

International Law Commission

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

Geneva, 11 May 2023

Madam Chair,

Distinguished members of the International Law Commission,

Ladies and gentlemen,

I convey to you all, the warm greetings of the Secretary General and best wishes for a successful session, the first of this present quinquennium.

It is a pleasure to be here with you as you begin an important journey in the progressive development of international law and its codification.

I extend my congratulations to new members on your election as members of this esteemed body. For almost 75 years, the Commission has played a pivotal role in the progressive development of international law, and its codification. Its achievements in this field are widely recognized by the various stakeholders, ranging from Governments to the academy. I am confident that the new members bring fresh energy to the work of the Commission.

I also renew my felicitations to those members who were returned to continue the important work of the Commission. This combination of the new and the old is one of the factors that has made the Commission an important player in the progressive development of international law. Old voices and new voices working together towards a common goal for a humanity governed by law: international law.

The Commission made great progress last year having accomplished first and second readings of three topics and good progress on other three. Moreover, three new topics were brought onto the Commission's programme of work: You therefore start with a full programme.

Madam Chair, I congratulate you, and the Bureau on your election, and together with the Secretariat for the positive and determined spirit with which the session has been planned and is progressing, with so much expected and so much to be accomplished. I also pay tribute to the previous bureau led by Mr. Dire D. Tladi. I cannot fail but to note that for the first time the Commission has a split chair-ship shared by two outstanding women in the field of international law. This can only augur well with efforts of the Commission to adapt and innovate in an ever-changing environment where questions of equality, equity and inclusiveness are at the core human endeavour.

Distinguished Members of the International Law Commission

It has become the tradition to utilize this occasion to provide members with an overview of the activities over the past year of the Office of Legal Affairs, which provides centralised legal services to the Organization, and the ways in

which the various units of the Office have played their part in developing and upholding international law.

I will start with the Codification Division, your Secretariat.

[COD]

Madam Chair,

Over decades, the Division has been the silent force behind your Commission and the Sixth (Legal) Committee of the General Assembly and has served as repository of their functioning.

In 2022, the Sixth Committee was convened in the context of the seventy-seventh session of the General Assembly from 3 October to 18 November 2022. The Sixth Committee successfully concluded the consideration of the agenda items allocated to it and maintained its tradition of adopting its resolutions and decisions, without a vote. Upon the recommendation of the Sixth Committee, the General Assembly adopted, also without a vote, 21 resolution and 10 decisions.

In relation to the work of the Commission, the Committee considered your 2022 report. The participation of the Commission members, including the Chair and the Special Rapporteurs, in the debate was important in ensuring the dialogue between the two bodies. The dialogue between the Commission and the Sixth Committee is one of the prime drivers of the progressive development of international law and its codification within the United Nations.

The Committee has noted the completion of the second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), and draft principles on protection of the environment in relation to armed conflicts, as well as of the first reading of the draft articles on immunity of State officials from foreign criminal jurisdiction.

The General Assembly welcomed conclusion of the work on the topic “Protection of the environment in relation to armed conflicts” in resolution 77/104 and decided to continue its consideration of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) at the seventy-eighth session of the General Assembly later this year.

Furthermore, the Committee took note of the decision of the International Law Commission to include the three new topics in its programme of work, as well as the inclusion of the topic “Non-legally binding international agreements” in its long-term programme of work.

The Sixth Committee also considered the agenda items entitled “Responsibility of States for internationally wrongful acts”, “Crimes against humanity”, “Diplomatic protection”, “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm”, and “The law of transboundary aquifers” on the basis of the articles completed by the International Law Commission between 2001 and 2019. I remain optimistic that we will soon see some advance one way or another on these items.

I wish to note in particular, that the future work on question of crimes against humanity remains of continuing interest for member States, and further work is ongoing and is also expected both this and next year. I recall that in resolution 77/249 the General Assembly decided that the Sixth Committee should

resume its sessions in 2023 and 2024 to exchange substantive views on all aspects of the draft articles, and to consider further the recommendation of the Commission for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. The resumed session of the Sixth Committee took place from 10 to 14 April 2023. I am glad to note that delegations had a rich and substantive debate. I look forward to the continuation of this work, following such a very promising start.

As you know, the Codification Division is also responsible for the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The Programme of Assistance remains a priority for Member States, and the Organization, as a capacity-building pillar in international law and the promotion of the rule of law.

The activities of the Programme continue to include the organization and facilitation of high-quality training programmes in international law: the International Law Fellowship Programme in The Hague, and three Regional Courses in international law - for Africa in Ethiopia, Asia-Pacific in Thailand and Latin America and the Caribbean in Chile.

I am pleased to note that starting the 2022 International Law Fellowship Programme in the Hague, we have returned fully to in-person training programmes.

The United Nations Audiovisual Library of International Law, an online training resource available world-wide free of charge on the Internet, forms another component of the Programme of Assistance. I am very grateful to members – present and former – who have made significant contributions by recording

lectures, drafting introductory notes to legal instruments and assisting in developing its Research Library.

