



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

International Law Commission

Statement

by

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Mr. Chair,

Distinguished members of the International Law Commission,

Ladies and gentlemen,

This is the first time that I address you via video conference from New York. I convey to you all warm greetings from across the Atlantic. It was a great pleasure for us last year to host you in part here at Headquarters during the memorable seventieth anniversary session. The events in New York and Geneva affirmed the central role that the International Law Commission has in the progressive development of international law and its codification. I congratulate the previous bureaus led by Georg Nolte and Eduardo Valencia-Ospina for overseeing the organizational efforts. I also congratulate you and your bureau for assuming the mantle of leadership for the current session, during which much work to advance the programme of the Commission is anticipated. I convey to you all the best wishes of the Secretary-General for a successful session.



Distinguished Members of the International Law Commission

Despite the distance between us, I intend, in my statement, to continue to follow the tradition of providing you with an overview of the activities of the Office of Legal Affairs in the preceding year. The provision of centralized legal services to the Organization remains the primary focus of the Office. I am of course mindful of the ever-expanding scope of legal activities of the United Nations system wide.

I will start with your Secretariat, the Codification Division.

[COD]

Mr. Chair,

Now that the major activities surrounding the seventieth anniversary are over, the remaining work of the Division concerning the anniversary concerns the completion of publication of the events outcome with a reputable publisher. Editorial work on the manuscript has taken more time than anticipated but is now almost complete, and contractual work with the publisher is underway. It is hoped that the book on the commemoration could be issued before the end of the year.

During the seventy-third session of the General Assembly, the Division provided substantive servicing as it has done in seventy-two years previously to the Sixth (Legal) Committee. The Committee was convened from 3 October and 13 November 2018. It held 35 plenary meetings, considering 27 agenda items, 25 of which were substantive. It also convened three working groups, and held numerous informal consultations on draft resolutions. Upon the recommendation of the Sixth





Committee, the General Assembly adopted, without a vote, 24 resolutions and 7 decisions.

In relation to your own work programme, it was gratifying to see many of you attend and participate in the “International law week,” the General Assembly, in resolution 73/265 of 22 December 2018, recommended that the Commission continue its work on the topics in its current programme of work, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee, while taking note of the decision of the Commission to include the topic “General principles of law” in its programme of work, and the inclusion of the topics “Universal criminal jurisdiction” and “Sea-level rise in relation to international law” in the long-term programme of work of the Commission.

The Assembly also welcomed the conclusion last year of the Commission’s work on “subsequent agreements and subsequent practice in relation to the interpretation of treaties”, and “identification of customary international law” and its adoption of the draft conclusions and commentaries thereto on the two topics. 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.

With regard to “protection of persons in the event of disasters”, a topic concluded by the Commission in 2016, the Assembly in resolution 73/209, decided to revert to the item at its seventy fifth session next year, while bringing to the attention of States the recommendation by the Commission that a convention be elaborated on





the basis of the draft articles, and requesting the Secretary-General to invite Governments that have not yet done so to submit comments on the articles.

At its forthcoming session this year, the Assembly will once more consider a number of items emanating from projects completed by the Commission. These relate to: “responsibility of States for internationally wrongful acts”, “diplomatic protection”, “consideration of prevention of transboundary harm from hazardous activities and allocation of loss in case of such harm” and the “law of transboundary aquifers”. It is my hope that we will see some advance one way or another on these items.

Since the last briefing, the Codification Division has continued to successfully implement the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The Programme 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. The activities of the Programme continue to include the organization and facilitation of four week in-person training courses: the International Law Fellowship Programme in The Hague, and three Regional Courses in international law - for Africa in Ethiopia, Asia-Pacific in Thailand and Latin America and the Caribbean in Chile. All four training programmes were successfully conducted and several members of the Commission contributed their time and expertise to assist in shaping the future of young international lawyers.

The Programme also develops and maintains the UN Audiovisual Library in International Law, an online training component, which is available world-wide free of charge. Members have also contributed to the Library by recording lectures. I am very grateful for such generous contributions. I also wish to take this





opportunity to thank former and current Commission members, who provided crucial support to two off-site recording missions, in Latin America and the Russian Federation. These two recording missions have increased the linguistic and geographical diversity of the Library.

Let me also note the successful completion and launch of the podcast initiative of the Library. Previously, lectures were available in video format only, requiring a large bandwidth to be viewed, which in turn made accessibility difficult in places with limited high-speed internet. All lectures are now available for free in video and audio files thus facilitating access in regions where such access would otherwise have been difficult.

[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 year for the Office, as we have addressed a wide range of issues of public international law. I will address a few.

[Accountability]

Let me first turn to the area of accountability, which has seen important developments in recent years, both with regard to the judicial and to the non-judicial international accountability mechanisms that my Office supports.





