Statement by Ms. Patricia O'Brien,

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International Law Commission

Geneva, 22 May 2012

Mr. Chairman,

Distinguished members of the International Law Commission,

Ladies and Gentlemen,

It is my distinct honour once more to be here with you today. Since this is the first session of the Commission following your election by the General Assembly last year, it is only natural that I begin my statement by extending to you all warm congratulations on your election and to wish you the very best for the new quinquennium in the important task of progressive development of international law and its codification.

I will seek to draw your attention to issues of a legal nature bearing on your work that have occurred since the Commission met last year. In doing so, I will first focus on issues before the Sixth Committee of the General Assembly. Thereafter, I will touch upon some activities concerning the Office of Legal Affairs.

Matters concerning the Commission in the Sixth Committee of the General Assembly

At the regular session of the General Assembly, the Sixth Committee, as is customary, accorded particular attention to the annual report of the Commission. I draw attention to General Assembly resolution 66/98, entitled "Report of the International Law Commission on the work of its sixty-third session", adopted on 9 December 2011. Its provisions provide policy guidance by the General Assembly to your work. In the overall, the Sixth Committee continues to look to the Commission for valuable work in the progressive development of international law and its codification.

Following the completion last year by the Commission of its work on the draft articles on the Responsibility of international organizations and on the Effects of armed conflicts on treaties, together with commentaries thereto, the General Assembly, in both instances, took note of the articles and annexed them to a resolution and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. It also decided, in both cases, to revert to the items in three years time, with a view to examining, *inter alia*, the question of the form that might be given to the articles.

It will also be recalled that the Commission completed work on the topic "Reservations to treaties", adopting, *inter alia*, the Guide to Practice, together with commentaries. In order to have a fuller debate on the topic, the General Assembly decided to take up its consideration at the forthcoming session of the General Assembly once all the relevant documentation will be available. At the time of debate Addendum 1 to the report containing the Guide to practice and commentaries had not been issued.

As for the other topics currently on the programme of work of the Commission, in resolution 66/98, the General Assembly recommended that the Commission continue its work on them taking into account observations of Governments. The topical summary of the Sixth Committee on the debate on the report of the Commission contains a detailed account of the views expressed.

In addition to the consideration of the Commission's report, which continues to remain the highlight of the Sixth Committee, the Sixth Committee also had before it two items which had previously been a subject of deliberation in the Commission. These are: Nationality of natural persons in relation to succession of States completed by the Commission in 1999 and the Law of transboundary aquifers completed in 2008.

Concerning the topic "Nationality of natural persons in relation to succession of States", the Commission adopted draft articles and commentaries thereto, with a recommendation that a declaration be adopted. The draft articles were annexed to resolution 55/153 and

since then the General Assembly has reverted to the item on two other occasions in consider the question of the final form. This year's resolution emphasizes the value of the articles in providing guidance to the States dealing with issues of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness. The General Assembly also decided that that, upon the request of any State, it will revert to this question at an appropriate time, in the light of the development of State practice in these matters.

As will be recalled, the Commission adopted draft articles and commentaries thereto on the Law of transboundary aquifers and proposed a two-step approach consisting of the General Assembly annexing the draft articles to a resolution, which it did in resolution 63/124, and then subsequently the possible elaboration of a convention. The focus of the Sixth Committee during its session was, *inter alia*, on the question of the final form that might be given to the draft articles. It was agreed to encourage States to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles, as well as encouraging the International Hydrological Programme of the United Nations Educational, Scientific and Cultural Organization to offer further scientific and technical assistance to the States concerned, The Sixth Committee is expected to revert to the item next year to continue to examine, *inter alia*, the question of the final form that might be given to the draft articles.

I will now address some other items that were also on the agenda of the Sixth Committee.

The question of "the Scope and application of the principle of universal jurisdiction", an item included in the agenda of the General Assembly in 2008, remains a matter of continuing interest. Thus far the Secretary-General has prepared two reports on the basis of information and comments received from governments, as well as observers, as appropriate. To further work on the subject a working group of the Sixth Committee was established last year and is expected to be reconstituted at the forthcoming session of the General Assembly. The working group essentially agreed on a roadmap for future work

following a step-by-step methodological approach in the discussion of issues concerning the definition of the concept of universal jurisdiction, its scope and its application. Needless to state that the consideration of the item is without prejudice to the consideration of this topic and related issues in other forums of the United Nations. Delegations are more than aware that the Commission has on its agenda several topics that bear on universal jurisdiction. It will be recalled that in its discussions on "The obligation to extradite or prosecute (*aut dedere aut judicare*)" last year, the Commission had a debate on the possible expansion of the topic to cover universal jurisdiction. Moreover, there were some delegations during the debate of the working group of the Sixth Committee that viewed the item as best suited for consideration by a body of such expertise as the Commission.

