided by United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 2000/47 of 18 August 2000 on the status, privileges and immunities of the Kosovo Force and UNMIK and their personnel in Kosovo and the 1946 Convention on the Privileges and Immunities of the United Nations. Under the Convention, officials of the United Nations were "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" and the archives of the United Nations and in general all documents belonging to it or held by it were "inviolable wherever located". The privileges and immunities of the Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo, the institution-building component of UNMIK, and its personnel also derived from UNMIK Regulation No. 2000/47.

Between 2014 and 2019, pursuant to a framework agreed between his Office and the Special Investigative Task Force in 2014, the Task Force and, subsequently, the Specialist Prosecutor's Office had carried out informal voluntary interviews with a number of former and current officials of UNMIK and the OSCE Mission in Kosovo. In addition, a number of United Nations documents had been provided to the Task Force and the Specialist Prosecutor's Office to assist them in their investigations.

In 2019, his Office had received a request from the Specialist Prosecutor's Office requesting the United Nations to authorize selected current and former UNMIK personnel to provide signed written statements for use in criminal proceedings before the Kosovo Specialist Chambers, to testify in such proceedings and to release relevant documents. Similar requests had been made to OSCE in respect of former personnel of the OSCE Mission in Kosovo and documents generated by the Mission. According to the request, the Specialist Prosecutor's Office had determined that a number of former officials of UNMIK and the OSCE Mission in Kosovo who had been interviewed informally under the 2014 framework were in a position to provide essential evidence that the Specialist Prosecutor's Office, as the prosecuting authority, wished to use to pursue criminal charges.

With regard to the peaceful resolution of disputes, the General Assembly had recently decided to request the International Court of Justice to render two advisory opinions. In late December 2022, in its resolution 77/247, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", the General Assembly had decided to request the Court to provide an advisory opinion on the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination; from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967; and from its adoption of related discriminatory legislation and measures. The Assembly had also requested the Court's opinion on the effect of such policies and practices on the legal status of the occupation and the legal consequences that arose for all States and the United Nations from that status. In March 2023, in its resolution 77/276, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change", the General Assembly had decided to request the Court to provide an advisory opinion on the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases; and on the legal consequences under those obligations where States, by their acts and omissions, had caused significant harm to the climate system and other parts of the environment.

Those questions raised sensitive, complex and novel issues of international law. In accordance with Article 65 (2) of the Statute of the International Court of Justice, his Office was currently preparing dossiers containing all documents likely to shed light on the questions raised in the requests. That was a challenging task, as the questions put to the Court were much broader in scope than they had been on previous occasions.

With regard to the activities of the United Nations Commission on International Trade Law (UNCITRAL), for which the International Trade Law Division served as the secretariat, he wished to offer some insights into the discussions that would take place at its forthcoming, fifty-sixth session.

In 2017, UNCITRAL had entrusted its Working Group III with a broad mandate for investor-State dispute settlement reform. The lengthy but productive intergovernmental deliberations that had taken place in that context would bear fruit in 2023 with the adoption of the first set of reform elements. They included a draft code of conduct for arbitrators in international investment dispute resolution and a draft code of conduct for judges in international investment dispute resolution, each with a commentary. The draft codes set out the key obligations of adjudicators in the context of investor-State dispute settlement, including candidates for the position of arbitrator and former adjudicators, strengthened their duty of independence and impartiality, expanded disclosure requirements and introduced rules on so-called “double-hatting”, whereby an adjudicator served as counsel in separate proceedings involving similar legal issues. The code for judges would apply to those appointed to serve as members of a standing mechanism for resolving investment disputes. The Working Group was also developing a court of first instance and an appeal mechanism.

Another set of reforms before UNCITRAL in 2023 related to the use of mediation for resolving investment disputes. For that purpose, UNCITRAL was expected to adopt a set of draft provisions on mediation for inclusion in investment agreements, which would provide States with a firm legal basis for the use of mediation. UNCITRAL would also adopt guidelines on investment mediation, which would set out the benefits of mediation and how it could be used to resolve investment disputes. Both texts were intended to promote the use of mediation, which remained underutilized in the settlement of investor-State disputes, and to facilitate the amicable settlement of investment disputes.

