

International Law Commission

Statement by Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel

Geneva, 17 May 2016

Mr. Chairman,
Distinguished Members of the International Law Commission,
Ladies and Gentlemen,

I wish to congratulate you very warmly, Mr. Chairman, together with the other members of the bureau, on your election and to convey to you all the best wishes for a successful session. This being the last year of the present quinquennium, it definitely is a crucial session. You will no doubt seek to conclude work on the various topics that you set out to advance at the beginning of your current five year term.

As you know, 2015 was a milestone year for the United Nations. The five Ps, the People, our Planet, Peace, Prosperity and Partnerships, form the basic foundation of and inform the Sustainable Development Agenda, which envisages a world in which, among other things, there is universal respect for human rights and human dignity and the rule of law, justice, equality and non-discrimination. In this vision into 2030, the rule of law, at both the national and international levels, plays a central stabilizing role.

International law is ever present in our daily lives and the Commission has played and continues to play an important function in its progressive development and codification. The General Assembly will continue to rely on the Commission's contribution in the years to come.

As on previous occasions, I will seek to provide you with an overview of activities of a legal nature that the Office of Legal Affairs has been involved in since I was here last May. These activities relate to the various units of the Office of Legal Affairs, which renders centralized legal services to the United Nations and its Member States.

Let me start with your own Secretariat, the Codification Division.

Mr. Chairman,

The background information note that the Codification Division prepares in advance of your session already offered some detail on the work of the Sixth Committee during the seventieth session of the General Assembly. The Committee met from 12 October to 20 November 2015, holding 29 plenary meetings to consider the 20 items allocated to it by the General Assembly, 17 of which were substantive. The Committee also transacted its business through three Working Groups, which held an additional total of 11 meetings.

The Committee has maintained its more recent tradition of adopting all its resolutions and decisions without a vote. On the whole, twelve draft resolutions and five draft decisions from the

Committee were subsequently adopted by the General Assembly.

In resolution 70/236 of 23 December 2015 on the work of your Commission last year, the General Assembly takes note of the final report on the topic "The Most-Favoured-Nation clause" and encourages its widest possible dissemination. It recommends that the Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee. Further, it draws the attention of Governments to the importance for the Commission of having their views by 31 January 2016 on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report. Once received, your Secretariat has made such comments available to the relevant Special Rapporteur and to members on the Commission website.

On the work of the various working groups, allow me to note that the Working Group on the scope and application of the principle of universal jurisdiction was reconvened to continue its discussions. For the third consecutive year, it discussed the Informal Working Paper which sets out considerations concerning the definition of universal jurisdiction, its scope and conditions for its application, and it did so, last year, bearing in mind the usefulness of sharing national practices. The discussion in the Working Group led to a revision of the informal paper, adding new suggestions for consideration, as well as a further advance of work, reflecting some possible formulations based on the elements identified during the course of discussions. These formulations are without prejudice to positions of delegations; do not reflect consensus among delegations; and are expected to be subject to further discussion

when the working group is reestablished at the seventy-first session as envisaged in General Assembly resolution 70/119 of 14 December 2015. This is still a work in progress and it is premature, at this stage, to indicate what the outcome of work on this item would be, or indeed whether the item will be referred to the Commission as sought by some delegations.

The second working group concerned the item "Criminal accountability of United Nations officials and experts on mission". It was established with a view to continuing the consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to General Assembly resolution 59/300 (A/60/980), in particular its legal aspects. A similar working group was last established in 2012.

In view of the adoption of the measures contained in General Assembly resolutions 62/63 and 63/119, as read with resolution 69/114, the focus of the discussions of the Working Group has been on the consideration of those aspects of the report of the Group of Legal Experts concerning the possible elaboration of a convention. Positions of delegations on whether or not a convention on this subject should be negotiated remain divided. The matter will be revisited in three years when the Working Group is expected to be reconstituted.

The Working Group also discussed any additional measures that may be taken, for possible inclusion in the draft resolution for the session that would enhance further the mechanisms of accountability, contained in General Assembly resolutions 62/63 and 63/119, as subsequently reiterated, since the previous Working Group session, in resolutions 67/88, 68/105 and 69/114. This was

particularly crucial given the continuing currency of the matter as deeply regrettable patterns of rape, sexual abuse and exploitation continue to occur in mission areas committed by the very people entrusted by the Organization with the responsibility of providing protection, thereby taking advantage of and causing more pain and suffering to, victims of conflict. This matter remains a dark stain on the image of the organization. Resolution 70/114 of 14 December 2015 with enhanced reporting mechanisms reflects this renewed sense of urgency.

The last working group, on Measures to eliminate international terrorism, was reconstituted to provide a framework for continuing discussions on the outstanding issues concerning the draft comprehensive convention on international terrorism. Unfortunately, as in the previous fourteen years, delegations were unable to reach agreement on the text as differences continue to exist principally on the formulation of the provision dealing with aspects concerning what ought to be carved out from the scope of the draft convention. Resolution 70/120 of 14 December 2015 anticipates, once more, the establishment, during the seventy-first session of the General Assembly, of a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism, as well as discussions on the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations. The fact that more than 15 years have elapsed since discussions began on this instrument demonstrates the sensitive and delicate nature of the issues implicated by the subject.