The second item that I address is "Measures to eliminate international terrorism". It cannot be emphasized enough how important this matter is to the United Nations. Unfortunately, the completion of the draft comprehensive convention on international terrorism has remained an illusive goal since 2001. Despite concerted efforts with the context of the Ad Hoc Committee established pursuant to resolution 51/210 and the working group of the Sixth Committee, general agreement cannot be reached on the outstanding issues which revolve around the exclusionary elements in relation to scope of application. In 2011, a Working Group of the Sixth Committee continued to reflect further on the 2007 elements of a package submitted by the Coordinator of the draft comprehensive convention, without delegations overcoming their differences on the way forward. It is expected that the Sixth Committee at the forthcoming session of the General Assembly will once more establish a working group on the subject. An Ad Hoc Committee was not convened this year in order to allow delegations more time to reflections and assessment.

The third item is "Criminal accountability of UN officials and experts on mission". This is another area where there is general concern within the United Nations. One single incident of criminal activity involving the United Nations tarnishes its image and adversely affects its operational capabilities, particularly in the field. When the Sixth Committee first took up this item in 2006, it approached the matter incrementally,

adopting short term measures on the basis of the report of the Group of Legal Experts that was commissioned by the Secretary-General while discussions continue on a possible long term measure, namely the adoption of a legally binding instrument. Last year, the Sixth Committee held a general debate, resulting in resolution 66/93 which is essentially an update of previous resolutions and retains the reporting mechanism first established in resolution 62/63. The report of the Group of Legal Experts, including its recommendation for the possible elaboration a legally binding instrument, which remains opens, is up for consideration in 2012 in the context of a working group of the Sixth Committee.

Next, I would like to make a few remarks on the "Rule of law at the national and international levels". This is a subject whose topicality remains crucial as the international community seeks to harness efforts towards a better world for all.

The debate in the Sixth Committee focused on the theme "Rule of law and transitional justice in conflict and post-conflict situations". In its resolution 66/102, the General Assembly again reaffirms its role in encouraging the progressive development of international law and its codification, and invites once more the Commission to continue to comment, in its annual report, on its current role in promoting the rule of law. The Assembly also decided to hold a one-day plenary on the rule of law at the national and international levels during the high-level segment of the forthcoming session of the Assembly, on 24 September 2012. The Sixth Committee remains seized with the matter and thematic subject for this year will be: "Rule of law at the national and international levels".

On the item "Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law", it is worth noting that the Programme was established in 1965 to contribute towards a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations and cooperation among States, thereby furthering the purposes and principles of the Charter of the United Nations. Since its establishment, the Programme has provided the foundation for the efforts of the United Nations to promote a better knowledge of

international law for nearly half a century. In 2011, the General Assembly reaffirmed that the increase in demand for international law training and dissemination creates new challenges for the Programme. It therefore welcomed the efforts of the Codification Division over the last few years aimed at strengthening its face-to-face training activities under the Programme, namely the International Law Fellowship Programme, which is conducted annually in The Hague, and the organization of Regional Courses in International Law. [Since 2010, three such Regional Courses were organized, one for Asia and two for Africa and there are discussions on the possible organization of such courses for Asia and Latin America and the Caribbean in the future. The General Assembly also authorized the Secretary-General to further develop the United Nations Audiovisual Library of International Law, which, since its launch in October 2008, has been accessed in 192 Member States by more than 290,000 users. Another important aspect of the Programme of Assistance recognized by the General Assembly is the preparation of legal publications, including the *United Nations Juridical Yearbook*, *Reports of International Arbitral Awards, The Work of the International Law Commission, Summaries of judgments, advisory opinions and orders of the International Court of Justice* and a new publication containing summaries of judgments, advisory opinions and orders of the Permanent Court of International Justice. These publications are increasingly being published in both hard and soft copy formats to increase their dissemination and access.

Before I address the next cluster of issues let me briefly touch upon developments in the "Administration of justice at the United Nations". The Sixth Committee considered, at its last session, some amendments to the Statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunals, which had been adopted by the respective tribunals. The General Assembly, in its resolution 66/107 of 9 December 2011, approved the amendments to the rules of procedure of the United Nations Appeals Tribunal, as set out in the annex to the resolution, while it decided not to approve the amendment to article 19 (Case management) of the rules of procedure of the United Nations Dispute Tribunal contained in annex I of document A/66/86. The Sixth Committee also considered the Code of conduct for the judges of the United Nations

Dispute Tribunal and the United Nations Appeals Tribunal, which had been prepared by the Internal Justice Council. On the recommendation of the Sixth Committee, the General Assembly, by its resolution 66/106 of 9 December 2011, approved the Code of conduct as set out in the annex to the resolution.

The Assembly decided to continue its review of effective remedies for resolution of disputes by non-staff personnel, such as individual contractors and consultants. It asked the Secretary-General to report in the next session on a proposed mechanism to address possible misconduct of judges, as well as on expedited arbitration procedures for non-staff personnel.

