

Statement by Ms. Patricia O'Brien,  
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**International Law Commission**

Geneva, 25 May 2011

Mr. Chairman,

Distinguished members of the International Law Commission,

Ladies and Gentlemen,

I am very happy to be here today. This is an opportunity to which I look forward every year. I am very mindful of the fact that this is the last year of the current quinquennium. This in itself poses the challenge of seeking to complete several topics on the current programme of work, while also providing an opportunity to reflect further on the future work so that the next Commission begins on a solid footing.

As in the past, I will use this occasion to bring to your attention a number of issues of a legal nature occurring inter-sessionally, which may bear on the work of the Commission. In this connection, I will first focus on matters concerning the Sixth Committee of the General Assembly.

I will then address the activities of the Office of the Legal Counsel, the Codification Division, the Division for Oceans Affairs and the Law of the Sea, the International Trade Law Division, and the Treaty Section.

**Matters concerning the Sixth Committee of the General Assembly**

Let me start with the first cluster of issues concerning the work of the Sixth Committee, focusing at the outset on Commission-related aspects. As in the past, the Sixth Committee devoted several meetings to the consideration of

your annual report. As is the tradition, this discussion remains the highlight of the Sixth Committee deliberations. The Sixth Committee continues to be appreciative of the contribution of the Commission to the progressive development of international law, and its codification. In particular, it recommended that the Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether written or as orally expressed in debates of the Sixth Committee. I am confident that you have had the opportunity to reflect on GA resolution 65/26, whose various provisions provide guidance for your work during the present session.

The Committee also had before it three items emanating from previous work of this Commission, namely (a) Responsibility of States for internationally wrongful acts; (b) Diplomatic Protection; and (c) Consideration of the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm. In all the three items, the attention since the Commission concluded its work has mainly been on the final form, in light of the recommendations of the Commission. As in previous years, no final dispositive action was taken in respect of any of these items; hence further examination of the issues, after a lag of three years, will take place during the sixty-eighth session of the General Assembly.

As regards, the item "Responsibility of States for internationally wrongful acts", the GA, in resolution 65/19, *inter alia*, decided to further examine the matter with a view to taking a decision, within the framework of a working group of the Sixth Committee, on the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.

Concerning the item, "Diplomatic protection", the GA, in resolution 65/27, *inter alia*, decided to further examine, within the framework of a working

group of the Sixth Committee, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the draft articles on diplomatic protection and to also identify any difference of opinion on the articles.

In relation to the item "Consideration of the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm", the GA, in resolution 65/28, *inter alia*, invited Governments to submit further comments on any future action, in particular on the form of the articles on prevention of transboundary harm from hazardous activities, and principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, bearing in mind the recommendations made by the Commission in that regard. Comments would be particularly important in two aspects, first in relation to the elaboration of a convention on the basis of the draft articles, and secondly, on any practice in relation to the application of the articles and principles. The Secretary-General was also requested to submit a compilation of decisions of international courts, tribunals and other bodies referring to the articles and the principles, thus following the practice obtaining in respect of State responsibility.

My final comment on Commission-related issues is to note that at the forthcoming session of the General Assembly, the Sixth Committee will take up the consideration of two items, which were topics of previous discussion in the Commission, namely "Nationality of natural persons in relation to the succession of States" and "The law of transboundary aquifers". In both cases, the question of the final form that the draft articles completed in 1999 and 2008, respectively, remains a key aspect of the discussion, in light of the recommendations of the Commission.

I will now turn to the other items on the agenda of the Sixth Committee. I will single out a number of items.

First, the question of “the scope and application of the principle of universal jurisdiction” has generated interest in recent years, resulting in the inclusion of the item in the GA agenda in 2008. The Sixth Committee in 2009 had before it a report of the Secretary-General prepared on the basis of information and comments received from governments. Moving forward, the GA, in resolution 65/33, invited member States to submit information and observations before 30 April 2011 on the scope and application of universal jurisdiction, including information on relevant applicable international treaties, their domestic legal rules and judicial practice. Such invitation has also been extended to observers, as appropriate. It is anticipated that the Sixth Committee will, at the sixty-sixth session of the GA, continue its consideration of the item, this without prejudice to the consideration of the topic and related issues in other forums of the UN. For this purpose, a working group of the Sixth Committee would be established to undertake a thorough discussion of the scope and application of universal jurisdiction. The Secretariat was requested to prepare for the working group a compilation of international treaties and decisions of international tribunals, which may be relevant to the principle of universal jurisdiction.