The "Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" is

another item that I thought I should address. The Programme of Assistance commemorated its fiftieth anniversary last year and as you know the Codification Division conducts face-to-face international law training programmes, and maintains the Audiovisual Library of International Law.

You may recall that the financial situation of the Programme has been very precarious in the past since most of the activities were dependent on voluntary contributions. Since taking up office in 2013, I have stressed my personal commitment to the Regional Courses in International Law and the Audiovisual Library and have met formally and informally with Member States to underscore that these activities needed to be put on a financially sustainable path. I am very pleased to inform you that all efforts to this effect have finally been rewarded. Last December, the General Assembly approved sufficient resources under the regular budget to conduct the Regional Courses every year in Africa, in Latin America and the Caribbean and in Asia-Pacific and to continue developing the Audiovisual Library.

As a result, this year, the Regional Course for Africa was conducted for the sixth consecutive year in Addis Ababa, and the first Course in over a decade has just concluded in Montevideo. In addition, a Course will be held in Bangkok later this year, which is the first Course organized in that region since 2012. The International Law Fellowship Programme will also take place in The Hague this summer.

The international law training programmes offer a great opportunity for heightening awareness of and knowledge of international law and I am very pleased that these courses will now

become a regular feature of my Office's activities. I am also gratified that we can continue and further enhance the Audiovisual Library. We are currently aiming at improving the accessibility to the Audiovisual Library in developing countries, as well as developing a mini-series of lectures on core topics of international law, which we hope will be particularly valuable for law faculties around the world.

I would like to take this opportunity to acknowledge the Commission's invaluable support for the various aspects of the programme over the years, both through its acknowledgment of the importance of the programme in its annual report and through the contribution to the activities of the programme by individual members. This support has certainly facilitated our efforts in placing the Programme on a sustainable financial footing.

Before concluding this segment let me note that in the forthcoming session of the General Assembly, the Sixth Committee will revert to the consideration of four items emanating from work completed by the Commission. These relate to responsibility of States for internationally wrongful acts, completed in 2001; diplomatic protection completed in 2006; the law of transboundary aquifers in 2008; and Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm, whose articles and principles were adopted in 2001 and 2006, respectively. These are items that have been on the agenda of the Sixth Committee since the Commission completed its work on them. It is hoped that the Assembly will take decisive action on them on the way forward at the forthcoming session.

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I will now move on to highlight some activities of the Office of the Legal Counsel. Once again, this has been a very busy year for my Office, as we have addressed a wide range of issues of public international law.

International humanitarian law

Turning first to matters of international humanitarian law, we have dealt with a number of complex legal matters. I wish to highlight three issues in particular.

The first is Humanitarian access

The delivery of humanitarian assistance across borders has faced particular difficulties in the past few years, and the situation in Syria has highlighted this issue more clearly than ever. The most difficult aspect for the United Nations has been the requirement to obtain consent from the host State in order to deliver humanitarian assistance across the border.

Due to this requirement, a number of humanitarian convoys could not make their way into Syria, preventing delivery of assistance to those people who were affected by the conflict.

Our Office has been involved in advising on legal issues concerning cross-border assistance, but I wish to highlight that the Secretary-General had an important role to play in achieving a breakthrough.

The Secretary-General continuously warned the Security Council of the humanitarian consequences of the inability of the United Nations to cross the Syrian border to deliver humanitarian assistance. The Security Council eventually adopted a binding resolution, resolution 2165, in July 2014, which authorized United Nations humanitarian agencies to use Syrian border crossings to deliver humanitarian assistance.

At the proposal of the Secretary-General, the Council also established a United Nations monitoring mechanism to assure the Syrian Government of the humanitarian nature of the aid crossing its border.

These arrangements addressed legal issues that would have otherwise been an obstacle in providing aid across the border. It was an example where a compromise was struck between the respect for State sovereignty and the urgent need to deliver aid to those desperately in need of it.

The second issue that I would like to address is compliance with IHL

The question of strengthening compliance with IHL has generated interest in the past few years, largely through the consultations which the ICRC and the Swiss Government undertook with States on the subject. Unfortunately, a proposal to establish a new mechanism in the form of regular meetings of States to discuss IHL issues was not approved by the International Conference of the Red Cross and Red Crescent. However, it is important to continue the debate.

In the context of this debate, our Office has sought to highlight the importance of existing United Nations mechanisms that contribute to the strengthening of compliance with IHL. These mechanisms include the General Assembly, the Security Council, the Human Rights Council and the various subsidiary bodies and individuals mandated by them to investigate violations of IHL and human rights law.

Therefore, until such time as a new mechanism is adopted, we believe that the existing mechanisms should be fully used. Through these mechanisms, the United Nations has a lot to contribute.

