



UNITED NATIONS
OFFICE OF LEGAL AFFAIRS

**30th Annual Informal Meeting of the Legal Advisers of the Ministries of
Foreign Affairs of the Member States of the United Nations**

Statement

by

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Distinguished delegates, Distingués délégués

Colegas y amigos,

[Opening remarks]

One of the highlights of my year is to deliver the opening statement for this meeting that for 30 years has been the prime forum for Legal Advisers from all over the world to meet in an open, informal setting to exchange views on numerous topics of international law.

I wish to express my sincere appreciation to the delegation of Mexico for coordinating the preparation of this year's meeting. I am grateful to the Legal Adviser of the Ministry for Foreign Affairs of Mexico, Mr. Alejandro Celorio, his



team in capital and the Permanent Mission of Mexico for the preparations of this meeting.

As we prepare to commemorate next year the 75th anniversary of the United Nations, we must take every opportunity to reflect on the past successes and current and future challenges of the Organization, including those most relevant to us as legal practitioners.

Therefore, I would like to share with you some comments on both recent developments as well as landmark anniversaries relevant to international law:

[BBNJ]

Let me start by referring to one of the most important multilateral processes being undertaken now under the United Nations auspices: the Intergovernmental Conference on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, known as the “BBNJ Conference”.

As you know, now three substantive sessions have been held in New York, respectively in August 2018 and March and August 2019.





The three sessions of the Conference focused discussions on the package of issues agreed by the General Assembly, namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together 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.

Delegations have also engaged on several cross-cutting issues, such as institutional arrangements, implementation and compliance and settlement of disputes.

At the most recent session and for the first time, delegations engaged in text-based negotiations based on a draft text of an agreement prepared by the President of the Conference, with the assistance of my Office.

I have been encouraged by the active way in which delegations have engaged in the discussions, however, progress have been uneven, with several issues requiring further in-depth discussions and consultations.

The President of the Conference was requested by the Conference to prepare before the next session a revised draft text based on the proposals made and discussions held at the third session.





This session is tentatively scheduled to be held in the first quarter of 2020 and is the last one that was mandated by General Assembly resolution 72/249.

I wish to take this opportunity to encourage you all to make patent, through a constructive approach in the negotiations, our common interest in providing future generations with healthy and productive oceans.

[Protection of the Environment]

Chers collègues et amis,

Nous vivons à un moment où la protection de l'environnement est au cœur des préoccupations de la communauté internationale.

La Commission du Droit International est actuellement saisie de trois sujets relatifs à l'environnement : la protection de l'atmosphère, la protection de l'environnement en rapport avec les conflits armés, et enfin, l'élévation du niveau de la mer au regard du droit international.





En outre, la Sixième Commission examine la question des dommages transfrontières résultant d'activités dangereuses ainsi que la répartition des pertes consécutives à de tels dommages.

Ces sujets ont comme point commun le désir de protéger l'environnement pour les générations présentes et futures.

Les questions relatives à la protection de l'environnement sont abordées dans le cadre de règles, d'accords et de nombreuses autres initiatives qui forment une mosaïque de normes juridiques, certaines contraignantes, d'autres moins.

Mais le tableau est loin d'être complet. Il est temps d'adopter une approche plus systématique de la protection de l'environnement, en mettant l'accent sur les conséquences juridiques du changement climatique. Faire face à la grave crise provoquée par le réchauffement de notre planète est devenu une priorité essentielle pour les Nations Unies.

Le mois dernier, le Secrétaire général a déclaré, lors du Sommet Action Climat, que notre génération a failli à sa responsabilité de protéger notre planète. Ses mots étaient les suivants :





“L ’urgence climatique est une course que nous sommes en train de perdre, mais c’est une course que l’on peut encore gagner. Nous avons provoqué cette crise climatique – et c’est à nous de trouver les solutions »

Nous devrions aussi considérer les paroles du Secrétaire général comme étant un appel à l’action au droit international.

Je tiens ici à saluer la décision de la CDI d’aborder le thème de « l’élévation du niveau de la mer au regard du droit international » qui affronte directement l’une des conséquences les plus graves du changement climatique, à savoir la menace réelle de la montée des eaux pesant sur les Etats de faible altitude.