Secondly, the item “Measures to eliminate international terrorism” remains a crucial one for the Sixth Committee as the international community continues to take concerted efforts to combat international terrorism. The outstanding issues essentially concerning the exclusionary elements of the scope of application of the draft international convention on international terrorism, which have been under discussion since 2001, continue to occupy the minds of delegations. In 2010, in the context of a Working Group of the Sixth Committee and last month within an Ad Hoc Committee on terrorism, Member States continued to reflect further on the 2007 elements of a package submitted by the Coordinator of the draft comprehensive convention. Delegations continue to have differences of opinion on the way forward. Another attempt will be made in the Fall, in the context of a working group of the Sixth Committee. I am sure Mr. Perera who chairs both the

working group and the Ad Hoc Committee has a better feel of the prospects for the future.

Thirdly, the question of "Criminal accountability of UN officials and experts on mission". It will be recalled that in 2009, the GA included this item in the provisional agenda of its sixty-fifth session for reporting purposes, while deciding that it would continue its consideration of the substantive aspects of the topic, including the still open question of elaborating a legally binding instrument on the matter, in 2012. Accordingly at this session, the Committee only held a general debate, and GA resolution 65/20 is an update of previous resolutions and retains the reporting mechanism first established in resolution 62/63. I need not stress that the more general problem of gender violence and sexual exploitation and abuse, particularly in conflict zones remains of critical concern to the UN.

Fourthly, the "Administration of justice system at the United Nations." The UN Dispute Tribunal and the UN Appeals Tribunal, which were established on 1 July 2009, are now in their second year of operation.

To date, the UN Dispute Tribunal has issued more than 360 judgments, and the UN Appeals Tribunal more than 100 judgments. The judgments of the UN Appeals Tribunal have addressed fundamental issues such as the role of judicial review, the burden of proof for allegations of discrimination, whether an expectancy of renewal attaches to a fixed-term contract of employment, the use of testimony by anonymous witnesses, and the requirements for an award of compensation. While many of the judgments of the UN Appeals Tribunal have confirmed the jurisprudence of the former UN Administrative Tribunal, there have also been notable developments, which will have a significant impact on the development of the Organization's policies in matters of administration and management and the advisory role played by the Office of Legal Affairs in that regard.

The GA is expected to assess the operations of the new administration of justice system at its forthcoming Fall session, after having expressed the view last year that it was too early to undertake such assessment. In 2010, the Assembly also decided that the outstanding legal aspects, including the question of effective remedies for non-staff personnel, as well as the code of conduct for the judges of the UN Dispute Tribunal and the UN Appeals Tribunal, shall be continued in the coming Fall, in the framework of a working group of the Sixth Committee.

To conclude this cluster of issues, some few remarks on the “Rule of law at the national and international levels”. This continues to be a topical subject within the United Nations circles, where the overall coordination and coherence in the rule of law activities system-wide is a continuing challenge.

The debate in the Sixth Committee focused on the theme “Laws and practices of Member States in implementing international law”. In its resolution 65/32, the GA again reaffirms its role in encouraging the progressive development of international law and its codification, and invites once more the Commission to continue to comment, in its annual report, on its current role in promoting the rule of law. At the forthcoming session of the Assembly, the Sixth Committee will continue its consideration of the item by addressing the theme “Rule of law and transitional justice in conflict and post-conflict situations”. It will also finalize the modalities of the high-level meeting of the General Assembly on the rule of law that will be convened during the high-level segment of the sixty-seventh session next year.

Mr. Chairman

I would now like to update you on the work of the Office of Legal Affairs over the last twelve months, and will start with some of the issues that we have been working on in the Office of the Legal Counsel.

As you know, we recently submitted comments and observations to you on the draft Articles on Responsibility of International Organizations, as adopted by you on first reading. Recently, we have also been very busy responding to requests for advice concerning the role of UNOCI, the UN's peacekeeping operation in Côte d'Ivoire, as well as issues concerning the provision of humanitarian relief in Libya. And as you may be aware, there have been some major developments concerning transitional justice mechanisms, including in particular the residual mechanism of the International Tribunals for Rwanda and Yugoslavia. These are the areas that I will briefly address this morning concerning the work of the Office of the Legal Counsel.

### **Responsibility of International Organisations [RIO]**

Regarding the draft Articles on the Responsibility of International Organizations, I hope that our comments and observations, as forwarded to you in February this year, have been of assistance to you in your consideration of the draft articles and commentary. As you can imagine, this was a significant project in the work of our Office. In preparing our comments on the draft Articles, my Office faced the enormous task of reviewing 60 years of practice of the Organization against the principles as set forth in the draft Articles, as well as the explanations set forth in the commentary. As you will have seen from our comments, my Office undertook a thorough review of the practice of the Organization to examine the conformity of the draft Articles to our existing practice, - as well as to their propriety when no such practice exists. As you know, our research revealed that "the practice" in the field of international responsibility is very much limited in scope and subject matter, and relates, for the most part, to third-party claims in the context of peacekeeping operations.