The General Assembly also assessed the operations of the new administration of justice system and has indicated its interest in continuing to monitor the developments in the jurisprudence of the Tribunals and to examine specific issues such as compensation for moral damages. The UN Dispute Tribunal and the UN Appeals Tribunal, which were established on 1 July 2009, are going into their third year of operation.

To date, the UN Dispute Tribunal has issued more than 560 judgments, and the UN Appeals Tribunal more than 180 judgments. The judgments of the UN Appeals Tribunal have addressed fundamental issues such as the role of judicial review and the standard of proof required in establishing disciplinary measures. [For example, the Appeals Tribunal has ruled that since disciplinary cases are not criminal, the United Nations should not follow the jurisprudence of the ILO Administrative Tribunal which requires that disciplinary charges must be proved "beyond reasonable doubt". Rather the Administrative Tribunal held that "when termination is a possible outcome, misconduct must be established by clear and convincing evidence".[1]

The Appeals Tribunal is also continuing to clarify other important principles, including, for instance, those governing the award of compensation. For instance, in the Vangelova case, the Appeals Tribunal overturned the lower court's award of

[1] UNAT Judgment 2011-UNAT-164 (Molari).

compensation for a procedural error in a promotion process because it was established that the error had not affected the staff member at all.[2]

These notable developments will have a significant impact on the development of the Organization's policies in matters of administration and management and the advisory role of the Office of Legal Affairs in that regard. The General Legal Division of the Office has a critical role to play in this area.

Some activities concerning the Office of Legal Affairs

Mr. Chairman

I would now like to update you on the other work of the Office of Legal Affairs over the last twelve months, and will start with some of the issues that we have been working on in the Office of the Legal Counsel.

International Tribunals

I begin with an update on the international tribunals. We have had a very busy year in this area. As you know, my Office has a long history of involvement - not only in the establishment, but also the operations of international criminal tribunals. Having made so much progress in fulfilling their mandates since their establishment in the 1990s, the International Criminal Tribunals for the former Yugoslavia and for Rwanda are now completing their work and preparing to close.

I mentioned last year that the Security Council adopted resolution 1966 (2010), which establishes the Residual Mechanism for the ICTY and ICTR. We have made substantial progress towards the start of the functioning of the Residual Mechanism on 1 July 2012. The General Assembly has elected the 25 judges of the Mechanism, and the President, Prosecutor and Registrar have been appointed.

[2] UNAT Judgment 2010-UNAT-46 (Vangelova).

We expect that the Rules of Procedure and Evidence, an information access and security policy for the archives and records, and the Headquarters Agreements with the governments of the Netherlands and Tanzania, the host countries of the two branches of the Mechanism, will be finalized soon. My Office has had the privilege of being at the centre of this fascinating and pioneering work.

ICTY/ICTR

As regards judicial proceedings, one of the significant developments at the ICTR last year was the decision to refer a case to Rwanda for trial. Referral of cases to national jurisdictions is a key element of the completion strategy of the ICTR. It is consistent with the notion that States are primarily responsible for prosecution serious international crimes. In practical terms, the decision could spur the referral of the cases of the six low level ICTR fugitives to Rwanda.

With the arrest of Ratko Mladic and Goran Hadzic last year, the ICTY does not have any fugitives. All the 161 indicted persons have been brought to justice. While the trials of Mladic, Karadzic and Hadzic will be conducted by the ICTY, the appeals, if any, would go to the Residual Mechanism, in accordance with resolution 1966 (2010).

Special Court for Sierra Leone

Last month, the Special Court for Sierra Leone convicted Charles Taylor, the former Liberian President, of planning, aiding and abetting war crimes and crimes against humanity. This is a historic moment for international criminal justice, as it is the first conviction of a former Head of State by an international criminal tribunal since Nuremberg. Charles Taylor was not the first Head of State to commit international crimes while in office. And I am convinced that he will not be the last one to be held accountable for his crimes in a court of law.

The judgment sends a strong and unequivocal message that no one is above the law. It is a victory in the fight against impunity, and a true testament that we are in the age of accountability. We expect that an appeal, if any, would be completed by the end of the year. At that point, the Special Court will make way for the Residual Special Court for Sierra Leone, which was established by agreement between the UN and the Government of Sierra Leone.

Extraordinary Chambers in the Courts of Cambodia - ECCC

Unlike the other tribunals, the ECCC is not quite at the completion stage yet. In its first appeal judgment, delivered in February this year, the Supreme Court Chamber confirmed the conviction of KAING Guek Eav, alias Duch, for crimes against humanity, and extended his sentence from 35 years to life imprisonment.

With the completion of the Duch case, the focus has shifted to the second trial, which involves the four surviving senior leaders of the Khmer Rouge regime and started in November 2011. In view of the advanced age of the accused, the judges have taken a novel approach, splitting the trial into several phases which will be heard successively. Many commentators consider this to be the most significant international criminal trial in the world at the moment.