Il s’agit d’un grave sujet de préoccupation pour la communauté internationale et cela nécessite nos efforts concertés.

J’appelle les délégations à réfléchir au meilleur moyen de tirer parti des règles existantes et, lorsque cela est nécessaire, d’en élaborer de nouvelles afin de mettre en place un cadre juridique robuste et exhaustif traitant à la fois des causes et des conséquences du changement climatique.





Cela impliquerait de prendre en compte toutes les différentes dimensions juridiques du problème, y compris, sans toutefois s'y limiter, les questions de prévention et de réduction des risques, d'adaptation, de coopération internationale, de responsabilité internationale et de répartition des pertes.

Nous devons mettre à profit le pouvoir et l'autorité du droit international pour apporter des solutions à ce problème déterminant de notre époque.

[ILC draft articles on prevention and punishment of crimes against humanity]

I would like to turn briefly to the International Law Commission's draft articles on prevention and punishment of crimes against humanity and the Commission's recommendation that a convention be negotiated on this basis, either within the General Assembly or at a diplomatic conference.

Accountability for the most serious crimes of concern to the international community as a whole remains a priority for the United Nations.

As explained in the commentaries to the draft articles, the draft provisions were elaborated with the intention of forming the basis of a draft convention.





They are designed to be as acceptable to States as possible, being largely based on widely adhered to existing treaties.

As you know, there is no global convention dedicated to preventing and punishing crimes against humanity and promoting inter-State cooperation, even though crimes against humanity are no less prevalent than genocide or war crimes.

Also, Member States have come together in the past to agree on treaties for the prevention, punishment and inter-State cooperation for offences far less egregious than these crimes.

A global convention on prevention and punishment of crimes against humanity would be an important additional piece in the current framework of international law, and in particular, international humanitarian law, international criminal law and international human rights law.

Action now lies with all of you, in the Sixth Committee.

The last time that the General Assembly adopted a treaty on the basis of the Commission's work was 2004 (Jurisdictional Immunities of States); and the last time that the Sixth Committee successfully concluded negotiation of a treaty from any source was 2005 (the Optional Protocol to the Convention on the Safety of UN





and Associated Personnel; and the Nuclear Terrorism Convention). This was 14 years ago.

The decisions that lie ahead are important not only for the fight against impunity, but also for the relevance and standing of the Sixth Committee.

It is imperative to reaffirm the Committee's role as effective partner for the Commission in the progressive development of international law and its codification: we can't allow our Committee to be considered a "graveyard" for the drafts sent by the Commission.

[70th anniversary of the Geneva Conventions]

In reference to milestone anniversaries, I was very pleased to see that one of the panels of this meeting will focus on the 70th anniversary of the Geneva Conventions.

This year, I have had several occasions to underline the continuing importance of the Conventions, including at a debate in the Security Council held on 13 August 2019 during which I emphasized the crucial role that the Security Council and, more generally, the United Nations has played in respecting and ensuring respect for international humanitarian law, including by:





- Establishing international criminal tribunals to prosecute war crimes, as well as the crime of genocide and crimes against humanity;
- Authorizing the establishment of commissions of inquiry to investigate alleged violations of international humanitarian law; and
- Mandating peacekeeping operations to protect civilians, particularly in the context of ongoing armed conflicts.

[Privileges and Immunities of the United Nations]

I would like to refer now to the issue of the privileges and immunities of the United Nations.

It is a well-established principle that the United Nations, under the 1946 Convention on Privileges and Immunities, enjoys absolute immunity from legal process, absent any express waiver of immunity.

This has been reiterated in recent cases involving the Organization.





[Haiti – Cholera]

As you know, claims were brought against the UN following the cholera outbreak in Haiti. Those brought against the UN directly were deemed not receivable under Section 29(a) of the Convention as they were not considered claims of a private law character.

Three cases were also instituted before U.S. federal courts and the Organization asserted its immunity through the U.S. Government.

In one of the cases, the plaintiffs argued that the UN had not provided a mode of dispute settlement under Section 29 of the Convention so should not be entitled to the benefits of immunity. In another case, the plaintiffs argued that only an intent to waive immunity is required and such intent could be found in historical Secretary-General's reports on UN liability in third party claims.

