



Informal Meeting of the Legal Advisers of the Ministries of Foreign Affairs

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Distinguished delegates,
Colleagues and friends,

[Opening remarks]

I am pleased to see you all again and to deliver the opening statement for this year's Informal Meeting of the Legal Advisers from the capitals. This is one of the highlights of my year and every year it is a distinct pleasure.

First of all, I wish to express my sincere gratitude to the delegation of Poland for coordinating the preparation of this year's meeting. I am very grateful to the Director of the Legal and Treaty Department in the Polish Ministry for Foreign Affairs in Warsaw, Mr. Piotr Rychlik, and his team in capital and in the Permanent Mission of Poland for the work that they have invested in organizing the 2018 meeting, which is the 29th annual meeting. The topics that you will be discussing this year are thought-provoking and sure to lead to some interesting exchanges.

Before we begin and in keeping with our tradition, I would like to make some general observations on a few timely topics that I think will also be of interest to you and will hopefully give you something to ponder over the next two days.

[Criminal Accountability]

Since the establishment of the ICTY over two decades ago, we are witnessing a new trend with respect to criminal accountability mechanisms established by the United Nations.

In contexts where it is difficult to foresee effective judicial accountability, the international community is focusing on non-judicial mechanisms which can gather and secure evidence in the interim, so that such evidence can be used in future judicial proceedings.

The first example is the mechanism created for Syria. In December 2016, the General Assembly established in resolution 71/248 a new mechanism known as the IIIM. The IIIM has two main tasks:





- (1) to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses committed in Syria; and
- (2) to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

The IIM will support criminal prosecutions and apply criminal justice methodologies in its work, even if it cannot ultimately issue indictments or prosecute cases.

In its first report, the IIM noted that the IIM model forges a new approach to international criminal justice, as accountability is now seen as a responsibility extending across multiple jurisdictions and involving coordination between national and international actors.

The second example is the establishment of a mechanism in Iraq. In September 2017, the Security Council requested the Secretary-General to establish an Investigative Team to support domestic efforts to hold ISIL (Da'esh) accountable, by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL in Iraq. This team, known as UNITAD, commenced its work on 20 August 2018.

Most recently, on 27 September, the Human Rights Council established an independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law in Myanmar since 2011 in order to facilitate and expedite fair and independent criminal proceedings. This mechanism will likely be similar to the IIM, with a couple of interesting differences, including direct access to victims and witnesses in Bangladesh and a ruling of the Pre-Trial Chamber of the ICC according to which the ICC may exercise jurisdiction over the deportation of the Rohingya people from Myanmar to Bangladesh.

These mechanisms show a significantly new approach that Member States have adopted in order to ensure some level of accountability for serious violations of international law where judicial accountability mechanisms may not be an option.





[LAW OF THE SEA]

Ladies and Gentlemen,

Turning briefly to issues pertaining to the law of the sea, many of you will recall that the General Assembly, in its resolution 72/249 adopted by consensus on 24 December 2017, decided to convene an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee established by resolution 69/292 on the elements and to elaborate the text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a view to developing the instrument as soon as possible.

The Assembly also decided that negotiations shall address the topics identified in a package agreed in 2011, namely, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

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

It further decided that, initially with respect to 2018, 2019 and the first half of 2020, the Conference shall meet for four sessions. In accordance with the resolution, an organizational meeting was held in New York in April this year, at which Ms. Rena Lee of Singapore was elected as President of the Conference. The meeting also decided on a number of procedural and organizational matters. Also in accordance with the resolution, the first session of the Conference took place from 4 to 17 September. That session focused on the four topics of the package, working through informal working groups, and considered, at the request of the President and on the basis of a President's aid to discussions, what would need to be included in the international legally binding instrument.

It is my assessment, as Secretary-General of the Conference, that the meeting was largely considered a success in terms of putting the Conference on a solid path





towards the development of a zero draft of an international legally binding instrument.

The second session is tentatively scheduled to take place from 25 March to 5 April 2019. In preparation for that session, the President was requested to prepare a document with the aim of facilitating focused discussions and text-based negotiations, containing treaty language and reflecting options concerning the four elements of the package.

[Treaties]

Les organisateurs de la Réunion de cette année nous invitent, dans l'après-midi de demain, à discuter du thème des mémorandums d'entente à la lumière de la Convention de Vienne.

Je me réjouis de cette initiative d'inclure dans cette Réunion un thème du droit des traités. La négociation, participation et mise en œuvre des traités sont en effet toujours à l'ordre du jour de l'agenda de tout conseiller juridique. Il s'agit d'une des matières fondamentales du droit international, sur lesquelles il convient toujours de garder notre attention.

Le droit des traités joue également un rôle central dans les activités de mon Bureau.

Mon Bureau compte avec une Section des traités, dont le rôle est exclusivement dévoué à cette matière. La Section des traités accomplit une double fonction. Elle exerce, d'une part, au nom du Secrétaire général, les fonctions dépositaires pour les traités multilatéraux conclus dans le cadre de l'Organisation.

Avec plus de six cents traités sous sa garde, le Secrétaire général est certainement le dépositaire le plus chargé du droit international contemporain et, pour cette raison, sa pratique sert souvent de modèle pour d'autres dépositaires. Souvent négligée, la fonction du dépositaire est pourtant essentielle pour le bon fonctionnement d'un traité multilatéral, et le dépositaire peut être confronté à des questions juridiques complexes, pouvant parfois avoir des implications politiques importantes.

Il suffit de voir la pratique récente du Secrétaire général pour s'en rendre compte : les conditions de l'exercice du droit de retrait d'un traité multilatéral ; le régime juridique des amendements à un traité multilatéral ; la participation à des traités d'entités dont la qualité d'État est contestée... Autant de questions qui ont appelé





notre attention dans les dernières années et qui méritent certainement une étude approfondie.

La Section des traités est également chargée de l'enregistrement et la publication des traités en vertu de l'article 102 de la Charte des Nations Unies. Cette fonction est issue – comme vous le savez – des appels, après la Première Guerre mondiale, pour des relations internationales plus transparentes.

L'idée des rédacteurs du Pacte de la Société des Nations, puis de la Charte, était que mettre à la disposition du public le texte des accords internationaux conclus par les États contribue au maintien de la paix et de la sécurité internationales.

L'œuvre du Secrétariat dans l'enregistrement et la publication des traités sera bientôt centenaire, mais elle s'est également développée avec les relations internationales et les nouvelles technologies. Aujourd'hui les archives des traités tenues par les Nations Unies sont un instrument inépuisable d'information sur l'activité des États en matière de traités.

Pour toutes ces raisons, on ne peut que se réjouir de l'initiative de l'Assemblée générale d'inclure dans son ordre du jour un point consacré au « Renforcement et promotion du cadre institué par les traités internationaux », que la Sixième Commission est en train de considérer dans ces travaux.

Ce point de l'ordre du jour donne aux délégations l'occasion de se consacrer à l'examen du règlement visant à mettre application l'article 102 de la Charte (adopté en 1946 et qui n'a pas été amendé depuis 1978), afin de s'assurer qu'il répond aux besoins des États. Je sais que les travaux de la Sixième Commission ont déjà donné lieu à d'intéressants débats sur cette question. Mais les promoteurs de ce point indiquaient également qu'il pourrait également fournir l'occasion de débattre d'autres sujets liés au droit des traités.

Avec le panel de demain après-midi, la Réunion des conseillers juridiques enrichira sans doute la réflexion des États dans cette matière.

[Concluding remarks]

I hope that this short introduction from my side has provided some background and insight for your discussions and for discussion of issues back in your capitals more generally.

