



UNITED NATIONS OFFICE OF LEGAL AFFAIRS

International Law Commission

Statement by

Mr. Miguel de Serpa Soares,

Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

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Mr. Chairman,

Distinguished members of the International Law Commission,

Ladies and gentlemen,

On behalf of the Secretary-General, I am delighted to welcome you to New York, where the Commission is holding the first part of its session this year. It is a great pleasure for us, in the Secretariat, to host you at the United Nations Headquarters. The last time we had this honour was in 1998, so this is indeed a very special occasion.

Your presence in New York is all the more special because this year marks the 70th anniversary of the International Law Commission. The Commission's first session, in 1949, took place not far from here, at the temporary headquarters of the United Nations in Lake Success on Long Island. This in many ways then is a journey back to where it all started for the Commission.

As you know, New York is also home to the General Assembly and its Sixth Committee, the Commission's counterpart in the progressive development and codification of international law. For the past seventy years, the two bodies have worked closely together in advancing both the scope and the substance of the international legal system. As in any long-standing relationship, the development and codification of international law has had its ups and its downs, its triumphs and its tribulations.

In the next few months, the Commission will take time to reflect on its achievements, consider its challenges and look ahead to its future. Here in New York, we will commemorate 70 years of the Commission – its platinum anniversary – on 21 May, with a solemn meeting and a conversation with the Sixth Committee. On 5 and 6 July, the Commission will meet with government legal



advisers and academics in Geneva to “draw a balance for the future”, as the theme of the anniversary has it.

Aside from the formal events, I encourage you to take advantage of your time in New York to connect with delegates to exchange ideas and build relations, in order to strengthen the bond and cooperation between the Commission and the Sixth Committee.

You will meet each other in this room, in the corridors, or at the photo exhibit on the Commission’s work, which my office has prepared to mark the Commission’s 70th anniversary. The exhibit, which is on display one floor above us, in the General Assembly Visitors Lobby, traces the history of the codification movement and examines many of the topics that the Commission has worked on. I invite you all to visit the exhibit and hope that it will inspire conversation and debate, not only on the Commission’s past, but also on its future. The exhibit will be officially launched on 21 May, and we are hoping to bring it to Geneva afterwards, logistics allowing.

Distinguished Members of the International Law Commission

I hope to have other occasions to reflect on the Commission’s 70th anniversary during the commemorative events. With this statement, I would like to continue the tradition of providing members with an overview of the activities over the past year of the Office of Legal Affairs, which is the central legal service of the Organization in public and private law, and the ways in which the various units of the Office have played their part in developing and upholding international law. In doing so I am mindful that, system-wide, the breadth of legal activities is ever expanding.

I will start with the Codification Division, your Secretariat.

[COD]

The contribution of the Codification Division to the progressive development and codification of international law often goes unsung, but that does not mean it is insignificant. Already in 1947, during the negotiations over the Statute of the Commission, the General Assembly noted that the Secretariat should act not only as an “administrative body”, but that it should constitute a “centre of scientific research.”

From the first session of the Commission in 1949, the Codification Division has been at the Commission’s side to assist it with its important mission. Through Secretariat studies, memoranda and ad hoc research tasks it has provided significant substantive input to the work of the Commission. Over the years, the



Codification Division has also been instrumental in identifying new topics for codification and progressive development.

Moreover, as the secretariat of numerous diplomatic conferences, from the 1958 Geneva Conference on the Law of Sea to the 1998 Rome Conference on the Establishment of an International Criminal Court, the Codification Division has guided many of the Commission's texts through diplomatic negotiations, resulting in international conventions that have laid the foundation for our modern international legal order.

There is perhaps no one more aware of the vital role of the Codification Division than you, Mr Chair, who for many years served as one of its officers. It is a great point of pride for us at the Secretariat to see you chairing the Commission today, personifying the close bond between the Commission and the Codification Division.

In the past year, much effort of the Codification Division has been devoted, as can be imagined, to the organization of the commemorative events for the 70th anniversary of the Commission. In addition, the Division completed an extensive memorandum on "Ways and means for making the evidence of customary international law more readily available", to aid the Commission in its second reading of the draft conclusions on the topic "Identification of customary international law".

Another significant mandate of the Codification Division is the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The training programmes and the UN Audiovisual Library of International Law are two main components of the Programme of Assistance. This year, the Division succeeded once again in offering a full range of Regional Courses in international law, in the Asia-Pacific region, Africa and Latin America and the Caribbean, as well as organizing the International Law Fellowship Programme in The Hague. I am grateful to many of the members who have contributed their time and expertise to deliver lectures at these courses. Last year, the Codification Division developed an International Law Handbook for the courses, which offers a comprehensive collection of international law instruments for teaching purposes. I am pleased to let you know that a French version of the Handbook, the *Recueil de droit international*, will be available in July in time for the International Law Fellowship Programme.

Since its creation in 2008, the Audiovisual Library has been accessed by over 1.5 million users in 193 Member States and non-Member States. While it was created primarily for the benefit of lawyers in developing countries, we are very much aware that, due to the technology gap in terms of limited access to computers, electricity and reliable high-speed Internet, its intended users may not have had the



extent of access that we wish. As such, accessibility has been a priority of the UN Audiovisual Library of International Law this year. In order to improve access for users in countries without reliable high-speed Internet, the Codification Division is working on a podcast project, which will provide the lectures as audio that can be streamed or downloaded.

Linguistic, geographic and gender diversity has also been one of the top priorities for the Audiovisual Library. In the past year, the Codification Division added 43 lectures, including several lectures recorded in Chinese, English, French and Spanish, to its expanding collection of over 500 lectures. All regional groups are represented among the 28 participating lecturers; and 12 of them are women. The Audiovisual Library of International Law will continue to focus on enhancing diversity in its programming and on providing legal content by leading experts in the field.

As you know, the Codification Division also serves as the Secretariat of the Sixth Committee, which held its seventy-second session in the fall of last year. Details on the session can be found in the the background note prepared by the Secretariat. The Sixth Committee met between 2 October and 10 November, holding a total of 30 plenary meetings, during which it considered a total of 24 agenda items, 22 of which were substantive. It also convened two working groups, which met a total of 5 times, and held numerous informal consultations on draft resolutions. Upon the recommendation of the Sixth Committee, the General Assembly adopted, without a vote, 18 resolutions and 7 decisions.