The current system of investor-State dispute settlement was under great scrutiny. It could therefore be expected that the draft codes of conduct and the two texts on mediation would help to reform the investor-State dispute settlement regime, promote transparency and accountability and thereby establish fair and effective means for resolving investment disputes.

Those first four reform elements were the products of a multilateral approach, representing the first concrete outcome of the process of reform that would be carried out over the following three years.

Since 2013, UNCITRAL had been working to create an enabling legal framework for micro-, small and medium-sized enterprises by addressing the legal obstacles that they faced throughout their life cycle, particularly in developing economies. In 2023, it would adopt a guide on access to credit for such enterprises. The guide would set out the legal framework needed to ensure that businesses could obtain financing for their operations and the ways in which States could improve their domestic legal framework to facilitate access to financing. Beyond legal reforms, the guide also addressed regulatory and policy measures that could help to reduce barriers in access to credit, such as the issuance of personal guarantees, credit guarantee schemes, infrastructure to facilitate credit risk assessment, rules and guidance on fair lending practices and the promotion of financial literacy.

With regard to the law of the sea and the activities of the Division for Ocean Affairs and the Law of the Sea, on 4 March 2023, 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 finalized the text of a draft agreement. That remarkable, landmark achievement had been secured at the conference’s resumed fifth session. The agreement was the third to be directly related to the United Nations Convention on the Law of the Sea. It addressed the four topics

identified in the package agreed in 2011 that had been under negotiation in connection with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, namely: marine genetic resources; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. The issues addressed in the agreement included: the agreement's relationship with the Convention, the relevant legal instruments and frameworks, and the relevant global, regional, subregional and sectoral bodies; general approaches and principles; international cooperation; institutional arrangements; funding; implementation and compliance; and the settlement of disputes.

At the closure of the resumed session on 4 March 2023, the conference had decided to establish an open-ended informal working group to ensure the terminological consistency of the text of the draft agreement and to resume the session once the working group had completed its work, with a view to adopting the draft agreement in all six official languages of the United Nations. On 18 April 2023, the General Assembly had requested the Secretary-General to convene the further resumed fifth session of the conference on 19 and 20 June 2023 or on a date to be determined in consultation with the President of the conference.

His Office continued to follow with interest the Commission's work on sea-level rise in relation to international law and looked forward to seeing the Study Group's consolidated substantive report on the topic. His colleagues in the Division for Ocean Affairs and the Law of the Sea remained available to provide information on technical aspects of the United Nations Convention on the Law of the Sea and share their expertise in that regard. On the related impacts of climate change, he recalled that the Commission of Small Island States on Climate Change and International Law had recently requested the International Tribunal for the Law of the Sea to render an advisory opinion. The questions raised by the Commission related to the obligations of States parties to the Convention to prevent, reduce and control pollution of the marine environment and to protect and preserve it in the context of climate change. His Office was involved in preparing a written statement that, at the Tribunal's request, would be presented in the context of those proceedings.

Similarly, the Commission's work on the topic "Prevention and repression of piracy and armed robbery at sea" would be of special interest to the Division given the centrality of the relevant provisions of the United Nations Convention on the Law of the Sea in that regard.

The Division, as the secretariat of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, had serviced the eighteenth meeting of the Ad Hoc Working Group of the Whole in March 2023. Through its world ocean assessments, the Regular Process continued to provide the latest ocean-related data and information to support policymaking. The declaration adopted at the 2022 United Nations Conference to Support the Implementation of Sustainable Development Goal 14 included a commitment to strengthen the science-policy interface for implementing that goal and its targets in order to ensure that policy was informed by the best available science and relevant indigenous, traditional and local knowledge, through processes such as the Regular Process.

With regard to sustainable fisheries, in December 2022, the General Assembly had completed its review of actions taken by States and regional fisheries management organizations and arrangements to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks. As a result, General Assembly resolution 77/118 on sustainable fisheries had included a number of new or updated provisions. In May 2023, the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks would be resumed, with a mandate to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of those stocks. The recommendations adopted by the Review Conference in 2006, 2010 and 2016 had played an important role in strengthening the implementation of the Agreement at all levels.

