

Statement by Ms. Patricia O'Brien,
Under-Secretary-General for Legal Affairs, The Legal Counsel
International Law Commission
Geneva, 23 May 2013

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

Thank you very much Mr. Chairman. It is always a pleasure to meet with the Commission. I am grateful for your invitation to be here with you. Sixty-five sessions on, the International Law Commission remains very important to the United Nations' efforts in the progressive development of international law and its codification as contemplated in the Charter of the United Nations. Member States always look forward to receiving your valuable report every year.

In my statement today, I will seek to address some legal developments within the United Nations which have taken place since last year's session of the Commission. I hope that the information provided will be of assistance to your work. Following previous practice, I will limit myself to developments, which bear on the work of the Office of Legal Affairs, beginning first with matters concerning the Sixth Committee and then move on to other activities within the Office of Legal Affairs.

Mr. Chairman,

The debate on the annual report of the Commission is an important part of the work of the Sixth Committee. Last year, however, the disruption

caused by Hurricane Sandy forced some adjustments to the programme of work envisaged for the International Law week. In this regard, the consideration of chapter IV of the report of the Commission on the work of its sixty-third session, dealing with the topic "Reservations to treaties" (A/66/10 and Add.1) was further deferred and shall be continued at this year's session of the General Assembly, alongside the consideration of the report of the Commission for this year. The Secretariat has already prepared for you the topical summary of the debate of the Sixth Committee on the various issues on your agenda. Indeed, General Assembly resolution 67/92 of 14 December 2012, on the report of the Commission at its sixty-third and sixty-fourth sessions, captures the essence of the policy directions of the Assembly in regard to your current work programme.

In addition to considering your report, the Sixth Committee addressed other items on its agenda of interest to the Commission. I will speak on some of them, starting with "Measures to eliminate international terrorism". After a break of one year, the Ad Hoc Committee established pursuant to General Assembly resolution 51/210 was convened last month with a view to continuing in particular the elaboration of a draft comprehensive convention on international terrorism. As you are aware, a number of outstanding issues concerning scope of application and the attendant relationship with international humanitarian law have been on the table since 2001, without any major breakthrough. Indeed, one of the reasons why the Ad Hoc Committee was not convened last year was to allow delegations time for reflection and assessment. When a working group of the Sixth Committee met in the autumn, positions among delegations remained to be bridged and the convening of the Ad Hoc Committee session last month was conditioned on the consideration that

future meetings shall be decided upon subject to substantive progress in its work. Unfortunately, there is still no agreement on the outstanding issues. It has since been recommended that work continue in the autumn of next year in the context of a working group of the Sixth Committee.

“The Scope and application of the principle of universal jurisdiction” is another pertinent item, which was included in the agenda of the General Assembly in 2008. To date the Secretary-General has prepared three reports on the basis of information and comments received from governments, as well as observers, as appropriate. In 2011, a working group of the Sixth Committee was established to further the work on the subject. The Working Group was reconstituted last year, and General Assembly resolution 67/98 envisages the reestablishment of the working group this year to continue that work. Following the roadmap for future work and a step-by-step approach, which identified the discussion of issues concerning the definition of the concept of universal jurisdiction, its scope and its application, the focus of the work last year was on definitional aspects. This is still a work in progress. At this stage it is still too early to determine what the final outcome of the work will be. I am conscious that some delegations continue to maintain that an expert body such as the Commission would be best suited to further advance work on the item.

“Criminal accountability of UN officials and experts on mission”, is another item that has been on the agenda of the Sixth Committee for some years now. It emerged from a continuing concern that any criminal activity, including gender violence and abuse, involving the United Nations personnel tarnishes its image and adversely affects its operations. Since taking up the matter in 2006, the work of the Sixth Committee has been incremental. Short term measures were adopted in resolutions 62/63 and

63/119, with the anticipation that the elaboration of a legally binding instrument, as proposed in the report of the Group of Legal Experts which was commissioned by the Secretary-General pursuant to resolution 59/300, would continue to be a possible long term goal. In the autumn last year, a working group of the Sixth Committee was constituted to continue consideration of the Group of Legal Expert report. The discussions revealed that delegations are not yet ready to commence any elaboration of a binding instrument. The item will continue to be debated annually. It is, however, envisaged that a working group of the Sixth Committee will be convened once more during the Seventieth session of the General Assembly, in particular to review the feasibility of elaborating a binding instrument.