## **International Peace and Security**

Following the genocide in Rwanda and Srebrenica, the Security Council has become more inclined to establish peacekeeping missions with increasingly robust and complex mandates and authorizing such missions, under Chapter VII, to use force beyond self-defence including to protect civilians under imminent threat of physical violence.

In this connection, this UN's Operation in Côte d'Ivoire (UNOCI) has recently been very topical, and over the last six months has raised a number of urgent legal issues. As you may know, UNOCI has been entrusted with a broad and complex mandate for both its civilian and military components.

Following the second round of the presidential elections in November last year, three legal issues came under particular international scrutiny: the first relating to UNOCI's certification mandate, the second relating to Côte d'Ivoire's representation in the UN, and the third relating to UNOCI's role in the armed conflict which ensued between the forces supporting the outgoing President and those loyal to the elected President.

### UNOCI's Certification Mandate

UNOCI was mandated to ensure that the electoral process in Côte d'Ivoire was open, free, fair and transparent, in accordance with international standards, at all stages of the electoral process, including the results of those elections. The legal basis for UNOCI's certification mandate derived from the Pretoria Agreements on the Peace Process in Côte d'Ivoire (the Pretoria Agreements), and the subsequent Declaration on the Implementation thereof which requested UN participation and assistance in the Ivorian elections. These agreements, and the role of the UN therein, were endorsed by the relevant organs of ECOWAS and the African Union as well as by the UN Security Council. In his statement of 3 December 2010, the SRSG certified

the result of the second round of the elections as announced by the Independent Electoral Commission (IEC) on 2 December 2010. The result announced by the IEC and certified by the SRSG was widely accepted by the international community including by the ECOWAS and the African Union as well as the Security Council and GA of the UN.

### Côte d'Ivoire's Representation in the United Nations

As former President Gbagbo refused to step aside after the election of President Ouattara, the issue of the representation of Côte d'Ivoire in the UN became increasingly contentious. In accordance with the established policy and practice of the UN, the Secretary-General put the matter before the Credentials Committee of the General Assembly in late December last year. In its deliberations, the Committee took note of the decision of the African Union to recognize the results proclaimed by the IEC and certified by UNOCI, and to recognize Mr. Ouattara as President Elect of Côte d'Ivoire. Accordingly, the Committee decided, by consensus, to accept the credentials of the representatives of Côte d'Ivoire presented by the President-Elect's Government. The GA ultimately approved the report of the Credentials Committee, including the decision to accept the credentials issued by President-Elect Ouattara's Government.

### **UNOCI's Role during the Armed Conflict**

In three successive resolutions the Security Council, acting under Chapter VII of the UN Charter, authorized UNOCI to use all necessary means to carry out its mandate, including the protection of civilians, within its capabilities and areas of deployment. UNOCI was also mandated to support, in coordination with the Ivorian authorities, the provision of security to the Government and other political stakeholders.

At the height of the armed conflict, and having obtained confirmation from the Office of Legal Affairs that it was acting within its mandate and subject to its rules of engagement, including the principles of international humanitarian law, UNOCI increasingly resorted to proactive and deadly force to ensure the protection of civilians, especially to prevent the use of heavy weapons against the civilian population.

UNOCI was also called upon to evacuate the nationals of a number of Member States from the country. While UNOCI was not obliged to do so, it acceded to these requests from Member States on a voluntary and exceptional basis, within its capabilities and resources, and without prejudice to the priority it was obliged to give to the evacuation of UN and associated personnel.

UNOCI was also called upon to provide protection to President Ouattara after the outbreak of hostilities. With the end of major hostilities and following the capture of former President Gbagbo and his detention by the Ivorian Government, UNOCI is now providing security, at the request of the Ouattara Government, to the former President, members of his family and former members of his Government.

Finally, UNOCI was also called upon to provide refuge to former combatants defecting from Gbagbo's forces. In accordance with advice of the Office of Legal Affairs and the Office of the Military Adviser, the defecting soldiers were disarmed and encamped outside the UN premises taking into account (i) the inviolability of UNOCI premises; (ii) the best interests of the UNOCI mission, including the best use of its capabilities and resources; (iii) the need to ensure the safety and security of UN personnel and other humanitarian personnel; as well as (iv) the priority accorded to the protection of civilians under imminent threat of physical violence.

## **Libya**

Similarly, events in Libya have also raised a number of interesting legal issues – ranging from questions regarding access to Libyan territory for humanitarian purposes, both before and after the adoption of Security Council resolution 1973; to action by the Security Council under the doctrine of the “responsibility to protect” – in particular, what measures could be considered “necessary” to protect civilians; to issues regarding the representation of Libya at the UN.