The Commission on the Limits of the Continental Shelf had held three sessions between the second half of 2022 and the beginning of 2023. At its fifty-seventh session, the last in the term of office of its current members, the Commission had adopted recommendations with regard to a joint submission by France and South Africa concerning the area of the Crozet Archipelago and the Prince Edward Islands; a submission by Kenya; and a partial revised submission by the Russian Federation concerning the Arctic Ocean. Upon request, it had also decided to suspend consideration of the submissions made by India and Sri Lanka. As at April 2023, 74 States parties had made submissions, either individually or jointly.

The Division's capacity-building activities were vital to promoting the full and effective implementation of the legal framework governing the oceans and the law of the sea. In addition to ongoing projects, such as the four-year programmes of assistance to meet the strategic capacity needs of developing States funded by the Norwegian Agency for Development Cooperation and the partnership with the World Bank on regional ocean governance training courses, the Division had recently launched the Project of Assistance to Strengthen Participation in and Implementation of the United Nations Fish Stocks Agreement, which was funded by the European Commission and was administered by the Food and Agriculture Organization of the United Nations. It had also renewed a partnership with the United Nations Institute for Training and Research on the provision of briefings for delegates. The Division also provided technical assistance at the national level, most recently for the Government of Eritrea. Furthermore, it also administered fellowship programmes, such as the United Nations-Nippon Foundation of Japan Fellowship Programme, and a number of trust funds.

The Treaty Section fulfilled the Secretary-General's depositary functions for over 600 multilateral treaties, including the United Nations Convention on the International Effects of Judicial Sales of Ships, which was to be opened for signature later in 2023, and the functions of registering and publishing treaties under Article 102 of the Charter of the United Nations.

On 26 February 2023, a further multilateral agreement deposited with the Secretary-General, namely, the amendments to annexes I and II to the 1998 Protocol on Persistent Organic Pollutants to the Convention on Long-range Transboundary Air Pollution, had entered into force. Developments of that kind continued to take place in the field of environmental protection. In that connection, his Office looked forward to the adoption of the draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of life in areas beyond national jurisdiction, which would also be deposited with the Secretary-General.

The importance of multilateral treaties in the area of environmental protection and climate change had been highlighted in the most recent quadrennial assessment report of the Scientific Assessment Panel of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, which had been presented on 9 January 2023. The Montreal Protocol was one of the multilateral treaties deposited with the Secretary-General that enjoyed universal participation, with 198 States parties. It was explained in that report that compliance with the Montreal Protocol would avoid global warming of 0.5–1°C by 2050 and that ozone levels in the Antarctic would likely return to 1980 levels by 2066. That assessment demonstrated that multilateral treaties were essential tools in the international community's efforts to combat climate change. Universal participation in such treaties could produce real, tangible results. Indeed, it was also estimated in the report that compliance with the 2016 Kigali Amendment to the Montreal Protocol, which concerned the phase-down of certain hydrofluorocarbons, could avoid a further 0.5°C of warming by 2100. His Office would continue its efforts to promote universal adherence to the Montreal Protocol and other multilateral treaties deposited with the Secretary-General aiming to promote international cooperation to protect the environment and combat climate change.

One of the most visible efforts in that regard had been the twentieth Treaty Event, which, following a two-year hiatus during the coronavirus disease (COVID-19) pandemic, had taken place in September 2022 on the sidelines of the general debate at the seventy-seventh session of the General Assembly. The event had been characterized by a renewed focus on universal participation in multilateral treaties deposited with the Secretary-General, in particular treaties in support of the 2030 Agenda for Sustainable Development. States



participating in the event had taken action on a wide range of multilateral treaties, making significant strides in the field of disarmament for instance. His Office looked forward to the next Treaty Event, which would be held in conjunction with the general debate at the seventy-eighth session of the General Assembly on the theme “Towards universal participation in multilateral environmental agreements for a healthy planet”.

A large number of States and international organizations found themselves called upon to perform depositary functions for multilateral treaties. In that connection, his Office looked forward to the debate on the subtopic “Best practices of depositaries of multilateral treaties” at the seventy-eighth session of the General Assembly. The debate would take place under the agenda item “Strengthening and promoting the international treaty framework”. His Office hoped that the discussions would lead to a deeper understanding of contemporary State practice.