At the end of 2018, the Residual Mechanism for International Criminal Tribunals completed its first year as a stand-alone single institution tasked with maintaining the legacies of the two *ad hoc* tribunals, ICTY and ICTR. On 20 March, the Mechanism rendered the appeal judgment in one of the major ICTY cases, largely upholding the verdict against Radovan Karadžić, bringing those long-running proceedings to an end.

Mr. Karadzic, who is one of the highest-ranking officials to be tried by the International Tribunal for the former Yugoslavia and by the Residual Mechanism, was found guilty of genocide for the 1995 Srebrenica massacre, crimes against humanity and violations of the laws or customs of war and was sentenced to life imprisonment.

The Mechanism is seized of one other appeal, in the case of General Ratko Mladić, and a retrial in the case of former senior Serbian security officials, Messrs. Stanišić and Simatović. The conclusion of all the substantive cases of both the ICTR and the ICTY therefore now moves into clear sight.

Other tribunals are also reaching defining stages of their work. Last year saw some important progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC) with the issuance of the trial judgement in Case 002/02, where the most senior former Khmer Rouge leaders indicted before the Chambers, Nuon Chea and Khieu Samphan, were convicted 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 was heard. Notably, the genocide charges were not in relation to the Khmer population itself, but were





restricted to charges of genocide against the Cham and Vietnamese minority populations.

Another noteworthy aspect of the judgement is the Trial Chamber's finding 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 testified, provide an invaluable historic record for the people of Cambodia, and the judgement clearly demonstrates that perpetrators of the most heinous crimes can be held accountable, even decades after those crimes were 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.

At the Special Tribunal for Lebanon, closing arguments in the central case of *Ayyash et al.* concluded in September 2018, with the trial judgement expected in the second half of this year. You will recall that this case relates to the 14 February 2005 attack which killed 22 individuals, including the former Lebanese Prime Minister Rafik Hariri, and injured 226 others.

As I have mentioned previously, recently, 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 interest, 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 may have jurisdiction.





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

Two years ago, I referred to the establishment of such a mechanism in the Syrian context, the International, Impartial and Independent Mechanism on Syria (the IIIM). And last year, I reported on the establishment of a similar mechanism in Iraq. Today, I can report that OLA is currently working, together with OHCHR, on the establishment of the third mechanism of this nature, this time regarding the situation in Myanmar.

The establishment of these mechanisms reinforces the idea that the main responsibility in the fight against impunity remains with States.

This approach raises new challenges that need to be addressed and that I would like to highlight the following considerations:

First, the establishment of mechanisms of this nature reinforces the need of building domestic judicial capacity. And the assistance of the international community in supporting nationally-owned efforts towards ensuring accountability for serious crimes under international law remains essential.

Second, these three accountability mechanisms that I have mentioned have been established in situations in which other domestic and international entities have already been collecting information and, sometimes, even attributing responsibility. In this regard, coordination and cooperation between different bodies, from fact-finding missions and sanctions committees to criminal accountability mechanisms is essential. This is particularly relevant regarding the





collection of information which, often, concerns the same facts, the same perpetrators and, most importantly, the same victims and witnesses, which are therefore being revictimized by recounting their ordeals.

Third, the plethora of entities gathering information regarding same situations also raises questions concerning the sharing of information with third parties, as not all entities follow the same policies. For example, while international accountability mechanisms cannot share evidence for use in criminal proceedings in which capital punishment could be imposed or carried out, in accordance with applicable United Nations policies, it appears that other bodies do not follow such a strict approach in their cooperation with domestic authorities.

Last but not least, finding resources to sustainably support accountability bodies remains a problem. However, interestingly enough, the mechanisms for Iraq and Myanmar have been both placed under the regular budget, and the Mechanism for Syria, which is currently funded through voluntary contributions, is requesting to be placed in the regular budget in 2020.

[Peacekeeping]

Turning to the area of peacekeeping, we have witnessed for some time now a gradual shift in the nature and role of some peacekeeping operations, particularly those deployed and operating in dangerous and high risk environments, where they frequently need to respond to threats posed by various actors, including terrorist elements and armed groups. This is often in situations that entail self-defence from an attack or threat of attack, or as part of their mandate to protect civilians at risk





of physical violence. The peacekeeping operations in Mali, the Central African Republic and the Democratic Republic of the Congo come to mind. Other missions have faced similar challenges over the years. In all of them, hard lessons have had to be learnt.

The deployment in such environments creates an obvious risk for all United Nations personnel, uniformed and civilian alike. Such risk was highlighted in a report commissioned by the Secretary-General that made some headlines at the end of 2017. The report was presented by former United Nations Force Commander General dos Santos Cruz, who made recommendations on how to improve the security of United Nations peacekeepers, including by increasing the robustness of their response to attacks and to threats.