As the efforts of the international community continue to seek to secure a better world for us all, the "Rule of law at the national and international levels" takes on a more important role. Indeed, on 24 September last year, at the initiative of the Sixth Committee, a high-level segment of the General Assembly was convened, culminating in the adoption of a Declaration contained in resolution 67/1. The Heads of State and Government, and heads of delegation reaffirmed their commitment to the rule of law and its fundamental importance for political dialogue and cooperation among all States. The three pillars of the United Nations, namely international peace and security, human rights and development are built upon it. The work of the Commission was commended in advancing the rule of law at the international level through the progressive development of international law and its codification. The thematic subject for the debate in the Sixth Committee this year will be: "The rule of law and the peaceful settlement of international disputes".

Turning now to the "Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law". As you are aware, the Sixth Committee considers this item annually and has expressed strong support for this Programme and recognizes the need to provide adequate funding to ensure its sustainability. The Programme, for nearly 50 years, has provided the foundation for the efforts of the United Nations to promote a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations and cooperation among States.

Since the beginning of this century, this programme has faced new challenges due to the increasing demand for training and dissemination of international law. As a response, the Codification Division has in recent years undertaken various efforts aimed at strengthening its face-to-face training programmes, including instituting cost-saving measures to increase the number of fellowships available for the International Law Fellowship Programme in The Hague, conducting Regional Courses in International Law for Africa, for Asia-Pacific and hopefully for Latin American and the Caribbean in the near future, as well as further developing the Audiovisual Library of International Law. To date, the Audiovisual Library has been accessed by more than 600,000 users in 192 Member States and truly is a major contribution to the teaching, study and wider dissemination of international law. Another important aspect of the Programme of Assistance is the preparation and dissemination of legal publications and other international legal materials, including hard copies which are essential for lawyers in developing countries with limited access to the internet. I am particularly pleased to draw your attention to two recently issued publications which are of great interest and highly useful to

international lawyers, namely *Summaries of Judgments, Advisory Opinions and Orders of the Permanent Court of International Justice* and the *United Nations Legislative Series: Materials on the responsibility of States for Internationally wrongful acts*

Another area of interest in recent years has been the General Assembly's examination of the question of the "Administration of justice at the United Nations", which this year culminated in its adoption of resolution 67/241. It approved the mechanism proposed by the Secretary-General for addressing possible misconduct of judges of the UN Dispute Tribunal and UN Appeals Tribunal. The Assembly also requested the Secretary-General to prepare a code of conduct for legal representatives who are external individuals and not staff members, in consultation with the Internal Justice Council and other relevant bodies.

The General Assembly emphasized that recourse to general principles of law and the Charter by the Tribunals is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances. The Assembly also requested the Secretary-General to submit proposals in the forthcoming sixty-eighth session for conducting an interim independent assessment of the formal system of administration of justice.

The UN Dispute Tribunal and the UN Appeals Tribunal, established on 1 July 2009, will be going into their fourth year of operation. As of 1 April 2013, the UN Dispute Tribunal has already issued more than 800 judgments, and the UN Appeals Tribunal close to 300 judgments. Recent judgments of the UN Appeals Tribunal have affirmed the Secretary-General's discretion to dismiss staff members for engaging in sexual

harassment. It has ruled that procedural irregularities do not automatically render a selection flawed where the staff member challenging the process had no real chance of being selected. The Appeals Tribunal has also held that the award of moral damages must be supported by evidence and has vacated orders of compensation where it found that the evidence to be insufficient.

These notable developments will have a significant impact on the development of the Organization's policies in matters of administration and management and the advisory role of the Office of Legal Affairs in that regard. The General Legal Division of the Office continues to play a critical role in this area.

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I shall now turn to the some activities concerning the Office of the Legal Counsel which continues to provide legal support to the Secretary-General and other key Secretariat departments and offices on a range of matters concerning international peace and security. Today, I will touch on three areas – the work and future of the international courts and tribunals; the implementation of Security Council sanctions regimes; and recent developments in the field of peacekeeping.

International Tribunals

I will begin with an update on the international and UN-assisted criminal tribunals. As you know, my Office has a long history of involvement - not only in the establishment, but also in the operation of international criminal tribunals. Over the past year, my Office has dealt on

a daily basis with a wide range of issues raised by the international criminal tribunals.

