UNITED NATIONS
OFFICE OF LEGAL AFFAIRS

International Law Commission

Statement

by

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

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Mr. Chair,

Distinguished members of the International Law Commission,

Ladies and gentlemen,

We are meeting at this session in challenging times. After more than one year of the Coronavirus pandemic, it remains a difficult period for humanity. The disruption to our daily lives has been enormous, and the global health and economic toll, unfathomable. The effects will be felt for many years to come. Hopefully, we are better for it as a community of nations than before. The pandemic has demonstrated that we are a global community that has to look out for one another. As Secretary-General António Guterres said on 18 June 2021 as he took the oath for the second term, "the pandemic has revealed our shared vulnerability, our inter-connectedness and the absolute need for collective action. We feel a new momentum

everywhere for an unequivocal commitment to come together to chart a course towards a better future."

Remarkably, over the last year or more, the work of the United Nations has continued unabated. We in the Office of Legal Affairs are proud to have fulfilled all of our mandated tasks without interruption. I commend the Commission for meeting in hybrid form this year to continue its important work, and I congratulate the Chair, the Bureau, all of the members of the Commission and the Secretariat for the positive and determined spirit in which the session has been planned and is progressing. Mr. Chair, I congratulate you and your bureau on the assumption of the leadership of the Commission in these challenging circumstances while also paying tribute to the previous bureau led by Mr. Pavel Šturma.

Like two years ago, I address you via video from New York. I convey to you all, the warm greetings of the Secretary General and best wishes for a successful session. The past year or so has reaffirmed the importance of international cooperation and the rule of law. Your work continues to be crucial and it is my hope that, as you advance in your work, some reflections will be made as to how the Commission can contribute further to the challenges of modern life.

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Distinguished Members of the International Law Commission

I will continue to follow the tradition of providing you with an overview of the activities of the Office of Legal Affairs, which provides centralized legal services to the Organization. I last briefed you in 2019 and a lot has happened since then.

I will start with the Codification Division.

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[COD]

Mr. Chair,

Even though the activities surrounding the seventieth anniversary of the International Law Commission are three years past, the work of the Codification Division concerning the completion of anniversary publications continued, leading to the issuance of two publications which I am told have been shared with members.

Since 2019, the Sixth Committee has been convened in the context of the seventy-fourth and fifth sessions of the General Assembly, and the Codification Division provided substantive servicing as it has done in years before. The convening of the latter session was particularly challenging as it was in the middle of the pandemic and most of the work had to be done either remotely or conducted under strict COVID mitigation measures, including delegations being spread over three conference rooms instead of one. Despite this, commemorative events on the

seventy-fifth anniversary of our United Nations were convened successfully, and provided the space for meaningful reflection of the United Nations achievements, and its prospects for the future.

The Committee held its sessions from 7 October to 20 November 2019 and 5 October to 20 November 2020. On both occasions, the Committee maintained its tradition of adopting its resolutions and decisions, without a vote.

In relation to the work of the Commission, the Committee was able to consider your 2019 report, and due to the pandemic, to make the necessary arrangements, through the General Assembly, for the postponement of the 72nd session to this year. The participation of the incoming Bureau of the Commission in the informal consultations among delegations in New York in the lead up to the decision was invaluable.

The Committee has also continued in the past two sessions to consider items, which have emerged from topics that were on the Commission's agenda. The Committee in the last two sessions has had before it the item "crimes against humanity" and remains seized and will thus continue to examine this year the recommendation that the Commission made in its 2019 report for the convening of a conference to elaborate a convention on the basis of the text prepared by the Commission. The Committee also had an opportunity to consider in 2019 four other former ILC items, namely "responsibility of States for internationally wrongful acts"; "diplomatic protection"; "consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm"; and "the law of transboundary aquifers". On all these items, the Committee essentially deferred consideration to future sessions.

In 2020 the Committee reverted to the consideration of the "protection of persons in the event of disasters", "responsibility of international organizations" and "expulsion of aliens". Again, in all three, the items were deferred to future sessions.

The Codification Division has continued to implement the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The Programme of Assistance remains a priority for Member States, and the Organization, as a capacity-building pillar in international law and the promotion of the rule of law. Unfortunately, since the completion of the Regional Course for Africa in Ethiopia held in early 2020, all the in-person training programmes, namely the Regional Course for Latin America and the Caribbean in Chile, the International Law Fellowship Programme in The Hague, and the Regional Course for Asia-Pacific in Bangkok were cancelled due to the outbreak and risks related to the COVID-19 pandemic. In the interim, with a view to supporting capacity-building in international law for developing countries and countries with emerging economies, a number of projects have been developed and implemented. The Codification Division designed a self-paced remote curriculum, in English and in French, which it shared with all applicants to the training programmes; online Regional Workshops have been organized on specific topics of interest to the region in question; and new continuing education initiatives for alumni of the training programmes have been successfully conducted. The Programme of Assistance remains indebted to those members of the Commission who continue to devote their time and expertise to assist in shaping the future of young international lawyers from developing countries and from countries with emerging economies.

The United Nations Audiovisual Library of International Law, an online training resource available world-wide free of charge on the Internet, forms another

component of the Programme of Assistance. Here too, members – present and former – have made significant contributions by recording lectures, drafting introductory notes to legal instruments and assisting in developing its Research Library. I am very grateful for such generous contributions.

As you may recall, the podcast component of the Library was launched a couple of years ago which made all video lectures available in audio files. The podcasts have been a great success in facilitating access to the Library generally, and specifically in regions where access to the videos proved difficult. Such access has been particularly relevant under the circumstances of the pandemic.