The third aspect relates to peacekeeping and IHL

The issue of the applicability of IHL to United Nations peacekeeping operations continues to attract interest. In recent years, peacekeeping operations have increasingly been targeted in places such as Mali, Darfur and South Sudan, and in certain situations, they were compelled to react to those attacks.

This has raised the question as to whether the situation has evolved into an armed conflict, and whether the concerned peacekeeping operation has become a party to the conflict. The question is not new, but our Office has had to address it more often than before.

There are a number of legal consequences that arise if a peacekeeping operation becomes a party to a conflict, such as carrying out military operations in accordance with the IHL rules on the conduct of hostilities, and handling any detained persons in

accordance with the requirements of IHL.

There is also the question whether in such situations the military personnel continue to benefit from the protection afforded under the 1994 Convention on the Safety of United Nations and Associated Personnel.

These are issues that we follow closely on an ongoing basis.

Peacekeeping

I will turn now to peacekeeping matters. My Office has been very much involved, since my last intervention before the Commission, in numerous issues related to our peace operations. None has required more advice and sustained engagement with the Department of Peacekeeping Operations, in the past year, than MINUSCA, the Multidimensional mission in the Central African Republic (CAR), which the Security Council established, as you know, in April 2014.

The CAR transitional authorities have now completed their mandate, with the swearing in of an elected President and the constitution of a National Assembly. A new era unfolds for the CAR authorities and for its population. With it, many expectations arise under the scrutiny of the international community, despite very serious continuing challenges. MINUSCA's role beyond the transitional period will be even more crucial.

MINUSCA's mandate encompasses supporting the CAR Government in the extension of State authority and preservation of its territorial integrity. The national army and the central authorities

had nearly collapsed in 2012 and 2013.

The extreme volatility of the situation and the systemic weakness of critical State institutions therefore led the Security Council to confer upon MINUSCA a very strong mandate to protect civilians. The Mission also has a proactive mandate to support measures to end impunity and increase accountability for perpetrators of violations of human rights. Further, the Council provided MINUSCA with a rather exceptional mandate to take temporary executive measures to arrest and detain individuals. Such arrests are at the request of the Government, in areas where national security forces are not present or operational. As in the case of MONUSCO's mandate to engage rebel armed groups with its Force Investigation Brigade, this is one of the mandates expressly qualified by the Council as exceptional, without creating a precedent and without prejudice to the agreed principles of UN peacekeeping operations. In 2014, on the basis of the urgent temporary measures, MINUSCA arrested between 300 and 400 individuals, and handed them over to the CAR authorities.

The need for trials without undue delay for all those arrested under the UTM mandate led the Mission to agree with the Transitional Government on support to facilitate the judicial process. Last year, I informed you that these consultations provided the momentum for the establishment, under CAR national legislation, of a Special Criminal Court tasked with bringing to justice perpetrators of serious violations of human rights in the CAR. We hope that the establishment of the Special Criminal Court will remain among the priorities of the Government in the post-transitional period, and that it will receive all the support needed, not only from our Organization, but also from the international community. Current projections are

that an advance team of internationally recruited personnel to help kick start the SCC's investigations will be in Bangui towards the end of the year. As I emphasized in my address last year, the UN will be providing logistical support and technical assistance. The SCC being a national court, we will not appoint personnel, including magistrates, to serve in the court.

The situation in the Central African Republic will remain under the eye of the international community in the coming months. Unfortunately, throughout the year, this has not always been for the reasons we had anticipated. I am certain that you have felt as much shock and outrage as we all have, at the allegations of sexual exploitation and abuse involving UN peacekeepers and members of non-UN international forces in the CAR, since 2013. Many of these cases involve child victims.

The Secretary-General appointed an independent Panel to review the UN response to this situation. Several UN departments have thus come under scrutiny. This includes my Office, in so far as it deals with the privileges and immunities of UN personnel, including in peacekeeping operations, and in so far as we facilitate the various cooperation requests of national investigation and judicial authorities.

The Organization collectively continues to adjust its processes to help bring to an end such horrendous acts, to provide more support to victims and to ensure accountability, consistent with the Secretary General's zero tolerance policy for sexual exploitation and abuse. A Special Coordinator on the UN response to SEA abuses has been designated: Ms Jane Holl Lute.

Drastic steps have also been taken in respect of the CAR. A recent example is the unilateral termination of the deployment of two contingents (the RDC and the Congo-Brazzaville contingents, which had been serving in the CAR initially under the AU-led force, MISCA and were later re-hatted as MINUSCA troops).

The CAR Panel recommendations have led my Office to scrutinize the history of our armed peacekeeping forces, since the creation of the UN Emergency Force (UNEF), in 1956. In particular, we have looked at the practice of the Organization, when negotiating the agreements under which troops are contributed by our member States (the TCC MOU), and deployed in the territory of other member States (the Status-of forces-agreements, or SOFAs). The CAR Panel has recommended to move away from the principle of the exclusive jurisdiction of the contributing country over crimes committed by UN soldiers in the host country of the peacekeeping mission. It has proposed to follow the example of the NATO SOFA.