The eyes of the international legal community would be on the Commission as it embarked on its work in the new quinquennium. Governments, scholars and the public at large relied on the Commission’s expertise and its dedication to the progressive development and codification of international law. His Office would continue to serve the Commission with the highest standards of diligence, professionalism and dedication.

**The Chair** expressed her appreciation for the support provided to the Commission by the Office of Legal Affairs, which was invaluable in enabling the Commission to produce high-quality work.

**Mr. Grossman Guiloff** said that he would like to know if the Office of Legal Affairs had considered making greater use of remote working tools. The Office’s experience of remote working could perhaps serve as a model for the Commission. On a related point, he wished to know whether the Office had considered using machine translation technologies to facilitate the preparation of official documents in a timely manner. Although the output was not perfect, it was better than nothing. Other international organizations were making active use of such technologies. In addition, he wondered whether the Office was considering the possible impact that artificial intelligence might have on its methods of work in the future. Lastly, it would be useful to know what measures had been taken to limit the environmental impact of the Office’s work, for example with regard to the use of paper.

**Mr. Jalloh** said that he would be grateful if the Legal Counsel could comment on the Commission’s plan to hold part of one of its sessions at United Nations Headquarters at some point during the following two years. The Commission had already been informed of the potential challenges of doing so in 2024. In his view, members would benefit from a period at Headquarters at an early stage in their terms of office.

In his statement before the Commission in 2022, the Legal Counsel had referred to the report of the Secretary-General entitled *Our Common Agenda*, which included suggestions for action that could be taken for the development and effective implementation of international law, and had mentioned a plan to launch a discussion among Member States on the role of the General Assembly in proposing topics for the Commission. As the General Assembly had yet to take action on some of the Commission’s projects, he would be grateful for further information on that plan.

**Mr. de Serpa Soares** (United Nations Legal Counsel) said that the priorities of the United Nations were those of its Member States. It was for Member States to inform the Secretariat of the areas in which they were willing to cooperate and those that were priority areas. As Legal Counsel, he was well placed to observe certain trends in that regard. Despite laments about the death of international law and multilateralism, he saw a clear willingness among States to cooperate on environmental issues in particular. The draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of life in areas beyond national jurisdictions was one example. In his view, the draft agreement represented the greatest achievement that had been secured during his tenure as Legal Counsel. In addition, negotiations on plastics and the oceans, which were being led by the United Nations Environment Programme, were progressing rapidly. At the same time, following decades of gridlock, the World Trade Organization was making significant progress on the topic of fisheries subsidies.

Currently, tools powered by artificial intelligence were not powerful enough to provide accurate responses to complex legal questions. Legal documents still required review by a human legal expert. Nonetheless, the potential impact of artificial intelligence in the legal field – indeed in all professional fields – was likely to be huge. Many Member States had no capacity to regulate developments in the application of artificial intelligence. For those reasons, the Commission’s input in that area would be invaluable; however, the Commission would need external expert assistance in order to understand the finer points of the technology. United Nations translators had already begun to integrate machine translation tools into their work. He was unsure how such tools were used in the specific case of the Commission’s documentation but would be closely following developments in that area, in coordination with the Director of the Codification Division.

Regarding the relationship between the Commission and the Sixth Committee, many Member States would welcome closer engagement between the two bodies. One of the ways to achieve that would be to arrange for more face-to-face interaction between members of the Commission and delegates, for example, in the context of International Law Week. However, such events had to be organized well in advance for budgetary and logistical reasons; it would be easier to make arrangements for 2025 than for 2024. The earlier the details of the event were finalized, the easier it would be to set funds aside for it and book meeting rooms. It was for the members of the Commission to reflect upon whether the choice of topics was a factor that could lead to better engagement with the Sixth Committee. While he suspected that it was, only Member States could provide useful insight in that regard. In the past, he had expressed frustration that the Sixth Committee seemed to be becoming the graveyard of the Commission’s projects. However, the debate among Member States regarding the draft articles on prevention and punishment of crimes against humanity was the most intense he had seen since his appointment.