### Humanitarian access

Questions of humanitarian access were raised with the Office of Legal Affairs both before and after the adoption of Security Council resolution 1973. Prior to the adoption of the resolution we considered the question of consent to humanitarian access, and more particularly, whose consent (the State’s or the rebels’) as a condition, in the absence of a mandate, for humanitarian access. However, with the adoption of resolution 1973, we considered that the combined effect of the Council’s determination to ensure the rapid and unimpeded passage of humanitarian assistance, its authorization of “all necessary measures to protect civilians”, and the exemption of humanitarian flights from the ban of flights, led to the conclusion that humanitarian operations have been mandated under Chapter VII of the Charter, thus dispensing with the need for Libya’s consent to the presence of these operations on its territory.

### R2P and what measures are considered “necessary” to that effect

Resolutions 1970 and 1973 are the first fully-fledged so-called “R2P resolutions”. They recognize the responsibility of the Libyan authorities to protect the Libyan population. They identify the wide-spread and systematic attacks in Libya as crimes against humanity, and thus frames them within

the “R2P crimes”. The historical background of the resolutions is a testimony to the many diplomatic and humanitarian measures taken by States to protect civilians short of use of force, and finally, in the words of paragraph 139 of the Outcome Summit resolution, member States have undertaken a collective action in accordance with Chapter VII, through the Security Council. The Security Council authorization “to take all necessary measures ... to protect civilians and civilian areas” is the culmination of the R2P doctrine.

Regarding the question about what measures could be considered “necessary” to protect civilians, in resolution 1973 the Security Council “authorizes member States to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding foreign occupation force of any form on any part of Libyan territory”. The scope of the authorization given to member States is broad. It would include any and all measures, excluding foreign occupation. It is also independent of and in addition to the authorization (under paragraph 6) to establish a no-fly zone. It is for Member States, however, to determine the measures they may deem necessary to protect civilians, depending on the circumstances of the country and its civilian population and the nature of the threat to their physical well-being.

### Credentials

The issue of the credentials of Libya’s Permanent Representative to the UN also raised interesting issues. By his letter of 27 February 2011, the Libyan Foreign Minister informed the Secretary-General that Libya's Permanent Representative and Deputy Permanent Representative to the United Nations were “no longer authorized to represent or speak on behalf of the Libyan Arab Jamahiriya at the United Nations or any of its subsidiary

organizations". The Foreign Minister also followed up with a similar letter with regard to fifteen other Libyan diplomats.

As the Foreign Minister remained an accredited representative of Libya to the UN, and in the absence of any recommendation from an inter-governmental body of the UN, we advised the Secretariat to act upon the Foreign Minister's communications. Consequently, as these diplomats had been recalled they could not, under the rules of procedure of the GA, perform any official functions on Libya's behalf such as speaking from the Libyan seat or exercising the right to vote in the GA. Consequently, their diplomatic passes were replaced with courtesy "visitors' passes" issued at the discretion of the Secretary-General. This would allow them access to UN premises, but would not allow them to perform official functions on behalf of the Government.

Subsequently we received several communications from the "Transitional National Council of Libya" seeking to reinstate the diplomats that had been recalled. These communications were forwarded to the Credentials Committee. In the absence of any recommendation from an inter-governmental body the Secretariat could not act upon these communications as they were not from an accredited Libyan representative. Should Libya seek to appoint a new Permanent Representative, then in order to be able to perform official functions he/she should present credentials to the Secretary-General in New York in person and also have the appropriate visa status.

### **Transitional Justice Mechanisms**

This now brings me to briefly touch on developments concerning transitional justice mechanisms. As you know, my Office has a long history of involvement not only in the establishment, but also the day-to-day running, of range of international transitional justice mechanisms.

As you know, the 1990s and the early 2000s were historic periods in international criminal justice, when new international criminal tribunals were established to ensure accountability for genocide, war crimes and crimes against humanity. Having made so much progress in fulfilling their mandates, the *ad hoc* international criminal tribunals and the Special Court for Sierra Leone are now completing their work and preparing to close. However, it is essential that some of their functions continue post-closure. These include witness protection, sentence enforcement, management of archives, review of sentences and contempt proceedings. It is generally accepted that these functions will be carried out by small and efficient international residual mechanisms. As such, the next few years will, I suggest, be equally historic, as the UN and its Member States seek to establish unprecedented structures in the architecture of international criminal justice. My Office has the privilege of being at the centre of this fascinating and pioneering work.

