



**UNITED NATIONS  
OFFICE OF LEGAL AFFAIRS**

**Informal Meeting of the Legal Advisers  
of the Ministries of Foreign Affairs  
Remarks**

by

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**Monday, 2 November 2015  
Trusteeship Council Chamber**

Thank you, Mr. Chairman, dear Bill, for giving me the floor.

Mr. Chairman,  
Ladies and Gentlemen Legal Advisers from capitals and from the missions,  
Excellencies,  
Dear colleagues and friends,

**[Introduction]**

I am very pleased to see all of you gathered again here at UN Headquarters for your traditional annual informal meeting.

Tradition has it that I am accorded the privilege of briefing the meeting on some current legal issues that we are facing at the United Nations. I wish to express my sincere gratitude to the organizing State this year, Canada, for honouring this tradition and giving me the floor.

I think that I can speak on behalf of the entire meeting when I congratulate Mr. William Crosbie, Legal Adviser and Assistant Deputy Minister in the Department of Affairs for Foreign Affairs, Trade and Development Canada, and his team in the Mission of Canada in New York - in particular Mr. Giles Norman - for having done an outstanding job in putting together the programme for this meeting.

I will not be able to speak to every item on the agenda but I would like to take this opportunity to say a few words on transparency in investment arbitration and on international criminal justice. Both of these matters will be discussed in detail over the course of the coming two days. And I also wanted to share some thoughts with you on an area which increasingly takes centre stage of my activities at the helm of OLA: Law of the Sea.

### **[Legal standards on transparency in investment arbitration]**

But let me start with some brief reflexions on UNCITRAL's recent achievements in the preparation of legal standards on transparency in investment arbitration.

UNCITRAL – as you are well aware - is a commission established by the General Assembly with a mandate to harmonize and modernize international trade law. The secretariat functions of the Commission are bestowed upon the International Trade Law Division, one of the six divisions in my Office of Legal Affairs.

UNCITRAL has made a significant contribution to developing and promoting international standards in the field of arbitration. The near-universal accession to the New York Convention and its increased use are a tribute to the role of arbitration as a peaceful means of settling international disputes, as are the numerous enactments of arbitration legislation based on the UNCITRAL Model Law on International Commercial Arbitration (1985, updated in 2006), and the extensive use of the UNCITRAL Arbitration Rules (1976, revised in 2010), including in the field of investment arbitration.

UNCITRAL's work on transparency in investment arbitration results both from the crucial role of investment as a tool for sustainable development and the need to increase the credibility of the investor-State dispute settlement (ISDS)

system. UNCITRAL aims to promote transparency and inclusiveness, both expressions of core United Nations values, as they relate to human rights, good governance and the rule of law.

In this context, UNCITRAL worked from 2010 to 2013 on the preparation of the Transparency Rules (UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration). Adoption of those Rules constitutes an important step towards better recognizing the right of the general public to information that is relevant to all taxpayers who may be directly impacted by the outcome of ISDS.

The Transparency Rules represent a fundamental change from the status quo of investment arbitrations, often conducted behind closed doors and hidden from the public view, even when the issues being raised gather much attention from the public and the media. Without going into detail, the Rules offer a procedural regime that guarantees public access to a wealth of documents in the dispute. The Rules also provide for open hearings and a qualified right for third parties to make submissions. They also include robust safeguards for the protection of confidential information. And, most importantly, they balance the public interest in receiving information and the interest of disputing parties in a fair and efficient resolution of their dispute.

Because the Transparency Rules only apply to investment treaties concluded after 1 April 2014, the Commission also prepared a convention to give those States and regional economic integration organizations that wish to make the Transparency Rules applicable to about 3,000 existing bilateral treaties an efficient mechanism to do so. That result of the Commission's work is the Mauritius Convention (United Nations Convention on Transparency in Treaty-based Investor-State Arbitration), adopted by the General Assembly on 10 December 2014 and open for signature since 17 March of this year.

By becoming a Party to the Convention, a State or a regional economic integration organization expresses its consent to apply the Transparency Rules to investor-State arbitration initiated pursuant to an existing investment treaty. I would note the flexibility provided under the Convention, as States are allowed to exclude from the scope of the Convention certain investment treaties, certain sets of arbitration rules, or to propose unilateral application.