Two other cases, Cases 003 and 004, are at the investigation phase. As you may have heard, these cases have created, and continue to create, a lot of controversy. Two international Co-Investigating Judges have resigned in quick succession. We are seriously concerned that these developments could eventually lead to lack of accountability for the suspects in the two cases. In this regard, we remain committed to ensuring that impunity for the crimes committed during the period of the Democratic Kampuchea is not tolerated.

Special Tribunal for Lebanon

In June of last year, Special Tribunal for Lebanon confirmed the indictment of four individuals who allegedly were involved in the attack that killed former Lebanese Prime Minister Rafik Hariri and 22 others and issued their arrest warrants. As efforts to locate and arrest the four accused have not been successful to date, the Special Tribunal will proceed to try them in absentia later this year. The Prosecutor is also examining three other related attacks to determine whether sufficient evidence exists to file an indictment.

The initial three-year mandate of the Special Tribunal expired on 29 February 2012. Pursuant to the terms of the Annex to Security Council Resolution 1757 (2007), after consulting with the Government of Lebanon and the Security Council, the Secretary-General has extended the mandate of the Special Tribunal for an additional three years.

ICC

Today it is the Rome Statute - which gave rise to the International Criminal Court - that is at the centre of our system of international criminal justice.

The 10th anniversary of the entry into force of the Rome Statute is a symbolic milestone that will be celebrated throughout the year by those involved in the fight against impunity for serious crimes of international concern. It will provide an opportunity to review the achievements made in the field of international criminal justice in the past 10 years; and the Court and its supporters hope that it will also act as a reminder of the urgency for all States committed to justice to ensure continued support for the Court.

The Court issued its first judgment on 14 March 2012 - a significant and historic event. The Court convicted Thomas Lubanga of the war crimes of conscripting children under the age of 15 years into armed groups, enlisting children into armed groups, and

using children to participate actively in an armed conflict that took place in the Eastern region of the DRC. His sentencing hearing is scheduled to open in mid-June.

I know there has been some criticism of how long it took for the Court to complete its first trial — over five years. That would be to overlook the issues that any new jurisdiction faces, where legal paths are as yet un-trod and there are not yet precedents to guide. It is to be expected that, as questions of first impression are answered and precedents established, the work of the Court will accelerate — all, of course, while guaranteeing due process of law to those brought before it.

Currently, the ICC is exercising jurisdiction in respect of the following seven situations: DRC, Central African Republic, Northern Uganda, Darfur, Libya, Kenya and Côte d'Ivoire.

As the centrepiece of the system of international criminal justice, the International Criminal Court is at the heart of the efforts of the international community to ensure accountability and end impunity while also seeking to strengthen the rule of law. If we want to be serious about combating impunity and nurturing and developing a culture of accountability, we must support its work. This Court provides the opportunity and the vehicle for our generation to significantly advance the cause of justice and, in so doing, to reduce and prevent unspeakable suffering.

Human Rights Due Diligence Policy

I would now like to turn to the work of my office with respect to the UN's Human Rights Due Diligence Policy. In response to requests from Member States and regional international organizations, the UN is increasingly being called upon to provide support to non-UN security forces —paying their salaries, training them and developing their operational capabilities, providing them with logistic support, providing them with fire support and even conducting joint military operations with them. Providing such support comes with a risk — a risk that the UN might be implicated in violations of international

law committed by those forces. Events in the Democratic Republic of the Congo in 2009 proved this to be all too true. To manage this risk, the Secretary-General announced last July the institution of a Human Rights Due Diligence Policy, applicable wherever any part of the Organization is contemplating or involved in providing support to non-UN security forces. The Office of the Legal Counsel played a central role in developing that Policy.

In accordance with the Policy, where a UN entity is contemplating providing support to non-UN security forces, it must first conduct an assessment of the risks involved, in particular the risks of the recipient forces committing grave violations of international humanitarian law, human rights law or refugee law. Where there are substantial grounds for believing there is a real risk of such violations taking place and it is not possible to put in place measures to eliminate that risk or reduce it to acceptable levels, then the UN entity concerned must refrain from supporting the non-UN security forces concerned.

If a UN entity goes ahead and provides support to non-UN security forces, it is required by the Policy to put in place measures actively and closely to monitor their conduct. If it then receives information that gives it reasonable grounds to suspect that those forces are committing grave violations of international humanitarian, human rights or refugee law, it must immediately intercede with their command elements with a view to bringing those violations to an end. If those intercessions do not succeed and the violations continue, then the UN entity in question must suspend or withdraw its support from the forces concerned.