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[OLC]

Mr. Chair,

I will now move on and update you on the activities of the Office of the Legal Counsel, which continues to deal with a variety of legal questions. Once again, this has been a very busy period for the Office. The Office has continued to address a wide range of issues of public international law. I will address two aspects.

[Accountability]

The area of accountability has seen important developments in recent years, both with regard to the judicial and to the non-judicial international accountability mechanisms that the Office supports.

In 2020, the International Residual Mechanism for Criminal Tribunals marked the tenth anniversary of its establishment. Like its predecessors, the work of the Residual Mechanism over these past years has been significant in helping dispel the notion that crimes such as genocide, war crimes and crimes against humanity can forever remain beyond the reach of international law. Let me quickly touch on some of the most recent developments.

On 8 June, the Mechanism rendered the appeal judgment in one of the major ICTY cases, upholding the verdict against General Ratko Mladić, bringing those long-running proceedings to an end. Mr. Mladić, who is one of the highest-ranking officials to be tried by the ICTY and by the Mechanism, was convicted of genocide in Srebrenica, crimes against humanity, and violations of the laws or customs of war and was sentenced to life imprisonment. The Residual Mechanisms issued two additional judgments during the month of June alone. On 25 June, it delivered its judgment in the multi-accused contempt trial, formerly known as *Prosecutor v. Maximilien Turinabo et al.*, which, following the death of Mr. Turinabo, is now named *Prosecutor v. Anselme Nzabonimpa et al.*, convicting four of the five remaining accused for contempt, primarily in relation to witness interference. On 30 June, in the first retrial held before the Residual Mechanism, the Trial Chamber convicted former senior Serbian security officials, Messrs. Stanišić and Simatović, for aiding and abetting crimes against humanity and violations of the laws or customs of war committed by Serb forces in Bosnia and Herzegovina in April 1992. These proceedings commenced in 2017, after the Appeals Chamber of the ICTY had quashed the Trial Chambers' acquittal of the two accused and ordered a retrial on all counts of the operative indictment. Another noteworthy development is the pre-trial proceedings that began last year in the case

of *Félicien Kabuga,* following his arrest in France in May 2020 after some 23 years as a fugitive.

Other tribunals achieved milestones in their work. At the Special Tribunal for Lebanon, in August 2020, the Trial Chamber issued its judgment in the main case, unanimously finding Mr. Salim Jamil Ayyash, who was tried *in absentia*, guilty as a co-perpetrator of all five counts he was charged with, including conspiracy aimed at committing a terrorist act, committing a terrorist act, and intentional and attempted intentional homicide. The other three defendants were acquitted. On 11 December 2020, the Trial Chamber unanimously sentenced Mr. Ayyash to life imprisonment. Earlier this year, the Appeal Chamber ruled that the assigned Defence Counsel for Mr. Ayyash has no standing to appeal the trial judgment issued *in absentia*. The Chamber noted that this is not prejudicial to the convicted person since the Tribunal's framework offers safeguards in the form of a general right to retrial, or an appeal in the event that the convicted person waives in writing his right to retrial.

At the Extraordinary Chambers in the Courts of Cambodia (ECCC), after the issuance of separate and conflicting closing orders in Case 004/02 against Ao An, the Pre-Trial Chamber unanimously declared "that the Co-Investigating Judges' issuance of the Two Conflicting Closing Orders was illegal" and that the Chamber had not assembled the necessary affirmative vote of at least four judges for a decision based on common reasoning on the merits. On 10 August 2020, the Supreme Court Chamber stated that the case against Ao An was terminated, holding that the Pre-Trial Chamber's unanimous finding meant that neither closing order was valid.

In Case 003 against Meas Muth, where there are also separate and conflicting closing orders, the Pre-Trial Chamber again unanimously found the issuance of two closing orders illegal, but in their attached opinions, the judges set out different considerations. The national judges took the view that both closing orders are of equal value and are valid (which was not the case in Case 004/02). They opined that the case should nevertheless be archived as one judge's act should not prevail over another, taking into account also the principle of presumed innocence of the accused. The international judges opined that only the indictment was valid, finding the dismissal order to be null and void, and that the case should therefore be forwarded to the Trial Chamber. The Office of Co-Investigating Judges has subsequently rejected a request by the international co-prosecutor to forward the case to the Trial Chamber. The latest development in this case is that the international co-prosecutor has notified the Pre-Trial Chamber that she will file a request that it resolve this judicial limbo by issuing a decision to conclude the pre-trial stage of the proceedings in Case 003 in accordance with the Pre-Trial Chamber's own findings in its considerations and the ECCC legal framework, which, in her opinion, requires that the case proceed to trial.

Since I last addressed the Commission, the three non-judicial accountability mechanisms, namely the International, Impartial and Independent Mechanism on Syria, the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL, and the Independent Investigative Mechanism for Myanmar, have become fully operational. They have been conducting investigations into the most serious international crimes and violations of international law, compiling case files and sharing information for use in legal

proceedings before international and national courts and tribunals, including the International Criminal Court and the International Court of Justice.

In recent times, there has clearly been a preference amongst the Member States for the establishment of such non-judicial accountability mechanisms, which focus on supporting national and international prosecution efforts rather than conducting their own prosecutions.

The significant activity with regard to the sharing of information with national tribunals, in particular by the Syria IIIM and UNITAD, has further bolstered the support of Member States for such mechanisms, resulting in greater interest in establishing new entities or empowering existing entities with "evidence collection" mandates to deal with difficult situations where accountability does not seem like an immediate prospect.