In the course of the last year, these developments led to a reassessment of the posture and dynamics of United Nations peacekeepers' engagement on the ground pursuant to their various mandates. The Security Council has taken notice, including by requesting certain peacekeeping operations to adopt a robust and proactive posture and highlighting the need for an appropriate response to deter asymmetric and other threats. The Secretary-General has also led various initiatives to sensitize Member States, including those contributing uniformed personnel to peacekeeping operations and those hosting them. For instance, in the margins of last year's General Assembly, he called upon all Member States that have not yet done so to consider becoming a party to the 1994 Convention on the safety of United Nations and associated personnel and its optional protocol.

Operating in such high-risk environments also inevitably leads to a reconsideration of our relationship with non-UN forces present in the theatre of operation, including national and international forces which may be engaged in counter-





terrorism or other offensive operations. United Nations peacekeeping operations must continue to operate within the boundaries of their mandate as provided by the Council. These mandates however do evolve. They have led some peacekeeping operations to provide support to non-UN forces, and enter into coordination arrangements or conduct joint operations with them. Last year, as you will recall, I mentioned the logistical support that MINUSMA has been mandated to provide to the units of the Joint Force of the G5 Sahel operating in Mali.

All such support must of course remain subject to the United Nations human rights due diligence policy. A compliance framework is being designed and implemented for the United Nations support to the G5 Sahel Force. Lessons will be learnt from all such activities. One of the key lessons is that we must ensure that we receive appropriate guarantees of compliance with international human rights, humanitarian and refugee law from all recipients of United Nations support. Another area of engagement is to seek the non-imposition and non-application of the death penalty to persons detained and handed over to national authorities, as well as guarantees that their treatment is consistent with international standards.

[Privileges and immunities]

I now turn, briefly, to challenges relating to the status, privileges and immunities of the Organization. As in previous years, I regret to report that matters have not improved. We continue to face challenges on taxation and social security and are facing increasing challenges to the immunity of the Organization when it comes to labour claims brought against the United Nations. There are a growing number of countries where the labour courts will not recognize the immunity of the





Organization from these types of suits, even in cases of staff members who have access to the internal justice mechanisms of the United Nations. This in turn is also leading to the seizure of United Nations funds pursuant to judgments issued by these labour courts, despite the absolute immunity from execution enshrined in the 1946 Convention on the Privileges and Immunities of the United Nations.

In this connection, I would like to highlight a recent opinion of the U.S. Supreme Court, which does not directly affect the immunity of the United Nations itself but has a direct impact on the Specialized Agencies of the United Nations. In February, the U.S. Supreme Court rendered a decision in a case brought against the International Finance Corporation (IFC) related to its financing of a power plant in India. The plaintiffs in the case, citizens of India, alleged that the power plant polluted the air, land and water in the surrounding area of the power plant.

Since the U.S. is not party to the Specialized Agencies Convention, many international organizations in the U.S., including the IFC, derive their immunity from the domestic law of the United States, specifically the International Organizations Immunities Act (IOIA). Under the IOIA, the immunity to be accorded to international organizations is the “same immunity from suit...as is enjoyed by foreign governments”.

The U.S. Supreme Court found that this formulation in the IOIA means that international organizations enjoy the same immunity from suit that foreign governments enjoy today under the Foreign Sovereign Immunities Act, i.e.





restrictive immunity, such that the “commercial activities” exception applied to foreign sovereigns would apply to international organizations.

While the IFC and other *amicus curiae* argued that this could potentially open the floodgates of litigation, the U.S. Supreme Court was not swayed by these arguments, noting the following: (a) the constituent instruments of international organizations can always provide for a different level of immunity; (b) it is not clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA; and (c) there are other requirements that must be met under the FSIA, including that the commercial activity must have a sufficient nexus to the United States.

Looking forward, while it is possible that future lawsuits will not have a sufficient nexus to the United States to allow for the suits to ultimately go forward, the Specialized Agencies will nonetheless be required to expend significant resources to hire counsel and defend lawsuits in which it is alleged they have engaged in a commercial activities, and may potentially need to pay for damages in cases where they no longer enjoy immunity.

In the proceedings, the statements of the U.S. Government indicated the Government’s view that the United Nations is in a different position since the immunity enjoyed by the United Nations in the U.S. is pursuant to a multilateral treaty, to which the U.S. is a party. However, there remains a possibility that eventually questions may arise as to why the United Nations itself should be treated differently than other international organizations in the U.S.





In this changing climate that I have described, it is important that the absolute immunity of the United Nations from both suit and execution of assets is maintained and supported.

[Situation in Venezuela]

To conclude on the work of the Office of the Legal Counsel, I would like to say a few words on the situation in Venezuela, which has naturally occupied the Secretary-General's attention over the last few months. My Office has repeatedly been called upon to provide legal advice in handling the situation.

A central objective of the Secretary-General has been to preserve the space for him to be able to play a role in defusing the crisis in the country, if the parties want him to do so, in particular by lending them his good offices in the context of any political negotiations among them.

The economic and social situation in the country has obviously presented an additional challenge in this regard.

