



**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 year I am happy to address you in person here in Geneva. I convey to you all, the warm greetings of the Secretary General and best wishes for a successful continuation of this session.

Sadly, we are again meeting at this session in challenging times for the world: new coronavirus outbreaks across the globe show that the COVID-19 pandemic is far from over, the number of violent conflicts worldwide is the highest it has been since 1945, people and ecosystems continue suffering drastic effects of climate change. The world economy is facing pressures of unprecedented proportions. In times like these, there is simply no durable alternative to dialogue, international



cooperation, and adherence to the rule of law. The Commission plays an important part in our global efforts to overcome the challenges of modern life and it is my hope that your work can contribute further to achieving this goal. The United Nations places international law at the centre of its activities.

I note with great optimism for the future that over the last year the work of the United Nations has continued as it strives to meet the aspirations of the framers of the Charter. We in the Office of Legal Affairs are proud to have fulfilled our mandated tasks without much interruption even in the face of the global coronavirus pandemic. I commend the Commission for meeting once again in hybrid form this year to continue its important work. I am informed that you have made great strides in your work and are on track to accomplish first and second readings of four topics and good progress on the other two topics. The Commission is also already planning ahead into the new quinquennium. Three new topics have been brought onto the Commission's programme of work: "Settlement of international disputes to which international organizations are parties," on the basis that the scope of this topic would be for future decision by the Commission; "Prevention and repression of piracy and armed robbery at sea"; and "Subsidiary means for the determination of rules of international law". I congratulate the Chair, the Bureau, all the members of the Commission and the Secretariat for the positive and determined spirit in which the session has been planned and is progressing, with so much expected and so much to be accomplished.

Mr. Chair, I also congratulate you and your bureau on the assumption of the leadership of the Commission in these daunting times. I also pay tribute to the previous bureau led by Mr. Mahmoud D. Hmoud.





Distinguished Members of the International Law Commission

As in the past, I will provide an overview of the activities of the Office of Legal Affairs, which offers centralized legal services to the Organization, since last year.

I will start with the Codification Division.

[COD]

Mr. Chair,

In 2021, the Sixth Committee was convened in the context of the seventy-sixth session of the General Assembly from 4 October to 18 November 2021. The Codification Division provided substantive servicing as it has done in the past. Just as the year before, the Sixth Committee had to adjust its working methods to strict COVID mitigation measures, once more spreading delegations over three conference rooms instead of one and conducting some of the meetings remotely. Despite this, the Sixth Committee successfully concluded consideration of the agenda items allocated to it and maintained its tradition of adopting its resolutions and decisions, without a vote. Upon the recommendation of the Sixth Committee, the General Assembly adopted, also without a vote, 20 resolutions and 10 decisions, including resolution 76/116 commemorating the fortieth anniversary of the 1982 Manila Declaration on the Peaceful Settlement of International Disputes.





In relation to the work of the Commission, the Committee considered your 2021 report. The participation of the Commission members, including the Chair and the Special Rapporteurs, in the debate was invaluable.

The Committee has noted the completion of the second reading of the draft guidelines on the protection of the atmosphere and the completion of the second reading of the draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties. The General Assembly welcomed conclusion of the work on these items in resolutions 76/112, 76/113, respectively.

Furthermore, the Committee took note of the Commission's decision to include the topic "Subsidiary means for the determination of rules of international law" in its long-term programme of work.

The Sixth Committee also considered the agenda items entitled "Crimes against humanity" and "Protection of persons in the event of disasters", on the basis of the articles completed by the International Law Commission in 2019 and 2016, respectively. The future work on question of crimes against humanity remains of continuing interest for member States, and further work on the way forward is expected this year. With respect to Protection of persons in the event of disasters, the General Assembly decided in its resolution 76/119 to examine the draft articles and to consider further the recommendation of the Commission for the elaboration of a convention on their basis, or any other potential course of action, within the framework of a working group of the Committee. The working group will be convened at the seventy-eighth and seventy-ninth sessions of the Assembly. It will report to the Sixth Committee at the seventy-ninth session of the General Assembly on the outcome of its deliberations.