I wish to highlight some important considerations as the number of entities with "evidence collection" mandates continues to grow. The first is that collection of evidence is of a legal technical nature, that requires criminal investigation and prosecutorial expertise, in order to ensure that the evidence collected can be admitted in legal proceedings before courts or tribunals. This is different from fact-finding efforts.

Second, as the collection and preservation of information has moved onto digital platforms and online channels, particularly in light of the COVID-19 pandemic, it is crucial that these entities have the necessary IT and cyber security

frameworks to ensure the safety and security of the information collected, as well as that of their interlocutors.

Third, the focus on the creation of evidence collection mandates, as opposed to judicial functions, once again reinforces that the main responsibility in the fight against impunity remains with States. Assistance of the international community in supporting nationally-owned efforts towards ensuring accountability for serious crimes under international law remains essential.

[Privileges and immunities]

I now turn, briefly, to our efforts and challenges relating to the status, privileges and immunities of the Organization.

Notably, the pandemic has generated novel questions and demands with regard to the legal framework governing the privileges and immunities of the Organization and its personnel. While each situation requires a case-by-case analysis, the approach of the Organization has generally been to cooperate with Member States, on a voluntary basis and without prejudice to its privileges and immunities, in the implementation of national measures related to public health, including movement restrictions, quarantine requirements and contact tracing. The Office of Legal Affairs has dealt with a wide range of related legal issues, including in support of medevac arrangements for UN personnel and the distribution of vaccines.

Relatedly, each year, the Organization concludes with United Nations Members States numerous host country agreements that facilitate the work of the Organization in the implementation of its mandate. They are mainly agreements for UN events, ranging from small meetings to major conferences, and also for the establishment of United Nations offices away from Headquarters. These agreements need to ensure that UN privileges and immunities are fully respected. On occasion, we do, however, tend to encounter resistance from Governments in recognising the full range of privileges, immunities and facilities, and their applicability to all participants of an event or personnel of a UN office - in particular, nationals of the host State. Most UN conferences away from headquarters held during the pandemic, have been conducted exclusively in virtual format, which has necessitated changes to the standard host country arrangements. For events with in-person participation, host country agreements have needed to include new elements on matters such as sanitation requirements, liability, cancellation or postponement, to facilitate the conduct of such events during the pandemic.

Labour claims brought against the United Nations continued to pose significant challenges to the work of the Organization. Labour courts in a number of countries are refusing to recognize the Organization's immunity from these types of suits, particularly where these are pursued by non-staff personnel. This has increasingly resulted in the seizure of United Nations funds pursuant to judgments issued by these labour courts. Funds have been seized despite the absolute immunity from execution which the Organization is accorded pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations and relevant host country agreements.

Turning to the United Nations Headquarters in New York, there have been increasing difficulties with respect to the timely issuance of visas and travel restrictions imposed on Secretariat personnel of certain nationalities and representatives of certain Member States. In view of growing concerns relating to the impact of these restrictions on the work of the Organization there has been a sustained effort by the affected Member States to have the Secretary-General invoke section 21 of the UN-US Headquarters Agreement. We have been working diligently on obtaining a meaningful improvement to the situation that will avoid us having to invoke section 21, which is not in the interests of either party.

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[GLD]

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

[Administration of justice]

One of the Secretary-General's continuing priorities for the UN system has been to advance a zero-tolerance approach to sexual harassment in the workplace. GLD has provided extensive support to these efforts. GLD has played a critical role in ensuring that UN staff members in the Secretariat are held accountable for their actions and decisions, contributing to the Secretary-General's revised policy on addressing discrimination, harassment, including sexual harassment, and abuse of authority that went into effect in 2019. The policy reflects a uniform definition of sexual harassment developed by GLD as well as measures to remove barriers to reporting and to improve the quality of investigations of sexual harassment. In addition, GLD has contributed to the UN system-wide task-force to

address sexual harassment in the UN system, which resulted in 2019 in the adoption of a model code of conduct to prevent harassment, including sexual harassment, at UN system events. The model code expects all participants to behave with integrity and respect towards others attending or involved with such events. In 2021, GLD's contributions also resulted in the issuance of a manual on sexual harassment investigations for use by UN system organizations.

The issue of the UN system's handling and reporting of allegations of sexual exploitation and abuse and sexual harassment has increasingly moved to the forefront in contribution agreements that the United Nations enters into with donor Member States. In April 2021, OLA was able to agree with USAID on provisions regarding sexual exploitation and abuse and sexual harassment to be used in agreements between United Nations entities and USAID. OLA has also been negotiating, on behalf of United Nations system organizations, with 15 donor Member States regarding such provisions to be used in agreements with the donor Member States in question, and expects that agreement will be reached very shortly.

OLA represented the Secretary-General before the United Nations Internal Justice system (specifically, before the UN Appeals Tribunal) in response to a number of cases brought by UN staff members working in Geneva who challenged a reduction in the post adjustment aspects of their salary. Those staff members challenged the authority of the International Civil Service Commission (ICSC), to approve a reduction in the post adjustment multiplier for staff members working in Geneva. By its resolution 3042 (XXVII) of 19 December 1972, the General Assembly established the ICSC with the aim of regulating and coordinating the

conditions of service of the UN Common System and answerable as a body to the GA.

Seven judgments dealing with these post adjustment cases were issued by the UN Appeals Tribunal in the Spring of 2021, reconfirming that the United Nations Tribunals do not have jurisdiction to review decisions by the General Assembly and its organs and found that the ICSC had the authority to decide on the reduction in the post adjustment multiplier without the General Assembly's further approval or action.