In its omnibus resolution on the work of the Commission, resolution 72/116 of 7 December 2017, the General Assembly took note of the Commission's decision to include the topic "Succession of States in respect of State responsibility" in its programme of work, as well as the inclusion of the topics "General principles of law" and "Evidence before international courts and tribunals" in the long-term programme of work of the Commission. More substantive information on the debate on each topic in the Sixth Committee is available in the topical summary (A/CN.4/713), prepared by the Secretariat.

Last year, the Sixth Committee's agenda included three items relating to outcomes of the Commission in previous years, namely "Responsibility of international organizations", "Expulsion of aliens" and "Effects of armed conflicts on treaties". Following discussion in plenary, the Committee decided to take up the first two topics again in three years, at its seventy-fifth session in 2020, and the last one at an appropriate time.

At its upcoming session, the Sixth Committee will consider once more an item that emanated from the work of the Commission, namely the Protection of persons in the event of disasters, completed in 2016.



Outside the regular session of the Committee, the Codification Division provided information briefings to delegates to familiarize them with the topics and the working methods of the Committee and the Commission. In March of this year, a briefing was held on State responsibility; and in April, in anticipation of your arrival in New York, the Secretariat briefed delegates on the work of the Commission.

[OLC]

I will now turn to the Office of the Legal Counsel, where the year has seen significant developments in the area of (a) accountability, (b) peacekeeping, (c) peaceful resolution of disputes, and (d) privileges and immunities.

[Accountability]

The area of accountability for international crimes has seen important progress. It was my privilege to join the Secretary-General and His Majesty King Willem-Alexander Royal Highness on 21 December to mark the formal closure of the ICTY in the Hall of the Knights of the Dutch Parliament. That formality duly reflected the significance of the end of the era ushered in by the ICTY as the very first international criminal tribunal of the modern era. It remains telling as a standard of success that each one of its 161 accused was accounted for over the course of its 24 years of work.

The remaining work of that Tribunal, and of the International Criminal Tribunal for Rwanda (ICTR), is being discharged by the International Residual Mechanism for International Tribunals. One month ago, the Mechanism rendered an important judgment in one of the major ICTY cases, convicting Mr. Vojislav Šešelj of crimes against humanity and bringing those long-running proceedings to an end. Just a fortnight ago, the Mechanism held appeal hearings in the case of Radovan Karadžić, and that appeal is projected for conclusion by year's end. The Mechanism is seized of one other appeal, in the case of General Ratko Mladić, and a retrial in the case of former senior Serbian security officials, Messrs. Stanišić and Simatović. The conclusion of all the substantive cases of both the ICTR and the ICTY therefore now moves into clear sight.

Other tribunals are also reaching defining stages of their work. At the Special Tribunal for Lebanon, the central case of *Ayyash et al.* has been set down for closing argument in late June and early July, with trial judgment to then follow in due course. In the Extraordinary Chambers in the Courts of Cambodia, judgment in the second trial – including charges of genocide – for former Head of State Khieu



Samphan and ‘Brother No. 2’, Nuon Chea, is expected later this year. That step will bring to an end the trial proceedings with respect to the highest-level Khmer Rouge accused. Lengthy judicial investigations with respect to a further four accused persons have either concluded or are nearing completion.

Unfortunately, both the ECCC and the Residual Special Court for Sierra Leone have continued to suffer from a lack of donor willingness to cover their budgetary needs, with the result that – this year again – the General Assembly has been required to approve subventions to allow those institutions’ continued operation. The processes for seeking subventions and voluntary financial contributions are time and cost-intensive, and necessarily divert tribunals and their officials from their core functions. The General Assembly has applied the same funding model of voluntary contributions to the International, Impartial and Independent Mechanism on Syria (IIIM). The Assembly however has indicated willingness to reconsider that funding basis, and I am hopeful that the membership will take the lessons of the past into account in setting the IIIM onto a sustainable financial path.

As I remarked to you last year, the IIIM represents a significant new approach to accountability for international crimes, focussed on supporting the prosecution efforts of other stakeholders rather than conducting its own prosecutions. There is considerable interest in how the IIIM will discharge these functions in the Syrian context, given the persistent lack of agreement in the Security Council on other avenues, such as referral to the International Criminal Court and extension of the mandate of the OPCW-UN Joint Investigative Mechanism. My Office was closely involved last year in processes of appointment of the IIIM’s Head and Deputy Head. With that leadership team now in place, the IIIM is well-placed to perform its vital work.

I am pleased that, in the case of Iraq, the Council showed unity in unanimously adopting resolution 2379 last September. In an approach similar to the IIIM, it thereby established an independent investigative team to support domestic efforts to hold Islamic State in Iraq and the Levant (ISIL/Da’esh) accountable for its actions in Iraq. My Office has been working closely with the Government of Iraq and other key stakeholders to move towards the prompt operationalisation of this important new mechanism. I expect the head of that team to be appointed soon, which will bring the commencement of this Team’s substantive work a major step closer.

Key justice processes in other national jurisdictions, with which OLA has been involved, have also taken important steps forward. In Central African Republic, the



Special Criminal Court is steadily moving forward with its own investigations, cooperation with the ICC, judicial training and outreach to constituencies. In Colombia, the magistrates of the Special Jurisdiction for Peace have been designated and that jurisdiction's work has begun.

My Office has worked closely with the African Union Commission in support of the African Union's efforts to establish the Hybrid Court for South Sudan. In August last year, my Office provided technical assistance during negotiations between the African Union Commission and the Government of South Sudan on the legal instruments for the establishment and operation of the Hybrid Court. I echo the calls for the Government, following approval of the legal instruments by the Council of Ministers of South Sudan in December, to take prompt steps to sign the Memorandum of Understanding with the AU to establish the Hybrid Court.