[OLC]

Madame Chair,

I now turn to the activities of the Office of the Legal Counsel, which continues to deal with a variety of legal questions. Once again, this has been a very busy year for the Office, as it has addressed a wide range of issues of public international law. I will highlight a few.

[Ukraine]

The Office of Legal Affairs continued to provide advice on a number of issues arising out of the Russian military offensive in Ukraine, ranging from legal terminology to legal support related to the global food insecurity situation that the armed conflict has aggravated. In particular, the Secretary-General has been seeking our guidance regarding the conclusion and implementation of a couple of instruments which were signed on 22 July 2022, namely: the “Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports” (also known as the Black Sea Grain Initiative), where three Parties – the Republic of Türkiye, the Russian Federation and Ukraine – request the assistance of the Secretary-General in the implementation of the Initiative; and the “Memorandum of Understanding between the Russian Federation and the Secretariat of the United Nations on promoting Russian food products and fertilizers to the world markets”.

The Office also continued to provide assistance to the President of the General Assembly on procedural matters relating to the eleventh emergency special session of the Assembly which held its first meeting on 28 February 2022 and last resumed on 22 and 23 February 2023, during which it adopted resolution ES-11/6 entitled “Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine”.

[Privileges and immunities]

I also wish to offer a few observations based on our work on the Organization’s status, privileges and immunities.

While we generally see that the Organization is granted the privileges and immunities necessary for the United Nations and its personnel to effectively fulfil its purposes, in some areas we continue to face challenges in securing the full respect for the privileges and immunities of the Organization and those of its officials. Particularly alarming are instances where United Nations officials are subject to criminal proceedings with respect to matters that fall squarely within the exercise of their official functions with the Organization and, as such, are covered by immunity from legal process.

The Organization will cooperate with Member States to facilitate the proper administration of justice and waive immunities as and where appropriate. However, in instances where the Organization is not able to waive such immunity, it is for the Member States to ensure that immunity is fully respected and that officials of the Organization are not subjected to criminal process contrary to the official’s immunity from legal process. On occasion, we face challenges on this point. Based on well-established rules and principles governing the law of treaties,

as reflected in the 1969 Convention on the Law of Treaties, we must insist that it is not permissible to invoke the provisions of domestic laws as a justification for failure to assert immunity from legal process in accordance with the obligations provided for under the United Nations Charter and the Convention on the Privileges and Immunities of the United Nations.

Since my last statement, my office has continued to deal with a wide range of issues relating to privileges and immunities above and beyond questions around the immunity from legal process. Some of these issues are a reflection of the impact of ongoing armed conflicts. For example, the exemption of United Nations officials from national service obligations, including military obligations, has been an important issue in a number of contexts, including with respect to the situation in Ukraine.

Host country agreements are an important tool for the United Nations to ensure that the full range of privileges and immunities, and related facilities, are granted to the Organization and its personnel. The Organization routinely enters into such agreements for United Nations presences and conferences and events held away from headquarters. A significant portion of the work of my office is dedicated to making sure that the necessary provisions are included in such agreements and all legal requirements are met. As the presence of United Nations offices has grown, so has the number of corresponding host country agreements, in some contexts leading to dozens of host country agreements being applicable to members of the UN family at the same location. The benefits of replacing this web of agreements with one UN agreement are evident. But putting this into reality has proven a difficult task. I am pleased to report that in September 2022, the United Nations and the Kingdom of Denmark entered into an overarching agreement

concerning the status of the offices of the United Nations family in Copenhagen - the first of its kind.

[Accountability]

Let me now turn to the area of accountability. As you know, my Office provides legal support to a number of international criminal courts and tribunals that were established by or with the assistance of the United Nations. I would like to take a moment to provide a brief update on the most recent developments of their work.

Turning first to the International Residual Mechanism for Criminal Tribunals, which remains seized with appeal proceedings in the *Stanišić and Simatović* case and trial proceedings in the *Kabuga* case, the last two main cases before the Mechanism relating to core crimes. The pronouncement of the appeal judgement in the *Stanišić and Simatović* case has been scheduled for 31 May. This will mark the end of proceedings that first began before the International Tribunal for the former Yugoslavia and subsequently came under the Mechanism's jurisdiction in 2015 following the decision by the ICTY Appeals Chamber that Messrs. Stanišić and Simatović be retried.

The trial in the *Kabuga* case commenced in September last year. Mr. Kabuga is charged with genocide and crimes against humanity, committed in Rwanda in 1994. You will recall that Mr. Kabuga was arrested in Paris in 2020 after having spent more than two decades as a fugitive. Since his transfer to the Mechanism's custody, the Trial Chamber has dealt with a number of motions concerning Mr. Kabuga's health. The Chamber is currently reassessing Mr.

Kabuga's fitness to stand trial in view of the findings in the latest medical report, which indicated a deterioration of his cognitive capacity.

Alongside the judicial caseload, the Mechanism has also made important strides in relation to the accounting of fugitives of the International Criminal Tribunal for Rwanda. With the termination of proceedings against Protais Mpiranya in September last year, following the confirmation of his death, only four fugitives now remain at large, all of whom are expected to be tried in Rwanda.