Residual Mechanism

Substantial progress has been made since the Security Council adopted resolution 1966 in 2010 establishing the Residual Mechanism for the ICTY and ICTR. The Arusha branch of the Residual Mechanism began functioning on 1 July 2012, and The Hague branch will commence functioning on 1 July this year. The General Assembly has elected the 25 judges of the Mechanism; the President, Prosecutor and Registrar have each been appointed; the judges have adopted the Rules of Procedure and Evidence; and the Secretary-General has promulgated a policy concerning access to information and security concerning the archives and records of the Mechanism. As you may recall, I mentioned in my remarks last year that we were soon going to conclude “Headquarters Agreements” with the Governments of the Netherlands and Tanzania, the host countries of the two branches of the Mechanism. While we have not yet concluded these agreements, we are confident that we are now in the final stages of the negotiations.

ICTY/ICTR

Since their establishment in the early 1990s, the ICTY and ICTR have made an enormous contribution to international criminal justice. Today, both are nearing completion of their mandates, and are preparing to close.

That said, nine fugitives indicted by the ICTR remain at large. However, consistent with the notion that States are primarily responsible for prosecution serious international crimes, six of the nine cases have

been referred to Rwanda. The remaining three top-level fugitives will be tried by the Residual Mechanism.

All 161 persons indicted by the ICTY have been brought to justice. The Tribunal anticipates concluding all trials during 2013, with the exception of Mladić, Hadžić, and Karadžić, all of whom were arrested considerably later than the other indictees. Of course, any appeals in those cases would be conducted by the Residual Mechanism, in accordance with resolution 1966 (2010).

Special Court for Sierra Leone (SCSL)

Last year, the Special Court for Sierra Leone convicted Charles Taylor, the former Liberian President, of planning, aiding and abetting war crimes and crimes against humanity, and sentenced him to 50 years' imprisonment. This was a historic moment for international criminal justice, as it is the first conviction of a former Head of State by an international criminal tribunal since Nuremberg. It demonstrates that those who commit international crimes – including Heads of State who commit such crimes while in office – will be held accountable before a court of law.

As might be expected in such complex cases, both parties have appealed. The Defence has presented 42 grounds of appeal, arguing that the Trial Chamber made systematic errors in the evaluation of evidence and in the application of law sufficiently serious to “reverse all findings of guilt entered against him” and to vacate the judgment. The Defence has also questioned the fairness of the trial and the judicial process itself, and has challenged the 50 year sentence imposed by the Chamber as being “manifestly unreasonable.” The Prosecution appealed against both the

judgment and the sentence, arguing that Mr. Taylor should have been found guilty on other basis, and that he should have received a significantly longer sentence. Oral arguments in the appeal took place in January, and it is projected that the appeal judgment will be delivered by the end of September this year. At that point, the Special Court will transition to the "Residual Special Court for Sierra Leone", which residual mechanism was established by agreement between the UN and the Government of Sierra Leone.

Extraordinary Chambers in the Courts of Cambodia (ECCC)

The ECCC is still working on its second trial, which started in November 2011 and initially involved the four surviving senior leaders of the Khmer Rouge regime. Unfortunately, proceedings against two of the accused in Case 002 have been terminated due to the ill health and death of the accused, Ieng Thirith and Ieng Sary respectively. While the proceedings against the remaining two accused will continue, it is most regrettable that the victims of the former Khmer Rouge regime and their families will not have the opportunity to see the judicial process run its course in the cases of Ieng Sary and Ieng Thirith.

In recent years, Cases 003 and 004 have created a lot of controversy, including the resignation of two international co-investigating judges in quick succession. A new international Co-Investigating Judge was appointed last year, and the investigations in these cases are now progressing well.

The ECCC is facing significant funding challenges on both the international and national sides. In March this year, a number of the

national staff went on strike because they had not been paid their salaries for a period of three months. There is a real risk that the judicial process will collapse if the financial challenges are not addressed quickly and adequately. It is imperative that both the international community and the Government of Cambodia live up to their commitments to support the ECCC. The Secretary-General has called on Member States to ensure that impunity for the crimes committed during the period of the Democratic Kampuchea is not tolerated.

Special Tribunal for Lebanon

In June 2011, the Special Tribunal for Lebanon indicted four individuals in respect of their alleged involvement in the attack that killed former Lebanese Prime Minister Rafik Hariri and 22 others, and issued warrants for their arrest. As efforts to locate and arrest the four accused have to date not been successful, the Special Tribunal will proceed to try them in absentia. Currently, all of the Tribunal's organs are working to prepare for the start of trial, which should take place later this year. [Has this already been confirmed by the STL in the recent past?]