My Office has considered this recommendation with particular attention and we have made two observations. First, the principle of the exclusive jurisdiction is a key provision of our model SOFA and of the MOUs with our contributing States. These agreements are essential for our peace operations. Their contents have been endorsed by the General Assembly and the Security Council. Substantial changes to these agreements require consultation with the Member States, and in particular with the contributing countries. You will be interested to hear that these consultations have been initiated. The General Assembly's Fourth Committee and its Sub-Committee on peace operations, the C.34, will also be involved, eventually.

Secondly, we have noted that the 1951 NATO SOFA applies to NATO member States in the context of their collective defence agreement. It does not apply to NATO Forces deployed in the territory of non-NATO members: the former ISAF in Afghanistan, or KFOR in Kosovo, for example. The SOFAs for NATO operations in these other operational contexts provide for the exclusive criminal jurisdiction of the contributing countries over their soldiers, like the UN SOFA and the TCC MOU.

When we consider its rationale, the principle of exclusive criminal jurisdiction is not intended to shield UN, or AU, or EU soldiers from prosecution. Rather, its purpose is to avoid prosecution and trial by national authorities in conflict or post conflict settings, where respect for the rule of law may be at issue, and whose legal traditions may differ from those of the contributing countries. The principle also serves to acknowledge the special legal and jurisdictional regime of military forces in national contexts.

We all agree that more needs to be done by the UN and also by regional organizations deploying forces under an international mandate. States contributing troops to UN and non-UN international forces must also do more to ensure that this plague, which undermines our respective purposes and the fundamental principles by which we stand, becomes an issue of the past.

Privileges and immunities

I would like to turn now to a matter of great concern to my Office and which may be of interest to you: the respect by Member States for the privileges and immunities enjoyed by the United Nations, in particular its immunity from legal process. The

International Law Commission has made a substantial contribution to the codification and development of international law concerning privileges and immunities. I note that the Commission is currently dealing with a related topic regarding the “immunity of state officials from foreign criminal jurisdiction”.

Over the years, the United Nations, including its funds and programmes, has been increasingly confronted with a number of adverse judgments in connection with labour claims submitted by locally recruited personnel. Some of those judgments have ordered the Organization to pay large sums of money in compensation. The courts in question appear to be basing their decisions on a restrictive approach to privileges and immunities combined with a view that the State Constitution prevails over any conflict between the Constitution and the State’s international legal obligations under the Charter of the UN and the General Convention. According to those courts the United Nations does not enjoy immunity from legal process regarding labour claims. I am sure you will agree with me that this a fundamentally flawed understanding of the principles of international law and in particular the Vienna Convention on the Law of Treaties.

As you know, Article 105 of the Charter provides that the United Nations shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes. The 1946 General Convention gives further detail to that provision and, among other things, provides in its Article II (2) that the Organization “shall enjoy immunity from every form of legal process except insofar as it has expressly waived its immunity”. The expression “every form of legal process” has been broadly interpreted to include every form of legal process before

national authorities, whether judicial, administrative or executive functions according to national law.

The argument that a labour dispute concerns an act *jure gestionis* and, as such, would not be covered by immunity from legal process, may be applicable to States but it cannot be applicable to the United Nations. The source of the Organization's immunity from legal process is to be found in the Charter of the UN and further elaborated in the General Convention, which provides for absolute immunity, without distinction between acts *jure imperii* and acts *jure gestionis*.

In this connection, I wish to recall that Article VIII, Section 29(a) of the General Convention provides that the United Nations shall make provision for appropriate modes of settlement of, inter alia, "disputes arising out of contracts or other disputes of a private law nature to which the United Nations is a party". In practice, contracts of locally recruited personnel have a provision establishing arbitration as the mechanism of choice to solve any dispute between them and the Organization. This means that contractors are not without remedy and that the United Nations is not hiding behind its immunity whatsoever.

Some may question whether the absolute approach to immunity adopted seventy years ago is still necessary or even adequate – that is certainly a matter of reflection and, in the end, for Member States to change if they so wish. In my view, the absolute immunity from legal process enjoyed by the United Nations under the General Convention is essential for the proper and efficient functioning of the Organization.

My Office has been in sometimes intense consultations with the Governments of the concerned Member States. In most cases, they appear to accept our legal position but find it difficult to properly inform their courts of the appropriate legal regime to be applied to the United Nations. The path ahead is far from easy and I am concerned that we may soon come to a situation where we are compelled to invoke formal dispute resolution measures under the General Convention.

Procedural matters

Let me also touch on an interesting matter in which we have been involved regarding the preparation of a relationship agreement with the International Organization for Migration (IOM).

To date, the IOM has not been part of the United Nations System. It is neither a specialized agency nor a related organization, like the International Atomic Energy Agency (IAEA) or the International Criminal Court (ICC).

However, the Council of the IOM took a decision last November to develop a legal arrangement with the United Nations with a view to establishing a closer relationship.