The Codification Division has continued to implement the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The Programme of Assistance remains a priority for Member States, and the Organization, as a capacity-building pillar in international law and the promotion of the rule of law. Unfortunately, the COVID-19 pandemic has had an impact on the activities planned for 2021: the Regional Courses for Africa, for Latin America and the Caribbean, and for Asia-Pacific, as well as the International Law Fellowship Programme, could not be held in-person. As an interim capacity-building measure, the Codification Division provided applicants with the remote self-paced learning curriculum. In addition to that, four interactive online workshops on the peaceful settlement of international disputes were conducted for selected applicants to the training programmes. Finally, with a view to supporting the continuing education of alumni of the training programmes, interactive webinars continued to be conducted for them. The ILFP in The Hague will be held in person this month. We hope it serves as an important juncture in the return to regular scheduling.

The Programme of Assistance remains grateful to those members of the Commission who continue to devote their time and expertise to assist in shaping the future of young international lawyers particularly from developing countries and from countries with emerging economies.

The United Nations Audiovisual Library of International Law, an online training resource available world-wide free of charge on the Internet, forms another component of the Programme of Assistance. I am also very grateful to members – present and former – who have made significant contributions by recording





lectures, drafting introductory notes to legal instruments and assisting in developing its Research Library.

[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 highlight a few.

[Ukraine]

The Office of Legal Affairs has advised on a number of issues arising out of the Russian military offensive in Ukraine. They have ranged from issues of privileges and immunities of UN personnel — such as the immunity from national service obligations that is accorded to Ukrainian national staff members — to questions regarding the obligations owed by the parties to the conflict to ensure the safety and security of UN personnel. And from issues of procedure — such as the application of Article 12, paragraph 1, of the Charter when a meeting of the General Assembly opens to consider a matter before the Security Council has met to exercise its Charter functions in respect of it — to questions regarding the implementation of the decisions of intergovernmental bodies — such as the





General Assembly's resolution suspending the rights of membership of the Russian Federation in the Human Rights Council.

I will pick out two issues of particular note.

The first concerns the decision of the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine. The Secretary-General wished to issue an immediate statement and sought our guidance. Referring to the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations — the Friendly Relations Declaration — adopted by the General Assembly in 1970, we noted that the decision of the Russian Federation was inconsistent with three of the principles, as articulated and developed there: namely, the principle of non-intervention, the principle of the sovereign equality of States and the principle of the equal rights and self-determination of peoples. This advice is reflected in the Secretary General's statement of 21 February (SG/SM/21149), in his press encounter of 22 February as well as in his remarks to the General Assembly on 23 February (A/76/PV.SG/SM/21153). The General Assembly used similar language in the first resolution adopted at its Eleventh Emergency Special Session (A/RES/ES-11/1, operative paragraph 5). We can find much in international law textbooks on whether recognition is a prerequisite for Statehood. We find much less on so called "premature" recognition. And we find less still on recognition of that which simply does not exist, and whether such recognition is in and of itself is a violation of international law. It is good for the





international legal order that we have clear affirmation from the General Assembly and the Secretary-General that it is, and a violation of the Charter, too.

A second point of note is the very fact of the Secretary-General's making such statements. The authority of the Secretary General to make statements on matters involving or affecting the United Nations is well established through unchallenged practice, dating from the earliest years of the Organization. Hundreds are now issued every year. Longstanding practice has also established that this power includes the authority to make statements characterising specific actions by specific States as not being consistent with the principles on which the United Nations is founded. And this includes making statements that particular actions by particular States constitute violations of the prohibition on the threat or use of force. This includes, notably, when neither the Security Council nor the General Assembly have taken any action in the matter concerned. Until now, we are aware of only one State having challenged the authority of the Secretary-General to make such statements. As the present crisis unfolded, the Secretary General sought our guidance on this point. We confirmed his authority on the basis of established practice—a source of the Organization's rules, as this Commission on more than one occasion has said. We also confirmed that, while he must be impartial in making such statements, there is no requirement that he be neutral in any way. The Organization is founded on certain principles, and neither the Organization as a whole nor the Secretary-General in particular can be neutral when it comes to respect for them. As Dag Hammarskjöld said to the Security Council immediately following the Anglo-French invasion of Egypt in 1956:





“As a servant of the Organization, the Secretary-General has the duty to maintain his usefulness by avoiding public stands on conflicts between Member Nations unless and until such an action might help to resolve the conflict. However, the discretion and impartiality thus imposed on the Secretary-General by the character of his immediate task, may not degenerate into a policy of expediency. He must also be a servant of the principles of the Charter, and its aims must ultimately determine what for him is right and wrong. For that he must stand.” (S/PV.751, para. 4)

[Our Common Agenda]

Shortly after we met last year, on 5 August 2021, the Secretary-General issued his report entitled “Our common agenda”. I wish to say a few words about this report as it is directly relevant to the work of the International Law Commission.