[Peacekeeping]

In the area of peacekeeping, the past year have seen the closure of now fewer than three peacekeeping operations, which completed the tasks mandated by the Security Council in support to peace, security and the rule of law in Côte d'Ivoire, Haiti and Liberia respectively.

ONUCI, the United Nations Operation in Côte d'Ivoire, was the first to close in June 2017, after 13 years. MINUSTAH, the former peacekeeping mission Haiti, closed a few months later, in October 2017 after 13 years; and UNMIL, the United Nations Mission in Liberia, closed in March 2018 after 14 years.

While a new, smaller peace operation was created by the Security Council in Haiti with a transitional mandate towards a fuller exit in two years (the Mission for Justice Support in Haiti, or MINUJUSTH), Côte d'Ivoire and Liberia have each completed their transition from a peacekeeping to a peacebuilding country.

Closing a peace operation is a complex process. My Office supports our colleagues in the liquidation efforts as required. For example, last year, we advised on the conclusion of transfer agreements with regard to Mission assets. Specifically, we facilitated the handover of the ONUCI and UNMIL radio stations to the Governments of Côte d'Ivoire and ECOWAS respectively, as well as related equipment, and we ensured, through the agreements negotiated with the Government of Côte d'Ivoire and with ECOWAS respectively, that the assets would be used to further the objectives of peace and development.

The gradual handover of responsibilities of UNMIL to other actors until its closure in March is an example of lessons learned by the Secretariat in the last 10 years, in terms of the required exit strategies for our peacekeeping operations: the handover of UNMIL's responsibilities, for instance, lasted at least three years. While the last



uniformed personnel left Liberia in February and March of this year, UNMIL had already completed the transfer of its security responsibilities almost two years prior, in June 2016, to the Liberian security services. The remaining tasks, particularly those in support to security sector reform, governance and the rule of law, were the last handed over. These were transferred to the United Nations country team upon the Mission's closure.

Despite the closure of MINUSTAH, Haiti remains a country hosting a peacekeeping operation. However, this is now on a much smaller scale. The new mission has not retained a military component, although it has retained formed police units authorized to provide operational support to the Haitian National Police. Additionally, the mandate of MINUJUSTH is already defined in time by the Council, which requested that the Secretary-General present a two-year exit strategy to a non-peacekeeping United Nations presence in Haiti that will be dedicated to peacebuilding exclusively, leaving all security responsibilities to the Haitian security forces.

As you know, my Office is also involved at the beginning of a peacekeeping operation. The establishment of MINUJUSTH was no exception in this regard. Our immediate role is to facilitate the conclusion of a Status of Forces agreement with the host country of the peacekeeping operation. The signing of such agreements arises from the long-established practice of the Secretariat in the field of peacekeeping. The Status of Forces agreements continue to be crucial tools to ensure that the peacekeeping operation and its members enjoy the privileges, immunities, rights and facilities needed for the proper implementation of the mission's mandate. The resolution creating MINUJUSTH did not include a clause providing that, pending the signature of a status of forces agreement, the Model SOFA shall be applicable to the new mission. This rendered the signing of a Status Agreement for MINUJUSTH all the more urgent.

Initially, we sought the *mutatis mutandis* application of the MINUSTAH Status Agreement to MINUJUSTH. This had been done in the past, for instance upon the transition from ONUB, the former peacekeeping mission in Burundi, to BINUB.

The Government of Haiti however indicated its preference for the negotiation of a new Status agreement. My Office facilitated these negotiations and, on assumption of the duties of MINUJUSTH, in the middle of October 2017, the new Status Agreement was signed by the Government of Haiti and the Special Representative of the Secretary-General in Haiti. One aspect of the Status Agreement concluded for MINUJUSTH that may be of interest in light of the current topic before the Commission is that it is being applied provisionally and will enter into force upon notification by the Government that it has completed its internal procedures.



Over the course of the last year, my Office has also been closely involved in supporting the competent departments, to implement a number of resolutions of the Council on the situation in Mali.

As you are no doubt aware, in early 2017, five States of the Sahel region (Mali, Burkina Faso, Niger, Chad and Mauritania), at a Summit of the Heads of State of a new regional entity, the G5 Sahel, decided to create a joint Force to fight terrorist groups and transnational organized crime networks in their shared border areas (the “FC-G5S”). The creation of this Joint Sahel Force was in response to the increasingly regional nature of the threat caused by terrorists and armed elements in the Sahel region. Its establishment by the G5 countries was welcomed by the Security Council.

The first issue on which my Office provided advice, is the relationship between MINUSMA and this new international military and security actor in the territory of Mali, alongside the French forces and the Malian armed forces. The increasingly complex and dangerous situation in the center and the North of Mali has at the same time required that MINUSMA reconsider its posture, which the Council has repeatedly requested to be more robust and proactive.

Our advice has remained, as in the case of the French Forces and the Malian armed forces, that MINUSMA should maintain a level of operational coordination with the other military and security actors in its area of operations, while also remaining conscious of its different mandate – which does not include an offensive counter-terrorist element. MINUSMA remains however authorized to use force in self-defence and defence of its mandate, which includes the protection of civilians and stabilization by preventing the return of armed elements to populated areas.

The mandate of the Council for MINUSMA again evolved with resolution 2391 of 8 December 2017. That resolution conferred on MINUSMA the task to provide “specified operational and logistical support” to the Joint Force of the G5 Sahel, based on an EU-coordinated financial mechanism. My Office thus facilitated the negotiation of a set of agreements, comprising a tripartite technical arrangement with the G5 Sahel and the European Commission, and a “Convention de délégation” between the United Nations and the European Union, on the financing of the UN support to the G5 Sahel Force.

I would point your attention to the fact that the support to the G5 Sahel is limited to the territory of Mali, reflecting the geographic scope of MINUSMA’s mandate, and that it consists mainly in providing medical evacuations for the G5 Sahel Force, the construction or improvement of camps of the Joint Force, and the provision of basic supplies such as water and fuel. It does not extend to the provision of lethal equipment. Importantly, as provided in the Council resolution, the UN support to the G5 Sahel Force remains subject to the United Nations Human Rights Due Diligence Policy. In case of concerns over compliance of the



G5 Sahel Force with human rights, international humanitarian law or refugee law, MINUSMA's support to the Joint Force may be unilaterally suspended and discontinued.