With these developments in mind, President Gatti, who was appointed last year, has indicated that one of her core priorities is to lead efforts in developing a comprehensive strategy to guide the Mechanism's continuing transition from an operational court to a truly residual institution.

Other tribunals have also reached defining stages of their work.

In July 2022, following the completion of judicial proceedings in the main *Ayyash* case, the Special Tribunal for Lebanon entered its residual phase. In view of the limited scope of the Tribunal's residual functions, and being mindful of the financial difficulties facing the Tribunal, the United Nations and Lebanon agreed on a completion plan under which the Tribunal would perform limited residual functions from 1 July 2022 to the end of 2023. Accordingly, earlier this year, the Secretary-General extended the mandate of the Special Tribunal from 1 March to 31 December 2023, for the purpose of completing the non-judicial residual functions and the orderly closure of the Special Tribunal. In September 2022, the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia delivered its judgement in case 002/02, with the full written judgment issued on 23 December 2022. The Supreme Court Chamber affirmed the convictions and life sentence against Khieu Samphan for genocide against the

Vietnamese, crimes against humanity and grave breaches of the Geneva Conventions committed across various locations in Cambodia between 1975 and 1979. With this decision, the Extraordinary Chambers completed its last case and entered its residual phase on 1 January 2023.

With these developments, all United Nations established or assisted tribunals have now entered their residual stages, almost exactly 30 years after the creation of the first ad hoc tribunal in 1993.

[Peacekeeping - Peace operations]

Criminal accountability efforts are naturally not confined to the various entities and processes established by the United Nations. Indeed, judicial cooperation, in and of itself, constitutes a considerable amount of the work of my Office. Judicial cooperation requests arise in various contexts of the Organization's work, and I would like to inform you of developments related to judicial cooperation within the context of peace operations.

I wish to recall that the United Nations is under a general obligation to cooperate with judicial authorities to facilitate the administration of justice. I would like to highlight the support being provided by my Office within the context of the ongoing cooperation by the United Nations with the Kosovo Specialist Chambers and in particular with the European Union Special Investigative Task Force and its successor the Specialist Prosecutor's Office.

By way of background, in 2014 the United Nations agreed to cooperate with the Special Investigative Task Force, and in 2016 with its successor the Specialist Prosecutor's Office, under conditions consistent with the legal framework

applicable to the United Nations. The Specialist Prosecutor's Office is a judicial institution of Kosovo according to Law No.05/L053 on "Specialist Chambers and Specialist Prosecutor's Office", of 3 August 2015, and was established to assume the mandate and personnel of the Special Investigative Task Force. As you may be aware, the Special Investigative Task Force had been established in September 2011 by the European Union to conduct a criminal investigation and to pursue any ensuing prosecutions into the allegations of war crimes and organized criminal activity by former leaders of the Kosovo Liberation Army between 1998 and 2000.

In its cooperation with the Special Investigative Task Force and the Specialist Prosecutor's Office, the United Nations has been guided by Regulation No. 2000/47 of 18 August 2000 on the Status, Privileges and Immunities of the Kosovo Force (KFOR) and the United Nations Interim Administration Mission in Kosovo (UNMIK) and their Personnel in Kosovo and the 1946 Convention on the Privileges and Immunities of the United Nations, pursuant to which "[o]fficials of the United Nations shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" and "[t]he archives of the United Nations and in general all documents belonging to it or held by it, shall be inviolable wherever located." It is noted that the privileges and immunities of the Organization for Security and Cooperation in Europe Mission in Kosovo (OMIK), as the Institution-building component of UNMIK, and of its personnel, also derive from UNMIK Regulation No. 2000/47 of 18 August 2000.

Pursuant to a framework agreed in 2014 between my Office and the Special Investigative Task Force, the Special Investigative Task Force and the Specialist Prosecutor's Office carried out (between 2014 and 2019) informal voluntary interviews with a number of former and current UNMIK and Mission in Kosovo (OMIK) officials. In addition, a number of United Nations documents were

provided to the Special Investigative Task Force and the Specialist Prosecutor's Office to assist their investigations, following a review by the Organization against the standard criteria.

In 2019, my Office received a request from the Specialist Prosecutor's Office, seeking the authorization by the United Nations for selected current and former personnel of UNMIK to provide signed written statements to the Specialist Prosecutor's Office for use in criminal proceedings before the Kosovo Specialist Chambers, to testify in criminal proceedings before the Kosovo Specialist Chambers, and for the release of United Nations documents for disclosure and use in criminal proceedings before the Kosovo Specialist Chambers. A similar request was sent to the Organization for Security and Cooperation in Europe in respect of former Mission in Kosovo (OMIK) personnel and documents generated by Mission in Kosovo (OMIK). The 2019 request specified that the Specialist Prosecutor's Office had determined that a number of former officials of UNMIK or Mission in Kosovo (OMIK), with whom Specialist Prosecutor's Office had conducted informal interviews under the 2014 framework, were in a position to give relevant and necessary evidence that the Specialist Prosecutor's Office wishes to rely upon, as the prosecuting authority, to pursue criminal charges.