The initial three-year mandate of the Special Tribunal expired last February, and was renewed pursuant to the terms of the Annex to Security Council Resolution 1757 (2007) for an additional three years.

ICC

Regarding the International Criminal Court, it is most encouraging that, nearly eleven years after its entry-into-force, there are now 122 States which are Parties to the Rome Statute. The Secretary-General is deeply committed to realizing the goal of universal participation that was dreamed of some 15 years ago in Rome. Step by step, that dream is on its way to becoming reality.

Since it opened its doors, the Court has issued two judgments — both in the past twelve months: the first, convicting Thomas Lubanga for the war crimes of conscripting, enlisting and using children to participate in an armed conflict, and the second, acquitting Mathieu Ngudjolo Chui of all charges of war crimes and crimes against humanity. The Court is expected to issue a third judgment in the case of *Prosecutor v. German Katanga* in the coming months. All three cases relate to the situation in the Democratic Republic of Congo, where regrettably the conflict continues. The United Nations has assisted the Court in the conduct of proceedings in all three of these cases, by providing a vast body of documentary evidence and, in two cases, making available its staff members to testify as to what they saw or learned. In a more prosaic way, it has also helped the Court's investigators by providing them with a range of logistical and administrative support as they go about their work on the ground. My Office has played a central role in making that cooperation possible, while at the same time protecting the Organization's vital interests, in particular, in the safety of its personnel and in its continued ability effectively to conduct its various operations and activities in the country. In return, the Court's work in bringing justice for the countless victims of crimes has been vital to the Organization's efforts to promote peace, development and human rights in the DRC. The Secretary-General has welcomed the news of the surrender of a fourth ICC suspect from the DRC and his transfer to The Hague — Bosco Ntaganda, who faces charges for war crimes and crimes against humanity allegedly committed in Ituri between 2002 and 2003. The United Nations will continue to cooperate with the Court in support of the proceedings in his case.

Concern has been expressed in some quarters that, as it nears the end of the thirteenth year of its existence, the Court has only completed two trials. It is often said that “justice delayed is justice denied”; and those who have endured unimaginable atrocities certainly deserve to see their persecutors brought before the Court and tried without undue delay. Long, drawn-out, seemingly never-ending proceedings can appear sometimes to make a mockery of the suffering of the victims, especially. Nonetheless, having established and assisted in the establishment of five international criminal tribunals, we are acutely aware that international criminal proceedings are not like normal criminal trials. They are vastly more complex, both in terms of the rules of law in play and in terms of the facts that have to be considered - sometimes, spanning events in entire geographical regions over days, weeks, months or even years. Moreover, the International Criminal Court faces a greater challenge than any tribunal before it, in that it is investigating “live” conflicts. This fact greatly hampers and complicates the investigations process, raises much greater concerns about the safety of witnesses and victims and, as far as the United Nations is concerned, poses much thornier problems when it comes to cooperating with the Prosecutor or with the defence, whether it be providing logistical and administrative support to investigators or making information and evidence available to the parties to proceedings. My Office frequently has to wrestle with these problems. It is to the credit of those involved, that, to date, in only one case has the Organization had to decline to make a piece of evidence available when it has been asked to do so.

Let us stand back, though, for one moment and look at the big picture. Currently, the ICC is exercising jurisdiction in respect of eight situations — the DRC, the Central African Republic, Northern Uganda,

Darfur, Libya, Kenya, Côte d'Ivoire and Mali. Who could have imagined this in Rome, 15 years ago? We have reached a pivotal moment in international relations, where the Court is accepted, without reservation, as the centre-piece of a global system of international criminal justice. The International Criminal Court is now at the heart of the efforts of the international community to ensure accountability and end impunity while also seeking to strengthen the rule of law. This Court provides the opportunity and the vehicle for our generation significantly to advance the cause of justice and, in so doing, to reduce and prevent unspeakable suffering.

Sanctions regimes

I will turn now to the United Nations' sanctions regimes. The General Assembly, like the Security Council, recognizes sanctions as an important tool in the maintenance of international peace and security. As many of you know, in its 2005 World Summit outcome document, the General Assembly called "upon the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions". Reiterating its earlier resolutions and echoing the United Nations Global Counter-Terrorism Strategy, the Security Council, in its resolution 1904 (2009) stressed the need to combat threats to international peace and security caused by terrorist acts by all means, in accordance with the UN Charter and international law, including applicable international human rights, refugee and humanitarian law.