The technical arrangement with the G5 Sahel, which was signed on 23 February in Brussels, also reflects the fact that the UN human rights activities in relation to the Joint Sahel Force are not limited to Mali, contrary to the logistical support that will be provided by MINUSMA: it extends to the FC-G5S units in the territory of the other G5 Sahel States.

[Peaceful resolution of disputes]

Turning now to the area of peaceful resolution of disputes, the year has seen a number of significant developments before the International Court of Justice, with which my Office has been involved in different ways.

Last June, the General Assembly adopted resolution 71/292, requesting an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The General Assembly posed two distinct questions, both as to (i) the lawful completion of the process of decolonization of Mauritius at the point of independence, and (ii) the consequences under international law arising from continued administration by the United Kingdom of the Chagos Archipelago. These questions raise sensitive, complex and novel issues of international law. Further to Article 65(2) of the Statute of the Court, my Office prepared a dossier containing a collection of all relevant documents. Under Note of 30 November 2017, this voluminous dossier was supplied to the Court. I will follow the future evolution of these important proceedings with interest.

Between Guyana and Venezuela, a controversy arose as a result of the Venezuelan contention that the Arbitral Award of 1899 about the frontier between British Guiana and Venezuela is null and void. In the Geneva Agreement of 1966, Guyana and Venezuela conferred upon the Secretary-General the power and responsibility to choose a means of peaceful settlement from amongst those contemplated in Article 33 of the Charter of the United Nations. The Geneva Agreement also provided that if the means so chosen did not lead to a solution of the controversy, the Secretary-General was to choose another means of settlement. Since 1989, the Secretary-General, acting through a series of Personal Representatives, lent his good offices to Guyana and Venezuela with a view to seeking a resolution of the controversy. These efforts did not prove successful. On 15 December 2016, the former Secretary-General Ban Ki-moon communicated to the parties a framework for the resolution of the border controversy based on his conclusions on what would constitute the most appropriate next steps. He extended the good offices process for a further year. At the same time, he stated that if, by



the end of 2017, his successor, Secretary-General António Guterres, concluded that significant progress had not by then been made towards arriving at a full agreement for the solution of the controversy, he would choose the International Court of Justice as the next means of settlement, unless the Governments of Guyana and Venezuela jointly requested that he refrain from doing so.

On 30 January 2018, the Secretary-General announced that he had carefully analysed developments in the good offices process during 2017 and had concluded that significant progress had not been made towards arriving at a full agreement for the solution of the controversy. Accordingly, he chose the International Court of Justice as the means that is now to be used for the solution of the controversy.

At the same time, the Secretary-General also reached the conclusion that Guyana and Venezuela could benefit from the continued good offices of the United Nations through a complementary process established on the basis of the powers of the Secretary-General under the Charter of the United Nations. These good offices could contribute to the use of the ICJ as the new means of settlement; help the parties reach an out of court settlement; and help them to address other issues in their bilateral relations.

Following the Secretary-General's decision, Guyana filed an Application with the Court on 29 March 2018, asking it to confirm the legal validity and binding effect of the 1899 Arbitral Award. In its Application, Guyana has founded the Court's jurisdiction on the combined effect of the 1966 Geneva Agreement and the Secretary-General's decision of 30 January 2018 as the means that is now to be used for resolution of the controversy.

I am hopeful that these steps may move the parties towards a resolution of this dispute.

In this context, I would like to say a few words about the election of ICJ judges which was held in November last year.

Every three years, the General Assembly and the Security Council hold an election to elect five judges of the ICJ. Such an election was held in November last year. In this election, there were six candidates for the five vacant seats. The election turned out to be a prolonged one. Over a period of three separate days in November, the General Assembly held 12 rounds of ballot and the Security Council held 11 rounds of ballot. In particular, the election of the fifth judge took a long time to complete.

I was personally present in the Security Council Chamber to supervise the balloting process in the Council, so I witnessed first-hand not only the legal complexity but also the political complexity involved in the process. As far as the legal aspect is concerned, one of the factors that makes the election of ICJ judges more complex than other elections is that a candidate is declared elected only if he



or she obtains an absolute majority of votes in both the General Assembly and the Security Council.

Therefore, if the names of the five candidates that received the absolute majority in the General Assembly do not match with those from the Security Council, the two organs would have to hold additional ballots to fill the remaining vacant seats. Normally, the two organs continue holding ballots until all the vacant seats are filled. However, in case of a deadlock, the Statute of the ICJ provides for the option of establishing a body called “joint conference”.

This option is contained in Article 12, paragraph 1, of the ICJ Statute which provides that “[i]f...one or more seats remained unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each still vacant”.

So, in case of a deadlock, a joint conference, which is a small body consisting of six members, could propose a candidate for consideration by the General Assembly and the Security Council. As this provision has never been applied, there are a number of aspects which may raise questions. For example, the Statute does not specify who should propose that a joint conference should be formed, and how the proposal should be put forward at either the General Assembly or the Security Council.

Furthermore, questions could arise as to how the General Assembly and the Security Council should choose three members each to sit on the joint conference, and whether States should be chosen as members of the joint conference, or whether individuals should be chosen and serve in their personal capacity. Interestingly, as far back as 1921, the Assembly of the League of Nations adopted the following criteria for membership in such a joint conference with respect to the Permanent Court of Arbitration: (i) the Assembly representatives should be delegates of States not represented in the Council; (ii) they should represent different systems of law; and (iii) they should not have a direct interest in the outcome.

Even if a joint conference is established and proposes a candidate, it is still subject to the approval of the General Assembly and the Security Council. A question could arise as to what would happen if the candidate proposed by the joint conference fails to be elected.

In the present case, one of the two competing candidates ultimately withdrew, which left the other candidate as the sole candidate for the remaining one seat. Therefore, the option of “joint conference” was not resorted to. However, the recent election of ICJ judges once again highlighted the recurring complexities involved in such elections.