Through close coordination between the Department of Peace Operations, UNMIK, other relevant United Nations entities as well as the Organization for Security and Cooperation in Europe, as appropriate, and with the legal guidance and support of my Office, the Organization has made an extensive number of United Nations documents, as well as a number of current and former UNMIK and Mission in Kosovo (OMIK) personnel available for the purpose of criminal proceedings before the Kosovo Specialist Chambers, subject to appropriate conditions.

Proceedings before the Kosovo Specialist Chambers have now reached the stage where the Kosovo Specialist Chambers has charged certain persons and these persons are now accordingly preparing their defence. In this regard, as of 2022, my Office is also responding to a number of requests for cooperation from Specialist Counsel for the Defence [, particularly in connection with the cases of *Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (Case No. KSC-BC-2020-06).]

In line with the desire of the Organization to ensure that, where appropriate, our cooperation should be afforded equally to the prosecution and the defence, I communicated to the Kosovo Specialist Chambers Registry that the United Nations will consider the requests from the Specialist Counsel for access to United Nations information and/or to current or former United Nations personnel within the legal frameworks that govern the status, privileges and immunities of the United Nations and of its personnel. In practice, the same procedures that were implemented for our cooperation with the Special Investigative Task Force/ Specialist Prosecutor's Office are being followed and adjusted as required, to the cooperation we afford to defendants in Kosovo Specialist Chambers proceedings. In this regard, my Office also works closely with the Office of the Registrar of the Kosovo Specialist Chambers.

[International Court of Justice and requests for advisory opinions by the General Assembly]

Turning now to the area of peaceful resolution of disputes. The year has seen a number of significant developments before the International Court of Justice, which remains busy with a full docket involving a wide range of legal issues. I

will highlight two recent developments. As you know, the General Assembly has recently requested two advisory opinions from the International Court of Justice.

At the end of December, the General Assembly, in its resolution 77/247 entitled “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”, requested the Court to render an opinion on the following questions:

“considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

In addition, at the end of March this year, the General Assembly adopted resolution 77/276 entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change” requesting the Court to render an advisory opinion on the following questions:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

These questions raise sensitive, complex and novel issues of international law. Pursuant to Article 65, paragraph 2, of the Statute of the Court, my Office prepares a dossier with “all documents likely to throw light upon the question” on which the opinion is requested. We are currently in the midst of compiling the dossiers for the two requested opinions. As you can imagine, this is a challenging

task as the questions posed to the Court are broader in nature than they have been in previous occasions. In the past, it has taken three to six months to submit a dossier.

[GLD]

I will now turn to the activities of the General Legal Division.

[Accountability]

The General Legal Division has continued to work on a wide range of legal accountability and asset recovery efforts with respect to an initiative of one of the United Nations' subsidiary bodies that is alleged to have been tainted by high level corruption and fraud. While I am unable to discuss specifics of the matter, the work involves several of General Legal Division's practice areas concerning criminal accountability, administrative law, the institutional legal framework, and arbitration and other commercial claims efforts.

In the area of criminal accountability of United Nations officials and experts on mission, the General Legal Division continues to support efforts to ensure criminal accountability of such personnel by referring credible allegations of criminal conduct to relevant national authorities. During the 2021-2022 reporting period, 41 referrals of United Nations officials and experts on mission were made upon credible allegations of criminal conduct.¹ The majority of those particular cases involved alleged entitlement fraud, and a few cases involved allegations of sexual exploitation and abuse.

¹ See Secretary-General's Report, A/77/225, "Criminal Accountability of UN Officials and Experts on Mission," Annex 1.

I also wish to report that one of our previous referrals of allegations of sexual assault resulted in criminal accountability in 2022. In October 2022, Karim Elkorany, a former UNDP and UNICEF staff member, was sentenced to 15 years in prison in the United States, after pleading guilty to the sexual assault of one person and lying to the FBI to cover up another sexual assault. As part of his guilty plea he admitted to having drugged 20 women, sexually assaulting at least 13 of them, many of them during the time of his employment with the United Nations.

This is a case that shows that with the courage of victims, effective cooperation from the United Nations, and a willingness from national authorities to pursue cases involving United Nations personnel, criminal accountability is possible.

[Administrative law]

Since I last reported to you, we were asked by the Fifth Committee of the General Assembly to assist in addressing the situation arising from recent judgments of the UN system for the Administration of Justice and of the International Labour Organization's Administrative Tribunal concerning the authority of the International Civil Service Commission in relation to the establishment of the post adjustment multiplier, which is an element of the compensation for professional and higher staff that varies by duty station. Specifically, I provided a legal opinion in response to questions relating to the proposed amendment of the Statute of the Civil Service Commission. Taking into account my advice, the General Assembly decided to amend the Statute. The amendment, which is the first change to the Statute since its approval in 1974, clarifies the role of the Commission in relation to the General Assembly and the extent of the Commission's decision-making authority.