The same issues, relating to the post adjustment component of salaries, were also litigated before the Administrative Tribunal of the International Labour Organization (ILOAT) in several cases brought by staff of the Specialized Agencies in Geneva. OLA had no involvement in the cases before the ILOAT. The outcome of the ILOAT deliberations was different to that of UNAT. In this regard, the ILOAT considered that under its statute, the ICSC had authority only to issue recommendations and not binding decisions on post adjustment multipliers. As a result of the different outcomes arising from the judgments of the ILOAT and the UNAT, the common system has witnessed a divergence in the emoluments paid to staff working in the same duty station. For now, staff working in the specialized agencies in Geneva are paid a higher amount of post adjustment when compared to staff of the UN Secretariat and the Funds and Programmes working at the same duty station.

In its resolution 74/255B, the General Assembly "reaffirm[ed] the authority of the [ICSC] to continue to establish post adjustment multipliers" and noted with concern that "the organizations of the United Nations common system face the challenge of having two independent administrative tribunals with concurrent

jurisdiction among the organizations of the common system, as highlighted in the report of the [ICSC]" and requested the Secretary-General "to conduct a review of the jurisdictional setup of the common system."

Such report (A/75/690) was presented in the spring of 2021, following which the General Assembly requested in resolution 75/255B that the Secretary-General provide in his next report detailed updated information on the divergence in the jurisprudence of the two tribunals on matters relating to the ICSC and an assessment of its impact on the cohesion of the United Nations common system; and requested the Secretary-General to submit a further report with detailed proposals and thorough analysis on practical options, giving priority to measures involving changes to the adjudication of cases involving International Civil Service Commission matters. The General Assembly further requested the Secretary-General to identify measures that organizations may need to take in order to recognize or be subject to the jurisdiction of the joint chamber. This work is ongoing.

[Data protection]

European Union data protection law, including the European Union's General Data Protection Regulation (GDPR), continues to have an adverse impact on the ability of UN System Organizations: (a) to deliver their mandated activities, including in support of refugees and other vulnerable populations; (b) to contract for key goods and services; and (d) to share critical data in furtherance of their respective mandates. This is because European Union Member States and institutions, as well as private entities, continue to seek to impose substantive obligations that emanate

from European Union data protection law on UN System Organizations in contracts, cooperation agreements, funding arrangements and other arrangements.

At the request of the legal advisers of United Nations System Organizations, for more than three years now, I have been engaged in discussions with the European Union, including with the European Commission and the European Data Protection Board (EDPB). Notably, in May 2020, the United Nations Secretariat, on behalf of UN System Organizations, made a publicly available submission to the EDPB, outlining the position of UN System Organizations under international law and concerns over the soft enforcement of European Data Protection law.

Despite these efforts, there is no satisfactory resolution to date. In particular, neither the EDPB nor the European Commission, has to date issued, as suggested by the UN System, a public declaration or guidelines that would: (a) address the UN System Organizations' concerns, in keeping with their status, privileges and immunities and regulatory frameworks; and (b) give assurance to parties subject to European Union data protection laws that the transfer of data to and from United Nations System Organizations could be undertaken without such parties having fear of running afoul of EU data protection laws or facing significant penalties or fines.

We will continue our engagement with the European Union as a solution will need to be found in the very near future.

In this context, I should also like to mention that, further to the Secretary-General's Data Strategy, which was endorsed by the Executive Committee in April 2020, the UN Secretariat is continuing its efforts to strengthen its own data protection and privacy framework governing the processing of personal data, including mechanisms for enhanced governance, oversight and accountability. I am personally

committed to this process, and I look forward to updating you on the Secretariat's efforts on this ongoing effort.

Development System reform

The Office of Legal Affairs (both the Office of the Legal Counsel and the General Legal Division) has continued to assist the Executive Office of the Secretary-General, the Development Coordination Office (DCO) and the UN Sustainable Development Group with the implementation of the repositioning of the United Nations development system which, pursuant to General Assembly resolution 72/279 of 31 May 2018, became operational as of 1 January 2019. Under the repositioned system, the functions of the UN Resident Coordinator were separated from those of the Resident Representative of the United Nations Development Programme (UNDP), and Resident Coordinators and Resident Coordinators Offices, as well as Regional Offices of the Development Coordination Office are now part of the UN Secretariat.

My office is continuing to work closely with the Development Coordination Office in negotiating necessary arrangements with relevant host Governments in order to establish the legal framework applicable to the Resident Coordinator and the Resident Coordinator's Office in the country. A number of governments have accepted a legal basis for the new RC system by replicating, mutatis mutandis and wherever possible, an existing UN agreement – most frequently the previous UNDP standard basic agreement. Currently, arrangements have been agreed and are in place in a number of countries. At the same time the longer-term legal basis for the Resident Coordinator and the Resident Coordinator's Office remains under discussion in others.

In addition to the negotiation of host country agreements, my Office has chaired a Legal Working Group of the UN Sustainable Development Group, comprising representatives of legal offices of UN Funds and programmes and Specialized Agencies and other members of the Sustainable Development Group, to update the Legal Annex to the UN Sustainable Development Cooperation Framework ("UNSDCF"), formerly the UN Assistance Development Framework ("UNDAF"), which is to be signed with Governments, as well as related guidance documents on the Legal Annex. These documents are intended to ensure a consistent approach by all UN System organizations in all countries in which development activities are being undertaken under the auspices of the Resident Coordinator.