The U.S. District Courts dismissed the claims and the Court of Appeals rejected the subsequent appeals and upheld the UN's absolute immunity from suit where an express waiver has not been granted. One case was brought before the Supreme Court which, earlier this month, decided not to hear it.





[IFC v. Jam]

In February 2019, the U.S. Supreme Court decided a case brought by plaintiffs in India against the International Finance Corporation. This case concerned the interpretation of U.S. domestic law on the scope of immunity under the International Organizations Immunities Act. The IFC derives its immunity from the IOIA. The Supreme Court found that immunity under the IOIA is not absolute but follows the restrictive immunity enjoyed by States, so that there is no immunity for commercial activities of an international organization.

The Court also indicated that immunities under the IOIA are only “default rules” and the charter of an organization may specify a different level of immunity.

The Supreme Court specifically referred to the principle pursuant to the Convention that the UN has immunity from every form of legal process, absent an express waiver.

As is the UN’s practice, the assertion of immunity before national courts is made through representations by Governments. The United Nations relies on, and is grateful for, the assistance provided by your Governments on these processes.





[UNCITRAL]

On this year of anniversaries, I wish to highlight the importance of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted 60 years ago, and one of the most successful treaties in the area of commercial law.

Drawing on the same spirit, the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as “the Singapore Convention on Mediation”, aims at promoting the use of mediation as an alternative and effective method of resolving trade disputes.

This innovative Convention adds an important new element to the international community’s efforts to promote legal confidence in international trade and investment: an effective mechanism to enforce international settlement agreements resulting from mediation.

The signing ceremony of this landmark Convention last August was one of the most successful for an instrument developed by the United Nations Commission on International Trade Law (UNCITRAL). At present, there are 51 signatory States only two months after its opening for signature.





Next year, UNCITRAL will celebrate the fortieth anniversary of the adoption of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This Convention provides a modern, neutral and balanced legal framework for the formation of contract of sales and the obligations of seller and buyer, with default rules that have proved to work well in various legal systems.

As a prominent uniform law text that has been adopted by almost 100 States, representing more than 80% of the global trade in goods, the influence of the CISG is undeniable.

As we enter the decade of action and delivery for sustainable development and review progress on the 2030 Agenda, we should reflect on how our actions when translated into international law, including commercial law, can be a decisive instrument in supporting the implementation of the Sustainable Development Goals.

[Convención de Viena sobre el Derecho de los Tratados]

En honor a México como organizador de esta reunión y de todos los países hispanohablantes, quisiera concluir mi intervención en la lengua de Miguel de Cervantes y Octavio Paz.





No podría dejar de mencionar el aniversario de la Convención de Viena sobre el Derecho de los Tratados, que recientemente alcanzó el notable hito de cincuenta años de existencia.

La Convención se erige hoy como un logro incomparable en la codificación y el desarrollo progresivo de las normas que regulan la formación y aplicación de los tratados, y representa una piedra angular en el marco internacional de los tratados y del multilateralismo.

Una de las disposiciones de la Convención reitera la obligación contenida en el Artículo 102 de la Carta para que todos los Estados Miembros registren en la Secretaría de las Naciones Unidas sus tratados vigentes.

El registro y la publicación de tratados han sido objeto de un renovado interés por parte de la Asamblea General en los últimos años. Durante su septuagésimo tercer período de sesiones y después del debate de la Sexta Comisión sobre el tema del programa titulado "Fortalecimiento y promoción del marco de tratados internacionales", la Asamblea General aprobó la Resolución 73/210, a la que se anexó el Reglamento recientemente enmendado para el registro y publicación de tratados.





Esta enmienda, la primera desde 1978, adapta el Reglamento a los avances en la práctica de registro y la tecnología de la información, y ha generado un amplio debate entre los Estados miembros sobre el marco de los tratados internacionales, que estoy seguro continuará de manera fructífera en la próxima sesión.

[Concluding remarks]

Dear colleagues,

I wish to finish by encouraging you all to continue to engage actively in the discussions of these two days with the same disposition, commitment and forthrightness which were at the basis of its creation 30 years ago, and which distinguish this unique annual meeting.

I thank you.