From a legal point of view, the Policy has its roots in three different bodies of law. The first is the Charter itself, Article 1, paragraph 3, of which mandates the Organization to promote and encourage respect for human rights and fundamental freedoms. The second is the law of international responsibility, which requires that an international organization not aid or assist a State or another international organization in violating its international legal obligations. The third applies where the non-UN security

forces are party to an armed conflict and the UN becomes a party to that conflict, too — something that may occur precisely because the UN is providing support to those forces. In such a situation, international humanitarian law, as reflected in common article 1 of the Geneva Conventions, requires that the Organization take such action as is within its power to try to make sure that the non-UN security forces conduct their operations in a manner that respects their obligations under international humanitarian law.

Amnesties

Another area that OLC has been working on concerns the question of amnesties. For over a decade now, the Secretary-General has advised his envoys and special representatives tasked with helping to negotiate peace agreements that those agreements should not contain amnesties for genocide, crimes against humanity or war crimes or for gross violations of human rights — summary executions, extrajudicial killings, torture, enforced disappearances, enslavement, rape and crimes of sexual violence of a comparably serious nature. The Office of the Legal Counsel played a central role in helping to formulate and establish this policy; and, with the Secretariat's increasingly "joined-up" approach to mediation and mediation support, it nowadays plays a central role in seeking to ensure its proper implementation.

Human Rights Vetting

I would now like to turn to the matter of human rights vetting in the context of peacekeeping. While cases of serious misconduct, including sexual exploitation and abuse, by UN personnel in peacekeeping operations are very rare, the cases that do arise have enormous potential to undermine the work of the UN. When carrying out complex mandates in challenging circumstances, the Organization relies heavily on its credibility and legitimacy in the eyes of the local population. When UN personnel break local laws they tarnish the image of the UN and undermine UN efforts to carry out its mandates - which often include promoting the rule of law and respect for international human rights standards. The negative effect is compounded when, as is often the case, there is no real

accountability for crimes committed, or when accountability measures are taken remotely in the jurisdiction of a troop contributing country - which may be far from the place where the crime was committed and its victims.

In light of these challenges, the Organization is trying to put in place measures to prevent serious misconduct from occurring. This is of course a multidimensional challenge. However, it includes ensuring that all persons who serve in UN peacekeeping operations meet the highest standards of integrity as required under the Charter of the United Nations. To this end, the Best Practices section of DPKO is currently leading an interdepartmental working group (which includes representatives of the Office of Military Affairs and the Police Division of DPKO, as well as Human Rights, OHRM and OLA), to devise a policy to require troop or police contributors to screen personnel which they provide to serve in UN operations, to ensure that no person with a criminal conviction, or who is alleged to have committed human rights abuses or violations of international humanitarian law, is provided by the Government to serve with the UN.

Once this policy is implemented across the Organization, it will allow the UN to reserve its right to deny deployment or to repatriate peacekeepers prematurely at the expense of the relevant national authority if there are grounds to believe that the person concerned has committed a criminal, or serious disciplinary, offence, or has committed an act that amounts to a violation of international human rights law or international humanitarian law.

Cooperation with States in upholding the rule of law

UN peacekeepers must lead by example. The Organization holds its personnel to the highest standards of integrity and accountability.

Over the past decade, and particularly in response to cases of sexual exploitation and abuse, strict rules have been developed to promote good conduct and discipline among peacekeeping personnel and to strengthen accountability mechanisms.

The Secretary-General has indicated that he will not hesitate to impose disciplinary measures or to refer cases for prosecution in appropriate cases, always subject to due process considerations and to applicable privileges and immunities as set forth in the 1946 Convention on the Privileges and Immunities of the United Nations. In addressing these issues, the UN works closely with the concerned Member States – usually the State hosting the peacekeeping operation, or the State of nationality of the concerned peacekeeper.

Operational challenges in the implementation of the applicable rules and mechanisms have been encountered in cases where the local judicial institutions in the host State are weak and lack the capacity to provide a fair trial to the accused. The practice demonstrates that co-operation is vital to ensuring the success of the mechanisms in place: co-operation between the host State and the State of nationality of the peacekeeper on the one hand with the UN on the other, and also co-operation between the host State and the State of nationality.

The UN also takes seriously its obligation to cooperate with relevant authorities of the host State in order to facilitate the proper administration of justice, as provided in the 1946 Convention. This is a key element of the rule of law. The issue has also often come up in cases where host country nationals seeking to avoid arrest by local law enforcement authorities have taken refuge in UN premises. While the UN must cooperate with the relevant national authorities in such cases, UN cooperation must also be subject to guarantees being given by the host State that the individuals concerned will be afforded due process in any legal proceeding, and, more generally, that such individual will not be subjected to torture or other serious violations of human rights.

Responsibility to Protect

Let me now turn to the Responsibility to Protect, a very interesting and relatively new political and legal concept which has been the subject of much discussion at the UN over the course of the last year and before.