Let me first provide some background.

On 21 September 2020, the General Assembly adopted the “Declaration on the commemoration of the seventy-fifth anniversary of the United Nations”. This set out what has been called since then “Our common agenda”. The Declaration was adopted by consensus during a high-level meeting.





On the topic of international law, Member States declared that they “will abide by international law and ensure justice.” They also declared that “[t]he purposes and principles of the Charter and international law remain timeless, universal and an indispensable foundation for a more peaceful, prosperous and just world” and that they will abide by the international agreements they have entered into and the commitments they have made.

Also, in their Declaration, Member States requested the Secretary-General to provide recommendations to advance Our Common Agenda and to respond to current and future challenges. The Secretary-General reported back to the General Assembly and issued his report entitled “Our Common Agenda”, which was welcomed by the General Assembly on 15 November 2021.

On international law, the report on “Our Common Agenda” calls for international cooperation that is guided by international law. More specifically, the report notes that “consideration could be given to a global roadmap for the development and effective implementation of international law.”

Let me share with you a number of reflections which led to the international law recommendations of the report.

At the outset, we considered the following premises to be essential:





- recognizing the primary role of States in the making and in the interpretation of international law;
- underscoring that the UN offers a unique platform and that it embodies the international law framework to address contemporary global challenges, including through the development of international law;
- recalling that the Sixth Committee is the primary forum for the consideration of legal questions in the General Assembly;
- recalling that the International Law Commission is entrusted with the mandate of making recommendations for the purpose of “encouraging the progressive development of international law and its codification”.

Second, we flagged a number of risks:

- The risk that Member States contend that it is not for the Secretary-General to interpret international law or to assess if States are implementing or complying with international law;





- The risk of unravelling existing agreement on specific issues, bearing in mind that the lack of compliance with existing legal regimes does not necessarily mean that new ones are required;
- The risk of compromising an entire normative process if such a process is not properly launched from the outset.

Having said that, the recommendation of a global roadmap for the development and effective implementation of international law, which is included in Our Common Agenda, suggests four specific actions where the Secretariat intends to play a role:

- First, encouraging the participation of States in multilateral treaties and other instruments open to all States that address matters of global concern, for example the protection of the environment.
- Second, urging States to accept the compulsory jurisdiction of the International Court of Justice and to withdraw any existing reservations in that regard. This is of fundamental importance as we continue promoting the use of pacific means for the settlement of disputes, including judicial settlement.
- Third, assisting States in identifying the most pressing gaps in the international legal framework, so that existing rules may be adapted, or new rules be devised.
- Fourth, helping States understand and overcome the reasons for non-compliance with international law.





The third action is particularly relevant in this setting as I wish to launch a discussion among Member States on the contemporary role of the General Assembly in proposing topics to the International Law Commission for the progressive development of international law and its codification.

It is equally important to note that the report on “Our Common Agenda” recognizes the unique position of the United Nations as a vital forum for the development of international law, being, as it is, the only universal platform where to discuss legal questions of global concern.

Overall, Our Common Agenda also strengthens a principled framework for the development of international law. It is important to involve several and diverse stakeholders because, ultimately, international law is not only for States but for the benefit of their people.

[Credentials and Unconstitutional Changes in Government]

In recent times, the world has seen a number of unconstitutional changes in governments and in some of these cases, it has led to competing requests for participation in the intergovernmental organs of the United Nations.





In this connection, it may be useful to recall that following events on 1 February 2021 in Myanmar and 15 August 2021 in Afghanistan, questions relating to their credentials and representation have arisen.

For the ongoing 76th session of the General Assembly, the Committee had before it two communications concerning the representation of Myanmar and two communications concerning the representation of Afghanistan, indicating different individuals as representatives to the 76th session of the Assembly. As you know, the Office of Legal Affairs serves as the secretariat of the Committee.

The Credentials Committee met on 1 December 2021, and it deferred its decision on the credentials pertaining to the representatives of Myanmar and representatives of Afghanistan to the 76th session of the General Assembly. This report was approved without a vote by the General Assembly on 6 December 2021 as resolution 76/15.