My Office is also continuing to assist the Development Coordination Office with other issues relating to the repositioned UN development system, including public private partnership arrangements between Resident Coordinators Offices and private sector entities, which would be coordinated under the leadership of Resident Coordinators, as well as contribution agreements with donor Governments and foundations. With the delinking of the Resident Coordinator System from UNDP, OLA's work to support the Resident Coordinator System is expected to increase even more in the coming months and years.

[Criminal Accountability]

OLA and GLD, in particular, have also continued work with respect to the criminal accountability of UN officials and experts on mission. Pursuant to General Assembly resolution 62/63, OLA, on behalf of the Secretary-General, brings

credible allegations that reveal that a crime may have been committed by UN officials or experts on mission to the attention of their state of nationality. As reflected in the Secretary-General's most recent report on Criminal accountability of UN officials and experts on mission (A/75/217), between 1 July 2019 and 30 June 2020, 29 cases were referred to states of nationality. Of these cases, 5 involved allegations of sexual exploitation and abuse, and 22 cases involved allegations of fraud or corruption. The report for submission to the seventy-sixth session of the General Assembly is being prepared.

The Office has continued to respond to requests for cooperation from national authorities of Member States in relation to ongoing investigations and criminal proceedings. Such cooperation in order to facilitate the proper administration of justice by Member States is required by section 21 of the General Convention.

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[ITLD]

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I will now turn to the work of the International Trade Law Division (ITLD), in particular its ongoing work on investor-State dispute settlement (ISDS) reform, mediation, rules for expedited arbitration and identity management and digital trade.

[WGIII on ISDS reform]

UNCITRAL Working Group III has made considerable progress on its mandate to work on a potential reform of the investor-State dispute settlement system.

The Working Group continues to simultaneously work on two work streams, reform options pertaining to structural reform and those pertaining to non-structural, or procedural reform.

Structural reform options include the establishment of a multilateral advisory centre, an appellate mechanism and a multilateral permanent investment court. Reform options on procedural reform include ADR mechanisms and dispute prevention, the selection and appointment of arbitrators, a code of conduct and options for procedural rules reforms, including the regulation of third-party funding and treaty interpretation.

Moreover, the Working Group considers a multilateral instrument to implement the reforms, which may be modelled after the Mauritius Convention on Transparency, to make the ISDS reform applicable to the more than 3000 existing international investment agreements.

The Working Group has completed a first round of preliminary considerations of the reform options, in many cases already on the basis of concrete draft provisions. In its session in February 2021, the Working Group discussed the selection and appointment of adjudicators in a standing mechanism as well as draft provisions on an appellate mechanism and enforcement issues. In May this year, the Secretariat has published a second version of the draft Code of Conduct for Adjudicators, jointly elaborated with the ICSID Secretariat, for consideration by the Working Group in its session in November.

Moreover, the Working Group is discussing a work plan with a notional schedule for future discussions and has prepared a request for additional resources, which would enable the Working Group to hold an additional week of working group sessions per year and to conclude the reform process by 2026.

[Mediation texts]

On 12 September 2020, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation) entered into force.

The Singapore Convention provides an effective mechanism for the enforcement of international settlement agreements resulting from mediation, and by doing so, it contributes to the facilitation of international trade and the promotion of mediation as an alternative and effective method of resolving commercial disputes.

Forty six (46) States signed the Convention on the opening day on 7 August 2019 and 53 States in total have signed the Convention since then. Six parties have ratified the Convention, the latest being Ecuador, which deposited its instrument of ratification on 9 September 2020.

The Singapore Convention is a part of a broader legal framework developed under the umbrella of UNCITRAL. In 1980, UNCITRAL adopted the UNCITRAL Conciliation Rules, the first international step taken to harmonize rules for mediation. It was followed in 2002 by the Model Law on International Commercial Conciliation. Then in 2018, UNCITRAL updated to the Model Law of 2002 and adopted the Singapore Convention.

Currently, UNCITRAL is in the process of updating the UNCITRAL Conciliation Rules of 1980 to reflect current practice and ensure consistency with

the Singapore Convention on Mediation and the Model Law of 2018, and also developing draft Notes on Mediation, which would provide the users with some guidance on the mediation procedure.

[Expedited Arbitration]

It is also expected that UNCITRAL will have a new set of rules for expedited arbitration, a streamlined and simplified procedure with a shortened time frame, which makes it possible for the parties to reach a final resolution of the dispute in a cost- and time-effective manner. Expedited arbitration is being increasingly used in international and domestic commercial practice for parties to reach a final resolution of the dispute in an effective manner. Presented as an appendix to the generic UNCITRAL Arbitration Rules, the Expedited Rules would be available for use by businesses who wish to conduct arbitration in an expeditious fashion. The Expedited Rules balance on the one hand, the efficiency of the arbitral proceedings and on the other, the rights of the parties to due process and fair treatment.

[Identity management and digital trade]

UNCITRAL continues its work in the field of digital trade. At present, its working group IV is finalising a model law on identity management trust services, which is expected to be adopted by the Commission in 2022. The Commission is also actively considering new topics in this area, and has asked the Secretariat to explore legal issues related to a range of digital tools, including data transactions, artificial intelligence, digital assets and online platforms, with a view to preparing proposal for future legislative work. To guide this work, the Secretariat is preparing a legal taxonomy, which may be relevant to other areas of the United Nations system

tackling pressing questions of digital transformation, including in other areas of international law-making.

In that context, the Commission is also looking into how disputes are being resolved in the digital economy through analysis of changes in practice, of evolving technologies and of the consequential need to transform the legal framework.

