



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**China University of Political Science and Law
Beijing, People's Republic of China**

**- International Law at the United Nations –
A conversation with the United Nations Legal Counsel**

Lecture by

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Professor HUANG Jin, President of the China University of
Political Science and Law,
Distinguished Deans and Party Secretaries,
Distinguished Members of the Faculties,
Dear students,
Ladies and Gentlemen,

I am pleased to be back again in Beijing and I am grateful for the opportunity to speak and discuss with you today. As you may be aware the reason for my visit to China is the Second Belt and Road Forum for International Cooperation, hosted by President XI Jinping. I am accompanying the Secretary-General of the United Nations, Mr. António Guterres. However, I am not here to speak about the Belt and Road Initiative but about my job, the job of the United Nations Legal Counsel and the mandate of my Office, the Office of Legal Affairs.



The role of the Legal Counsel and the mandate of OLA

Let me first of all say a few words about the role of my office, the Office of Legal Affairs of the United Nations Secretariat.

The Office was established in 1946. Its overall purpose is to support the accomplishment of the objectives of the United Nations by providing advice to the principal and subsidiary organs of the United Nations and by promoting among Member States a better understanding of and respect for the principles and norms of international law.

What this means in practice is that the approximately 200 staff of some 60 nationalities provide a unified central legal service for the Secretariat and the principal and subsidiary organs of the United Nations. Put more plainly, the Office is the in-house Counsel to the Secretary-General, to the senior management and to the wider UN system.

It is a great privilege to be entrusted with this role and it is one that we treat with the responsibility it deserves. The work that crosses my desk on a daily basis is varied and often urgent.

Naturally, our role requires us to carry out this work on a confidential basis. Like legal advisers in many walks of life we must often operate outside the public domain.

Lawyers in my Office address questions which you would expect to arise in the United Nations Office of Legal Affairs. Questions relating to peacekeeping operations, international criminal justice, international humanitarian law, and oceans and law of the seas are staple work for us. However, some of the questions we deal with might surprise you. Contracts of more than \$4 billion annually, procurement policy, privileges and immunities, international trade law and a system for handling internal disputes and disciplinary matters for a staff of more than 60,000 also greatly occupy our work days.

It is vital for decision-makers in all of these areas of work to understand the legal implications of their choices, and to arrive at legally sound decisions. I have found that they very much want to understand the legal context, even if it might not always





immediately the path to where they wish to go. I also find that decision makers are conscious that when they seek early legal advice their policy choices are greater.

My office has been called upon to provide legal advice on many of the most pressing political issues of the day. Please let me give you some examples.

Selected highlights of the work of OLC

There are six divisions in the Office of Legal Affairs, one of which is the Office of the Legal Counsel. Essentially, the Office of the Legal Counsel is responsible for providing legal advice and services to the United Nations, which covers a wide array of public international law issues. The Office is called upon to provide legal advice to the United Nations system on matters pertaining to, amongst others, the United Nations Charter, privileges and immunities of the United Nations and its personnel, rules of procedure of the United Nations, United Nations peace operations, international and hybrid tribunals, as well as non-judicial accountability mechanisms.

On the achievements side, we have seen a number of accomplishments for the Office of the Legal Counsel, and also for the United Nations as a whole, with the closure of at least three peacekeeping operations in the last few years.

More specifically, we saw the closure of peacekeeping operations in Côte d'Ivoire, Haiti and Liberia, all of which had completed their mandates, given by the Security Council, to support peace, security and the rule of law in their respective countries. All three operations closed after at least a decade of operations in the field and made significant contributions to the maintenance of peace in those countries.

Closing down a peacekeeping operation is a very complex process. My Office supports our colleagues in the liquidation efforts as required, which involve, amongst others, understanding the needs of the peacekeeping operations, and the negotiation of agreements between the United Nations and the relevant governments. Naturally, each peacekeeping operation and its closing down process differs, and thus raises its own unique legal issues. The Office of Legal Affairs has been





providing advice on a wide range of issues, from privileges and immunities, to liability issues, to contractual matters, often under tight timelines.

Another achievement that my Office was involved in relates to one of our significant portfolios – criminal accountability. In November 2018, we saw important progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC), which is one of the hybrid tribunals that the Office supports, with the issuance of the trial judgement in Case 002/02.

In that case, the Trial Chamber convicted Nuon Chea and Khieu Samphan, the most senior former Khmer Rouge leaders indicted before the Chambers, for genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949. This is the first case in the ECCC in which evidence related to charges of genocide against the Cham and Vietnamese minority populations were heard.