[Privileges and Immunities]

To conclude on the work of the Office of the Legal Counsel, I turn, briefly, to challenges relating to the status, privileges and immunities of the Organization. As in previous years, I regret to report to you that matters have not improved. We continue to face challenges on taxation, social security and the validity of existing bilateral agreements in South America. The Secretariat has also had to deal with difficult matters relating to the interpretation of the UN-US Headquarters Agreement relating to the issuance of visas, geographical restrictions, status of the premises of permanent missions to the UN and their personnel.

[GLD]

[Administration of justice]

I will now turn to the activities of the General Legal Division. My Office's work to promote accountability includes providing extensive support to the Secretary-General initiatives to ensure that the United Nations Secretariat and its staff members are held accountable for their actions and decisions.

In 2017, the Secretary-General announced a new strategy to improve the Organization's system-wide approach to preventing and responding to sexual exploitation and abuse. The Office of Legal Affairs, in particular the General Legal Division, has advised on the creation of procedures to identify individuals who may have engaged in sexual exploitation and abuse. My Office has also led efforts to develop a new uniform policy on sharing information on allegations of sexual exploitation and abuse with national authorities, while balancing confidentiality requirements. The uniform policy was endorsed by senior management in November 2017 and will be promulgated as a Secretary-General's bulletin this year.

In recent months, a global social movement highlighting the scourge of sexual harassment has led to an outpouring of complaints in numerous countries, sectors and industries. The Secretary-General has stressed his "commitment to zero tolerance of sexual harassment, and underline[d] that harassment of any type is antithetical to the principles for which we stand as an Organization." The Organization is taking action on numerous fronts to improve its response to complaints of sexual harassment. The Secretary-General has established a Chief Executives Board Task Force on addressing sexual harassment to develop a common UN system approach to addressing sexual harassment. Other actions have included establishing a Rapid Response Team of senior managers, setting up a confidential helpline for colleagues to access information regarding available recourse mechanisms and support, strengthening investigative capacity and



intensifying awareness raising efforts. In all of these initiatives, the Office of Legal Affairs has been an active and engaged partner.

A policy that can encourage individuals to report sexual exploitation and abuse, sexual harassment and other types of misconduct will ultimately enhance the trust of individuals and Member States in the Organization. Accordingly, the Secretary-General has emphasized the importance of a robust policy on protection against retaliation. My Office has supported the Secretary-General's efforts to strengthen the policy, through expanding its scope of protection to consultants and individual contractors who report misconduct. The policy has also been revised so that reports of misconduct committed by a broader range of actors (including contractors and peacekeepers) will also trigger protections under the policy.

The internal administration of justice system continues to be an essential pillar of the accountability system of the United Nations. Since their establishment in 2009, the UN Dispute Tribunal and the UN Appeals Tribunal have delivered 1551 and 809 judgments, respectively, to date. The Office of Legal Affairs represents the Secretary-General in appeals proceedings and plays a key role in the development of policy regarding the administration of justice.

[Criminal accountability]

The Office of Legal Affairs, and the General Legal Division in particular, has also continued its work with respect to the criminal accountability of UN officials and experts on mission.

Pursuant to General Assembly resolution 62/63, the Office of Legal Affairs, on behalf of the Secretary-General, brings credible allegations that reveal that a crime may have been committed by UN officials or experts on mission to the attention of their state of nationality.

As reflected in the Secretary-General's most recent report on the subject(A/72/205), between 1 July 2016 and 30 June 2017, 35 cases were referred to states of nationality. Of these cases, 2 involved allegations of sexual exploitation and / or abuse and 30 involved allegations of fraud or corruption.

My Office has also continued to facilitate the administration of justice, pursuant to article V, section 21 of the Convention on the Privileges and Immunities of the United Nations, by responding to requests for cooperation from national authorities of Member States in relation to ongoing investigations and criminal proceedings.

[Unfortunately, the Office of Legal Affairs receives few responses to these referrals. At the time of the publication of the last report by the Secretary-General, in 100 of the 124 cases that have been referred we had not been informed by Member States whether referrals have been taken up by national law enforcement authorities.



Even more strikingly, to date, my Office has not been informed of any referral to a Member State which has led to the relevant official or expert on mission being prosecuted.

With a view to encouraging responses from Member States, my Office, through the General Legal Division and pursuant to the resolutions adopted by the General Assembly on this topic, follows up with by letter 3, 6, and 12 months after the referral.

With regard to allegations of sexual exploitation and abuse, an enhanced system for follow-up has recently been introduced under which I have personally engaged with the Permanent Representatives of relevant Member States to the United Nations in order to underline the need for action by national authorities in such cases.]

[Arbitration and Claims]

Another core function of the General Legal Division is to provide legal advice with respect to commercial claims and disputes involving operational activities of the Organization, its organs and funds and programmes. However, should such a matter not be resolved amicably, the aggrieved party has the right under its contract to have the dispute resolved by *ad hoc* international commercial arbitration conducted under the UNICTRAL Arbitration Rules.

Given the multitude of operational activities, the Division has been frequently called upon to advise upon arbitration proceedings concerning claims that arise from operations at Headquarters, in peacekeeping missions, and from the operations of the many UN funds and programmes.

These claims arise from contracts entered into with commercial contractors in support of the above operations and often involve million-dollar claims. In addition, arbitration under the UNCITRAL Arbitration Rules is also the standard settlement mechanism for disputes arising out of contracts between the Organization and individuals, such as individual contractors and consultants, UN Volunteers or service provider in the context of the funds and programmes. Recently, Member States have been increasingly interested in the resolution of disputes with such individuals, who are collectively referred to as non-staff personnel. They have expressed concern that *ad hoc* arbitrations under the UNCITRAL Rules do not constitute an effective remedy for those individuals, as they are often engaged by the Organization for the provision of services in the field or other remote locations.

[On 9 February 2012, the General Assembly, in resolution 66/237, requested that the Secretary-General submit to the Assembly a proposal for implementing a mechanism for expedited procedures for consultants and individual contractors.