[Micro, Small and Medium-sized Enterprises, MSMEs]

Since 2013 the Commission has taken up work to reduce the legal obstacles faced by MSMEs, in particular those in developing countries, throughout their life cycle, starting with the legal questions concerning simplification of incorporation. This work has resulted in two legislative guides: one on business registration, adopted in 2018, and another on limited liability enterprises, adopted by the Commission at its fifty-fourth session last month.

Both guides simplify the formation and operation of MSMEs thus encouraging migration of those MSMEs operating in the informal sector to the formal one, which, among others, improves their visibility with the public. Moreover, the simplified legal form for MSMEs may facilitate the economic inclusion of women and other entrepreneurs facing cultural, institutional or regulatory obstacles such as youth and ethnic minorities. Through these legislative guides, UNCITRAL contributes to the support of productive activities, job creation, and sustainable and inclusive entrepreneurship, in line with SDG 8 and 9.

At its fifty-fourth session, UNCITRAL also adopted the Legislative Recommendations on Insolvency of Micro and Small Enterprises and approved in principle the draft commentary to the Legislative Recommendations. These new recommendations aim to assist States with establishing a simplified insolvency

regime to address the insolvency of individual entrepreneurs and micro and small businesses of an essentially individual or family nature with intermingled business and personal debts. The end-product will be part of the UNCITRAL Legislative Guide on Insolvency Law and also contribute to UNCITRAL texts aimed at reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.

The adoption of the text by UNCITRAL is very timely given the relevance of the text in the context of COVID-19 response and recovery measures. Lockdowns and other measures to contain the COVID-19 pandemic have reduced demand for products and services, as well as disrupted supply chains, particularly in sectors where MSEs operate. Despite temporary relief measures implemented by States, insolvencies of MSEs are expected to rise dramatically. The text provides for mechanisms and solutions for States to address MSE needs in financial distress either through low-cost and expeditious liquidation of non-viable MSEs or simplified reorganization of viable MSEs.

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[DOALOS]

Mr. Chair,

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

While the pandemic may have reduced some of the pressures on the marine environment, most of its impacts were negative, including severe disruptions of production and global supply and value chains in ocean-based economies, impacting

especially Small Island Developing States and the shipping and fishing sectors. Many ocean-related meetings and conferences were also cancelled or postponed.

Mr. Chair,

[Oceans and law of the sea]

Every year, in its resolution on oceans and the law of the sea, the General Assembly recognizes the universal and unified character of the Law of the Sea Convention, with 168 parties including the European Union, and the role of the Convention in setting out the legal framework within which all activities in the oceans and seas must be carried out. It also reaffirms the need for the integrity of the Convention to be maintained.

These elements should remain at the forefront as the International Law Commission continues its work, including in respect of the ongoing study on the topic, "Sea-level rise in relation to international law". Of particular relevance to this topic is the depositary practice of States and the Secretary-General with respect to the deposit of information concerning baselines and outer limits of maritime zones. At the request of the Meeting of States Parties and the General Assembly, respectively, the Secretariat prepared a note on the practice of the Secretary-General in respect of deposits under the Convention (available as SPLOS/30/12) and a publication containing guidelines to assist States with regard to deposits.

I understand that there have already been informal exchanges in this connection between the Division and representatives of the open-ended Study Group established by the International Law Commission. My colleagues in the Division continue to be available to provide information to the Commission on technical

aspects of the Convention. As appropriate, they are also ready to share, with my full support, their know-how and experience.

Allow me now to elaborate on the meetings serviced by the Division. The twenty-first meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, postponed in 2020, was held in a virtual format from 14 to 18 June and focused on "Sea-level rise and its impacts", a topic of great importance to Member States. As a matter of fact, in identifying the topic of focus of the Informal Consultative Process, the Assembly took note of the decision by the Commission to include "Sea-level rise in relation to international law" in its programme of work. The Assembly has consistently recognized that the adverse impacts of climate change, including those related to sea-level rise, are among the greatest challenges of our time. They undermine the ability of all countries to eradicate poverty and food insecurity, as well as to achieve sustainable development. Cooperation and coordination of work under relevant global and regional instruments and frameworks, including the Convention, need to be increased.

Let me also recall that at the twentieth meeting of the Informal Consultative Process, held in June 2019 on the theme "Ocean Science and the United Nations Decade of Ocean Science for Sustainable Development", delegations considered the important opportunity of the Decade in addressing gaps in ocean science, increasing knowledge, and improving synergies and supporting the sustainable conservation and management of marine resources. Several delegations also underlined the important complementary role of traditional knowledge.

[Meeting of States Parties to the Convention]

Due to COVID-19, the thirtieth Meeting of States Parties of the Convention took place in a format that combined in-person and virtual meetings with exchanges of documents and written statements, stretching from 6 July to 9 December 2020. In August 2020, States Parties held the first in-person Meeting at United Nations Headquarters in New York since the onset of the pandemic to elect seven judges of the International Tribunal of the Law of the Sea. In December 2020, the Meeting approved the budget of the Tribunal for the period 2021-2022. The Meeting also received information reported by the three bodies established under the Convention and considered issues of a general nature, relevant to States Parties, which had arisen with respect to the Convention under article 319.