The Office of the Legal Counsel has provided advice on the procedure in the United Nations by which a relationship agreement should be concluded, and will take the lead in drafting the relationship agreement once the General Assembly authorizes the Secretary-General to proceed with such an agreement.

Any relationship agreement would have to be approved by

both the IOM Council and the General Assembly and it is hoped that this will happen during the course of 2016.

This would add another international organization to the United Nations System, and would greatly facilitate the coordination between, on the one hand, IOM and, on the other hand, the United Nations, specialized agencies and other related organizations.

Accountability

I wish finally to update you on the work of the Office of the Legal Counsel with regard to the latest developments in ensuring accountability for international crimes.

My Office has continued to support the international and UN-assisted criminal tribunals on a daily basis.

I am pleased to report that the International Criminal Tribunal for Rwanda concluded its judicial work at the end of 2015. The Residual Mechanism has now assumed all the remaining essential functions of the ICTR. One notable event prior to the closing of the ICTR was the arrest in December 2015, of one of the remaining fugitives, Ladislas Ntaganzwa, in the Democratic Republic of the Congo. He has been transferred to Rwanda, where the ICTR had referred his case for trial. This arrest and transfer demonstrates that although the judicial work of the ICTR may have been concluded, there will be no impunity for the crimes within its jurisdiction. Eight ICTR fugitives remain at large, including three senior figures, who will be tried by the Mechanism when they are arrested.

The International Tribunal for the former Yugoslavia is continuing towards the completion of its final trials and appeals. As you will be aware, in March the ICTY delivered its trial judgment in the *Karadzic* case, finding him guilty of genocide, crimes against humanity, and war crimes. In another judgment also delivered in March, involving one of the longest-running cases at the Tribunal, an ICTY Trial Chamber acquitted *Seselj* of all nine counts on which he was charged – three for war crimes and six for crimes against humanity. The appeals in both cases, if any, would be heard by the Residual Mechanism.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) are at peak workload, with proceedings advancing at the Pre-Trial, Trial and Appeal stages. I was pleased to note that in December 2015 the General Assembly granted a subvention to the ECCC, placing it on a more secure financial footing this year. However, in the longer term the ECCC is likely to continue to face financial challenges.

The trial in the *Ayyash et al* case before the Special Tribunal for Lebanon is continuing, against five accused, in absentia. The work of this tribunal, which is distinct in jurisdiction and nature from the other international and UN-assisted criminal tribunals, is of great importance for the people of Lebanon.

The Residual Special Court for Sierra Leone had a quasi-judicial hearing recently. A convicted person who was granted conditional early release was re-arrested after it was alleged that he had violated the terms of his release by participating in a political event. He admitted the violation and a judge will soon decide whether he should be imprisoned again or allowed to remain under

conditional early release. The key issue on which my Office has been engaged – in close consultation with the members of the Oversight Committee – is devising a future financing arrangement for the Residual Special Court. Voluntary contributions are simply, and clearly, not a sustainable means of financing a judicial institution.

I would also like to point out two current trends to address situations where atrocities have been committed and where there is an expectation that those who perpetrated them will be held accountable.

Firstly, I note the involvement of regional organizations in the establishment and operation of new hybrid tribunals. Last year, I informed you of the work of the Organization in relation to accountability for the grave atrocities committed in the South Sudan conflict. My Office has continued to be engaged on this matter throughout the year.

Since December 2013, serious violations of international humanitarian law and human rights have been committed in South Sudan, with crimes including extrajudicial killings, ethnically targeted violence, rape and other forms of sexual and violence, and attacks on schools, places of worship, hospitals and United Nations and associated peacekeeping personnel. Calls for accountability have been made in numerous fora, including the Security Council, the Human Rights Council and the African Union Peace and Security Council, as well as by civil society.

In August 2015 the parties to the conflict adopted an Agreement on the Resolution of the Conflict, in which they agreed

to establish a Hybrid Court for South Sudan. The Hybrid Court shall be “an independent hybrid judicial court” and it “shall be established by the African Union Commission to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law” committed after 15 December 2013.

In October 2015 the Security Council requested the Secretary-General to make available technical assistance for the establishment of the Hybrid Court. This is the first time the United Nations has been tasked with providing technical assistance to a regional organization in the establishment of a hybrid tribunal. The United Nations has a wealth of expertise in the establishment and operation of international and United Nations-assisted criminal courts and tribunals and is liaising with the African Union Commission to share lessons learned from past experiences.

Secondly, I would like to mention another trend which I see emerging strongly: the concept of international assistance to national jurisdictions to facilitate the prosecution of serious crimes of international concern.

We see an increasing number of domestic courts exercising jurisdiction in respect of the most serious crimes of international concern under the complementarity principle. National judicial systems remain indeed the principal venue for accountability in respect of broader classes of middle and lower-level perpetrators. It is therefore essential to strengthen their capabilities.