In successive resolutions, including resolutions 1730 (2006) and 1904 (2009) establishing the De-Listing Focal Point and the 1267/1989 Ombudsperson respectively, the Security Council has taken steps towards ensuring fairer and clearer procedures for placing individuals and entities on Security Council sanctions lists, and for removing them from those lists. In particular, petitioners have access to an independent and impartial Ombudsperson whose role has been significantly strengthened with the adoption of resolutions 1989 (2011) and 2083 (2012). This is particularly notable in that delisting recommendations now take effect, unless the Committee decides by consensus within a specified period to reject a recommendation or, in the event that there is a lack of consensus within the Committee, the matter is referred to the Security Council itself for decision.

However, despite these improvements, there are pending cases and a growing number of new complaints which have been lodged in regional and national courts around the world, in which listed individuals and entities have successfully argued that their listing infringes upon their fundamental human rights, including due process. My Office has been monitoring these cases, including the *Kadi* and *Nada* cases, with concern for their impact on Member States' obligations under Chapter VII and their obligations under human rights law, including in the case of the European States, obligations arising under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

I am hopeful that the enhancements to the regimes which we have seen in resolutions 1989 (2011) and 2083 (2012) would go a long way towards providing additional fairness and transparency. Indeed several individuals have recently been de-listed, including Mr. Kadi. I am also

heartened by the Security Council's continuing efforts to improve fairness and transparency. I remain concerned, however, that the current UN sanctions regimes remain susceptible to human rights challenges.

Ultimately, the impact of the Ombudsperson will largely depend on how her recommendations are taken up and dealt with by the Committee and, if necessary, by the Security Council. The de-listing of several individuals, including Kadi, strongly indicates that the enhancements have had tangible impact in real terms. It will be equally interesting to see what wider impact the implementation of resolutions 1989 (2011) and 2083 (2012) will have on the jurisprudence of national and regional courts seized with relevant cases.

In the final analysis, however, it is for Member States, and in particular those in the Security Council, to ensure respect not only for the mandatory measures under Chapter VII but also, consistent with the relevant Security Council resolutions and the UN Global Counter-Terrorism Strategy, to ensure respect for international humanitarian and human rights law in their efforts to combat terrorism and other violations of international law. I remain confident that the two objectives are mutually reinforcing and that Member States will continue to work, both inside and outside the Security Council, to avoid any conflict between their human rights obligations and their obligations under Chapter VII of the UN Charter.

Peacekeeping operations

This now brings me to say a few words about peacekeeping. As this is a particularly dynamic area of the Organization's work, it generates a high

demand for legal support, and the last 12 months have been no exception. In this regard, my Office not only provides day-to-day support to the Departments of Peacekeeping Operations and Field Support in respect of 14 different operations, but also provides advice with respect to broader policy issues which apply in respect of all of the Organizations peacekeeping as well as its political missions.

MONUSCO – Intervention Brigade

Recent developments concerning operations in the Democratic Republic of the Congo are a case in point. By its resolution 2098 of 28 March 2013, the Security Council extended the mandate of the “United Nations Organization Stabilization Mission in the DRC”, otherwise known as “MONUSCO”, until the end of March next year, and authorized the establishment within its military component of a robust fighting force, the “Intervention Brigade”. The Intervention Brigade has been given a specific mandate to carry out “targeted offensive operations”, either unilaterally or with the armed forces of the DRC “in a robust, highly mobile and versatile manner”. This is “to prevent the expansion of all armed groups [in the DRC], to neutralize these groups, and to disarm them, in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC, and to make space for stabilization activities”.

Of course, while enforcement actions are not entirely a new element in UN peace operations, they are not the norm, and they raise a number of challenges. Following the voting in the Council on resolution 2098, Guatemala expressed concern regarding the involvement of the UN in peace enforcement activities on the grounds that such activities “may compromise the neutrality and impartiality that we deem so essential to

the Organization's peacekeeping activities", and noted conceptual, operational and legal considerations that may require further exploration. These considerations were recognized by the Council when it expressly noted that MONUSCO's mandate was "on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping" – i.e. the consent of the parties, impartiality, and non-use of force, except in self –defence and the defence of the mandate.

By virtue of the tasks foreseen for the Intervention Brigade, it would appear that MONUSCO may end up becoming a party to armed hostilities in the DRC, thus triggering the application of international humanitarian law. This would mean that MONUSCO would be required to conduct its operations in compliance with IHL – which may lead to significant practical challenges, particularly if MONUSCO is required to detain large numbers of fighters in its efforts to "neutralize" and "disarm armed groups". In addition, MONUSCO itself would also become subject to the application of IHL. While the law remains somewhat unclear in this area, this may mean that military members of MONUSCO, and any persons taking a direct part in hostilities, may lose their protected status under the Convention on the Safety of United Nations and Associated Personnel.