Another noteworthy aspect of the judgement is the Trial Chamber’s finding in relation to sexual violence in conflict. Specifically, the Trial Chamber found that practices of forced marriage, and rape in the context of forced marriage, constituted crimes against humanity of other inhumane acts. This is an important contribution to the development of international criminal law in this area. The proceedings, in which 185 individuals provided testimony, provide an invaluable historic record for the people of Cambodia, and the judgment clearly demonstrates that perpetrators of the most heinous crimes can be held accountable, even decades after those crimes have been committed.

I personally attended the reading of the summary of the judgement in Phnom Penh last November to mark this important milestone in the Chambers’ work.

Additionally, you may be aware of the request of 22 June 2017 from the General Assembly to the International Court of Justice for an Advisory Opinion pertaining to a question about the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. In conveying the request to the Court, the Secretary-General also informed that the Secretariat would prepare a dossier containing a collection of all relevant documents, to be transmitted to the Court. My Office took the lead in putting together a dossier of all documents “likely to throw light upon the question”, and after months of intensive work, we were able to submit the dossier, containing a total of 473 documents collected from the United Nations





archives, to the Court in support of the proceedings. The Court recently delivered its Advisory Opinion on the issue on 25 February 2019.

I also wish to refer to a new project of the Office, which has been the establishment of non-judicial accountability mechanisms. In the last few years, we have seen a new trend with respect to international criminal accountability mechanisms. In contexts where it is difficult to foresee effective judicial accountability in the immediate future, there is an increasing appetite, at a minimum, for gathering and securing evidence, so that such evidence can be used in the future by national, regional or international courts that have or may have jurisdiction in the future.

This represents a significant new approach, focusing on supporting the prosecution efforts of other stakeholders rather than conducting its own prosecutions.

While my Office has experience in and has been integral in the establishment of international tribunals and ad-hoc hybrid tribunals, the unique nature and different requirements of this type of new non-judicial accountability mechanisms, or investigative mechanisms, required my Office to think innovatively and work with flexibility.

This was crucial in order to fulfill the mandates which had been given by Member States, as well as to quickly and efficiently operationalize a functional mechanism, while also protecting the United Nations' interests. Part of this means ensuring that the United Nations Charter, policies, procedures, and rules and regulations are complied with by these mechanisms at all stages.

An example of such non-judicial accountability mechanisms is the United Nations Investigative Team for Accountability of Da'esh/ISIL (UNITAD), which the Security Council, in resolution 2379 (2017), requested the Secretary-General to establish.

The resolution had come about as a result of a request from the Government of Iraq to the Secretary-General and the Security Council, calling for the assistance of the international community to ensure that members of ISIL (Da'esh) were held accountable for their crimes in Iraq. My Office, together with a number of other United Nations Secretariat Departments, supported the establishment and





deployment of UNITAD, which was able to formally commence its activities on 20 August 2018, and which deployed to Baghdad on 29 October 2018.

Selected highlights of the work of the C.6 and the ILC

The Codification Division of the Office of Legal Affairs serves as the Secretariat of the Sixth (Legal) Committee of the General Assembly, the International Law Commission and the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

The Sixth (Legal) Committee is one of the Main Committees of the General Assembly of the United Nations. Its main function is to assist the Assembly in the discharge of its responsibilities under the Charter of the United Nations in the progressive development of international law and its codification.

Its contribution to the whole body of international law ranges from its involvement in the elaboration of the Genocide Convention to the Rome Statute of the International Criminal Court; from the Declaration on Principles of International Law concerning friendly relations among States in accordance with the Charter of the United Nations to the Manila Declaration on Peaceful settlement of disputes. From “hard law” to ‘soft law”. It also serves as the main policy interlocutor that discusses the works of the International Law Commission, and its interventions have resulted in the convening of diplomatic conferences that have elaborated instruments on diplomatic and on consular relations, the law of treaties, non-navigational uses of water courses, and so on. In short, it has a central role in the lawmaking scheme within the United Nations.

During the regular segment of seventy-third session of the General Assembly last year, the Committee met from 3 October and 13 November 2018, during which it considered 27 agenda items. The Assembly also considered the following agenda items through its working groups:

- (1) measures to eliminate international terrorism, which has to date elaborated instruments on the prevention and suppression of terrorist bombings, of financing of terrorism and of nuclear terrorism and for several years now has been working on a draft comprehensive convention on terrorism;
- (2) criminal accountability of United Nations officials and experts on mission; and





(3) the scope and application of universal jurisdiction, another critical topic, as the world community seeks to combat impunity, questions have arisen as to how the jurisdictional competence that States have are exercised.