However, one may wish to describe that situation, there have clearly been humanitarian problems, with drastic shortages of food, medicines and more. The Government has denied that these problems have taken on the dimensions of a humanitarian crisis, while the opposition has been calling for humanitarian aid and, indeed, has been making physical attempts to secure the entry of such across the country's borders.





Whatever the political and moral rights and wrongs, the law in this regard is clear; and this is so, even if we accept, for argument's sake, that the situation in the country can be said to constitute a disaster or other similar emergency.

As was remarked during this Commission's work on its draft articles on the Protection of Persons in the event of disasters, the law may be evolving towards greater recognition of a duty on the part of a State that is affected by a disaster to seek external assistance if its domestic response capacity is overwhelmed and, with that, towards greater recognition of a duty to accept offers from others to provide it with assistance of the kind and in amounts that it needs.

But, even if we were to go further than that and assume that there is a concrete legal obligation on the part of the affected State to consent to the entry of humanitarian assistance on to its soil, it would still remain the case that, if the affected State were to withhold its consent and refuse the assistance offered to it, that would not mean that external actors could lawfully deliver that assistance on its territory.

To think otherwise would be to commit the fallacy that the International Court of Justice pointed out nearly seventy years ago in its advisory opinion in the Interpretation of *Peace Treaties* : if a State fails to do what it is legally obliged to do, the fact that that failure is a violation of its obligations under international law does not mean that other States can treat it as having done what it ought rightfully to have done.





Even if it did not have the lawful right to do so — and it is most doubtful that it did not have that right — the Government of Venezuela therefore retained at all times the legal ability to prevent the lawful entry of aid and assistance on to its territory.

Another issue that has been a subject of discussion among delegates recently concerns the representation of Venezuela in United Nations organs and United Nations Conferences. That a situation may arise where more than one authority may claim to be the government entitled to represent a Member State in the United Nations was acknowledged by the Organization early on.

The General Assembly addressed this question in its resolution 396 (V) adopted at its fifth session on 14 December 1950, in which it recommended that the Assembly consider and adopt decisions concerning those situations.

Such situations have most often arisen when the Secretariat received two sets of credentials for one Member State, appointing different delegations to participate on behalf of that Member State, for example in relation to Afghanistan, Cambodia and more recently Guinea-Bissau. In such cases, it has been the Credentials Committee of the General Assembly, which consists of nine members, that has considered the matter. The Committee reports to the Assembly on its findings and recommendations and based on such recommendations, the Assembly takes a decision.

Most recently, in the South-South Conference held in Argentina in March, where the Committee had before it only the credentials signed by Mr. Jorge Arreaza,





Foreign Minister of Venezuela, some members of the Credentials Committee disassociated themselves from the adoption of the Committee’s resolution, solely with respect to the acceptance of the credentials of the representatives of Venezuela. One member stated that it had recognized “Interim President Juan Guaidó as the only legitimate President of Venezuela”. Various statements were made in the plenary of the Conference when considering the report of the Credentials Committee, some expressing support for Mr. Guaidó and calling for a free and fair elections in Venezuela and others raising concerns about the report of the Credentials Committee recalling the principles of sovereignty and non-interference.

[GLD]

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

[Administration of justice]

One of the Secretary-General’s signature reform initiatives has been transforming the management processes of the Secretariat. Among other things, the Secretary-General established a policy to delegate authority to line managers for decisions under the UN Staff and Financial Regulations and Rules. The new policy went into effect on 1 January 2019.

Before the policy could come into effect, the General Legal Division helped to frame the new policy in an administrative issuance, specifically, a Secretary-General’s Bulletin, that establishes the policy’s legal framework. That framework applies not only to how the Secretary-General’s managerial authority is to be





delegated but also for how managers will be held accountable for exercising such authority.

OLA's work to promote accountability has also included providing extensive support to the Secretary-General initiatives to ensure that the UN staff members are held accountable for their actions and decisions.

GLD has played a critical role in supporting the Secretary-General's efforts to advance a zero-tolerance approach to sexual harassment. GLD contributed to the UN system-wide task-force to address sexual harassment in the UN system, which resulted in all UN System organizations adopting a model policy on sexual harassment in 2018. The model policy reflects a uniform definition of sexual harassment developed by GLD, as well various key elements that remove barriers to reporting sexual harassment. GLD is currently participating in a CEB Task Force working group aimed at strengthening and harmonizing investigative capacity and improving of the quality of investigations of sexual harassment.

[Arbitration and Claims]

A few years ago, the Commission placed the topic, "settlement of disputes involving international organizations" on its long-term programme of work. I thought it might be convenient at this stage to address a few words on dispute settlement with commercial entities and individual service providers, which is part of the core functions of GLD.

As you know, under the Section 29 of Convention on the Privileges and Immunities of the United Nations, the Organization is bound to make provisions





for “appropriate modes of settlement” of disputes arising out of contracts or other disputes of a private law character which cannot be resolved amicably.