In addition, we have continued to work with the Secretariat's management offices to develop proposals called for by the Member States to address divergences in the jurisprudence of the United Nations system for the Administration of Justice and of the International Labour Organization's Administrative Tribunal in cases involving the United Nations Common System of Salaries, Allowances and Benefits. These proposals would aim to avoid future divergence in the jurisprudence of these two tribunals.

[Support to IAEA's mission to the Zaporizhzhia Nuclear Power Plant]

With respect to the ongoing situation in Ukraine, there have been growing concerns about the safety and integrity of the Zaporizhzhia Nuclear Power Plant, which is located in the area of active military operations. Further to a request received from the International Atomic Energy Agency (IAEA), the United Nations provided support to the IAEA with respect to its inspection mission, which took place in August 2022. The United Nations continues to provide support as needed to the IAEA.

[ITLD]

Je me tourne maintenant vers les travaux de la Division du droit commercial international (ITLD), qui assure le secrétariat de la CNUDCI, en particulier ses travaux en cours à la CNUDCI concernant la réforme du règlement des différends entre investisseurs et États (RDIE), et l'accès des micro-, petites et moyennes entreprises (MPME) au crédit.

La Commission des Nations Unies pour le droit commercial international (CNUDCI) pour laquelle la Division du droit commercial international qui fait

partie du Bureau des Affaires juridiques assure le secrétariat va tenir sa cinquante-sixième session à Vienne cet été, et j'aimerais vous donner un très bref aperçu des discussions qui auront lieu pendant la session.

[Réforme du règlement des différends entre investisseurs et États]

En 2017, la Commission a confié à son Groupe de travail III un large mandat concernant la réforme du système de règlement des différends entre investisseurs et États. Les délibérations intergouvernementales, longues mais productives, commencent à porter leurs fruits cette année avec l'adoption de la première série d'éléments de cette réforme.

Parmi ceux-ci, l'établissement d'un code de conduite pour les arbitres et d'un code de conduite pour les juges dans le règlement des différends relatifs aux investissements internationaux, avec leur commentaire respectif. Ces codes contiennent des obligations clés concernant les personnes appelées à trancher des différends entre investisseurs et États (y compris les candidats, les anciens arbitres et les anciens juges), renforçant leur devoir d'indépendance et d'impartialité, élargissant et fixant des exigences strictes de divulgation et introduisant des règles sur la pratique dite de la « double-casquette » (lorsqu'une personne chargée du règlement d'un différend exerce les fonctions d'avocat dans une autre procédure impliquant des questions juridiques similaires). Le code pour les juges s'appliquera *in fine* aux membres nommés pour siéger au sein d'un mécanisme permanent de règlement des différends d'investissements, une cour multilatérale de première instance et un mécanisme d'appel, qui sont deux autres éléments de réforme actuellement en cours de développement par le Groupe de travail.

Une autre série d'éléments de réforme qui sera présentée à la Commission cet été concerne le recours à la médiation en vue de régler des différends relatifs aux investissements. A cette fin, il est attendu que la Commission adopte une série de dispositions sur la médiation visant à être intégrées dans les accords d'investissements (existants et futurs) et qui fournissent aux Etats un fondement juridique solide pour utiliser la médiation. La Commission adoptera également un guide pratique sur la médiation en matière d'investissements, qui explicite les avantages de la médiation et la manière dont celle-ci peut être utilisée pour résoudre les différends relatifs aux investissements. Etant donné que la médiation est encore trop peu utilisée dans le RDIE, les deux textes visent à promouvoir son utilisation et à faciliter un règlement amiable des différends relatifs aux investissements en proposant d'autres options aux investisseurs que le seul arbitrage d'investissement.

Comme vous le savez, le système actuel de règlement des différends entre investisseurs et Etats par l'intermédiaire de l'arbitrage fait l'objet de critiques quant à sa légitimité même, la cohérence de ses résultats, des coûts et des délais importants, et donc sa réforme revêt une importance toute particulière. On peut donc s'attendre à ce que les codes de conduite et les deux textes sur la médiation contribuent à réformer en profondeur le système de règlement des différends entre investisseurs et Etats, encouragent la transparence et la responsabilité des acteurs et ainsi mette en place une réforme juste et efficace, notamment aux yeux de l'opinion publique. Ces quatre premiers éléments de la réforme sont également les fruits d'une démarche multilatérale, avec cette première étape concrète, d'une série de réformes à venir dans le domaine du règlement des différends entre investisseurs et Etats qui sera déroulée par le Groupe de travail III au cours des trois prochaines années.

[Accès des micro-, petites et moyennes entreprises au crédit]

Depuis 2013, la Commission travaille à la création d'un environnement juridique favorable pour les micro-, petites et moyennes entreprises en visant à réduire les obstacles juridiques que celles-ci rencontrent tout au long de leur cycle de vie, notamment dans les économies en développement. C'est ainsi que la Commission a adopté un guide législatif sur la création et le registre des entreprises, une structure de société très simplifiée et un guide sur l'insolvabilité des petites entreprises. Cette année, la Commission adoptera un Guide sur l'accès des micro-, petites et moyennes entreprises au crédit. Le Guide présente le cadre juridique nécessaire pour que les entreprises obtiennent le financement de leurs opérations ainsi que la manière dont les Etats peuvent améliorer leur cadre juridique national en vue de faciliter l'accès au financement. Ce travail s'appuie sur les travaux antérieurs de la Commission dans le domaine des sûretés et principalement la Loi type de la CNUDCI sur les sûretés mobilières.