In order to achieve consensus on its work, numerous rounds of informal consultations on draft resolutions were held and ultimately, upon the recommendation of the Sixth Committee, the General Assembly adopted, without a vote, 24 resolutions and seven decisions. The adoption of resolutions without a vote has become a hallmark of the working methods of the Committee.

The relationship of the Sixth Committee and the International Law Commission is an essential one and this is exemplified by the keen interest that delegations and legal advisers have in the consideration, annually, of the report of the Commission to the Assembly. The Commission, which commemorated its seventieth anniversary last year, has been prodigious. Since the beginning of the current millennium, the Sixth Committee has been presented with several completed works from the Commission, some of which remain in various stages of discussion in the Committee.

These include:

- (a) the draft articles on responsibility of States for internationally wrongful acts (2001);
- (b) the draft articles on prevention of transboundary harm from hazardous activities (2001);
- (c) the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (2006);
- (d) the draft articles on diplomatic protection (2006);
- (e) the draft articles on the law of transboundary aquifers (2008);
- (f) the draft articles on the responsibility of international organizations (2011);
- (g) the draft articles on the expulsion of aliens (2014); and
- (h) the protection of persons in the event of disasters (2016).

Last year, the Commission presented to the Assembly, through the Committee, draft conclusions, together with commentaries, on “subsequent agreements and subsequent practice in relation to the interpretation of treaties”, and on the “identification of customary international law”. The Assembly took note of the





conclusions, the text of which were annexed to resolutions 73/202 and 73/203, with the commentaries thereto, and brought them to the attention of States and all concerned entities and encouraged their widest possible dissemination.

Another important area worth mentioning is the role that the Office plays in the implementation of the United Nations Programme of assistance in the teaching, study, dissemination and wider appreciation of international law.

The teaching of international law has been of primordial interest of the United Nations from its very beginnings. It is one of the means of furthering the aims of the United Nations. Already in 1947, the General Assembly requested member States to take appropriate measures to extend the teaching of international law in all its phases of its development in universities and institutions of higher learning.

In 1965, the General Assembly established the United Nations Programme of Assistance with a view to contributing to a better knowledge of international law “as a means for strengthening international peace and security and promoting friendly relations and co-operation among States.”

Its activities include four in-person training courses: the International Law Fellowship Programme in The Hague, and the three Regional Courses - for Africa, Asia-Pacific, and Latin America and the Caribbean.

These four-week courses are held every year and are designed to enable government legal officers and teachers of international law from developing countries, and countries with emerging economies to deepen their knowledge of international law.

They focus on core topics of international law, with a regional focus – for example, by highlighting contemporary international law issues of interest in Asia-Pacific.

The Programme also includes the Audiovisual Library of International Law as online training component. It contains documents, audio, video and photographic materials on the most important treaties concluded under the auspices of the United Nations; a research library linking to the most important sources of materials for international law training and research; and over 500 lectures from renowned scholars and practitioners on diverse topics of international law, both in video and





podcast format, delivered in all official languages of the United Nations and accessible worldwide completely free of charge.

China has been a strong supporter of the Programme of Assistance, and four Chinese international lawyers have recorded lectures for the Audiovisual library of International Law.

Also, since 2010 six Chinese nationals were awarded fellowships and attended training programs under the Programme of Assistance.

Selected highlights of the work of ITLD and UNCITRAL

The mandate of the United Nations Commission on International Trade Law (UNCITRAL), which was established in 1966, is to create a business-friendly environment through the modernization and harmonization of international trade law. International trade law is a broad subject – including tariff reduction negotiations in the World Trade Organization or free trade agreements. UNCITRAL’s focus is on private international commercial law and the development of modern, fair and harmonized rules for commercial transactions. Differences in legal systems create uncertainty and increased transaction costs, which operate as a disincentive to trade in new markets. UNCITRAL’s objective is to address these issues, and to establish the best conditions for cross-border trade, investment and business growth. The experience of recent decades shows just how beneficial such growth is to everyone, in creating jobs and building sustainable economies.

What is the link between harmonization and growth? Harmonizing laws enables transparent and predictable business transactions, reducing costs, and allowing wider and faster distribution of products, services (and now also data). In other words, it encourages repeated commercial transactions, and thus growth.