After four years of negotiations, the Security Council adopted on 22 December 2010 resolution 1966 (2010), which establishes the Residual Mechanism for the ICTY and ICTR. My Office is now leading in the implementation of this resolution so that the Residual Mechanism can commence functioning on 1 July 2012. Critically, the Residual Mechanism will continue, *inter alia*, the jurisdiction of the two Tribunals to try fugitives. The Council has established a novel structure. The Residual Mechanism is a single new subsidiary organ of the Security Council, not a merged continuation of the two Tribunals, yet it will continue their jurisdictions. The Mechanism will have branches in The Hague and Arusha, but will have a single President, Prosecutor and Registrar.

The Residual Special Court for Sierra Leone has been established through an agreement between the UN and the Government of Sierra Leone, which was signed in July 2010. It will commence functioning immediately

when the Special Court terminates following the conclusion of any appeal in the Charles Taylor case. Its functions are similar to those of the ICTY and ICTR Residual Mechanism, but there is unlikely to be any trial of a fugitive. The case of the one remaining fugitive indictee, who is believed to be dead, will be transferred to a competent national jurisdiction either by the Special Court or Residual Special Court. The Residual Special Court will be based in The Hague, with a sub-office in Sierra Leone for witness protection and other functions. Its archives have been moved to the National Archives of the Netherlands in The Hague, which also houses the archives of the Nuremberg Tribunal.

## **ICTY/ICTR**

The International Criminal Tribunals for the former Yugoslavia and for Rwanda continue to work towards the goals set out in their completion strategies. It is unclear at this stage exactly when the Tribunals will complete all trials and appeals, but the Security Council has urged them to complete all work by the end of 2014. This means that there will be a substantial period of overlap starting with the commencement of the Residual Mechanism in July 2012 until the completion of the Tribunals' work. The Security Council has laid down a number of transitional provisions which will determine the respective jurisdictions and functions of the Tribunals and the Residual Mechanism during this period.

## **Special Court for Sierra Leone**

The trial of the former Liberian President Charles Taylor in The Hague is now the only remaining case on the docket of the Special Court. The trial proceedings have been completed and the Trial Chamber is now deliberating on the judgment. In the event of an appeal, it is expected that the proceedings would conclude around May next year. This means that the Special Court will be the first of the international criminal tribunals to

complete its work; and its residual mechanism will be the first to start functioning.

In the meantime, the two Tribunals are continuing their work, as evidenced by the conviction last month of two Croatian military leaders for war crimes in 1995 and the conviction earlier this month of the former commander of Rwanda's army for his role in that country's genocide in 1994. While many years have passed since these crimes were committed, the fight against impunity continues.

### **Extraordinary Chambers in the Courts of Cambodia - ECCC**

Last July, the Court completed its first trial. It convicted Kaing Guek Eav, alias Duch, of crimes against humanity, grave breaches of the Geneva Conventions, and serious offences under Cambodian national law. Duch was the Secretary of the S21 detention centre in Phnom Penh, where records show that more than 12,000 people were detained and executed, although the actual numbers are believed to have been considerably greater. Duch was sentenced to 35 years of imprisonment.

One of the really striking successes of the ECCC is the impact it has had on Cambodian society. More than 31,000 Cambodians visited the ECCC to witness the proceedings against Duch, many travelling long distances from the provinces and staying overnight. This number is believed to be higher than for any of the other UN-assisted tribunals. It is a forceful reminder of the importance of pursuing justice in the country where atrocities have taken place wherever possible. Further, there is strong potential for the transfer of capacity and international standards to the national courts since the ECCC is embedded in Cambodia's national court structure and jurisdiction, with participation by international and Cambodian judges, prosecutors and court administrators.

The Court is now preparing for the trial in the second case involving four senior leaders of the former Khmer Rouge regime. In this respect the Court recently announced that it will on June 27 hold an initial hearing for the four regime leaders, who are currently in detention.

### **Special Tribunal for Lebanon**

On 17 February this year, the Prosecutor filed an indictment with the Pre-Trial Judge, which remains confidential. Despite much speculation in Lebanon and the region, we have no information about the proposed indictee or indictees, nor the charges. The Special Tribunal is based on civil law procedures, under which the Pre-Trial Judge is now considering confirmation of the indictment. We have no firm information on the timing of such confirmation.

The mandate of the Special Tribunal runs until 29 February 2012, and it remains to be seen to what extent that may be extended to enable the Special Tribunal to complete its work.

### **Panel of Experts on Sri Lanka**

The Secretary-General's Panel of Experts on Sri Lanka was established pursuant to a commitment made in a Joint Statement of the Secretary-General and the President of Sri Lanka on 23 May 2009. In that Joint Statement the Secretary-General underlined the importance of an accountability process to address allegations of violations of international humanitarian law and human rights law committed during the last leg of the military operations between the Government and the Liberation Tigers of Tamil Eelam.