The decision of the Committee did not specifically address the question of whether the representatives of Myanmar and Afghanistan could continue to participate provisionally in the meetings of the General Assembly at the 76th session. Rule 29 of the rules of procedure of the General Assembly allows for provisional participation of a Member State until the Committee has reported, and the General Assembly has given its decision. In this connection, representative of the Permanent Missions of Afghanistan and Myanmar have continued to participate





provisionally in 76th session of the General Assembly after the adoption of resolution 76/15.

Across the UN system organizations, which includes specialized and related organizations, intergovernmental bodies have deferred decisions on credentials of Myanmar and Afghanistan. In some cases, the decisions adopted contains a reference to General Assembly resolution 396 (V) which recommended that “whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case” and that “the attitude adopted by the General Assembly [...] concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies”.

As you know both in Afghanistan and Myanmar, the United Nations has a presence in the country. Although the United Nations Secretariat has no role in the recognition of Governments, it has nevertheless taken care when engaging with the de facto authorities to act in a manner consistent with the decisions adopted by its intergovernmental organs, in particular the decisions of the Security Council and the General Assembly.

[Accountability]





Let me now turn to the area of accountability.

Turning first to the International Residual Mechanism for Criminal Tribunals, you may recall that there were some significant judicial achievements last year, with the issuance in June of the appeal judgement in the Mladić case, and the trial judgement in the re-trial of Messrs. Stanišić and Simatović, to name a few. Appeal proceedings in the Stanišić and Simatović case commenced in September 2021 and are expected to be completed in June next year.

The pretrial proceedings in the Kabuga case continued and the trial is expected to commence in June 2022, pending a decision regarding the accused's fitness to stand trial.

Alongside the judicial caseload, the Mechanism has made decisive progress in relation to the tracking of fugitives of the International Criminal Tribunal for Rwanda. With the Prosecutor's confirmation of the deaths of Protais Mpiranya and Phénéas Munyarugarama in May, only four fugitives now remain at large.

At the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Supreme Court Chamber terminated Case 003 against Meas Muth and Case 004 against Yim Tith in the absence of a definitive and enforceable indictment against either of them, providing clarity in light of the separate and conflicting closing orders that





were issued against them and the separate considerations that were appended to the Pre-Trial Chamber's decisions in these cases. With the appeal judgement due by the end of the year in the appeal in Case 002/02 against Khieu Samphan, the ECCC will have completed its work and will move into its residual phase in 2023.

This year also marked the twentieth anniversary of the establishment of the Special Court for Sierra Leone, and several commemorative events were held to celebrate that milestone event, including the opening of a memorial garden in Sierra Leone.

At the Special Tribunal for Lebanon, the Appeals Chamber reversed in March this year the acquittals by the Trial Chamber of Mr. Hassan Habib Merhi and Mr. Hussein Hassan Oneissi and convicted them in relation to the 14 February 2005 attack in Beirut that killed former Lebanese Prime Minister Rafik Hariri and 21 others and injured 226 people. At their sentencing on 16 June 2022, the appeals chamber unanimously decided to sentence Mr Merhi and Mr Oneissi to life imprisonment, the heaviest sentence under the statute and the rules for each of the five counts on which they were convicted.

Let me take a moment here to focus on the Special Tribunal for Lebanon (STL), which in the past couple of years has faced quite a set of challenges. In 2020, the Tribunal faced a significant restructuring in light of financial constraints, resulting in an unexpected 37% budget reduction. Thereafter, the socio-economic crisis in Lebanon led to the Tribunal needing to seek a subvention from the General Assembly both for 2021 and 2022. With this development, the Secretary-General





is now obliged to seek subventions on an annual basis for the Special Tribunal for Lebanon, the ECCC and the Residual Special Court for Sierra Leone to avoid their collapse.

Due to the financial constraints of the STL, a trial in the second case before the Court was stayed indefinitely two weeks before the trial was set to commence, providing a major setback to those victims who had waited so long for their voices to be heard and to our collective justice efforts more generally.

The STL is yet another example demonstrating our longstanding view that voluntary funding of ad-hoc tribunals is not sustainable. International justice is a long-term commitment, which requires predictable, stable and sustainable funding. For the first time, an international court case was stayed right before the commencement of the trial due to a lack of funding. If we are serious about accountability, the international community cannot let this happen again.

The experience of the STL also highlights the importance of having appropriate governing structures. This includes:

(a) creating structures that can ensure the timely delivery of judicial work while also ensuring judicial independence. This has been an ongoing issue for all the UN tribunals and one of the common complaints from Member States as extended





timelines lead to donor fatigue and criticisms of international accountability being too costly and taking too long;

(b) accountability mechanisms for judges and other senior officials; and

(c) an oversight body that has legal expertise, but also expertise in financial and accounting matters, in order to ensure that a Tribunal is efficient, effective and accountable.