Harmonization must go hand-in-hand with modernization, so that UNCITRAL focusses on developing practical and up-to-date solutions to the legal issues involved. UNCITRAL develops its texts through formal meetings at the United Nations, open to all United Nations member States (some of which are also UNCITRAL member





States), interested international organizations and invited international non-governmental organizations.

The participants share experience on the topics concerned, in multilingual discussions (that is, in the six official UN languages which, as you probably know, includes Chinese). The delegations come to consensus on the solutions to be adopted. The process is also highly transparent – not only UNCITRAL legal texts, but all written materials and draft proposals that the delegations consider, and the reports of their week-long deliberations, are published on the UNCITRAL website in the six official UN languages.

I should add, here, that transparency encourages debate outside the UNCITRAL sessions, as they are called, and informs the UNCITRAL deliberations. Using the published materials, States and organizations can consult on obstacles that their businesses or stakeholders have encountered, and on potential solutions.

In-depth commentary on UNCITRAL topics from outside the UNCITRAL process, found in journal articles, online and at conferences, further supports the process. The resulting legal texts are practical in approach, and we can be sure that they work. In addition, all regions and levels of development are represented in UNCITRAL sessions, so the solutions developed are truly universal – they work everywhere.

The Secretariat of UNCITRAL, the International Trade Law Division of the Office of Legal Affairs that I lead, is the oil in the UNCITRAL engine. The Secretariat supports the States and organizations in their deliberations, preparing and publishing research materials and proposals for the States and organizations to consider. And once UNCITRAL has adopted legal texts, the Secretariat provides technical assistance to States in the effective use of the texts.

The texts themselves take different forms: international conventions, model laws and legislative guides. UNCITRAL has no power to require States to use its texts, which all require domestic implementation. In recent years, States have ratified, enacted or used UNCITRAL texts on hundreds of occasions, demonstrating that they are persuaded of the benefits of those texts.





UNCITRAL works in many subject-areas – reflecting that international commerce requires confidence in domestic legal environments as well as rules enabling cross-border transactions. So UNCITRAL texts cover setting up and financing businesses, selling and transporting their products and services, often now through the digital economy, resolving business disputes and, in some cases, winding-up businesses that fail.

I should like to focus on some aspects of UNCITRAL’s work that are relevant to large commercial transactions such as infrastructure development, which are familiar to you through the Belt and Road Initiative. UNCITRAL has a model law and legislative guide on procedures to conclude infrastructure contracts between governments and private enterprise, i.e. on public procurement and public-private partnerships.

These texts are designed to encourage broad competition, and transparent and objective contract awards, so that the citizens ultimately financing the infrastructure receive value for their taxes. The immediate financing of the construction often requires secured borrowing, facilitated by UNCITRAL’s model law and legislative guides on security interests, texts that also address a main problem of secured transactions laws – the multiplicity of regimes around the world, with consequent gaps and inconsistencies that hinder access to credit.

An almost inevitable feature of such projects is that there will be disputes and, here, UNCITRAL’s decades of experience in providing for the efficient and effective settlement of these disputes through arbitration and mediation, with decisions capable of international enforcement, are reflected in our flagship texts such as the UNCITRAL Model Laws on International Commercial Arbitration and International Commercial Mediation, and Conventions on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention that counts 159 member States and celebrates its 60th anniversary) and the Convention on International Settlement Agreements Resulting from Mediation (to be known as the “Singapore Convention on Mediation”) that will open for signature on 7 August 2019.

Where a project includes cross-border investment, disputes between States and investors can be settled in a transparent way, using the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the Mauritius Convention on Transparency).





I mentioned above the importance of data, the basic commodity for the digital economy and oil of the 21st century. UNCITRAL is also focusing on enabling the digital economy, which as we all know has transformed the way we do business and encourages regional cooperation in commercial transactions.

Just last year, UNCITRAL adopted a Model Law on Electronic Transferable Records, which supports the timely completion of commercial agreements, improving speed and security of transmission, permitting the reuse of data and automating certain transactions through "smart contracts". These are invaluable tools in transport and logistics, and finance ("fintech") and for developing countries interested in establishing a market for electronic warehouse receipts to facilitate farmers' access to credit. So UNCITRAL also considers the needs of small businesses and in fact has a workstream focusing on MSMEs and their challenges in developing economies, in particular.

Strengthening and promoting the international treaty framework

Let me now turn to the crucial importance of international treaty law. Since its establishment in 1945, the United Nations and its Member States have striven to give practical meaning to the Charter's resolve to establish the conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to develop legal bases for peaceful relations between States.