Unlike other commissions of inquiry, the Panel was not an investigative or fact-finding body. Rather it was an advisory body tasked with advising the

Secretary-General on the modalities, applicable international standards, and comparative experience with regard to accountability processes in order to address alleged violations of international human rights and humanitarian law committed during the military operations. The report of the Panel was released on 25 April 2011, and made a number of recommendations to the Government of Sri Lanka, the Secretary-General and the UN. The Panel's most important recommendation for the Government was the conduct of genuine investigations into alleged violations committed by both sides.

The three main recommendations directed to the Secretary-General and the United Nations include the following:

- (a) The establishment of an "independent international mechanism" to monitor and assess the extent to which the Government is carrying out an effective domestic accountability process; conduct investigations independently into the alleged violations; and collect and safeguard for future use information provided to it, relevant to accountability for the final stages of the war.
- (b) The conduct of a comprehensive review of actions by the UN system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates.
- (c) The reconsideration by the Human Rights Council of its May 2009 Special Session Resolution regarding Sri Lanka in light of its report.

The recommendation to establish yet another independent commission of investigation raises a number of difficulties, both of a legal and political nature. In the recent practice of the UN, commissions of inquiry have been established either under a mandate from a UN organ, or at the request of the country concerned. In either case the cooperation of the Government is a necessary condition for the successful conduct of an investigation in its territory, and for the implementation of its recommendations. In the

absence of both a mandate and the consent of the Government – as is likely to be the case in Sri Lanka – the establishment of a commission of inquiry to conduct investigations within Sri Lanka is virtually impossible.

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Let me now turn to the activities of the **Codification Division**, which apart from being the substantive Secretariat of the Commission, the Sixth Committee and other standing and ad hoc committees established within the context of the Sixth Committee, is responsible for implementing the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, an item which has been on the agenda of the Assembly from the 60s. In order to respond to increasing demand for international law training, the Codification Division has strengthened its face-to-face training activities under the Programme, with which many of you are familiar. These measures have resulted in the award of more fellowships under the International Law Fellowship Programme, which is conducted annually in The Hague, and the organization of Regional Courses in International Law. I am pleased to inform you that in the last six months, two such Regional Courses were organized, one for Asia and one for Africa. There are also ongoing discussions to organize a Regional Course in Latin America and the Caribbean.

To further expand international law training and research opportunities for lawyers in developing countries, the **UN Audiovisual Library of International Law**, created by the Codification Division, continues to be expanded with new lectures and research material. Since its launch in October 2008, the Audiovisual Library has been accessed in 191 Member States.

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Mr. Chairman,

Allow me now to address the work of the Division for Ocean Affairs and the Law of the Sea (DOALOS). The Division continues to support the uniform and consistent application of the UN Convention on the Law of the Sea, its Implementing Agreements and other relevant agreements and instruments. It also continues to assist the GA in its annual review of ocean affairs and law of the sea issues, as well as on other developments relating to the implementation of the Convention.

Let me highlight a number of developments. First, last December, the GA, in its resolution 65/37, decided that the Regular Process for global reporting and assessment of the state of the marine environment, including socio-economic aspects, was to be accountable to the General Assembly. The GA decided that the Regular Process was to be intergovernmental in nature and guided by international law, including the Convention and other applicable international instruments. In addition, the GA established a group of experts as an integral part of the Regular Process. The deadline for the first integrated assessment of the state of the marine environment, to be prepared by the Group of Experts, is set for 2014.

Second, in the context of fisheries, the resumed Review Conference on the United Nations Fish Stocks Agreement was held in May 2010 to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks. The Conference also reviewed the implementation of the recommendations adopted at the 2006 Review Conference. Additional recommendations were adopted, including a recommendation that the Informal Consultations of States Parties to the Agreement should continue and that the Agreement should be kept under review through the resumption of the Review Conference.

In 2011, the GA will conduct a further review of the actions taken by States and regional fisheries management organizations and arrangements in response to resolutions 61/105 and 64/72 on the impacts of bottom fishing on vulnerable marine ecosystems. In preparation for the review, the Secretary-General will convene a two-day workshop on 15 and 16 September later in the year to discuss implementation of those resolutions.

Third, DOALOS continues to provide secretariat servicing to the Commission on the Limits of the Continental Shelf, whose workload is now considerable.

In the past 8 months, the Commission has received four new submissions from Bangladesh, Denmark, Maldives and Mozambique, bringing the total number of submissions to 55. Moreover, there are at least 43 additional potential submissions, as indicated in the preliminary information transmitted by coastal States to the Secretary-General.