Such mechanism was described in a concept paper of the Secretary-General and submitted at the sixty-sixth session of the General Assembly (A/66/275 and Corr.1) as well as a subsequent report by the Secretary-General (A/67/265), which were prepared by my Office. The Secretary-General proposed new expedited arbitration procedures with rules to be based upon the UNCITRAL Arbitration Rules, to be developed by the Office of Legal Affairs in consultation with funds, programmes and participating entities. The General Assembly took note of the proposed expedited arbitration procedures for consultants and individual contractors developed by the Secretary-General but decided not to act on these proposals (resolution 67/241).

Interest in the area has continued with a 2016 report of the Joint Inspection Unit entitled “Use of non-staff personnel and related contractual modalities in the United Nations system organizations” (A/70/685) to which the Secretary-General transmitted his comments (A/70/685/Add.1). The Secretary-General recommended that “the executive heads of the United Nations system organizations should ensure that long-serving non-staff personnel (including UNVs) have access to appropriate formal internal justice mechanisms. To that end, the executive heads should consider allowing them access to existing mechanisms or establish another practical system for their use” (see Recommendation 11 of A/70/685/Add.1.)]

In the absence of a specific recourse available to non-staff personnel, however, disputes with consultants or individual contractors continue to be resolved through arbitration under the UNICITRAL Rules, unless settled amicably. As a result, the General Legal Division remains charged with the responsibility of defending the Organization, its organs and funds and programmes, with respect to claims raised by non-staff personnel, including arbitration proceedings. The Office of Legal Affairs continues to support current efforts to identify appropriate dispute resolution mechanisms for such personnel, particularly for personnel in remote duty stations discharging peacekeeping and humanitarian operations and UN volunteers, with a view to providing an “appropriate mode of settlement” in accordance with the Convention on the Privileges and Immunities of the UN.

[ITLD]

À la suite de l’adoption de la Convention de Maurice sur la transparence dans l’arbitrage entre investisseurs et États fondé sur des traités, le Groupe de travail III a commencé des travaux de large portée sur une réforme éventuelle du système de règlement des différends entre investisseurs et États (RDIE). Il s’agit d’un sujet d’un grand intérêt pour les États et le Groupe de travail a commencé le processus tendant au recensement et à l’examen des principales préoccupations soulevées et



qui pourraient justifier une réforme. L'importance de la thématique se retrouve dans la position du Groupe de travail selon laquelle une analyse factuelle devrait être complétée par un examen des opinions exprimées sur le sujet tant ces dernières sont également pertinentes pour les États qui prennent des décisions de politique générale. Après avoir tiré des conclusions de cette analyse, le Groupe de travail III décidera si cette réforme est souhaitable et, dans l'affirmative, quelles solutions possibles pourraient répondre aux principales préoccupations.

Le Groupe de travail IV (commerce électronique) a commencé ses travaux sur les aspects juridiques de la gestion de l'identité et des services de confiance, qui sont largement reconnus comme des éléments fondamentaux pour l'utilisation des technologies de l'information et de la communication dans une économie numérique. En particulier, la reconnaissance juridique de la gestion de l'identité et des services de confiance à travers les frontières pose des difficultés sérieuses mais offre également des avantages significatifs : par exemple, la facilitation des échanges commerciaux sans papier, qui peut entraîner une réduction considérable des coûts du commerce, nécessite l'identification fiable de toutes les entités impliquées ainsi que l'assurance de l'origine et de l'intégrité des messages échangés. La CNUDCI est en train d'étudier différentes options pour mener à bien ses travaux dans ce domaine, en tenant compte des lois existantes ainsi que des principes généraux qui sous-tendent les textes de la CNUDCI sur le commerce électronique.

La CNUDCI va finaliser et adopter de nouveaux instruments dans le domaine de la médiation internationale. La médiation est une méthode de résolution des différends caractérisée par sa flexibilité et sa rapidité ; elle est peu onéreuse et permet de protéger les relations sur le long terme entre les parties. Reconnaissant à la fois les bienfaits de la médiation, et le besoin de mieux promouvoir son utilisation, la CNUDCI a inscrit à son agenda la finalisation de la convention sur les accords de règlements internationaux résultant de la médiation. La convention sera ensuite présentée pour adoption à l'Assemblée générale. Une fois adopté et en vigueur, cet instrument constituera un cadre légal de référence pour l'exécution des accords de règlement internationaux. De façon complémentaire à la convention, la CNUDCI a également prévu d'adopter un supplément à la Loi type sur la conciliation commerciale internationale, qui portera également sur l'exécution des accords de règlement internationaux.

[DOALOS]

I shall now turn to the activities of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs. Let me recall that this Division discharges the functions vested in the Secretary-General by the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and related Agreements. It also



performs numerous functions mandated by the General Assembly in its ocean-related resolutions, particularly the annual resolutions on oceans and the law of the sea and on sustainable fisheries.

Let me recall that, with 168 States Parties, including the European Union, the Convention remains one of the most widely ratified and influential multilateral treaties. A substantive part of its regime reflects customary international law. The General Assembly annually recognizes the universal and unified character of the Convention, and reaffirms that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained.

Among the functions of the Division under the Convention, I wish to mention the depositary ones, concerning the charts and list of geographical coordinates of baselines and outer limits of maritime zones, the servicing of the Meeting of States Parties, as well as the extensive support to the Commission on the Limits of the Continental Shelf in connection with its 21 weeks of sessions.

The twenty-eighth Meeting of States Parties to the Convention, to be held next month, will adopt the budget for the International Tribunal for the Law of the Sea for the 2019-2020 biennium. It is expected that it will also address the issue of one remaining vacancy in the Commission on the Limits of the Continental Shelf.

In this regard, I recall that, in June 2017, the twenty-seventh meeting elected 20 members of the Commission on the Limits of the Continental Shelf, and seven members of the International Tribunal for the Law of the Sea, including some former members of the Commission.

Following these elections, the Commission held the first three sessions in its new composition during which it has actively considered 11 submissions by coastal States, namely, those made by the Russian Federation in respect of the Arctic Ocean; Brazil in respect of the Brazilian Southern Region; France and South Africa, jointly, in respect of the area of the Crozet Archipelago and the Prince Edward Islands; Kenya; Nigeria; Seychelles in respect of the Northern Plateau Region; France in respect of Reunion and the Saint-Paul and Amsterdam islands; Côte d'Ivoire; Sri Lanka; Portugal; and Tonga. The Commission also received presentations concerning four additional submissions, namely Brazil, in respect of the Brazilian Equatorial Margin; Palau, in respect of the North Area; Canada, in respect of the Atlantic Ocean; and Oman.