We are currently engaged in discussions on issues of accountability in contexts that entail some measure of involvement

of the domestic judiciary, including the Central African Republic, as I have already mentioned, and Sri Lanka.

With respect to Sri Lanka, the Human Rights Council adopted in September 2015 a consensus resolution that noted the Government's proposal to establish a Judicial Mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law. It affirmed in that regard the importance of the participation of Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators. The United Nations stands ready to assist the Government in connection with this Judicial Mechanism.

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I shall turn to the activities of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs. To date, without change from last year, there are 167 parties, including the European Union, to the United Nations Convention on the Law of the Sea. In its resolution 70/235, on Oceans and the law of the sea, with a view to achieving universal participation, the General Assembly once again called upon all States to become parties to the Convention and its Implementing Agreements.

The Division continues to meet the growing demand by States with respect to technical cooperation and capacity-development, through various programmes of assistance, training activities,

fellowship programmes and trust funds. Among some of the activities, I wish to note in particular the delivery of a programme of assistance to the Government of Somalia under a project funded by the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. In July 2015, the staff of the Division delivered a week-long training course to the officials of the Federal Government of Somalia and of regional administration in Mogadishu.

In another important development, the Regular Process for global reporting and assessment of the state of the marine environment, including socioeconomic aspects has completed its first five-year cycle with the release of the First Global Integrated Marine Assessment. At its seventieth session, the General Assembly welcomed with appreciation the assessment and approved its summary.

As noted by the Secretary-General in his introductory remarks to the Assessment, this first “World Ocean Assessment” provides an important scientific basis for the consideration of ocean issues by Governments, intergovernmental processes, and all policy-makers and others involved in ocean affairs. The Assessment reinforces the science-policy interface and establishes the basis for future assessments. Together with future assessments and related initiatives, it will help in the implementation of the 2030 Agenda for Sustainable Development, particularly its ocean-related goals.

The Division also continues to provide substantive servicing of activities relating to the Convention and its Implementing Agreements. This year, in late March early April, 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 started its work. The Preparatory Committee is expected to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS. In doing so, it will take into account the various reports of the Co-Chairs on the work of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The General Assembly will then decide, before the end of its seventy-second session, on the convening and on the starting date of 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.

Among the issues considered by the Prepcom as at its first meeting were the scope of an international legally binding instrument and its relationship with other instruments; guiding approaches and principles of such an international legally binding instrument; 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.

The Preparatory Committee is to report to the Assembly on its progress, by the end of 2017.

Concerning the international legal regime dealing with

fisheries, I am pleased to inform you that, pursuant to General Assembly resolution 70/75, the Review Conference on the 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 "Agreement") will be resumed at United Nations Headquarters in New York, at the end of May 2016.

This resumed Review Conference presents an important opportunity for States Parties to the Agreement, as well as States non-parties, intergovernmental organizations, the fishing industry, civil society and other stakeholders, to contribute to the ongoing efforts to improve the state of the oceans and its resources. The Conference is mandated in article 36 of the Agreement to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks, by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions, in order to better address any continuing problems in the conservation and management of those stocks.

Over the past decade, the General Assembly has also devoted specific attention to the question of the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks. It has been doing so by adopting and periodically reviewing a set of measures calling on States and regional fisheries management organizations and arrangements to take specific actions to assess and minimize such impacts. This year, pursuant to resolution 69/109, the General Assembly will undertake,

in the context of the informal consultations on the draft resolution on sustainable fisheries , a further review of the implementation of its previously agreed resolution provisions addressing the impacts of bottom fishing. The Assembly will also hold a two-day workshop on 1 and 2 August 2016, prior to that review.

Further to this, the Secretary-General has been requested to prepare a report, in cooperation with FAO, for consideration by the General Assembly, on the actions taken by States and regional fisheries management organizations and arrangements in this regard.

Against the background of the ongoing efforts related to the start of the implementation of 2030 Agenda for Sustainable Development, this year's meeting of the General Assembly's Informal Consultative Process on Oceans and the Law of the Sea will be held in June. Its topic of focus will be marine debris, including plastics and microplastics, an issue of global concern affecting all the oceans of the world.

Finally, the Division has continued to provide substantive servicing to the Meeting of States Parties to the Convention and the Commission on the Commission on the Limits of the Continental Shelf (CLCS). In January, due to lack of nominations from the Eastern European Group of States, the Meeting of States Parties to the United Nations Convention on the Law of the Sea was unable to fill a vacancy in the Commission. A new election will be held for this purpose during the twenty-sixth Meeting of States Parties next month.

In the past twelve months, the CLCS has received several

new submissions pertaining to the delineation of the outer limits of the continental shelf beyond 200 nautical miles from the baselines, bringing the total number of submissions to 81, including four revised submissions, representing two more submissions and two more revised submissions than reported last year. Areas covered by submissions to the Commission continue to expand and they include regions, such as the Arctic region and the South China Sea, which are at the centre of the public's attention. The Commission has to date issued 24 recommendations, two more than last year, most recently recommendations in respect to the submission made by Argentina, and the submission made by Iceland in relation to the Ægir Basin area and in the western and southern parts of Reykjanes Ridge.

