



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**Responsibility of States:
State of Play and the way forward (Part II)**

Introductory Remarks

By

**The United Nations Legal Counsel
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Excellencies,
Ladies and Gentlemen,

It is my pleasure to give some introductory remarks this afternoon by way of opening the meeting of this panel of experts, which has been convened to discuss the future of the articles on the responsibility of States for internationally wrongful acts. As you may be aware, the International Law Commission adopted the articles in 2001 after a herculean effort of nearly fifty years of work. In so doing, the Commission left it for the member States, as represented in the Sixth Committee of the General Assembly, to take a decision, at an appropriate point in the future, on the possibility of convening a diplomatic conference to negotiate an international convention on the basis of the articles. The Sixth Committee has since considered the matter on five occasions, the last being in 2013, and it is scheduled to do so again at the seventy-first session of the Assembly, next year.

In the meantime, I am sure you will agree with me that the articles have been extremely well-received by States, Courts and Tribunals as well as by academia. It is clear, including from the series of studies prepared by the Secretariat, that they have come to be generally regarded as an authoritative restatement of the law on international responsibility, with the differences of view being limited to a relatively few articles.

It is increasingly apparent that the time might be fast approaching for the Assembly to start considering its options, and for it to take a decision on the future of the articles, one way or the other. Continuing to simply postpone a decision on how to proceed, after what will be 15 years since their adoption by the Commission, risks creating doubts as to the extent to which States perceive the significance of the articles, thereby potentially undermining their authoritativeness. As we approach a point of diminishing returns while the articles linger on the agenda of the Assembly, we need to look to the future. It is time to have the conversation about whether the work of the International Law Commission should be the last word on the matter, or whether there might be room for further work, with a view to cementing the acquis of the Commission.

It is in this light that I welcome the initiative of the five delegations (Czech Republic, Guatemala, Mexico, Portugal and South Africa) which have organized this second in a series of panels to explore the possible advantages and pitfalls of the Assembly deciding to convene a diplomatic conference to negotiate an international convention on the responsibility of States for internationally wrongful acts. Permit me to express my gratitude to Amb. Juan Manuel Gomez Robledo of Mexico, who is well known to all of us, for agreeing to officiate over today's panel. I also would like to welcome our expert panelists to the United Nations and to thank them for giving their time to come and debate this issue with us today. I am sure we will all benefit from their presence.

Before giving the floor to Amb. Gomez Robledo to introduce the panelists, permit me to make some further remarks about the subject-matter of the panel. While it is for the member States to take the decision on the future of the articles, I wish to note that we are gathered here today on the eve of the seventieth anniversary of the United Nations. It is a time for solemn reflection on the contribution of the Organization to the improvement of the human condition. It goes without saying that the fulfillment of the mandate of the General Assembly to progressively develop and codify international law, based on the tremendous contribution of the International Law Commission, is an important part of the legacy of the Organization. Indeed, as you know from this year's discussion on the rule of law, which is dedicated to the the role multilateral treaty processes in advancing and promoting the rule of law, the treaty regime developed by, or adopted under the auspices of, the United Nations has transformed international law. Contrary to the position prevailing at the time of the creation of the United Nations, seventy years later we find ourselves in the presence of a relatively mature system of international law, anchored in a web of treaties, at the core of which lies a series of law-making international conventions adopted on the basis of the work and recommendation of the Commission.

While it is accepted that not all international legal instruments, including those developed by the Commission, require transformation into legally binding treaties, it still remains the fact that codification by means of the adoption of an international convention is one of the, if not the, primary modes of international law-making. Still, it is not a step that should be taken lightly. It requires a significant level of political commitment, and a marshalling of resources, both intellectual and financial. Nonetheless, when successful, the benefits far outweigh the costs. Existing multilateral law-making treaties, such as the Vienna Convention on the Law of Treaties which has to a significant extent

strengthened the stability of the treaty regime, stand as monuments to prior struggles and efforts by our predecessors to further develop and codify the law. It is now our turn to make a contribution. A commitment to encapsulation of law in a treaty is a commitment to the future of international law. It is also an important reaffirmation of the centrality of role of States, and of this Organization, in the making of international law.

I thank you, and wish you a successful meeting.