In 2005, more than 150 Heads of State and Government unanimously embraced the "Responsibility to Protect" (R2P). They declared that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity", and that "the international community, through the United Nations, also has the responsibility … to help protect populations" from those crimes.

In addressing the challenge of "operationalizing" R2P, the Secretary-General has identified three pillars of action. Pillar I is the enduring responsibility of States to protect their populations. Pillar II is the role of the international community to assist States to protect their populations before crises and conflicts escalate to the level of the commission of R2P crimes.

And Pillar III involves a commitment that States "are prepared to take collective action in a timely and decisive manner, through the Security Council, in accordance with the Charter … where national authorities are manifestly failing to protect their populations". The commitment also includes action under Chapters VI and VIII, as well as under Chapter VII, and includes cooperation with relevant regional organisations, as appropriate. And of course, the concept is necessarily limited by the legal framework provided under the Charter. Any decision of the Security Council to take action would require the concurring votes of each permanent member. This underscores that R2P does not create any additional exceptions to the prohibition on the use of force under the Charter, - the exceptions being acts in self defence, and acts authorized by the Security Council.

Most States have agreed that the UN's role should focus, at the outset, on prevention. The challenge for giving true practical meaning to the concept is thus to work out how the UN can best assist States to protect their populations before crisis situations occur, particularly as there will be situations in which the Security Council will not authorize enforcement action under Chapter VII. This challenge has yet to be met, and of course differs with each unique situation.

R2P gives expression to what had become a global-wide conviction that it is immoral and unacceptable for States to allow gross violations of the human rights of their populations, and that the international community has a responsibility to prevent these crimes. In this light, R2P has grown out of a number of important developments: it reflects a recognition of the changing nature of conflict since the drafting of the Charter in 1945 – today most conflicts occur within States rather than between them. It signifies a broad acceptance of fundamental principles of human rights, and reinforces the normative content of the crimes of genocide, war crimes, [ethnic cleansing], and crimes against humanity. And it affirms States' obligations under international law to prevent, prosecute and punish these crimes.

At the heart of R2P is the recognition that state sovereignty – the cornerstone of international relations – entails responsibility. States have a responsibility to protect their populations from the R2P crimes. Building upon this responsibility is the positive obligation which is placed upon the international community to assist States to meet their responsibilities and to take action where these responsibilities are not met. This notion of sovereignty as responsibility underscores that sovereignty is the basis for a certain status and authority under international law, as well as for enduring obligations towards one's people.

Importantly, rather than detracting from the principle of State sovereignty, R2P reinforces it. It drives home the role of the State as a protector of its nationals. As stated by the Secretary-General, R2P is "an ally of sovereignty, not an adversary". As one of the defining attributes of statehood and sovereignty is the protection of populations; prevention of atrocity crimes begins at home. R2P reinforces the collective security mechanism established by the Charter with its emphasis on prevention, and that enforcement measures may only be taken in accordance with the legal framework prescribed by the Charter.

So some might ask, what is new? The "added-value" so to speak of R2P, is that it encapsulates the moral and legal imperatives of the international community in relation to the four "R2P crimes ". It is a potentially powerful vehicle for an important political process, where political pressure, as well as tangible technical and material assistance, may be brought to assist States to exercise their responsibilities. It places pressure not only on national Governments, but also on actors in the international community. It reflects a marked shift in perspective. While some would argue that R2P has no normative effect, others argue that R2P is an enabling new norm, and, while it is not an obligatory new norm and does not impose binding new duties, it does confer additional responsibility and that additional responsibility includes taking action.

This brings me to the invocation of R2P regarding Libya. In its resolution 1970 (2011), the Security Council recalled Libya's "responsibility to protect its population". The international community, both via the UN and other multilateral and bilateral efforts, took a series of measures under pillars II and III to help protect the civilian population from what were described by the Security Council as "widespread and systematic attacks … which may amount to crimes against humanity" – thus framing the attacks within the R2P crimes.

These ranged from diplomatic measures, to the imposition of sanctions and referral of the situation to the ICC, to the Security Council's authorization under Security Council resolution 1973 "to take all necessary measures to protect civilians and civilian populated areas under attack". In the case of Libya, action by the international community was swift, multifaceted and targeted. This was the most explicit and robust application of R2P to date.

It is arguably premature to pass judgment on the success or otherwise of actions by the international community under "R2P" in the context of Libya. The NATO intervention has been criticized for going beyond the limits of the Security Council authorization, and has fed concerns that R2P was and might be used for "political

considerations" – to accomplish "regime change" and to legitimize interference in the internal affairs of States.

At the same time, others have argued that: the limits of authorization were not exceeded; the protection of the civilians in Libya required the drastic action taken; and that many thousands of lives have been saved by the intervention.

Today, with thousands dead and many more injured, the grave situation in Syria is at the top of the international agenda.

Syria is a true test of R2P.