My fourth point will be a brief comment on the maritime zones established by UNCLOS. As you know, the Secretary-General performs functions regarding the deposit of charts or lists of geographical coordinates in relation to straight and archipelagic baselines and the outer limits of the territorial sea, the exclusive economic zone and the continental shelf. Since April last year, such deposits have been made by Vanuatu and Lebanon. In total, 53 States have deposited information pertaining to the limits of their maritime zones, including the lines of delimitation. The Secretary-General gives due publicity to such deposits by issuing Maritime Zone Notifications.

My final comments on this cluster relate to piracy. Over the past year, piracy off the coast of Somalia has continued to threaten the lives of seafarers, the safety and security of international navigation and the stability of the region. The Office of Legal Affairs has been working in a number of fora to assist States in addressing the legal aspects for the repression of piracy under international law. While the Office has continued to provide information and

advice to States on a broad range of legal issues, our work over the past year has focused on two principal areas, namely (a) possible international mechanisms for the prosecution of suspected pirates and (b) national legislation on piracy.

With regard to international mechanisms, last year, the Office of Legal Affairs, pursuant to a request of the Security Council in its resolution 1918 (2010), prepared a report of the Secretary-General on possible options to further the aim of prosecuting and punishing persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia (S/2010/394). The report identified seven possible options, ranging from the enhancement of UN assistance to building the capacity of regional States to prosecute and punish persons responsible for acts of piracy, on the one hand, to the establishment of an international tribunal pursuant to a Security Council resolution, on the other.

Following the initial consideration of the Secretary-General's report by the Security Council last July, the Secretary-General appointed Mr. Jack Lang (France) as his Special Advisor on Legal Issues related to Piracy off the Coast of Somalia. After undertaking wide-ranging consultations, Mr. Lang submitted to the Secretary-General a comprehensive report with 25 recommendations addressing a host of legal, political, and socio-economic issues (S/2011/30). Mr. Lang proposed the establishment of two Special Courts on piracy, respectively, located in Puntland and Somaliland, and an extraterritorial Somali Special Court to be temporarily located in a neighbouring country. The proposal of a three-part system for Somali Special Piracy Courts incorporates two of the options set forth in the Secretary-General's report (S/2010/394). Mr. Lang's recommendations are currently under consideration by Member States in the Security Council and are also being discussed in the Contact Group on Piracy off the Coast of Somalia.

Concerning national legislation on piracy, DOALOS has been cooperating with the International Maritime Organization and the United Nations Office on Drugs and Crime on two important initiatives to assist States to adopt new legislation or to review and possibly update their existing national legislation. In its resolution 1950 (2010), the Security Council called on all States to criminalize piracy under their national legislation.

The first initiative involves making publicly available on the DOALOS website a compilation of national legislation on piracy provided by States to DOALOS and IMO. The second initiative involved the preparation of three studies by the three entities on the elements of national legislation on piracy under relevant international legal instruments. These studies were presented to the Legal Committee of IMO at its 98th session in April 2011.

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Let me now turn to the activities of the **International Trade Law Division** (ITLD) in Vienna which, as you are aware, serves as the substantive secretariat of the United Nations Commission on International Trade Law (UNCITRAL).

2010 was a busy year for the UNCITRAL. It adopted three important texts reflecting recent developments in international trade law, namely (a) the UNCITRAL Arbitration Rules, as revised to reflect changes in arbitral practice since the adoption of the original version in 1976; (b) the Supplement on Security Rights in Intellectual Property, complementing the UNCITRAL Legislative Guide on Secured Transactions, and addressing the need to make secured credit more available to intellectual property owners and other right holders; and (c) the UNCITRAL Legislative Guide on Insolvency Law, which was further developed to provide timely guidance on how to develop and improve the treatment of enterprise groups in insolvency.

The Commission, through its Working Groups, is now engaged in work on various new topics, including transparency in treaty-based investor-State arbitration, online dispute resolution and registration of security rights in movable assets.

At its forty-fourth session, to be convened in Vienna soon from 27 June to 8 July, the Commission is expected to consider and finalize the revised version of the 1994 UNCITRAL Model Law on Public Procurement, to reflect the experience gained in its usage and new practices, in particular, those resulting from the use of electronic communications. The Commission will also consider possible future work in the areas of e-commerce and microfinance, as well as its role in promoting the rule of law at the national and international levels.

Work intended to promote UNCITRAL texts to ensure uniform interpretation and application of UNCITRAL texts, as well as effective implementation, continues to be part of the activities of the Division. Thus, it publishes digests of case law and operates "CLOUT", a system for collecting and disseminating information on court decisions and arbitral awards relating to UNCITRAL texts. It also takes part in various technical assistance activities and coordinates closely with relevant international organizations.