The Division also acts as the secretariat of the United Nations 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. The thirteenth round of informal consultations of States parties to that Agreement will convene for two



days in this month, incorporating a new format, which will include a discussion panel. Pursuant to the recommendation of the resumed Review Conference in 2016, the informal consultations of States Parties to the Agreement will be dedicated, on an annual basis, to the consideration of specific issues arising from the implementation of the Agreement. Thus, it was decided that the thirteenth round in 2018 will focus on the topic “Science-policy interface”, while the fourteenth round in 2019 will focus on the topic “Performance reviews of regional fisheries management organizations and arrangements”.

The Division also provides substantive support to the General Assembly and its subsidiary organs, including in connection with the annual consideration of law of the sea and ocean affairs and sustainable fisheries. Let me now, in that context, briefly address several major ocean-related processes.

One of the major developments of relevance is the on-going process at the United Nations concerning the development of an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. In another significant step forward, the Preparatory Committee established by General Assembly resolution 69/292 on the Development of 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 adopted, at its fourth session in July last year, its recommendations to the General Assembly.

Building on those recommendations, the General Assembly, in resolution 72/249 adopted in December 2017, decided to convene an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee on the elements and to elaborate the text of an international legally binding instrument under the Convention, with a view to developing the instrument as soon as possible. Initially with respect to 2018, 2019 and the first half of 2020, the Conference will meet for four sessions. The first session will take place this year in September.

The negotiations are to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together with and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology. A number of cross-cutting issues will also be considered, including the scope of the instrument, its relationship to the Convention and other instruments, institutional arrangements, dispute settlement and responsibility and liability.

The second process of importance which is accountable to the General Assembly and is an intergovernmental process guided by international law, including the



Convention and other applicable international instruments, is the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects. The Process is now in its second cycle, which started in 2017 and will be completed in 2020.

The two main outputs for this second cycle are the preparation of a second world ocean assessment and the Regular Process support for other ocean-related intergovernmental processes, including the preparation of three process-specific technical abstracts.

In 2017, the Group of Experts of the Regular Process prepared three technical abstracts of the outcome of the first cycle, namely the first World Ocean Assessment. The abstracts provide a synthesis of its information and findings for the benefit of policy-makers, in a concise and accessible format. They deal with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; the ocean and the Sustainable Development Goals under the 2030 Agenda for Sustainable Development; and the impacts of climate change and related changes in the atmosphere on the oceans. These technical abstracts, together with the hard copy publication of the first World Ocean Assessment, were launched in June 2017 in the margins of the “Ocean Conference”.

In addition, the second part of the 2017 marked the successful completion of the first round of regional workshops in support of the second cycle of the Regular Process. These regional workshops were held in Lisbon in September; in Auckland, New Zealand in October; in Camboriú, Brazil and Bangkok in November; and in Zanzibar, United Republic of Tanzania in December. A second round of regional workshops is scheduled to be held in the second half of this year. In its last year’s resolution on oceans and the law of the sea, resolution 72/73, the General Assembly also decided on the format of the future second world ocean assessment. While the first World Ocean Assessment provided a baseline study of the state of the world’s oceans, the second should focus on trends and take the form of a single comprehensive assessment. In furtherance of the mandate by the Assembly, the outline for the second world ocean assessment was recently approved by the Ad Hoc Working Group of the Whole of the Regular Process at its meeting held on 1 March of this year.

Ocean science in the context of the legal regime for the oceans also remains at the forefront in another forum. This year’s nineteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, to be held in mid-next month, as decided by the General Assembly in 2016, and reiterated in resolution 72/73, will focus its discussions on anthropogenic underwater noise, a topic of increasing interest. Let me note in this regard that the Convention does not specifically mention noise pollution. However, since sound is a form of energy, its introduction into the marine environment, if it results or is



likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities, is considered by some as a form of pollution of the marine environment under the Convention.

Finally, as to the marine science, the General Assembly also decided to proclaim the United Nations Decade of Ocean Science for Sustainable Development for the 10-year period beginning on 1 January 2021.

With regard to international legal regime for the conservation and sustainable use of marine living resources, General Assembly resolution 72/72 on sustainable fisheries adopted on December 2017, reflected a number of important developments. In particular, the year beginning on 1 January 2022 was proclaimed the International Year of Artisanal Fisheries and Aquaculture; and the date of 5 June was proclaimed the International Day for the Fight against Illegal, Unreported and Unregulated Fishing. In both cases, the Food and Agriculture Organization of the United Nations was designated as the lead agency for marking the milestone, in collaboration with other relevant organizations and bodies of the United Nations system.

It is very important to highlight that all the new developments that I have mentioned also come with new and increased capacity requirements for States, clearly in addition to those which have already been put forward in relation to the current commitments, rights and obligations of States. In this regard, the Division continues to provide assistance to States in building human and institutional capacity, including through needs-based training programmes, fellowships and trust funds. By way of example, a new capacity-building programme, the United Nations – Nippon Foundation of Japan Sustainable Ocean Programme, aims at enhancing awareness, human capital and institutional capacity to support the continuously evolving and integrated nature of ocean governance and the law of the sea. One of the activities under this Programme is a training programme to reinforce capacity in the context 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.

As another example of recent capacity-building activities, the Division assisted, at the request of ASEAN, in December last year, in the successful delivery of the first Training Workshop on the Law of the Sea, including the 1982 United Nations Convention on the Law of the Sea in Jakarta, thus furthering the ASEAN-United Nations cooperation in this field which is of central importance for that region.



[Treaty Section]

Pour terminer, je voudrais exposer brièvement sur la contribution de la Section des traités qui, comme vous le savez, exerce les fonctions dépositaires du Secrétaire général et est également en charge de l'enregistrement et de la publication des traités et accords internationaux conformément à l'article 102 de la Charte.