In 1996, the General Assembly accepted the long-standing practice of the Secretary-General to resolve any such disputes that cannot otherwise be settled amicably through arbitration under the UNCITRAL Arbitration Rules. Disputes that arise from *commercial* contracts to which the UN is a party often involve claims of many millions of dollars.

Arbitration under the UNCITRAL Rules has also been the standard dispute resolution mechanism for those arising from contracts with individuals, such as consultants, individual contractors, UN Volunteers and other service providers, referred to as “non-staff personnel.”

Such non-staff personnel do not have access to the UN system for the administration of justice. Given that standard arbitration under the UNCITRAL Arbitration Rules can be costly and cumbersome for disputes involving such non-staff personnel, the General Assembly has requested information about options for an expedited and less costly approach to arbitration of such non-staff personnel claims under the UNCITRAL Arbitration Rules. GLD developed an approach to such an expedited arbitration process using the UNCITRAL Rules, and that process was proposed to the Assembly in 2012. The Assembly took note of the proposal and has remained seized of the matter.

[Institutions]

The European Union’s General Data Protection Regulation (GDPR) entered into effect in May 2018. Under the GDPR, EU member States can impose substantial fines on persons or entities that are subject to the GDPR and who fail to abide by





GDPR standards for handling personally identifiable data. Consequently, various States or entities with whom UN System organizations interact for the delivery of mandated activities have sought to require UN System organizations to comply with the GDPR. In some instances, such States and entities have refused to accept personally identifiable data from or to transfer such data to UN System organizations without assurances that they would not be subject to penalties for doing so. All of this has threatened to impair the ability of UN System organizations to deliver their mandated activities.

At the request of the Legal Advisors of the UN System organizations, I am spearheading consultations on behalf of the UN System organizations with the European Commission. The Commission has acknowledged that the GDPR does not apply *per se* to UN System organizations, and the Commission is aware that the GDPR has created complications for the UN System and other international organizations. Through our consultations, we are seeking to find practical solutions to avoid having the GDPR impair the activities mandated for our organizations. We are also providing the Commission with evidence and assurances that UN System organizations have robust policies and practices for protecting personally identifiable data. As you can imagine, UN System organizations handle a great deal of such data, from information on staff, delegates and others attending conferences and meetings, to suspected terrorists, refugees and others under the protection of the organizations. We are continuing to engage with the Commission to find a practical way forward.





[Development System reform]

The Office of Legal Affairs has been assisting the Executive Office of the Secretary-General with the implementation of the repositioning of the United Nations development system. Pursuant to General Assembly resolution 72/279, of 31 May 2018, the functions of the UN Resident Coordinator were separated from those of the Resident Representative of the United Nations Development Programme (UNDP) as of 1 January 2019. The Resident Coordinator's functions are being performed by a separate individual from the UNDP Resident Representative. Also, pursuant to the same General Assembly resolution, the UN Development Operations Coordination Office (DOCO), which supports the UN Development Group (UNDG) and the Resident Coordinators system, was transferred from UNDP to the UN Secretariat as a standalone office. DOCO has been renamed as the Development Coordination Office, and the UNDG has been renamed as the UN Sustainable Development Group and is chaired by the Deputy Secretary-General.

The separation of Resident Coordinators' functions from those of UNDP Resident Representative has meant, among other things, that a new legal framework has to be established with host Governments applicable to the Resident Coordinator and the Resident Coordinator's Office in the country. [The Secretary-General has proposed to the host Governments that UNDP's Standard Basic Assistance Agreement (SBAA) be applied, *mutatis mutandis*, to the Resident Coordinators and the Resident Coordinator's Offices.] My office is working closely with the Development Coordination Office in negotiating necessary arrangements with relevant host Governments. [We have already seen that some countries wish to





take this opportunity to negotiate a new agreement and we anticipate that there may be attempts to limit the scope of certain privileges and immunities, such as taxation, but my Office will continue to take the position that we must adhere to the immunities and privileges set forth in the 1946 Convention without any restrictions.] My Office is also assisting the Development Coordination Office with other issues relating to the repositioned UN development system.

[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/72/205), between 1 July 2017 and 30 June 2018, 24 cases were referred to states of nationality. Of these cases, 8 involved allegations of sexual exploitation and abuse, and 14 cases involved allegations of fraud or corruption.

The Office has also 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.

[ITLD]





Le 20 décembre 2018, l'Assemblée générale a adopté la Convention des Nations Unies sur les accords de règlement internationaux issus de la médiation, concluant trois années intenses de travail au sein de la Commission des Nations Unies pour le droit commercial international (CNUDCI). Le Gouvernement singapourien ayant généreusement proposé d'accueillir une cérémonie de signature de la Convention à Singapour, l'Assemblée Générale a en outre autorisé la tenue d'une cérémonie d'ouverture à la signature le 7 août 2019 à Singapour et recommandé que la Convention soit désormais connue sous le nom de « Convention de Singapour sur la médiation ».