As of today, the Convention has one State party (Mauritius) and fifteen other signatories (Belgium, Canada, Finland, France, Gabon, Germany, Italy, Luxembourg, Madagascar, the Republic of Congo, Sweden, Switzerland, Syria, United Kingdom and the United States of America) and I firmly believe that the number will soon grow.

With the Transparency Rules and the Convention now firmly in place, a practical question arises as to how and where the relevant information will be available to the public. A central feature of both the Transparency Rules and the Convention is the repository function stipulated in article 8 of the Rules. This Transparency Registry will also be a unique place for Governments to share information about investment cases and law, and for policy makers and Government officials to gain first-hand knowledge of how the system functions.

Member States of UNCITRAL unanimously decided that the necessary independence and neutrality of the Registry would be maximized if that it were run directly by the UNCITRAL secretariat on behalf of the Secretary-General. My office is currently working with donors (the European Union and the OPEC Fund for International Development) to ensure that the Registry will soon be operational. I am very grateful to both of these organisations for the strong commitment they are showing.

UNCITRAL standards on transparency - the Transparency Rules, the Mauritius Convention and the Transparency Registry - are the most recent results of a multilateral endeavour to reform investment arbitration. They should be understood in the context of fostering foreign direct investment as a tool for the sustainable growth. By making public information on disputes arising from such investments, they contribute to building confidence in the existing international investment framework.

More steps may need to be taken by UNCITRAL in the future to respond to the increasing challenges regarding the legitimacy and efficiency of international investment law and ISDS. For example, work has already begun to consider possible legal solutions to the difficulties resulting from concurrent proceedings; the preparation of a code of ethics for arbitrators is also envisaged. A number of regional initiatives regarding the future architecture of ISDS are also closely monitored.

Let me conclude by emphasizing that the work of UNCITRAL on investment arbitration will continue to be guided by principles that underpin its standards on transparency, to enhance the public understanding of, and confidence in, the investment arbitration process, and to improve or restore its overall credibility.

### **[International criminal justice]**

Let me now turn to my next topical issue: international criminal justice. I note that immediately after this opening session you will discuss international criminal tribunals from a big picture perspective, drawing on lessons learned and past experiences. I would, therefore, like to say a few words about this subject, on which I and my Office are engaged on a daily basis.

International tribunals have indisputably had a significant impact on the way in which we consider accountability for those who would perpetrate atrocities during conflicts. Now more than ever, there is an expectation that there will be accountability for the most serious crimes of international concern - and this rests in large part upon the foundations laid by the tribunals. I will not repeat here the numerous achievements made in the realm of international criminal justice, with which you are familiar. Instead, I would like to speak about how we see international criminal justice taking shape in the future. Allow me, however, to make one brief reference to the opening event of the International Nuremberg Principles Academy on 6 June this year in Nuremberg, Germany, where I provided a programmatic overview of the developments which led the Secretary-General to announce the dawning of an "Age of Accountability". This account is on our website and has recently been published in the "Journal of International Criminal Justice".

As I said in the Security Council in May, as a matter of policy and principle, the United Nations supports the International Criminal Court as the preferred accountability option when crimes of international concern have been committed. But we know that sometimes that is not possible because the ICC is not seized of jurisdiction. As a result, we have seen recently several calls for new accountability mechanisms: for the Central African Republic; MH17; South Sudan; Sri Lanka; Syria; and there may be more in future.

In answering these calls, we should draw upon the deep well of experience and knowledge that we have developed since the early 1990s.

One of the critical lessons that we have learned, and which I wish to emphasize today, is that financing is a fundamental issue. International criminal justice requires sustained, stable and reliable financial resources.

As you may recall, in the context of the establishment of the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the Residual Special Court for Sierra Leone, the Secretary-General advised that international criminal tribunals should not be left to the vagaries of voluntary contributions from the international community.

The wisdom of this advice has been borne out by the experience of existing institutions that have on several occasions come close to financial crisis due to lack of funding. If we are serious about nurturing this age of accountability, we must accept the financial commitment which that entails.

But we need to consider how to balance increased calls for accountability with the challenges we face in securing the necessary resources and support. I look forward to hearing the ideas that will ensue in your discussions later. In the meantime, let me offer two suggestions.