The thirty-first Meeting of States Parties was held from 21 to 25 June 2021 in a format that combined in-person meetings with virtual consultations due to the continuing situation related to the COVID-19 pandemic. On an exceptional basis, and owing to the unprecedented circumstances arising as a result of the COVID-19 pandemic, the Meeting decided to extend the five-year term of office of the members of the Commission on the Limits of the Continental Shelf until 15 June 2023. The decision was made without prejudice to article 2, paragraph 4, of annex II to the Convention and will not constitute a precedent, either for the Commission or for other bodies of the Convention or the United Nations with elected members. Notwithstanding this decision, however, the next election of the members of the Commission will take place as initially scheduled at the thirty-second Meeting of States Parties in 2022.

[Commission on the Limits of the Continental Shelf]

The Division continues to ensure extensive support to the Commission on the Limits of the Continental Shelf.

Since the start of the pandemic, the Commission decided not to hold its sessions at United Nations Headquarters in New York as originally planned. In view of a number of challenges, including those related to ensuring the confidentiality of its deliberations and of the data and information contained in submissions by States Parties, the Commission also concluded that it would not be in a position to meet virtually. Its sessions are expected to resume when conditions allow for the conduct of in-person meetings.

While no formal sessions of the Commission have been held in the past year, the Commission and its sub-commissions have continued to be actively engaged in matters of organizational nature, through the convening of informal virtual meetings.

In addition to the challenges posed by COVID-19, the Commission continues to experience challenges regarding its significant workload, as well as the conditions of service of its members. Overall, the Commission has received 96 submissions, including eight revised submissions, from 74 States Parties individually or jointly. It has so far issued 35 sets of recommendations, including for four revised submissions, yet 49 submissions are still awaiting consideration. Currently, the waiting time between the making of a submission and the establishment of a subcommission is approaching 12 years and looks set to increase further.

Due to the Covid 19 pandemic, a full year of work of the Commission has been lost. This is precisely when such work, in the context of the five-year term of office of the members of the Commission, might otherwise have resulted in the approval of additional recommendations. This is an underlying reason why a group of States proposed that the thirty-first Meeting of States Parties extend the five-year term of office until 2023.

[Intergovernmental Conference on an international legally binding]

On the Intergovernmental Conference on an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, convened pursuant to resolution 72/249 (the "Intergovernmental Conference"), its third session took place from 19 to 30 August 2019 in New York. Discussions focused on the draft text of an agreement, prepared by the President of the Intergovernmental Conference with the assistance of the Division. Owing to the COVID-19 pandemic, the fourth session had been postponed to 16 to 27 August of this year. Unfortunately, the continued impact of the pandemic has required a further postponement of the fourth session to the earliest possible available date in 2022, preferably during the first half of the year.

When it meets, the fourth session will have before it a revised draft text of an agreement, prepared by the President of the Intergovernmental Conference. A compilation of textual proposals received from delegations was also prepared to assist delegations in their negotiations.

Given the postponement of the fourth session and to keep momentum, the President of the Intergovernmental Conference, in consultation with the Bureau, decided to launch intersessional work, which was conducted virtually through webinars or online discussion forums from September 2020 to March 2021. Going forward, additional Intersessional work may take place in 2021.

[Regular Process for Global Reporting and Assessment of the State of the Marine Environment]

The Division also provides substantive support to the General Assembly and its subsidiary organs, including in connection with the Regular Process for Global

Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the "Regular Process").

The Regular Process recently completed its second cycle (2016-2020). Its main outputs included three process-specific technical abstracts of the first World Ocean Assessment, which were issued in June 2017, and, most importantly, the Second World Ocean Assessment, which was launched on 21 April 2021. The Second World Ocean Assessment evaluated trends observed since the first World Ocean Assessment, which was released in 2015. It also identified current gaps in knowledge and capacity and is expected to contribute significantly to informing policies and actions worldwide for the future of the ocean.

The third cycle of the Regular Process (2021-2025) began in January 2021 and foresees new assessments of the state of the marine environment, including socioeconomic aspects; strengthened support for and interaction with other ocean-related intergovernmental processes; and a coherent programme on capacity-building to strengthen the ocean science-policy interface.

[Sustainable fisheries]

In 2019, the fourteenth round of Informal Consultations of States Parties to the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks addressed the topic, "Performance reviews of regional fisheries management organizations and arrangements". States Parties, inter alia, decided on the resumption of the Review Conference on the Agreement and the revision of the terms of reference of the Trust Fund established under Part VII of the Agreement.

The resumed Review Conference has now been postponed to 2022 due to the pandemic. When it meets, it will serve as an important opportunity for States to revert to the review implementation of the Agreement and re-assess its effectiveness in ensuring the conservation and sustainable use of the world's straddling fish stocks and highly migratory fish stocks. Incidentally, the fifteenth round of these Informal Consultations, on the topic "Implementation of an ecosystem approach to fisheries management", has also been postponed from May 2020 to 2022.

As reflected in General Assembly resolution 75/89 on sustainable fisheries, in November 2022, the General Assembly will undertake a further review of the actions taken by States and regional fisheries management organizations and arrangements to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks, focused on the implementation of relevant provisions of General Assembly resolutions. This review, which was postponed from 2020, is expected to be informed by a dedicated report of the Secretary-General, as well as the outcomes of a two-day multi-stakeholder workshop scheduled for August 2022.

[Developing human and institutional capacity]

Mr. Chair,

Developing human and institutional capacity, perhaps more than ever in light of the negative impacts of COVID-19, is essential to improving the sustainable development of our oceans. Heavy reliance will be placed on ocean sectors, particularly from Small Island Developing States, in building back from the consequences of the pandemic. There is an ongoing pressing need to protect and preserve the marine environment, including from the impacts of climate change. In

this context, the Division continues to provide assistance to States, in particular developing States, in building the human and institutional capacities to improve ocean governance processes, including in the context of the COVID-19 recovery.

The Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and three United Nations – Nippon Foundation Fellowships could not be implemented in-person due to the COVID-19 pandemic. Instead, an exceptional virtual programme of training activities was developed on the law of the sea topics and on the impacts of Covid-19 on ocean affairs, reaching over 300 participants and leveraging virtual meeting technology to reach a broader geographic audience and to benefit from the participation of delivery partners from around the world.

With respect to other training programmes and capacity development activities, the Division, together with the United Nations Conference on Trade and Development, is working to finalize the implementation phase of a four-year project funded through the United Nations Development Account. This project assists Barbados, Belize and Costa Rica in developing evidence-based and policy-coherent oceans economy and trade strategies to support these countries in realizing economic benefits from the sustainable use of marine resources. As this programme ends, the Division has launched a four-year, multi-track global capacity-building programme for developing countries, sponsored by the Norwegian Agency for Development Cooperation (Norad) with the aim of building sustainable blue economies through strengthened ocean governance based on the Convention.

On a bilateral level, the Division is also in the process of completing a multi-year training programme for Somalia on the development of an effective legal framework for the governance of Somalia's maritime zones and the sustainable development of its marine resources, funded through the United Nations Trust Fund

to Support Initiatives of States Countering Piracy off the Coast of Somalia. Finally, the Division is in the process of developing a tailored in-person training programme on maritime zones for Saudi Arabia, with delivery expected in the next year.

Mr. Chair,

On a more personal note, the Office of Legal Affairs was deeply saddened by the unexpected passing, on 7 July 2021, of an esteemed member of the international fisheries community, Professor Fabio Hazin of Brazil. Professor Hazin was a well-respected academic and practitioner in the field and served in many capacities, including as President of the Review Conference on the United Nations Fish Stocks Agreement and as Chair of the Informal Consultations of States Parties to the Agreement. We extend our sincere condolences to his family and all who knew him in the international community.

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[Treaty Section]

Let me now turn to the activities of the Treaty Section, which fulfils the depositary functions of the Secretary-General for more than 600 multilateral treaties, as well as the function of registration and publication of treaties under Article 102 of the Charter of the United Nations.

A number of important multilateral treaties deposited with the Secretary-General entered into force in the past two years in the areas of the protection of the environment, international trade, and disarmament.

Turning first to the field of environmental protection, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement, entered into force on 22 April 2021. This is the first treaty to include specific provisions for the protection and promotion of human rights defenders in environmental matters. In addition, the Doha Amendment to the Kyoto Protocol, a key instrument in the fight against climate change, entered into force on 31 December 2020 following its acceptance by 144 Parties to the Kyoto Protocol.

These important developments in environmental law followed the entry into force, in 2019, of amendments to two other key environmental treaties namely the 2012 Amendment of the text and annexes II to IX to the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone and the addition of new annexes X and XI, and the 1995 Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Moving to international trade law, the 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation, entered into force on 12 September 2020. The entry into force of this instrument developed by the United Nations Commission on International Trade Law is a stark illustration of the continuing relevance of the General Assembly's mandate of progressive development of international law. In addition, another agreement in the field of trade law, the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, entered into force on 20 February 2021.

Finally, in the field of disarmament, the Treaty on the Prohibition of Nuclear Weapons entered into force on 22 January 2021. This instrument is a considerable legal development since it constitutes the first multilateral nuclear disarmament treaty in more than two decades.

Turning to registration of treaties, the adoption by the General Assembly of amendments to the regulations to give effect to Article 102 of the Charter of the United Nations in 2018 has given rise to a discussion of treaty law-related topics among Member States. As you may know, the Sixth Committee took up this item again in 2020. In the corresponding resolution, the General Assembly reaffirmed the importance of the registration and publication of treaties, as well as their accessibility. In addition, the Assembly highlighted the significance of electronic submissions of treaties for registration, and welcomed the continued organization of workshops on treaty law and practice as an important capacity-building initiative. My Office is ready to continue supporting Member States towards our shared goal of strengthening and promoting multilateralism and the international treaty framework along with the practical demands of its day-to-day implementation.

Certainly, it is worth recalling that the efforts of the General Assembly build on the foundation established by the Vienna Convention on the Law of Treaties, which remains one of the main hallmarks of the Commission after over fifty years. As the outcome of its monumental work on the progressive development and codification of the law of treaties, the Vienna Convention not only has 116 Parties, but has also gained importance as most of its provisions are widely regarded as customary international law. The versatile legal regime established by the Convention now lies at the centre of treaty relations between subjects of international law.

I would like to salute the significant contribution of the Commission, which, in the recent period, adopted several important instruments specifying and clarifying provisions of the Vienna Convention. In this sense, allow me to note the importance for practitioners of recent outputs of the Commission, such as the Guide to practice on reservations to treaties or the Conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties.

This endeavour will continue with the second reading of the Guide to provisional application of treaties at the present session, and with its future work on the draft conclusions on peremptory norms of general international law (*jus cogens*). I wish the Commission all success in its work on these important topics.

[Conclusion]

Distinguished Members of the International Law Commission

As I conclude, allow me once again to wish the Commission all the success for a fruitful session in Geneva, operating as it is in these difficult times. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication. The election for the renewal of the Commission's mandate takes place this year, and we are taking steps to have the elections in November. To those members seeking reelection I can only wish you the best of luck and those whose term ends next year, thank you for your contribution to the work of the Commission, and to international law.

You will of course all be in the Commission next year to complete current term of office!

Thank you very much to all.