Let me note in this regard that, the Commission, consisting of independent experts in their personal capacity, issuing recommendations based on scientific and technical data, and not being a judicial body, naturally does not address issues concerning sovereignty over the land territory or cases of unresolved land or maritime disputes.

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I turn now to the activities of the International Trade Law Division, in Vienna, which serves as the secretariat for the United Nations Commission on International Trade Law (UNCITRAL). The current legislative programme of UNCITRAL includes work on simplified registration and incorporation for micro, small and medium enterprises, on commercial arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law, and secured transactions.

At its forty-ninth session this coming July, the Commission is expected to adopt the draft Model Law on Secured Transactions. Building on other texts of UNCITRAL, including the UNCITRAL Legislative Guide on Secured Transactions, the Model Law is designed to assist States in modernising their law dealing with credit secured by a security interest in movable property. The overall objective is to increase the availability and decrease the cost of credit, in particular to small and medium-size enterprises. Moreover, work on online dispute resolution (ODR) has recently concluded, with the completion of the document titled "Technical Notes on ODR" which will also be before the Commission for approval.

At its July meeting, UNCITRAL will also hear various reports on the progress of the work of the working groups, which are currently preparing draft legislative texts, on the subject matters mentioned earlier. It will also hear from its secretariat on issues raised by the implementation of its technical assistance program, which covers the range of those subject matters, as well as public procurement law, international contract law and transport law. The Commission will discuss ways to promote uniform interpretation and application of UNCITRAL norms and standards, to facilitate the effective adoption of texts by States, and to encourage cooperation and coordination between UNCITRAL and other international organizations active in the field. It will also discuss the role of UNCITRAL in promoting the rule of law at the national and international levels, and give consideration to a draft guidance note on strengthening United Nations support to States to implement commercial law reforms.

Let me also note that next year UNCITRAL will celebrate the fiftieth anniversary of its founding, with a Congress in Vienna envisaged for July 2017. The Commission at its July session will consider the main objective of the Congress: exploring how UNCITRAL can contribute to emerging development issues through the modernization of international trade law.

In the field of insolvency, the enactment of the UNCITRAL Model Law on Cross-Border Insolvency by nineteen African States, bringing the total number of enacting States to forty-one, is a significant development marking not only an increased recognition of cross-border insolvency as a component of modern insolvency law but also a necessary tool to address greater regional trade and investment integration.

The General Assembly last year had requested the Secretary-General to establish and operate through the Secretariat of the Commission the repository of published information under article 8 of the Rules on Transparency, initially as a pilot project to be funded entirely by voluntary contributions. The repository constitutes a central feature both of the Rules and of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (known as the “Mauritius Convention on Transparency”), by providing a consolidated, transparent and easily accessible global case record database for all investor-State arbitrations conducted pursuant to the Rules and the Convention. The repository is now staffed and fully operational.

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J'aimerais maintenant, en passant à la langue française,

donner un aperçu du travail des Nations Unies dans le domaine de l'administration de la justice. Le Tribunal du contentieux administratif des Nations Unies et le Tribunal d'appel des Nations Unies, établis tous les deux le 1er juillet 2009, achèvent bientôt leur septième année d'exercice.

La Division des questions juridiques générales du Bureau des affaires juridiques joue un rôle clé, de conseil, dans l'élaboration des politiques de l'Organisation en matière d'administration et de gestion du personnel. Elle représente par ailleurs le Secrétaire général dans toutes les affaires pendantes devant le Tribunal d'appel des Nations Unies. Au 19 avril 2016, le Tribunal du contentieux administratif avait rendu 1,230 jugements, et le Tribunal d'appel 609 jugements. La jurisprudence de ces deux tribunaux continue de contribuer à développer le droit administratif international.

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Pour terminer, je voudrais vous parler du travail 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 la publication des traités et accords internationaux conformément à l'article 102 de la Charte.

Un des faits les plus marquants pour la Section des traités cette année est sans doute l'adoption de l'Accord de Paris lors de la 21^{ème} Conférence des Parties à la Convention-cadre des Nations Unies sur les changements climatiques. Mon bureau, notamment par l'intermédiaire de la Section des traités, a en effet été impliqué

dans le processus de négociation du texte de l'Accord, fournissant une assistance juridique dans le cadre du groupe de travail de Durban et tout au long de la Conférence de Paris, particulièrement en matière de procédure et de droit des traités. Le travail de mon bureau ne s'est toutefois pas arrêté là, puisque le Secrétaire général s'est également vu confier les fonctions dépositaires relatives à cet Accord. Nous avons donc veillé, entre autres, à la préparation de l'original de l'Accord et au bon déroulement de la cérémonie d'ouverture à la signature qui s'est tenue à New York le 22 avril dernier. Cette cérémonie a rencontré un franc succès, puisque en une journée l'Accord de Paris a obtenu un nombre record de signatures : les représentants de 175 pays se sont en effet retrouvés à New York pour signer l'Accord adopté à Paris le 12 décembre 2015.