First, we may wish to explore in greater detail the concept of international assistance to national jurisdictions to facilitate the prosecution of serious crimes of international concern. This is the model envisaged for the Special Criminal Court in the Central African Republic and may be the approach for Sri Lanka.

International assistance no longer refers exclusively to the involvement of the United Nations. Regional organisations can play a key role, and in that regard I note that the African Union has assumed a leading role in accountability in the establishment of the Extraordinary African Chambers in the Senegalese Courts, which are currently engaged in the trial of former Chadian dictator Hissène Habré. In the context of South Sudan, we have seen reference in the recently published report of the Commission of Inquiry to the establishment of an “African-led” and “African-owned” mechanism “in order to bring those with the greatest responsibility at the highest level to account”. We at the United Nations, and within my Office in particular, are thrilled to be working with regional organisations on matters of accountability.

In principle, the provision of international support to a national jurisdiction is a conceptually viable model. There are clear advantages to prosecuting crimes within the domestic legal system of the country in which they occurred. There should also be increased scope for capacity-building under such a model, consistent with the notion of positive complementarity. The combination of national judges and international judges lends a particular legitimacy to the proceedings of the court. It also strengthens the role the court can play in contributing to broader accountability and reconciliation in the country concerned. Obviously, this model faces challenges in execution due to lack of capacity and other constraints.

Therefore, significant commitment on the part of the international community is required to ensure that the accountability efforts reach a conclusion in line with the rule of law and international standards of fairness and due process.

This brings me to the second suggestion. Two years ago, we witnessed the closure of the Special Court for Sierra Leone. Next month, the International Criminal Tribunal for Rwanda will complete its judicial work. In another two years, the International Tribunal for the former Yugoslavia will follow suit. As these pioneering institutions wind down their operations, a new institutional structure for tribunals has arisen – in the form of the Residual Mechanism and the Residual Special Court. This new brand of tribunal is intended to be small and cost-efficient, and to be flexible enough to adapt to the needs of the judicial activities. The judges work remotely; to the extent possible, judicial work is done by a single judge instead of a panel of three judges; and staff is rostered. So I would suggest that the second way in which we could achieve that seemingly elusive balance – between increasing calls for accountability and rising expectations and challenges in securing the necessary resources and support – is by engaging the models of these two institutions.

I am confident that by drawing on our past experience, by thinking creatively and with a measure of realism, we can answer the demands from the international community, from affected populations, from world leaders, that those responsible for serious international crimes be held accountable.

## **[Droit de la mer]**

Monsieur le Président,  
Distingués collègues,

Ceci m'amène au dernier sujet que j'aimerais aborder avec vous aujourd'hui : une mise à jour concernant les questions relatives aux océans et au droit de la mer sur lesquelles mon Bureau a continué de travailler activement. Et lorsque je parle des océans et du droit de la mer, il convient également de mentionner que je suis le coordonnateur d'ONU-Océans.

Comme vous le savez, ONU-Océans est un mécanisme inter institutions pour la coordination en matière d'océans et de zones côtières.

Cette année a effectivement été riche en développements, qui ont confirmé le dynamisme actuel des questions relatives aux océans et l'engagement des Etats en faveur d'océans et de mers durables.

Lorsque l'Assemblée générale adopta en juin la résolution 69/292, relative à l' « Élaboration, dans le cadre de la Convention des Nations Unies sur le droit de la mer, d'un instrument international juridiquement contraignant sur la conservation et l'exploitation durable de la biodiversité marine des zones situées au-delà des limites de la juridiction nationale », un nouveau jalon a été atteint.

Dans sa résolution, l'Assemblée a constitué un comité préparatoire qui commencera ses travaux en mars 2016 et fera un rapport sur leur état d'avancement avant la fin de 2017. Avant la fin de sa soixante-douzième session, l'Assemblée prendra une décision sur l'organisation et la date d'ouverture d'une conférence intergouvernementale en vue d'examiner les recommandations du comité préparatoire sur les éléments d'un projet de texte et d'élaborer un instrument juridiquement contraignant dans le cadre de la Convention.

La Division des affaires maritimes et du droit de la mer (DOALOS) de mon Bureau fournira son appui, y compris un appui substantif, au comité préparatoire.