L'année dernière a été riche en ce qui concerne les traités conclus et confiés au Secrétaire général en sa qualité de dépositaire. Il est intéressant de noter que ces traités couvrent des domaines importants du droit international et cela témoigne de la vigueur de la coopération intergouvernementale. Dans le domaine de la sécurité internationale et du désarmement, la Conférence des Nations Unies pour la négociation d'un instrument juridiquement contraignant visant à interdire les armes nucléaires en vue de leur élimination complète a adopté, le 7 juillet 2017, le Traité sur l'interdiction des armes nucléaires. Ouvert à la signature de tous les États au Siège de l'Organisation des Nations Unies le 20 septembre 2017, le Traité a recueilli, à ce jour, cinquante-sept signatures (57) et cinq (5) ratifications. La fin de l'année 2017 a également vu l'adoption de trois (3) amendements au Statut de Rome de la Cour pénale internationale. Effectués à l'Article 8 du Statut relatif au crime de guerre, ces amendements renforcent le régime juridique des armes prohibées en situation de conflits armés. Adoptés le 14 décembre 2017, ils entreront en vigueur à l'égard des États Parties qui les auront acceptés un an après le dépôt de leurs instruments de ratification ou d'acceptation, conformément aux dispositions du paragraphe 5 de l'article 121 du Statut de Rome. Encore plus récemment, le Secrétaire Général a été désigné dépositaire de l'Accord régional sur l'accès à l'information, la participation du public et l'accès à la justice en matière d'environnement adopté par les États de l'Amérique Latine et des Caraïbes, le 4 mars 2018. Ce texte démontre notamment l'interconnexion entre le droit international des droits de l'homme et le droit international de l'environnement par la consécration des droits des défenseurs des droits de l'homme en matière environnementale.

Le droit international de l'environnement est également à l'honneur dans le cadre des traités multilatéraux entrés en vigueur au cours des derniers mois. Le Protocole additionnel de Nagoya – Kuala Lumpur du 15 octobre 2010 sur la responsabilité et la réparation relatif au Protocole de Cartagena sur la prévention des risques biotechnologiques est entré en vigueur le 5 mars 2018. Par ailleurs, l'année 2017 a vu l'entrée en vigueur de l'Amendement du 4 juin 2004 à la Convention sur l'évaluation de l'impact sur l'environnement dans un contexte transfrontière le 23 octobre 2017 et également l'entrée en vigueur le 16 août 2017 de la Convention de Minamata du 10 octobre 2013 sur le mercure. Dans un domaine différent du droit international, on peut également noter l'entrée en vigueur le 18 octobre 2017 de la Convention des Nations Unies du 10 décembre



2014 sur la transparence dans l'arbitrage entre investisseurs et États fondé sur des traités.

Les différents instruments conventionnels mentionnés constituent une infime partie du riche répertoire des quelques 600 traités multilatéraux déposés auprès du Secrétaire général. Ils mettent surtout en lumière la grande variété de questions juridiques que la Section des Traités est amenée à traiter au quotidien.

Tout récemment, on peut par ailleurs relever la question du retrait d'un Etat Partie au Statut de Rome. Le 17 mars 2018, la République des Philippines a également notifié au Secrétaire général sa volonté de se retirer du Statut de Rome, retrait qui sera effectif le 17 mars 2019, conformément aux dispositions de l'article 127 de celui-ci. Si j'avais eu l'occasion, lors de mon intervention de l'année dernière, de me réjouir de la décision de la République de Gambie et de la République sud-africaine de retirer leurs notifications de retrait du Statut avant que ceux-ci ne prennent effet, je ne peux que regretter la notification de retrait effectuée par la République des Philippines.

Je voudrais conclure par les éléments marquants évoqués par l'Assemblée Générale dans le cadre de sa dernière résolution 72/119 relative à « L'état de droit aux niveaux national et international ». Tout en rappelant le rôle des processus d'établissement des traités multilatéraux dans la promotion de l'état de droit, l'Assemblée a salué les efforts du Secrétariat et réaffirmé son soutien aux initiatives de renforcement des capacités en matière de traités. L'Assemblée n'a pas manqué l'occasion de rappeler que l'enregistrement des traités auprès du Secrétariat constitue une obligation imposée par l'article 102 de la Charte des Nations Unies. Elle s'est également félicitée des efforts déployés en vue du développement et de l'amélioration de la base de données des traités et de leur accès en ligne, ainsi que de la cérémonie annuelle des traités. Au cours de la dernière édition de cette Cérémonie, d'ailleurs, soixante-et-onze (71) États membres et deux (2) États observateurs ont effectué quatre-vingt-dix-huit (98) actions relatives aux traités multilatéraux déposés auprès du Secrétaire général.

Notons enfin que l'Assemblée Générale a pris note du rapport que le Secrétaire général a préparé à sa requête afin d'examiner le Règlement destiné à mettre en application l'article 102 de la Charte. Il est à noter, à cet égard, que ce Règlement, adopté par l'Assemblée en 1946, n'a été amendé qu'à trois reprises, la dernière fois il y a déjà quarante ans, en 1978. Le rapport du Secrétaire général examine les dispositions du Règlement à la lumière de la pratique contemporaine et propose des possibles amendements en vue de rationaliser le processus d'enregistrement et publication des traités en tirant profit, notamment, des progrès en matière de technologies de l'information. Il inclut également des suggestions visant au renforcement des capacités, à publication et à l'assistance technique afin de renforcer cette fonction importante de la Charte. L'Assemblée générale ayant



pris note du rapport du Secrétaire général, gageons que ses prochains débats conduiront à l'adoption d'un Règlement amendé et adapté aux nouvelles pratiques des Etats Membres.

[Conclusion]

Distinguished Members of the International Law Commission

This concludes my overview of the work of the Office of Legal Affairs in the past year. I look forward to joining you again for the commemorative events celebrating the 70th anniversary of the Commission, later this month in New York and in July in Geneva.

Meanwhile, I wish you a fruitful session and a productive time here in New York. Rest assured that the Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication. Thank you very much.