Cette nouvelle convention vient compléter la remarquable série d'instruments de la CNUDCI portant sur le règlement des différends commerciaux internationaux, notamment dans le domaine de l'arbitrage, mais aussi dans celui de la médiation. La médiation est une méthode de résolution des différends caractérisée par sa flexibilité et sa rapidité ; elle est peu onéreuse et permet de protéger les relations entre les parties sur le long terme. La médiation est pratiquée depuis très longtemps dans la diplomatie bilatérale ou multilatérale ; elle fait aussi l'objet de nombreuses études de droit international public.

Néanmoins – et malgré ses avantages pratiques – la médiation est encore en phase d'expansion dans le monde des affaires, notamment dans les pays occidentaux, dont la culture juridique favorise les procédures contradictoires, au contraire d'autres régions, notamment en Asie et au Moyen Orient, où la médiation est plus profondément enracinée. Une tendance à la généralisation de ce type de procédure se dessine toutefois clairement, notamment grâce à la médiation judiciaire.

La Convention de Singapour sur la médiation tient compte de la diversité des niveaux d'expérience de la médiation dans les différents pays. En prévoyant des





règles cohérentes pour l'exécution internationale des accords de règlement issus de la médiation, la Convention facilite la solution rapide et efficace des différends commerciaux et contribue ainsi à l'optimisation des ressources dans le commerce international.

Une fois adopté et en vigueur, cet instrument constituera le cadre légal de référence pour l'exécution des accords de règlement internationaux, de la même façon que la Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères, la fameuse « Convention de New York » de 1958 pour l'arbitrage international. En parallèle à la Convention de Singapour, la CNUDCI a également amendé la Loi type de la CNUDCI sur la conciliation commerciale internationale de 2002, devenue la Loi type de la CNUDCI sur la médiation commerciale internationale et les accords de règlement internationaux issus de la médiation de 2018.

Lors de sa 51^{ème} session, la CNUDCI a également adopté un guide législatif sur les grands principes d'un registre des entreprises dans le cadre de son programme de travail sur les micros-, petites et moyennes entreprises. Les micro-, petites et moyennes entreprises constituent partout dans le monde une part essentielle du tissu économique et elles emploient plus de 60% de la population active mondiale. Le Guide soutient les Etats qui entreprennent des réformes législatives pour éliminer les obstacles juridiques rencontrés par les micro-, petites et moyennes entreprises et notamment pour faciliter leur constitution. Ce guide, comme le reste du programme de travail de la CNUDCI sur le MPME s'insère et contribue à l'objectif de développement durable n° 8, de « Promouvoir une croissance économique soutenue, partagée et durable, le plein emploi productif et un travail décent pour tous ».





Dans le même esprit de faciliter le développement et le fonctionnement des entreprises et de sauvegarder celles qui sont en difficulté, la CNUDCI a adopté, toujours lors de sa 51^{ème} session, la Loi-type sur la reconnaissance et l'exécution des jugements liés à l'insolvabilité, accompagnée d'un guide pour son incorporation dans le droit interne.

Les autres travaux en cours à la CNUDCI portent également sur des thématiques actuelles, telles que la réforme du système de règlement des différends entre investisseurs et États, les procédures arbitrales accélérées, les aspects juridiques de la gestion de l'identité digitale et des services électroniques de confiance dans le commerce digital ou encore l'insolvabilité des groupes d'entreprises.

La Commission a en outre décidé qu'à la suite de la finalisation du guide pratique sur les sûretés mobilières, le Groupe de travail VI examinera les questions juridiques relatives à la vente judiciaire de navires dans le contexte du commerce international.

[DOALOS]

Mr. Chair,

Let me now turn to the activities of the Division for Ocean Affairs and the Law of the Sea. This Division discharges the functions vested in the Secretary-General by the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and related Agreements. It also performs numerous functions mandated by the General Assembly in its ocean-related resolutions, in particular the annual resolutions on oceans and the law of the sea and on sustainable fisheries.





2019 marks the twenty-fifth anniversary of the entry into force of the Convention. At United Nations Headquarters this occasion will be commemorated, among others, during the twenty-ninth Meeting of States Parties to the Convention, on 17 June, with the participation of the Secretary-General and with a side event hosted by the Government of Singapore.

The Convention remains one of the most widely ratified and influential multilateral treaties even though there have been no new ratifications or accessions in the past 12 months. As at today, it has 168 States Parties, including the European Union. A substantial part of its regime, however, is applicable also to States that are not parties to it, in so far as its provisions reflect customary international law. The most recent resolution of the General Assembly on oceans and the law of the sea recognized once again the universal and unified character of the Convention. It also reaffirmed that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained.

Here, I wish to note that this is an important aspect to be kept in mind when the Commission decides to embark on a study of the topic “Sea-level rise in relation to international law”.