Une autre réalisation importante de cette année concerne l'aboutissement et la publication prochaine de la première évaluation mondiale intégrée du milieu marin. Les cinquante-cinq chapitres de l'évaluation traitent d'une vaste gamme



de questions affectant les écosystèmes des océans et la biodiversité du milieu marin.

L'évaluation, dont le résumé a été publié comme document officiel des Nations Unies et considéré par le Groupe de travail spécial plénier de l'Assemblée générale en septembre 2015, est d'une importance cruciale dans la mesure où il fournit des données de référence sur l'état du milieu marin, y compris les aspects socio-économiques. L'évaluation devrait informer les prises de décision et contribuer ainsi à la gestion, de manière durable, des activités humaines affectant les océans.

En Septembre, le Groupe de travail spécial plénier a adopté des recommandations relatives à l'évaluation, aux leçons apprises et aux perspectives d'avenir. Ces recommandations sont actuellement examinées par les Etats Membres dans le contexte des consultations informelles sur le projet de résolution de l'Assemblée Générale sur les océans et le droit de la mer, qui reprendront le 18 novembre. L'Assemblée devra, en particulier, décider du lancement du second cycle du Mécanisme de notification et d'évaluation systématiques à l'échelle mondiale de l'état du milieu marin, y compris les aspects socioéconomiques.

La publication de la première évaluation mondiale intégrée du milieu marin ne pouvait tomber à un moment plus propice. Cette année marque l'adoption par l'Assemblée Générale de l'Agenda 2030 pour le développement durable et de ses dix-sept Objectifs de Développement durable, y compris l'Objectif 14 sur les océans.

L'évaluation et ses futures moutures constitueront une importante source d'information lors de la mise en œuvre de l'Objectif 14, ainsi que des autres objectifs pertinents de l'Agenda.

Je tiens à souligner l'importance particulière de l'Objectif 14c, qui appelle à améliorer la conservation des océans et de leurs ressources et à les exploiter de manière plus durable en application des dispositions du droit international, énoncées dans la Convention des Nations Unies sur le droit de la mer (CNUDM). Cet objectif réaffirme que la Convention fournit le cadre juridique requis pour la conservation et l'exploitation durable des océans et de leurs ressources, comme il est rappelé au paragraphe 158 de « L'avenir que nous voulons ».

L'examen de la mise en œuvre de l'Agenda 2030 sera d'une importance cruciale. L'Agenda prévoit que les processus de contrôle et de suivi à tous les niveaux devront être établis à partir des plateformes déjà existantes si celles-ci existent déjà. J'aimerais rappeler à ce propos que l'Assemblée Générale a reconnu le rôle du Processus consultatif officieux ouvert à tous en tant que forum unique pour des discussions approfondies sur les questions liées aux océans et au droit de la mer, en conformité avec le cadre constitué par la Convention et le chapitre 17 de l'Agenda 21.

Ce Processus pourrait jouer un rôle significatif dans l'examen de l'Objectif 14 et des autres objectifs ayant trait aux océans. Il convient aussi de noter que les Etats Membres envisagent actuellement certaines propositions qui permettraient de soutenir l'examen de l'Objectif 14 telle que la proposition de Conférences triennales sur les mers et les océans.

Il existe de nombreuses autres questions relatives aux océans que je pourrais aborder ici, y compris les questions liées aux migrations périlleuses mixtes par voie maritime. Mon Bureau suit de très près les développements relatifs à la région méditerranéenne afin de veiller en particulier au respect des dispositions de la CNUDM relatives au devoir de sauvetage des personnes en détresse en mer et l'obligation faite aux Etats côtiers d'établir des services de recherche et de sauvetage.

La CNUDM prévoit que les problèmes des espaces marins sont étroitement liés entre eux et doivent être envisagés [...] dans leur ensemble. En conséquence, les enjeux majeurs concernant les océans doivent également être considérés dans une perspective globale, interdisciplinaire et intersectorielle.

Cela souligne l'importance de la promotion de la coopération et de la coordination à tous les niveaux. Je suis persuadé que ONU-Océans peut jouer un rôle de soutien à cet égard.

### **[Conclusion]**

I'm afraid that I have already exceeded my time and have to leave it at that. I look forward to seeing you in the coming days at the various events during "international law week". Thank you very much for your kind attention and I wish you an interesting and successful week.