HRDDP

In its resolution, the Council also expressly required that, when operating jointly with the Congolese armed forces, the Intervention Brigade act in strict compliance with the "human rights due diligence policy on UN-support to non- UN forces" (HRDDP). My Office played a central role in the development of this policy, and continues to provide advice concerning its application in all operations where the UN might be called on to provide support to non-UN security forces. Further to requests from certain

Member States, the policy was recently issued both as a Security Council and as a General Assembly document.

In response to requests from Member States and regional international organizations, the UN is increasingly being called upon to provide support to non-UN security forces - support such as paying their salaries, training them and developing their operational capabilities, providing them with logistic support, providing them with fire support and even conducting joint military operations with them – as is the case with the Intervention Brigade and the FARDC in the DRC.

Providing such support comes with a risk — a risk that the UN might be unwittingly implicated in violations of international law committed by those forces. Events in the Democratic Republic of the Congo in 2009 proved this to be all too true. To manage this risk, in 2011 the Secretary-General announced the institution of a Human Rights Due Diligence Policy, which is applicable wherever any part of the Organization is contemplating or involved in providing support to non-UN security forces.

In accordance with the Policy, where a UN entity is contemplating providing support to non-UN security forces, it must first conduct an assessment of the risks involved, in particular the risks of the recipient forces committing grave violations of international humanitarian law, human rights law or refugee law. Where there are substantial grounds for believing there is a real risk of such violations taking place and it is not possible to put in place measures to eliminate that risk or reduce it to acceptable levels, then the UN entity concerned must refrain from supporting the non-UN security forces concerned.

If a UN entity goes ahead and provides support to non-UN security forces, it is required by the Policy to put in place measures to actively monitor their conduct. If it then receives information that gives it reasonable grounds to suspect that those forces are committing grave violations of international humanitarian, human rights or refugee law, it must immediately intercede with their command elements with a view to bringing those violations to an end. If those intercessions do not succeed and the violations continue, then the UN entity in question must suspend or withdraw its support from the forces concerned.

From a legal point of view, the Policy has its roots in three different bodies of law. The first is the Charter itself, Article 1, paragraph 3, of which mandates the Organization to promote and encourage respect for human rights and fundamental freedoms. The second is the law of international responsibility, which requires that an international organization not aid or assist a State or another international organization in violating its international legal obligations. The third applies where the non-UN security forces are party to an armed conflict and the UN becomes a party to that conflict, too — something that may occur precisely because the UN is providing support to those forces. In such a situation, international humanitarian law, as reflected in common article 1 of the Geneva Conventions, requires that the Organization take such action as is within its power to try to make sure that the non-UN security forces conduct their operations in a manner that respects their obligations under international humanitarian law.

My Office has recently had to advise on the application of this policy in respect of the situation in Mali. In December last year, the Security Council requested the Secretary-General to develop and refine options for

a UN logistic support package to the African-led International Stabilization Force in Mali (AFISMA). AFISMA is authorized to use force to support the Malian authorities in recovering areas in northern Mali under the control of armed groups. In replying to the Council, the Secretary-General emphasized that any support by the Organization to AFISMA would be provided subject to, and consistently with, the Human Rights Due Diligence Policy. In its subsequent resolution, the Council endorsed the Secretary-General's position, and emphasized that UN support to AFISMA must be consistent with IHL, human rights law and refugee law. Steps are now being taken to ensure that this is so with respect to disbursements from the trust fund which the Secretary-General has established, at the Council's request, to provide support for AFISMA. [Following the adoption of the Security Council resolution 2100, most AFISMA units will probably be re-hatted as UN forces on 1 July, when a new peacekeeping operation MINUSMA, will commence its military and police operations.

Gratifyingly, the Security Council, in its resolution 2093 of 6 March 2013 on Somalia, has again endorsed the Human Rights Due Diligence Policy by stipulating that the Organization's logistic support package to the African Union Mission to Somalia, AMISOM, must be delivered in a manner consistent with its requirements.