The Secretary-General has a number of functions under the Convention. These functions are discharged through the Division. Among them, I would like to highlight the depositary functions. The deposit of the information concerning the baselines and outer limits of maritime zones charts and list of geographical coordinates is of increasing importance, and, as I understand, might be of direct relevance for your work as you address the topic of sea-level-rise.





My colleagues in the Division stand ready to share their know-how and experience with the Commission and provide information on the technical aspects of the Convention. As to the other functions discharged by the Division under the Convention, apart from the servicing of the Meeting of States Parties, the Division continues to ensure extensive support to the Commission on the Limits of the Continental Shelf, the only body established under the Convention which was not provided by that treaty with a dedicated secretariat.

Moving to the Meeting of States Parties to the Convention, I would like to recall that normally it meets annually, but it can also be resumed as needed. In practice, this happens where there is a need for by-elections. Last January, the twenty-eighth Meeting resumed to fill two vacancies in the Commission on the Limits of the Continental Shelf.

It elected Mr. Yong Tang (China) to fill the vacancy which occurred as a result of the resignation of Mr. Lyu Wenzeng (China). Regrettably, the other vacancy which concerned a seat allocated to the Group of Eastern European States that has been vacant for years could not be filled, due to an ongoing lack of nominations.

Next month, when the twenty-ninth Meeting of States Parties meets, it will need to address this issue.

Apart from the commemoration of the twenty-fifth anniversary of the Convention, it will also receive information reported by the three bodies established under the Convention, consider budgetary matters of the International Tribunal for the Law of the Sea and issues of a general nature, relevant to States parties, which have arisen with respect to the Convention under article 319 of the Convention.





As to the Commission on the Limits of the Continental Shelf, it continues to hold three sessions a year for a total of 21 weeks of meetings which puts particular demands on its secretariat.

During the past year, this Commission held three sessions during which it has actively considered 12 submissions by coastal States, some of them being quite substantial and complex. These submissions were made by the Russian Federation in respect of the Arctic Ocean; Brazil in respect of the Brazilian Southern Region; Norway in respect of Bouvetøya and Dronning Maud Land; France and South Africa, jointly, in respect of the area of the Crozet Archipelago and the Prince Edward Islands; Kenya; Nigeria; Seychelles in respect of the Northern Plateau Region; France in respect of Reunion and the Saint-Paul and Amsterdam islands; Côte d'Ivoire; Sri Lanka; Portugal; and Tonga.

The Commission also received presentations concerning three additional submissions made by The Bahamas; Benin and Togo, jointly; and Liberia. These additional submissions show that the workload of the Commission continues to increase. The most recent, forty-ninth, session of the Commission was particularly productive. The Commission approved two sets of Recommendations, namely those in respect of the submission made by Brazil for the Brazilian Southern Region and in respect to the submission Norway concerning Bouvetøya (Bouvet Island).

The Division also acts as the secretariat of 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. From 2016 to 2018, participation in the Agreement continued to increase at a firm pace.





With eight new States Parties, the number of Parties rose from 82 to 90. Building on the success of the thirteenth round of Informal Consultations of States Parties to that Agreement in May 2018, which addressed, under a new format, the topic “Science-policy interface”, the fourteenth round of these Informal Consultations, held this month, focussed on the topic “Performance reviews of regional fisheries management organizations and arrangements”. It is also expected that States Parties will decide on the date of the next resumption of the Review Conference on the Agreement, possibly in 2021.

One other ongoing major development is 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. These negotiations are to address the 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.

The first session of the Conference took place from 4 to 17 September 2018. On the basis of a President’s aid to discussions, that session, working through informal working groups, focused on the four topics of the package and cross-cutting elements relating thereto.

The session also held discussions on the process for the preparation of the zero draft of the instrument.





The second session took place from 25 March to 5 April 2019. A President's aid to negotiations, which included treaty language and options, facilitated focused discussions and text-based negotiations in the Informal working groups on the four topics of the package agreed in 2011 and on cross-cutting issues. The second session ended on a high note. Many delegations expressed satisfaction with the progress achieved.

The President of the Conference was requested to prepare, for the third session, a document with the aim of enabling delegations to negotiate the text of the future instrument. Such a document will be structured in a form more akin to a treaty and contain treaty language.

The third session of the Conference will be held from 19 to 30 August 2019 and the fourth session in the first half of 2020.

Let me now turn to matters related to substantive support that the Division also provides to the General Assembly and its subsidiary organs, including in connection with the annual consideration by the Assembly of oceans and law of the sea and sustainable fisheries.

Another process of considerable importance serviced by the Division is the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the Regular Process). The Regular Process is an intergovernmental process guided by international law, including the Convention and other applicable international instruments and is directly accountable to the General Assembly.

The Regular Process is now in its second cycle, which started in 2016 and will be





completed in 2020.

The two main outputs for this second cycle are the second world ocean assessment, which is under preparation, and the Regular Process support for other ocean-related intergovernmental processes, including three process-specific technical abstracts of the first World Ocean Assessment which were issued in June 2017.