In the Secretary-General’s report entitled *Our Common Agenda*, international law was not addressed as a separate topic, because the drafters had taken the view that international law underpinned the entire exercise. Concerning the section of the report that dealt with compliance with international obligations, which the Office of the Legal Counsel had had a hand in drafting, the basic idea was that it was necessary to take a case-by-case approach in order to understand what was preventing a given Member State from complying with a particular international obligation. In that regard, he wished to point out that the translation of international legal instruments was crucial for compliance. Often, small and developing States failed to implement international law through the transposition of treaties into their national legislation because they did not have the technical means to translate the treaty into their national languages.

**Mr. Paparinskis** said that, over the past year, there had been discussions in multiple forums regarding the possible establishment of a special international tribunal on the aggression against Ukraine. He would be interested to hear the Legal Counsel’s thoughts in that regard.

**Mr. Fathalla** said that he was curious to know what steps the Office of Legal Affairs took to prevent the politicization by Member States of the output of the Commission and the advisory opinions of the International Court of Justice.

**Mr. Fife** said he agreed that there was a pressing need for greater synergy between the Commission and the Sixth Committee. In that connection, he wondered what measures the Office of Legal Affairs was taking to promote cooperation between the legal offices of the various agencies, funds and programmes of the United Nations system and between the United Nations and regional and subregional international organizations, in particular in relation to topics of general interest, such as artificial intelligence and sea-level rise.

**Mr. de Serpa Soares** (United Nations Legal Counsel) said that he was aware of the discussions taking place among States on the possible establishment of a special international tribunal on the crime of aggression against Ukraine, with or without the involvement of the United Nations. Some of those discussions were being held within the institutional framework of the European Union; indeed, the European Parliament had recently issued a study on the topic. In any discussion on the possible involvement of the United Nations in such an initiative, Member States would have to answer three preliminary questions: first,

whether the General Assembly had the power to adopt a binding resolution on the establishment of such a tribunal; second, if so, what kind of majority would be needed; and, third, whether such a resolution could waive the immunity of Heads of State under customary international law.

The strategy of the Office of Legal Affairs for preventing the politicization of legal work at the United Nations was to strictly observe the principle of impartiality. The credibility of the Office was tied up with the fact that it did not serve the particular interests of any one Member State or group of States. Member States rightly expected the Office's cooperation on an equal basis. The role of the Office of Legal Affairs with regard to requests for advisory opinions from the International Court of Justice was limited to providing a dossier that was as extensive and as comprehensive as possible. It was not for the Legal Counsel to attempt to reply to or intervene in respect of questions put to the Court.

With regard to cooperation between the different bodies of the United Nations, in his capacity as Legal Counsel, he chaired an annual meeting of the legal advisers of all specialized agencies and United Nations funds and programmes, the purpose of which was to ensure coherence in the work undertaken on topics of common interest. Throughout the year, his office and the legal offices of the various agencies, funds and programmes exchanged information through informal channels. While he did not have authority over the specialized agencies, since they were independent, the working relationship between the Office of the Legal Counsel and the agencies' legal offices was excellent. There were also informal cooperation networks, such as UN-Oceans, which were, in his opinion, often more effective than formal mechanisms.

In terms of cooperation with regional bodies, some partners were more receptive than others. The Office of Legal Affairs had a longstanding working relationship with the International Committee of the Red Cross. It had a fledgling relationship with the relatively small legal department of the African Union and maintained sporadic contact with the Asian-African Legal Consultative Organization and the Organisation for Economic Co-operation and Development. The Office was also working to enhance cooperation with the European Union, non-public entities such as universities and non-governmental processes such as the Oxford Process.

**Ms. Okowa** said she understood that the Credentials Committee had reached an impasse on the question of the representation of Afghanistan and Myanmar in the political organs of the United Nations. She would welcome the Legal Counsel's comments in that regard. She would also be interested to learn what strategies the Legal Counsel employed to encourage Member States to put female candidates forward for election to the Commission, with a view to improving its historically poor track record when it came to the representation of women.

**Mr. Mavroyiannis** said that he would be grateful for clarification as to whether the Legal Counsel had issued a formal legal opinion on Security Council resolution 2672 (2023) on cross-border aid operations in the Syrian Arab Republic.