Of course, States and the international community through the League of Arab States and the machinery of the United Nations, have sought to provide assistance and apply pressure via efforts under Pillars II and III.

The Secretary-General has repeatedly called upon the Syrian authorities to stop the violence, and continues to remind Syria of its responsibilities. The League of Arab States, the UN Human Rights Council and the General Assembly have been very engaged and vocal with regard to the situation in Syria.

In April, the Security Council adopted two resolutions on Syria. In resolution 2042, the Council called for the urgent, comprehensive and immediate implementation of all elements of the Envoy's six-point proposal. In resolution 2043, the Council authorized a United Nations Supervision Mission to Syria - UNSMIS - for an initial period of 90 days. We must deploy to the authorized maximum strength immediately and without further delay.

With regard to the ongoing situation in Syria, it is now too late to prevent the current bloodshed. The challenge for the international community is to find ways to prevent further escalation of the conflict. R2P's contribution is to underscore the

responsibilities of States *vis-à-vis* their populations, and to pressure and mobilize the international community to help States meet those obligations, - including the taking of collective action where States fail to do so. To a very large extent the Syrian authorities have disregarded their responsibilities to date. But the international community has not. It is mobilized, and, while much remains to be done, the doctrine of R2P is very much engaged.

On this note, I'd like to leave you with the thought that the doctrine of R2P continues to generate immense pressure not only on the Government of Syria, but also on the international community to take effective action to ensure that the Syrian authorities desist from the violence. It has increased the moral and political pressure on the permanent members of the Security Council. It continues to place moral and political pressure on States and the entire machinery of the United Nations to find a way to end the bloodshed.

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I will now turn to the activities of the Division for Ocean Affairs and the Law of the Sea (DOALOS), which performs multiple functions under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Division continues to support the uniform and consistent application of UNCLOS, its two Implementing Agreements and other relevant agreements and instruments. It also continues to successfully assist the General Assembly in its annual review of ocean affairs and law of the sea issues. These issues assume added significance in light of the United Nations Conference on Sustainable Development in Rio this coming June.

The universal participation in UNCLOS – important for a single coherent legal regime of the oceans - remains one of the priorities of the General Assembly. In its resolution 66/231, the GA reiterated its call to all States to become parties to UNCLOS and its Implementing Agreements. The Secretary-General has recently encouraged the 34 Member States not yet parties to UNCLOS to become parties. Indications have been

received from Cambodia of its intention to ratify UNCLOS shortly. To commemorate 30 years of opening for signature of UNCLOS, the General Assembly, decided to devote 10 and 11 December this year for such purpose in the context of its debate on "Oceans and the law of the sea" and the Secretary-General has been requested to organize activities to mark the occasion.

A number of developments also occurred in the past year worthy of highlight:

In September 2011, the first Workshop in support of the Regular Process for global reporting and assessment of the state of the marine environment, including socio-economic aspects, took place in Santiago, Chile. More recently, in February 2012, a second Workshop took place in China. These Workshops are a key mechanism by which the first global integrated marine assessment will be accomplished and States will enhance their assessment capacity. The outcome of these Workshops was presented by the host countries at the third meeting on the Ad hoc Working Group of the Whole on the Regular Process in April of this year.

Second, in the context of fisheries, the General Assembly focused on the review of its resolutions 61/105 and 64/72 relating to bottom fishing, a practice which can negatively affect vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks. A two-day Workshop was held in New York last September, to discuss the implementation of those resolutions. The discussions were subsequently taken into account by the Assembly in deciding on additional urgent actions for bottom fishing in areas beyond national jurisdiction. Those actions are reflected in the resolution 66/68 on sustainable fisheries.

On piracy, despite a decrease in the rate of hijacks, piracy and armed robbery at sea off the coast of Somalia has continued to threaten the lives of seafarers, the safety and security of international navigation and the stability of the region. It is also worrisome to

note that there has been a recent increase of incidents of piracy and armed robbery in the Gulf of Guinea.

The Office of Legal Affairs has been working in a number of fora to assist States in addressing the legal aspects for the repression of piracy under international law. Our work over the past year has focused on two principal areas, namely (a) regional mechanisms for the prosecution of suspected pirates, including specialized anti-piracy courts; and (b) national legislation on piracy.

With regard to regional mechanisms, the Office of Legal Affairs, pursuant to a request of the Security Council in its resolution 1976 (2011), prepared a report of the Secretary-General on the modalities for the establishment of specialized Somali courts to try suspected pirates, both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court sitting in another State in the region (S/2011/360). The report assesses the legal and practical considerations for the establishment of such courts, including the possible participation of international personnel and other international support and assistance, as well as the related projected costs.