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I will now make some observations on the activities of the Treaty Section. In the past year, the Section continues to perform the depositary functions on behalf of the Secretary-General, as well as the registration and publication functions mandated by Article 102 of the Charter of the United Nations.

The Secretary-General is depositary for over 550 treaties. In the past year, five new multilateral treaties were received for deposit, as well as two amendments to the Rome Statute of the International Criminal Court.

This year, the annual treaty event will take place from 20 to 22 and on 26 and 27 September during the general debate of the sixty-sixth session of the General Assembly. As in previous years, this event provides a distinct opportunity for States to participate in the multilateral treaty framework.

The Treaty Section is also involved in the provision of training to Member States and international organizations at the regional level and at Headquarters on treaty law and practice, as well as the implementation of treaty obligations in collaboration with other UN partners. In October 2010, the Treaty Section organized in Jakarta, in collaboration with the Government of Indonesia and the Asian-African Legal Consultative Organization, a Regional Training on Treaty Law and Practice. This year, training courses, organized jointly with UNITAR, will be held at Headquarters and regional training courses are tentatively planned for the Commonwealth of Independent States, the Association of Southeast Asian Nations (ASEAN) and in Central and South America.

Assisting States in the submission of treaties for registration pursuant to Article 102 of the Charter is also a key component of the Section's training activities. While there has been a steady increase over the years in the number of treaties and actions submitted for registration by Member States - the current annual average is 2000 treaties and treaty actions - the Treaty Section is aware that the number of treaties it has received does not reflect the actual number of treaties in force.

The Treaty Section has also been continuing its efforts to enhance the efficiency of the registration and publication processes through increased automation. In October last year, the Treaty Section completed a major upgrade of its Treaty Information and Publishing System in order to enhance the desktop publishing of the *United Nations Treaty Series* with the objective of speeding up their availability in hard copy and electronically. At the end of 2010, the Treaty Section had submitted 73 volumes for printing. The web-

publishing procedures have also been further enhanced with a view to facilitating the electronic availability of authentic texts of treaties shortly after their registration and a brief editorial review.

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I am very conscious that this is the last year of the current quinquennium for the Commission. It will no doubt be a busy session as you seek to conclude some of the topics on the current programme of work. It will be my hope that some time will be devoted to a reflection of how the Commission, as it continues its important work in the progressive development of international law, and its codification, can maintain its efficiency, effectiveness and productivity with reduced resources at its disposal.

We are living in extraordinarily difficult economic times. Member States from all regions are facing serious financial pressures. In March, the Secretary-General requested all Departments to reduce by at least three per cent their outline figure for the 2012-2013 biennium. He spoke of an emergency situation where Member States are in serious financial distress and that the UN should not take anything for granted. He said that we cannot assume business as usual and added that we need to change our mentality in this regard.

Since then, the Secretary-General has launched the project of UN Strengthening and Reform which aims to ensure that the Organisation will deliver more and contain costs in the long-term. He has asked each head of Department to review all processes in their programme of work so that we achieve maximum effectiveness and demonstrate strong self-discipline. All of us, including the Commission, will need to seek creative ways of meeting our objectives if we are to continue to operate within the budgetary constraints.

The general guidance and orientation in these reform efforts, among other things, identifies three relevant areas, namely the duration of meetings; secondly, possible recourse to on-line publications, and, thirdly, reduction in the volume of parliamentary documentation. This will obviously have a bearing on the work of the Commission, particularly on the duration of its sessions, and the consequent impact on whether or not there should be split sessions, as well as the curtailment of summary records of debates of the Commission.

Members of the Commission are aware of the limitations on budgetary growth at the UN during the past few biennia. It has been costing more and more US dollars to make payments in Swiss Francs in respect of ILC expenditures. In recent years we have managed to overcome such shortfalls - of between \$100,000 and \$200,000 - by taking funds from other areas of the overall budgetary allocations made to the Office of Legal Affairs. For the 2010-2011 biennium, it is estimated that the Office of Legal Affairs will have to find approximately \$550,000 from other areas of our budget to fund the shortfalls. This is a considerable sum of money for a relatively small Department. As I mentioned here in 2009, the scope to alleviate shortfalls is being reduced all the time, while the shortfalls have been increasing.

In preparing budget proposals for 2012-2013 and to address the Secretary-General's subsequent request for a reduction of at least three per cent in our outline figure, programme managers were under instructions to reduce the overall budget of the Organisation. This instruction meant that we were unable to meet the ILC cost estimates provided to us by the UN Office in Geneva.

I raise these issues to bring to your attention the intense focus of the Secretary-General on them and in the hope that the Commission will take them into account in its discussions. I wish to assure you all, that the

Commission, in its noble endeavours, can, as always, count on the support of the Office of Legal Affairs.

Thank you very much.