Au-delà des réformes juridiques, le Guide examine aussi les mesures de nature réglementaire et les politiques publiques permettant de réduire les obstacles à l'accès au crédit, telles que l'apport de garanties personnelles, les mécanismes de garantie du crédit, les infrastructures permettant d'évaluer la solvabilité des entreprises, les règles et orientations sur les pratiques de prêts équitables, et la promotion de l'éducation financière. Le Guide reconnaît également que bien souvent, les femmes entrepreneur rencontrent des obstacles importants, et recommande par conséquent que les conditions d'accès au crédit pour de potentiels.

[Travaux dans d'autres domaines]

Bien sûr, d'autres travaux dans le domaine du droit commercial international sont également en cours de développement. Au cours de l'été, la Commission considèrera un texte sur une procédure de rejet rapide et la décision préalable dans les procédures arbitrales. Le texte apportera aux praticiens un éclairage utile sur ce pouvoir discrétionnaire utilisé par les tribunaux arbitraux sous les règles d'arbitrage applicables, y compris le Règlement d'arbitrage de la CNUDCI.

La Commission poursuit également ses travaux sur les questions juridiques relatives à l'économie numérique, avec un groupe de travail actuellement bien avancé dans l'examen d'un texte législatif sur les transactions en matière de données et d'un autre texte sur l'intelligence artificielle dans la contractation. Le secrétariat fait également un état des lieux approfondi des développements dans l'usage des technologies (telles que les outils en ligne, l'utilisation de la chaîne de bloc, la transmission électronique de documents) dans les procédures de règlement des différends. La Commission tiendra également un colloque pendant sa session annuelle en vue d'aborder les sujets relatifs à la lutte contre les changements climatiques et à la contribution possible du droit commercial international, avec afin d'identifier des axes de travaux futurs dans ce domaine important pour au sein des Nations Unies. Je m'attends à ce que toutes ces discussions soient très intéressantes et ouvrent notamment la voie à de nouveaux développements dans le domaine du droit commercial international.

Pour terminer, permettez-moi de souligner l'importance cruciale du rôle que joue ITLD dans la promotion des travaux de la CNUDCI, à travers ses activités d'assistance technique et de renforcement des capacités. Ces activités ont pris de plus en plus d'importance au cours des dernières années, en partie avec une

collaboration plus étroite avec des organisations partenaires dans différentes régions. Les Journées de la CNUDCI pour l’Amérique latine et les Journées de la CNUDCI pour l’Afrique, avec les Journées de la CNUDCI pour l’Asie et le Pacifique, jouent un rôle significatif à cet égard. En outre, le lancement de plusieurs cours en ligne et d’autres ressources documentaires en ligne, ainsi que les projets de redynamiser la base de données jurisprudentielles, seront déterminants en vue de permettre à ITLD de continuer d’assumer son rôle de gardien des textes de la CNUDCI.

[DOALOS]

Madam Chair,

Let me now turn to the law of the sea and the activities of the Division for Ocean Affairs and the Law of the Sea.

[Intergovernmental Conference on an international legally binding instrument]

And here, I am most delighted to inform you that the **Intergovernmental Conference on an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, convened pursuant to resolution 72/249 (the “Intergovernmental Conference”)**, finalized the text of a draft agreement, on Saturday 4 March. The resumed fifth session originally scheduled to be held from 20 February to 3 March 2023, worked overtime to conclude this remarkable landmark achievement.

The draft agreement, which will be the third agreement directly related to the United Nations Convention on the Law of the Sea, contains a preamble, 76 articles and two annexes. It addresses the four elements of the package that were under negotiation in relation to the overall umbrella of the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, namely: marine genetic resources, including the fair and equitable sharing of benefits; measures such as area-based management tools, including marine protected areas; environment impact assessments; and capacity-building and the transfer of marine technology. A number of cross-cutting issues are also addressed such as the relationship between the agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; general approaches and principles; international cooperation; institutional arrangements, with the establishment of a Conference of the Parties and other bodies; funding; implementation and compliance; and the settlement of disputes. The draft agreement designates the Secretary-General of the United Nations as depositary of the agreement. It also requests the Secretary-General, through the Division for Ocean Affairs and the Law of the Sea of my Office, to perform the secretariat functions under the agreement until such time as the secretariat established by the agreement commences its functions.

At the close of the resumed session on 4 March, the conference decided to establish an open-ended informal working group tasked with ensuring the uniformity of terminology throughout the text of the draft agreement and harmonizing the versions in the six official languages of the United Nations. The informal working group has started its work.