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The law of the sea continues to retain a prominent place in today's international legal order. 2012 was a busy one for the Division for Ocean Affairs and the Law of the Sea, as the world community commemorated the thirtieth anniversary of the Opening for Signature of the United Nations Convention on the Law of the Sea (UNCLOS). A series of events were

organized, including the holding of a panel discussion on 8 June 2012, coinciding with the World Oceans Day and the adoption of a declaration at the 22nd Meeting of States Parties to the UNCLOS. The Secretary-General also launched an oceans-focused initiative – the Oceans Compact: Healthy Oceans for Prosperity – in Yeosu on 12 August, at an international conference organized by the DOALOS. This initiative seeks, among other things, to strengthen United Nations system-wide coherence in the delivery of oceans-related mandates. To round off the year, the General Assembly in December held a high-level commemorative meeting. A publication entitled “UNCLOS at 30: Reflections”, with contributions from delegates to the Third Conference, some of whom are present here today, was also published.

These events took place against the background of the continuing regular activities of the DOALOS. These included the annual review, by the General Assembly, of ocean affairs and law of the sea issues, informal consultations on draft resolutions on oceans and the law of the sea, on sustainable fisheries and the work of the Ad Hoc Working Group of the Whole on the Regular Process for global reporting and assessment of the state of the marine environment, including socioeconomic aspects. This World Ocean Assessment is expected to be ready by the end of 2014.

Moreover, through the Ad Hoc Open-ended Informal Working Group of the General Assembly work has continued to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, including by taking a decision on the development of an international instrument under UNCLOS. The Working Group, preceded by two intercessional workshops on marine genetic

resources and on conservation and management tools, will meet this coming to August continue consideration of matters within its mandate.

In relation to the question of sustainable fisheries, the Outcome of the 2012 United Nations Conference on Sustainable Development (Rio+20), States made a number of significant commitments in relation to sustainable fisheries, including by recognizing the need to improve the conservation and sustainable use of marine fishery resources and by making specific commitments to restore fish stocks. New paragraphs to that effect have been incorporated in resolution 67/79.

On maritime security there continues to be been a considerable decrease in the incidents of piracy and armed robbery against ships, particularly off the coast of Somalia. We have witnessed States cooperating in the repression of piracy, in conformity with article 100 of UNCLOS. This cooperation has taken a variety of forms, including the conclusion of regional cooperation agreements, coordinated patrols of areas at high risk for piracy, sharing of evidence in piracy cases, handovers of suspected pirates for trial and post-trial transfers for imprisonment. We have also seen implementation of the articles 110 on the right of visit and article 105 on the seizure of pirate ships, as well as an increase in the prosecution of suspected pirates under universal jurisdiction. Despite recent trends, continued efforts by the international community are needed. For example many States still do not have domestic legislation on piracy which fully reflects the provisions of UNCLOS.

The Division has also continued to provide substantive servicing of the meetings of States Parties to the UNCLOS and the Commission on the Commission on the Limits of the Continental Shelf (CLCS), whose members

for the period 2012-2017 were elected at 22nd Meeting of States Parties in June this year. The workload of the Commission is quite significant, necessitating an increase to 21 weeks of meetings annually. In the past twelve months, it has received six new submissions bringing the total number of submissions to 65, as well as a revised submission and addenda to several other submissions.

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Let me now address the activities of the International Trade Law Division (ITLD), in Vienna. In 2012, United Nations Commission on International Trade Law (UNCITRAL) adopted two texts to provide guidance on the implementation of existing texts on procurement and arbitration: *The Guide to Enactment of the UNCITRAL Model Law on Public Procurement* and the *Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the revised 2010 UNCITRAL Arbitration Rules*. UNCITRAL was represented at the high-level meeting of the General Assembly on the rule of law at the national and international levels. The occasion provided a unique opportunity for the international community to consider a perspective not commonly associated with promotion of the rule of law, that is, from a commercial and trade point of view. It is noteworthy that the Declaration of that High-level meeting recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship, and commended the work of UNCITRAL in modernizing and harmonizing international trade law in that regard.

This year's UNCITRAL session, to be convened in Vienna in July will consider and finalize a number of texts reflecting recent developments in international trade. In the field of arbitration, the draft *UNCITRAL rules on transparency in treaty-based investor-State arbitration* will be finalized as an effort to ensure transparency in disputes arising under investment treaties. In addition, the draft *UNCITRAL Guide on the New York Convention* will be considered. In the field of security transactions, the draft *UNCITRAL technical legislative guide on the implementation of a security rights registry* aimed at assisting States in the establishment and operation of a general secured rights registry will be finalized. In the field of insolvency, the *Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency* will be revised to take into consideration issues relating principally to centre of main interests (COMI) that have emerged from recent jurisprudence, which will also be reflected in a revised edition of the *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*. The *UNCITRAL Legislative Guide on Insolvency Law* will also be extended to address directors' obligations in the period approaching insolvency.