Treaties are a vital part of international relations and the United Nations has played a central role in the negotiations of hundreds of multilateral treaties that address subjects ranging from trade, crime and corruption, disarmament or combatting terrorism to development, human rights, the environment or the law of the sea. Each has significant bearing on the United Nations' quest to create a safer, more just, and more prosperous world. The Secretary-General has, with the endorsement of Member States of the United Nations, committed the Organization to strengthening and promoting the multilateral treaty framework by highlighting the importance for States to become parties to the over 600 treaties deposited with him and the need to implement them.





In September 2000, world leaders attending the landmark Millennium Summit were invited to take advantage of their presence at the Organization's Headquarters to sign or ratify these multilateral treaties.

A successful side event called the "Treaty Event" offered a platform for Governments to showcase their commitment to strengthening the rule of law at home and in the global arena.

Similar events have been held since then during the opening of the General Assembly sessions each year for high-level delegations to undertake treaty actions in a solemn setting, resulting in more than 2,000 new signatures, ratifications and other treaty-related actions.

The upcoming Treaty Event organized by the Treaty Section of the Office of Legal Affairs will take place from 24 to 27 September.

To deliver results for a strengthened international framework, the Treaty Section also works with Member States to build their capacity and offers legal expertise and technical assistance in the field of the law of treaties and treaty practice.

The Treaty Section of the Office of Legal Affairs is also involved in the dissemination of international law, in particular bilateral and multilateral treaties that are registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter, by publishing registered treaties in the United Nations Treaty Series.

A searchable electronic database with information about over 70,000 registered treaties and 120,000 treaty-related actions is available at the website of the Treaty Section.

The full texts of these treaties in all their authentic languages, as well as daily updated status of multilateral treaties deposited with the Secretary-General, are also available on the internet through the website of the Treaty Section.





With an invitation to consult this website and other resources I have mentioned earlier, I would like to end this lecture in the hope that you would further your curiosity and knowledge of international law.

BBNJ

Before I conclude, let me briefly touch upon a significant development in relation to the law of the sea, in particular the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (or “BBNJ” as it is widely known). Issues related to BBNJ, including the matter as to whether there is a governance or regulatory gap and if so how that gap should be addressed, have been extensively discussed within the General Assembly over the past 15 years.

Those deliberations led to the landmark decision by the General Assembly, in December 2017, to convene the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (“the BBNJ Conference”). The convening of that Conference marks the first time since the adoption of the United Nations Fish Stocks Agreement in 1995 that States have met to negotiate a legally binding instrument under UNCLOS. It also represents an opportunity to make a substantial contribution to the development of the international legal framework for the oceans, and the conservation and sustainable use of their biodiversity.

The decision to convene the BBNJ Conference followed from the 2015 recommendations of an Ad Hoc Open-ended Informal Working Group, which was mandated by the General Assembly to study issues relating to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, and that Working Group’s recognition of the need for the comprehensive global regime to better address those issues.

A Preparatory Committee was subsequently established to make recommendations on the elements of a draft text of an international legally binding instrument under UNCLOS. The task of the BBNJ Conference is to consider those recommendations,





and to elaborate the text of such an instrument, with a view to developing it as soon as possible.

In its negotiations, the Conference is mandated to address a package of issues related to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, in particular, together and as a whole:

- o marine genetic resources, including questions on the sharing of benefits;
- o measures such as area-based management tools, including marine protected areas;
- o environmental impact assessments; and
- o capacity-building and the transfer of marine technology.

In the resolution convening the Conference, the Assembly reaffirmed that the work and results of the Conference should be fully consistent with the provisions of UNCLOS, and recognized that this process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

During the first two sessions of the Conference, delegations progressed discussions as to how each of these issues might be addressed in the international legally binding instrument.

Two further sessions are to be held in August this year and during the first half of 2020 respectively.

The Conference highlights the continued relevance of UNCLOS and multilateralism in addressing issues of global significance which require international multi-stakeholder cooperation. It also shows that the United Nations remains a relevant forum to discuss and find solutions to issues of global concern.

Conclusion

This brings me to the end of my lecture today. I hope that I have succeeded in providing you with a glimpse of what the work of an international lawyer at the United Nations looks like today.





If you consider embarking on a career in the practice of international law, the Office of Legal Affairs is – in my admittedly biased view – a very interesting option.

Thank you very much for attention. You have all my best wishes for your studies and future career.