The Security Council, in resolution 2015 (2011), decided to continue its consideration, as a matter of urgency, of the establishment of specialized anti-piracy courts in Somalia and other States in the region. On the basis of that same resolution, the Office of Legal Affairs prepared a further report of the Secretary-General with detailed implementation proposals for the establishment of such courts, assessing: (i) the kind of international assistance, including the provision of international personnel that would be required to help make specialized anti-piracy courts operational; (ii) the procedural arrangements required for transfer of apprehended pirates and related evidence; (iii) the projected case capacity of such courts; and the projected timeline and costs for such courts (S/2012/50).

Concerning national anti-piracy legislation, the Security Council, in its resolution 2015 (2011), called on all States to criminalize piracy under their national legislation and

for international partners to assist States in developing legislation on piracy. The Council requested the Secretary-General to compile and circulate information received from Member States on the measures they have taken to criminalize piracy under their domestic law, and to prosecute and support the prosecution of individuals suspected of piracy off the coast of Somalia as well as to imprison convicted pirates. Information was received from 42 Member States.

Let me also note that the related aspect of the use of privately-contracted armed security personnel on board ships as a protective measure against piracy and armed robbery at sea is a matter that raises a number of complex legal issues which are currently being examined by the Contact Group on piracy off the coast of Somalia and IMO.

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Let me now turn to the activities of the International Trade Law Division (ITLD) which is located in Vienna and provides substantive servicing of the United Nations Commission on International Trade Law (UNCITRAL).

For UNCITRAL, 2011 was another productive year. It adopted two substantive texts reflecting recent developments in international trade law: The *UNCITRAL Model Law on Public Procurement* was revised to reflect experience gained in its use and practice developed since the adoption of the original text in 1994. The main objective of the Model Law is to enhance efficiency and effectiveness in the procurement process. Moreover, the *Judicial Material on UNCITRAL Model Law on Cross-Border Insolvency* was prepared to foster the uniform interpretation of the Model Law by providing information and guidance to judges on cross-border related insolvency issues.

UNCITRAL, through its Working Groups, is currently engaged in work on a number of other topics, including transparency in treaty-based investor-State arbitration,

online dispute resolution, electronic transferable records, selected concepts relating to cross-border insolvency and registration of security rights in movable assets.

At its session its year, to be convened in New York from 25 June to 6 July, UNCITRAL is expected to consider and finalize the revised version of the Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement. The Commission will also consider possible future work in the areas of public procurement and microfinance, as well as its role in promoting the rule of law at the national and international levels.

A notable development in this regard is the establishment of the UNCITRAL Regional Centre for Asia and the Pacific, a novel yet important step for UNCITRAL in reaching out and providing technical assistance to developing countries. The Regional Centre officially opened on 10 January 2012 and its key objective is to enhance international trade and development in the Asia-Pacific region by promoting certainty in international commercial transactions through the dissemination of international trade norms and standards, in particular those elaborated by UNCITRAL.

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I will now make some remarks on the activities of the Treaty Section, which continues to perform the depositary functions on behalf of the Secretary-General, as well as the registration and publication functions mandated by Article 102 of the Charter of the United Nations.

The Secretary-General is depositary for over 550 multilateral treaties, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, adopted by the General Assembly on 19 December 2011, being the most recent.

Wider participation in the multilateral treaties deposited with the Secretary-General is effectively promoted through annual and special treaty events. At last year's Treaty Event, 57 States undertook 88 treaty actions. This year's Event will take place from 24 to 26 September and on 1 and 2 October, during the general debate of the sixty-seventh session of the General Assembly. The opening date coincides with the high-level meeting on the rule of law at the national and international levels. As treaties are a critical foundation for the rule of law, the Secretary-General has highlighted the rule of law as the focus of the 2012 Treaty Event.

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This is the first year of the current quinquennium. You will no doubt be making plans on the programme of work for the rest of the quinquennium to ensure that concrete outcomes are realised on topics on your agenda. We are living in a most difficult economic climate and the UN is not exempt from that. Many of the Organisation's traditional donors – some in this part of the world - are experiencing the greatest economic challenges in their modern histories. Financial resources are very scarce. We are expected to produce more with less. There is an urgent need to reflect more on how the Commission, as it seeks to accomplish its noble tasks in the progressive development of international law and its codification, can increase its efficiency, effectiveness and productivity. Naturally, the duration of the Commission's sessions and whether these are single or split are critical factors to be considered.

I should inform members of the Commission that I met with the Sixth Committee last year to advise them of the very serious need for the Commission to prudently manage its way of doing business. I took no pleasure in doing this, but the seriousness of the Organisation's financial situation compelled me to do so.

All of us, including the Commission, need to seek creative ways of meeting our objectives if we are to continue to operate within the budgetary constraints.

As you debate the many issues that are on your agenda, rest assured that you can, as in the past, count on the support of the Office of Legal Affairs. Over the years, the Codification Division has served as the secretariat of the Commission solely motivated by the highest standards of integrity, independence and professionalism. I have no doubt that this Commission will continue to be served with the highest standards of competence and efficiency.

Thank you very much.