The STL also highlights the importance of ensuring a realistic assessment of the breadth of the mandate given to a Tribunal and the time it will take to complete such a mandate. As tribunals are indeed independent, once the mandate is given, it is very difficult to limit it. In the case of the STL, the mandate was very broad, including the investigation of Related Cases to the Hariri assassination, which while logical, meant that the investigative activities continued for years and would have kept continuing if not for the Tribunal's financial crisis.

Finally, the STL also highlights the difficulties, which are common to all the Tribunals, of ensuring that Member States understand that criminal justice and accountability are long-term and include residual functions, that are often tied to things such as enforcement of sentences, which can go on for decades. If the international community is not ready to commit to such long-term efforts for each individual tribunal, there must be new thinking on how to ensure the performance





of such residual functions in the most cost-efficient and practical manner. One way may be through a common administrative hub, but this would require an understanding on the part of Member States that different tribunals created by different bodies and for different purposes could, and should, share administrative personnel, resources, etc.

[Peacekeeping]

Turning to peacekeeping, with the drawdown and closure of UNAMID in Sudan we have witnessed yet another reduction in the number of peacekeeping missions. The Security Council in its resolution 2559 (2020) of 22 December 2020 authorized the immediate termination of the UNAMID mandate by 31 December 2020 and requested the Mission to commence on 1 January 2021, an orderly and safe withdrawal of civilian and uniformed (military and police) personnel to be completed by 30 June 2021, except for those required for liquidation. To enable a seamless drawdown, liquidation and exit, the Security Council in paragraph 5 of its resolution 2559 (2020) also requested the Government of Sudan to fully respect all provisions of the Status of Forces Agreement (SOFA) of 9 February 2008 until the departure of the final element of UNAMID from Sudan, in particular the provisions relating to the safety and security of UNAMID.

The drawdown of UNAMID presented some challenges in the face of assessed ongoing and anticipated security threats, such as civil unrest, banditry, unauthorized intrusions into the Logistics Base and risk of theft of UNAMID assets. These





challenges persisted notwithstanding the commitment by the Government of Sudan in a letter from the Permanent Representative of Sudan to the Security Council of 21 May 2020 (S/2020/429), on 21 May 2020 to assume full responsibility for the protection of its citizens, to comply strictly with all international standards for the protection of civilians, including proactive monitoring and anticipation, increased army and judicial police deployment, and community protection, and to facilitate humanitarian assistance, including through full and unhindered humanitarian access and ensuring the safety and security of humanitarian personnel. Council Members had certain concerns, which my Office was consulted upon, as to the need for some sort of security presence to support the government's efforts, with questions centering around the size of such a security presence and its mandate, particularly with regard to the use of force.

In the final analysis, a minimal presence tasked with the provision of static security protection was agreed upon by Member States in the Council. Thus, the Security Council in its resolution 2559 (2020) decided to authorise, for the duration of UNAMID's drawdown and liquidation, the retention of a guard unit from within UNAMID's existing footprint to protect UNAMID's personnel, facilities and assets. The resolution itself did not specify the actual strength and configuration of the Guard Unit. However, following consultations among relevant Secretariat departments and the Mission, a 363 Formed Police Unit element including a 3-member Guard Unit Headquarters was agreed upon to constitute the United Nations Police Integrated Guard Unit to support the African Union-United Nations Hybrid Operation in Darfur (UNAMID) drawdown and liquidation in undertaking the specific tasks.





Another recent development has been the impact of the conflict in the Tigray region of Ethiopia on our missions in Sudan and South Sudan, particularly upon members of the Ethiopian contingents in these missions.

In late 2019, reports emerged that a number of troops of Tigrayan origin deployed as members of the Ethiopian contingents in certain UN peacekeeping missions were allegedly subjected to harassment and ill-treatment. It was also reported that some contingent members had been disarmed and confined to barracks or repatriated to their home country against their will, notwithstanding the fact that they may have expressed concerns to members of their respective missions about returning to Ethiopia. There were also reports of concerns expressed by some police officers following direct discrimination, as well as fears among some others of being arrested upon their return, particularly following the arrest and detention upon return of at least three police officers of Tigrayan origin who had previously served with UNAMID. These reports raised concerns that the repatriation of the police officers to Ethiopia would put them at real risk of human rights violations upon their return, bearing in mind the principle of “non-refoulement”.