**Mr. de Serpa Soares** (United Nations Legal Counsel) said that the Secretariat and all funds and programmes were bound by the determinations of the political organs of the United Nations. Such determinations were expressed primarily through the Credentials Committee, which was still deadlocked over the credentials of the representatives of Afghanistan and Myanmar. The specialized agencies were not bound by the decisions of the Credentials Committee but followed them closely. In situations where there was a lack of clarity around the legitimate representation of a Member State, the Secretariat had to make hard decisions regarding the execution of its own mandates. For example, in Afghanistan, the Taliban had forbidden women from working. That was an issue for the Organization's operations in the country, not least because gender equality was a principle enshrined in the Charter of the United Nations. The Secretary-General had repeatedly stated that the situation was unacceptable. However, in a country on the verge of humanitarian catastrophe, the United Nations could not simply cease all activity, in view of the adverse effects that such a stoppage would have on locals who depended on international assistance. In such situations, the Secretariat applied practical guidance prepared by the Department of Political and Peacekeeping Affairs, limited its activities to those strictly necessary for the performance of

its core mandates and refrained from engaging in any activity that could be construed as an act of recognition.

Regarding the participation of women in the field of international law, it was up to Member States to ensure an appropriate gender balance in their nominations and appointments. The Secretariat could only set an example. Since his appointment as Legal Counsel in 2013, the Office of Legal Affairs had progressively become the most gender-balanced unit in the Secretariat, in large part thanks to active recruitment decisions. The Secretary-General was constantly encouraging Member States to put more women forward for positions on elected bodies. The fact that the current President of the International Residual Mechanism for Criminal Tribunals, the current President of the International Court of Justice and the current Head of 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 were women was a sign that progress was starting to be made.

He had not issued a legal opinion on the subject of resolution 2672 (2023), despite misinformed claims made in that regard in the British media and press. The position of the General Assembly and the Security Council was that the consent of the State concerned must be provided or a relevant Security Council resolution must be adopted as a prerequisite for humanitarian assistance to go ahead. In the absence of either, it was simply not possible for humanitarian workers to enter the State concerned. That position was clear and did not require explanation in a legal opinion. He was aware that some legal scholars had made academic arguments to the contrary; his office simply did not agree with their findings. Moreover, as Legal Counsel, he had a degree of executive responsibility for the deployment of humanitarian workers and was therefore accountable for their safety. For him, it was not simply an abstract question to be discussed among international lawyers.

**Mr. Patel** said that he wished to thank the Legal Counsel for the briefing he had given at a recent capacity-building workshop on treaty law and practice organized by the Asian-African Legal Consultative Organization. Capacity-building and technical assistance were particularly valuable to Asian and African nations developing national treaty databases. He was also grateful for the Legal Counsel's support for the Trust Fund for Assistance to Special Rapporteurs of the International Law Commission, which was a particularly valuable resource for Special Rapporteurs from developing countries.

**Mr. Ouazzani Chahdi** said that he would appreciate further information on the status of the draft agreement finalized by 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.

**Mr. de Serpa Soares** (United Nations Legal Counsel) said that the organization of capacity-building activities was limited by the capacity of his relatively small office. The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was of great value to young professionals in the developing world. Its inclusion in the Organization's regular budget, which ensured its continuity, was a major achievement. Some of the divisions of the Office of Legal Affairs had their own capacity-building programmes. The Division for Ocean Affairs and the Law of the Sea, for example, did significant bilateral work with Pacific island States and had assisted the Somali Parliament in the preparation and adaptation of its maritime laws. The Office of Legal Affairs would welcome further cooperation with institutions such as the Asian-African Legal Consultative Organization on more specific topics, provided that sufficient resources were made available by Member States.

The draft agreement 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 had been adopted in English only. A process of linguistic consolidation in the six language versions was currently under way, and Member States intended to formally adopt the various language versions on 19 June 2023. A signing ceremony would be organized shortly thereafter, perhaps in September, during the high-level segment of the seventy-eighth session of the General Assembly. A large number of States were ready to sign the treaty, which would come into force once 50 countries had consented to be bound by it.

*The meeting rose at 12.25 p.m.*