L'Accord de Paris n'est pas le seul à être venu étoffer la liste des traités multilatéraux déposés auprès du Secrétaire général. On le sait moins, mais cette année a également vu l'adoption et l'ouverture à la signature de l'Accord international de 2015 sur l'huile d'olive et les olives de tables, adopté le 9 octobre 2015 lors d'une réunion qui s'est tenue ici, à Genève, dans le cadre de la Conférence des Nations Unies sur le commerce et l'environnement. Cet Accord a été ouvert à la signature le 1^{er} janvier 2016.

Un troisième traité est, quant à lui, entré en vigueur cette année, à savoir l'Accord intergouvernemental sur les ports secs. Cet accord, conclu à Bangkok le 1^{er} décembre 2013, est entré en vigueur le 23 avril dernier.

Par ailleurs, au cours de cette année, l'assistance juridique de la Section des traités a également été sollicitée dans le cadre des

négociations, au sein de la Commission économique et sociale pour l'Asie et le Pacifique, d'un arrangement régional pour la facilitation du commerce transfrontière sans papier.

La diversité de ces quatre traités multilatéraux, parmi les plus de 560 traités déposés auprès du Secrétaire général, démontre l'étendue des sujets et des questions que la Section est amenée à traiter.

Enfin, il est intéressant de noter que l'Assemblée générale a, cette année, axé une partie de ses débats au sein de la Sixième Commission sur le sous-thème « Le rôle des processus d'établissement des traités multilatéraux dans la promotion et le renforcement de l'état de droit ». C'est dans ce contexte que la résolution 70/118 fut adoptée, mettant l'accent notamment sur l'importance des fonctions dépositaires, ainsi que d'enregistrement et de publication des traités exercées par la Section. L'Assemblée générale s'est ainsi félicitée des efforts déployés pour développer et améliorer la base de données de la Section relative aux traités. Je note à cet égard que nous sommes en train de nous doter d'un nouveau site Internet qui permettra un accès plus simple et plus rapide aux informations relatives au statut des traités déposés auprès du Secrétaire général et aux traités enregistrés et publiés conformément à l'article 102 de la Charte. Par le biais de cette résolution, l'Assemblée générale a également invité le Secrétaire général à examiner les dispositions réglementaires donnant effet à l'article 102 de la Charte et à faire figurer une brève présentation de l'évolution de sa pratique dépositaire dans son prochain rapport annuel. L'Assemblée générale a enfin réaffirmé son soutien à la cérémonie annuelle des traités, qui, en 2015, s'est tenue, comme d'habitude, concomitamment au débat général de la session de

l'Assemblée générale. Cette cérémonie a accueilli pas moins de 24 États qui ont accompli un total de 31 actions relatives aux traités déposés auprès du Secrétaire général.

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CONCLUSION

Le travail de la Commission continue d'être du plus grand intérêt pour la communauté juridique internationale, et tout particulièrement pour les États membres en son sein. Chaque année, dans sa résolution sur le rapport annuel de la Commission, l'Assemblée générale se félicite du travail accompli par celle-ci. En cette dernière année du quinquennium, je voudrais saluer le travail impressionnant déjà accompli par la Commission, et notamment l'achèvement de ses travaux sur « l'expulsion des étrangers », « l'obligation d'extrader ou de poursuivre (*aut dedere aut judicare*) » et « la clause de la nation la plus favorisée ». Cette session devrait également permettre à la Commission de conclure son projet d'articles relatifs à « la protection des personnes en cas de catastrophe », un sujet auquel les États accordent un grand intérêt. Je suis certain que les travaux de la Commission sauront aider les États à résoudre les problèmes juridiques et institutionnels qui se posent dans ces circonstances souvent très difficiles.

Alors que la Commission cherche à remplir le mandat qui lui a été confié par l'Assemblée générale dans un environnement changeant en adoptant ses méthodes de travail pour relever les

nouveaux défis qui se présentent à elle, je voudrais lui renouveler mon assurance que le Bureau des affaires juridiques fera tout son possible pour lui fournir l'assistance nécessaire.

Permettez-moi de souligner que cette année, suite aux demandes de la Commission, la Division de la codification a préparé deux memoranda dans le cadre des sujets « Détermination du droit international coutumier » et « Crimes contre l'humanité ». En outre, elle a également contribué à l'examen du programme de travail à long-terme de la Commission en réexaminant la liste des sujets établie en 1996 à la lumière des faits survenus ultérieurement et en dressant une liste de sujets susceptibles d'être étudiés par la Commission, accompagnée de brèves notes explicatives.

En particulier, je peux vous promettre que la Division de la codification, qui lui prête main-forte en assurant un service de secrétariat substantiel depuis toutes ces années, continuera d'exercer ses fonctions avec la plus grande diligence, le plus grand professionnalisme et le plus entier dévouement.

Je vous remercie de votre attention.