The conference also decided to resume at a later date, once the open-ended informal working group has completed its work, with a view to adopting the draft

agreement in all six official languages. The General Assembly, on 18 April, requested the Secretary-General to convene the further resumed fifth session of the conference on 19 and 20 June 2023, tentatively, or on a date to be determined in consultation with the President of the conference.

[ILC study on sea-level rise]

We continue to follow, with interest, the work of the Commission on sea-level rise and look forward to the finalization of the consolidated substantive report of the Study Group on the topic as a whole, scheduled for 2025. As before, my colleagues in the Division for Ocean Affairs and the Law of the Sea remain available to provide information to the Commission on technical aspects of the United Nations Convention on the Law of the Sea and to share their know-how and experience with the Study Group.

On the related impacts of climate change, I recall the recent request for an advisory opinion submitted to the International Tribunal for the Law of the Sea by the Commission of Small Island States on Climate Change and International Law. The questions put to the Tribunal relate to obligations of States Parties under the United Nations Convention on the Law of the Sea to prevent, reduce and control pollution of the marine environment and its protection and preservation in the context of climate change. Upon invitation of the Tribunal, the United Nations will present a written statement in these proceedings and my Office is currently involved in its preparation.

[ILC work on piracy and armed robbery at sea]

Similarly, the work of the Commission on the topic “Prevention and repression of piracy and armed robbery at sea” will be of special interest to the Division, in light of the centrality of the provisions of the Convention in that regard.

[Regular Process]

Since we last met, the Division, as the secretariat of the **Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the “Regular Process”)**, serviced the eighteenth meeting of the Ad Hoc Working Group of the Whole 27 March 2023. [The Regular Process is a mechanism that reviews the environmental, economic and social aspects of the state of the world’s oceans, both current and foreseeable. This process produces the World Ocean Assessment, the only integrated assessment of the world’s ocean at the global level. Among the documents approved by the meeting is the format, scope and outline of the third World Ocean Assessment (WOA III).]

The Regular Process, through its World Ocean Assessments, continues to provide the latest ocean-related data and information to support policymaking. The Declaration from the 2022 United Nations Ocean Conference held in Portugal in 2022 recognized the importance of strengthening the science-policy interface for implementing SDGoal 14 and its targets to ensure that policy is informed by the best-available science and relevant indigenous, traditional and local knowledge, through processes such as the Regular Process (paragraph 14 (h)).

[Fisheries]

With regard to sustainable fisheries, in December 2022, the General Assembly completed its review of actions taken by States and regional fisheries management organizations and arrangements to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks. This resulted in the addition of a number of new or updated provisions in General Assembly resolution 77/118 on sustainable fisheries. This month, the Review Conference on the United Nations Fish Stocks Agreement will be resumed, with a mandate 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 better to address any continuing problems in the conservation and management of those stocks. The recommendations adopted by the Review Conference in 2006, 2010 and 2016 have played an important role in strengthening implementation of the Agreement at all levels.

[Meeting of States Parties to the Convention]

Last year, I reported on the thirty-second **Meeting of States Parties to UNCLOS** and the election of twenty members of the Commission for a five-year term, starting on 16 June 2023. The thirty-third Meeting will be held next month from 12 to 16 June. In addition to the usual administrative matters, the Meeting will elect seven members of the International Tribunal for the Law of the Sea.

[Commission on the Limits of the Continental Shelf]

The Commission on the Limits of the Continental Shelf held three sessions from the second half of 2022 to the beginning of 2023. The fifty-seventh session concluded the six-year term of office of the current membership of the Commission, which was extended by one year pursuant to a decision of the thirty-first Meeting of States Parties.

At the fifty-seventh session, the Commission adopted recommendations in regard to three submissions made by France and South Africa, jointly, in respect of the area of the Crozet Archipelago and the Prince Edward Islands; Kenya; and the Russian Federation in respect of the Arctic Ocean (partial revised submission). It also decided to suspend consideration of the submissions made by India and Sri Lanka following receipt of communications requesting that the Commission not consider and qualify those submissions.

At the next session, the newly elected members will be inducted, and the Commission will continue consideration of recommendations currently before the plenary, among other matters.

As at April 2023, 74 States Parties have made submissions, either individually or jointly. Overall, the Commission has received 103 submissions, including ten revised submissions.

[Capacity-building]

Let me conclude this overview of the work of the Division by highlighting its increasing capacity-building activities, which are vital to promoting the full and effective implementation of the legal framework for oceans and the law of the sea

by all States. In addition to ongoing projects, such as the four-year Programmes of Assistance to Meet the Strategic Capacity Needs of Developing States funded by the Norwegian Agency for Development Cooperation (NORAD) and the partnership with the World Bank on regional ocean governance training courses, the Division recently launched a new Project of Assistance to Strengthen Participation in and Implementation of the United Nations Fish Stocks Agreement, funded by the European Commission and administered by the Food and Agriculture Organization of the United Nations. It also renewed its partnership with the United Nations Institute for Training and Research (UNITAR) to provide briefings for delegates at the United Nations Secretariat.