Following the first round of regional workshops in support of the second cycle of the Regular Process held in 2017, last year 2018 marked the successful completion of a second round of regional workshops. They were held in Koror, Palau, and in Valletta in August 2018; in Odessa, Ukraine, in October 2018; in Bali, Indonesia, and in Doha in November 2018, and in Accra and in Guayaquil, Ecuador, in December 2018. The objective of these regional workshops was to support the development of the second world ocean assessment by enabling the collection of regional-level data and enabling relevant members of writing teams to meet.

As to the format of the second world ocean assessment, the General Assembly decided on it in its resolution 72/73. While the first World Ocean Assessment provided a baseline study of the state of the world's oceans, the second will focus on trends and take the form of a single comprehensive assessment. In furtherance of the mandate by the Assembly, the annotated outline for the second world ocean assessment was considered and taken note of by the Ad Hoc Working Group of the Whole of the Regular Process at its last meeting held in August 2018. At present, the writing teams for the various chapters of the second world ocean assessment are being constituted and drafting for some chapters is already underway.

In accordance with the programme of work for the period 2017-2020 for the second cycle of the Regular Process, a two-day multi-stakeholder dialogue and





capacity-building partnership event (“the Event”) was held in New York in January 2019, in order to provide an opportunity to build awareness and collaboration with respect to capacity-building in support of the Regular Process, including with respect to building capacity to participate in, and make use of, integrated assessments.

It was attended by representatives of States, relevant United Nations system organizations, bodies, funds and programmes, relevant intergovernmental organizations and other stakeholders, including representatives from academia, civil society and industry.

The “Way forward: Conclusions from the Multi-Stakeholder dialogue and capacity-building partnership event” will be useful in the furtherance of capacity-building under the Regular Process.

Ocean science in the context of the legal regime for the oceans also continues to remain at the forefront in another forum. This year’s twentieth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, to be held in June, will be devoted to the theme “Ocean Science and the United Nations Decade of Ocean Science for Sustainable Development”, as decided by the General Assembly in its resolution 73/124. The important and cross-cutting role of ocean science in supporting the achievement of SDG 14 of the 20230 Agenda and each of its interrelated targets is reflected in target 14.a.

Ocean science also contributes to the achievement of other SDGs.

Advancing ocean science globally and filling gaps in knowledge presents a number of challenges, including insufficient funding and competition for funds, limited human, institutional and technological and infrastructure capacity in some regions,





particularly in developing countries, shortage of national policies or regulatory frameworks to promote ocean science, as well as challenges in data acquisition, analysis, management and dissemination.

Therefore, among other action, it is imperative to continue increasing the awareness of the provisions of UNCLOS and its implementing agreements, as well as those of other legal instruments that complement UNCLOS, and to address any challenges in the implementation of the legal framework.

As to the discussions at the nineteenth meeting of the Informal Consultative Process, held in June 2018, on the theme of anthropogenic underwater noise, the General Assembly noted that delegations, inter alia, expressed concern over the potential social, economic and environmental impacts of anthropogenic underwater noise due to the growth of ocean-related human activities, which has resulted in increased sound in many parts of the ocean, as well as the potential impacts of anthropogenic underwater noise on different marine species and, in view of the continuing gaps in knowledge and lack of data, stressed the urgent need for further research and international cooperation to assess and address the potential effects of anthropogenic underwater noise in all ocean areas.

Last but not least, let me say a few words with regard to international legal regime for the conservation and sustainable use of marine living resources. General Assembly resolution 73/125 on sustainable fisheries adopted in December 2018, reflects a number of important developments, including in the context of the Committee of Fisheries of the Food and Agriculture Organization of the United Nations. Moreover, pursuant to this resolution, the General Assembly will undertake, in 2020, 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.

The review will focus on the implementation of a number of paragraphs of resolutions 64/72, 66/68 and 71/123, with a view to ensuring effective implementation of the measures therein and to make further recommendations. As in the past, the review will be informed by a report of the Secretary-General and a two-day multi-stakeholder workshop.

It is very important to highlight that all the new developments that I have mentioned also come with new and increased capacity requirements for States, as they endeavour to respond to ongoing and rapid developments in ocean affairs. In this regard, the Division continues to provide and enhance its assistance to States in building human and institutional capacity, including through needs-based training programmes, fellowships and trust funds.

By way of example, a new capacity-building programme, the United Nations – Nippon Foundation Sustainable Ocean Programme began last year, which provides both thematic capacity-building to mid-level ocean professionals and critical capacity assistance to government officials from developing States, in particular least developed States (LDCs) and small island developing States (SIDS). The Programme also provides training for individuals involved in the ongoing negotiation process on 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. An additional expansion of the project is envisaged.





[Conclusion]

Distinguished Members of the International Law Commission

This concludes my statement for today. Let me once again wish you all the success for a fruitful session in Geneva. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication. Thank you very much.