UNCITRAL, through its Working Groups, is currently engaged in work on a number of other topics including online dispute resolution and electronic transferable records. At its upcoming session, the Commission will consider possible future work in the areas of public procurement, public-private partnerships, arbitration, microfinance, international contract law as well as commercial fraud.

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Turning now to the activities of the Treaty Section, as I have mentioned on previous occasions, the Secretary-General is depositary to

over 550 multilateral treaties. In recent months three more treaties have been deposited with the Secretary-General, namely (a) the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted in Seoul on 12 November 2012; (b) the Doha Amendment to the Kyoto Protocol, adopted on 8 December 2012; and (c) the Arms Trade Treaty, adopted by the General Assembly on 2 April 2013. It is the function of the Treaty Section to perform the depositary functions on behalf of the Secretary-General, as well as registration and publication of treaties and every international agreement in accordance with Article 102 of the Charter of the United Nations. Over the years, a considerable amount of treaty practice has developed. The Section routinely responds to requests from States and international organizations, including on matters concerning final clauses of treaties or draft final clauses to intergovernmental processes convened to draw up new treaties or amend existing treaties.

The wider participation in the multilateral treaties deposited with the Secretary-General is effectively promoted through treaty events. At last year's Treaty Event, 40 States undertook 86 treaty actions, of which 60 constituted instruments of ratification, acceptance or accession. This year's Event will take place from 24 to 26 September and from 30 September to 1 October 2013, during the general debate of the sixty-eighth session of the General Assembly. Forty-seven treaties covering the areas of human rights, rights of the child, refugees and stateless persons, international trade, terrorism, criminal matters, law of the sea, outer space, disarmament and privileges and immunities and the safety of United Nations personnel will be highlighted for this year's Event.

The Treaty Section promotes better knowledge of treaty law and practice as well as wider dissemination of treaty-related information, through the

provision of advice and assistance to States, specialized agencies, United Nations offices, treaty bodies and other entities; its United Nations Treaty Collection website and capacity-development activities. It organizes training seminars on treaty law and practice at Headquarters bi-annually, together with UNITAR, and workshops at the regional level. This year, a follow-up training seminar on treaty law and practice to the 2011 seminar in Colombia will be organized with the Government of Peru.

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We are living in a most difficult economic climate and, increasingly, the UN is not exempt from this. The UN General Assembly has mandated a three per cent reduction in the Organization's Regular Budget for the 2014-2015 biennium. There continues to be an urgent need to reflect more on how the Commission, as it seeks to accomplish its tasks, can increase its efficiency, effectiveness and productivity. Naturally, the duration of the Commission's sessions and whether these are single or split are critical factors to be considered.

The funding for the ILC proposed by the Secretary-General in 2014-2015 UN Regular Budget is not sufficient to meet the expenditures (travel and DSA of the members and the Secretariat) relating to servicing the meetings of the ILC in Geneva. Indeed, the level of resources contained in the 2014-2015 biennium will only cover split sessions of up to nine weeks in each of the next two years. This fact is pointed out in the budget document which will be presented to Member States. My Office will be drawing attention to this, including tomorrow when it meets with the Advisory Committee on Administrative and Budgetary Questions which makes recommendations to the General Assembly on budgetary matters.

All of us, including the Commission, need to seek creative ways of meeting our objectives if we are to continue to operate within the budgetary constraints.

Let me conclude my statement on a more personal note. As some of you are aware, I will be leaving my position as United Nations Legal Counsel this autumn to take up post here in Geneva as the Permanent Representative of Ireland to the United Nations. Since taking up duty at UNHQ in August 2008 I have had the privilege of interacting with so many dedicated individuals working in the advance of the ideals and values which the Organization stands for. It has been the most rewarding experience. As a lawyer, my annual visits with the Commission have constituted some of my cherished moments. I am sure that, as I make Geneva my new home soon, I will have an opportunity to continue to follow the important work of the Commission in the progressive development of international law and its codification. As I move over the other side, I will continue to be an advocate of the Commission's work.

The Office of Legal Affairs, together with your Secretariat, the Codification Division, will continue to do the utmost to serve, as always, with the highest standards of professionalism, competence, integrity, impartiality and independence.

Thank you very much.