Capacity-building activities also include technical assistance at the national level, most recently for the Government of Eritrea. Furthermore, the Division also administers fellowships, such as the United Nations-Nippon Foundation Fellowship Programmes, as well as a number of Trust Funds.

[Treaty Section]

Permettez-moi enfin d'évoquer quelques points saillants des activités de la Section des traités, qui remplit les fonctions de dépositaire du Secrétaire général pour plus de 600 traités multilatéraux, y compris la Convention de Beijing sur la vente judiciaire de navires qui sera ouverte à la signature prochainement, ainsi que la fonction d'enregistrement et de publication des traités en vertu de l'Article 102 de la Charte des Nations Unies.

Depuis ma dernière intervention devant la Commission, un nouvel instrument multilatéral déposé auprès du Secrétaire général dans le domaine de la protection de l'environnement - les Amendements aux annexes I et II au Protocole

de 1998 sur les polluants organiques persistants - est entré en vigueur le 26 février dernier. Ces développements dans le domaine de la protection de l'environnement par le biais des traités multilatéraux se poursuivent. [À cet égard, mon Bureau suit de très près le processus devant mener à l'adoption de l'Accord se rapportant à la Convention des Nations Unies sur le droit de la mer et portant sur la conservation et l'utilisation durable de la biodiversité marine des zones ne relevant pas de la juridiction nationale, qui sera également déposé auprès du Secrétaire général.]

D'une manière plus générale, l'importance des traités multilatéraux pour la protection de l'environnement et la lutte contre les changements climatiques a été soulignée dans le rapport d'évaluation quadriennal du Groupe de l'évaluation scientifique du Protocole de Montréal de 1987 relatif à des substances qui appauvrissent la couche d'ozone, présenté le 9 janvier 2023. Le Protocole de Montréal fait partie des traités multilatéraux déposés auprès du Secrétaire général jouissant d'une participation universelle, avec 198 parties. Le rapport indique que le respect du Protocole de Montréal a permis d'éviter un réchauffement planétaire de 0,5 à 1 degré Celsius d'ici 2050 et que les niveaux d'ozone dans l'Antarctique reviendront probablement à ceux de 1980 d'ici 2066. La portée de cette évaluation est claire : les traités multilatéraux sont des outils essentiels pour la communauté internationale dans ses efforts de lutte contre les changements climatiques, et la participation universelle à ces traités peut aboutir à des résultats réels et tangibles.

En effet, le rapport estime également que le respect de l'Amendement de Kigali de 2016 au protocole de Montréal, relatif à l'élimination progressive de certains hydrofluorocarbures (HFC), pourrait permettre d'éviter un réchauffement supplémentaire de 0,5 degré d'ici à 2100. Mon Bureau entend poursuivre ses efforts pour promouvoir l'adhésion universelle au Protocole de Kigali et aux autres traités multilatéraux déposés auprès du Secrétaire général qui visent à promouvoir

la coopération internationale en matière de protection de l'environnement et de lutte contre les changements climatiques.

L'un des efforts les plus visibles à cet égard est la Cérémonie des traités, qui a repris en 2022 pour sa vingtième édition, après une interruption de deux ans due à la pandémie de COVID-19. Organisé parallèlement au débat de haut niveau de l'Assemblée générale en septembre dernier, l'événement a été marqué par un regain d'intérêt pour la participation universelle aux traités multilatéraux déposés auprès du Secrétaire général, en particulier aux traités s'inscrivant dans le Programme de développement durable à l'horizon 2030. À cette occasion, les États ont agi à l'égard d'un large éventail de traités multilatéraux, réalisant des avancées importantes en particulier dans le domaine du désarmement. Mon Bureau est pleinement engagé dans la préparation de la prochaine Cérémonie des traités, qui se tiendra parallèlement au débat de haut niveau de la soixante-dix-huitième session de l'Assemblée générale sur le thème « Vers une participation universelle aux accords multilatéraux sur l'environnement pour une planète saine ».

Un grand nombre d'États et d'organisations internationales sont appelés à exercer les fonctions de dépositaire de traités multilatéraux, un rôle vital dans la vie du droit international, bien qu'il ne soit pas aisé. À cet égard, je tiens à appeler votre attention sur l'échange de vues technique à venir sur le thème « Pratiques exemplaires des dépositaires de traités multilatéraux » qui se tiendra en Sixième Commission lors de la prochaine session de l'Assemblée générale. Cet échange aura lieu lors de l'examen par la Commission du point de l'ordre du jour intitulé « Renforcement et promotion du régime conventionnel international ». Je me félicite de cette discussion qui, je l'espère, enrichira notre compréhension de la pratique conventionnelle contemporaine.

[Conclusion]

Distinguished Members of the International Law Commission

As you commence the new quinquennium, the eyes of the international legal community will be upon the Commission. Governments, scholars and the public at large rely on your expertise and dedication to the object of the Commission: the progressive development of international law and its codification.

Allow me once more to wish the Commission all the success in fulfilling its mandate and a fruitful continuation of this session. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication.

Thank you very much.