As part of the UN response and contingency preparations, specific legal advice was provided on the steps that the Organization should take in cases where contingent members have expressed to the mission certain concerns with respect to their repatriation. The general advice recalled that, in line with the UN Charter, particularly Articles 1.3, 55, and 56, the Organization seeks to promote respect for





all applicable rules of international human rights law (which would also include international refugee law).

It was particularly noted that, as a general matter, the Organization cannot compel mission personnel, including military or police, to return at the request of their Government, and that, should they not wish to return, for example due to concerns regarding their treatment or safety, such individuals will be advised of their option to seek international protection according to international law and applicable domestic law, including asylum or other forms of protection. The relevant advice to the individual would be provided by the UNHCR and relevant determinations would generally be for the host state. The mission would, of course, need to officially notify the host State authorities of the continued presence in the country of individuals who have sought some form of protection.

It is worth noting that, nothing in the Model Memorandum of Understanding with TCCs nor in the other legal arrangements with Member States concerning police and other mission personnel, would prevent the Organization from facilitating the proper consideration of an asylum application by members of missions.

Ultimately, the Organization would need to inform the Government of the respective officers' decision not to return.

It would be important for such a communication to recall Ethiopia's obligations regarding the safety and protection of its nationals under relevant international law





instruments such as those related to international human rights law, including international refugee law.

[Privileges and Immunities]

I now wish to offer a few observations based on our work on the Organization's status, privileges and immunities.

The Charter of the United Nations is clear in requiring that the Organization enjoys the privileges and immunities which are necessary for it to fulfill its purposes. The Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies set out the essential, minimum standards in that regard. The Organization routinely enters into host country agreements for the establishment of United Nations offices or conferences and smaller events held away from headquarters, which build on the Conventions and specify the requirements of the United Nations' in further detail. As the work of the Organization has evolved since 1945, so have the standards reflected in these host country agreements. And in developing these standards, we have also relied on the work of the Commission as and where relevant, such as with respect to the provisional application of host country agreements which we have addressed on the basis of the guidance and model clauses recently developed by the Commission.





We are often seeing that Member States have no difficulty in granting the Organization the privileges and immunities necessary for the United Nations to effectively operate in today's world. However, on occasion this is becoming a formidable task. We have seen attempts to erode the minimum standards provided for in the Conventions by, for example, seeking to introduce conditions or qualifications to the immunity from legal process to be accorded to United Nations officials, or otherwise limiting United Nations privileges and immunities.

These challenges do not only arise in connection with negotiating host country agreements, where we maintain our red lines firmly. They also materialize in connection with the work of the Organization. Of particular concern are isolated instances where criminal processes are pursued against United Nations personnel for matters that fall squarely within the exercise of their official functions and, as such, are covered by the functional immunity to be accorded to United Nations officials and experts on mission regardless of their nationality.

We will continue our efforts to ensure the necessary respect for the whole range of privileges and immunities which the Organization requires to fulfill its purposes effectively and free from interference, while also cooperating with Member States in the administration of justice within the legal framework of the Organization.

Turning finally to the United Nations Headquarters in New York, there have been continuing difficulties with respect to the timely issuance of visas and travel restrictions imposed on Secretariat personnel of certain nationalities and





representatives of certain Member States. In view of growing concerns relating to the impact of these restrictions on the work of the Organization there has been a sustained effort by the affected Member States to have the Secretary-General invoke section 21 of the UN-US Headquarters Agreement. We have been working diligently on obtaining a meaningful improvement to the situation that will avoid us having to invoke section 21, which is not in the interests of either party. Some progress has been observed.

[GLD]

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

[Data protection]

When I last reported to you, I had mentioned that pursuant to the Secretary General's Data Strategy, which was endorsed by the Executive Committee in April 2020, the UN Secretariat was working to strengthen its data protection and privacy framework governing the processing of personal data, including mechanisms for enhanced governance, oversight and accountability. Since then, GLD have worked closely with the OLA Data Team to complete work on a draft protection policy for the Secretariat which would serve as a model for a system-wide approach to data protection. That draft policy is now going through the required, policy promulgation process, which is expected to be completed later this year.

[Accountability]





GLD has been asked to take on a wide range of legal accountability and asset recovery efforts with respect to an initiative of one of the UN's subsidiary organs that is alleged to have been tainted by high level corruption and fraud. While I am unable to discuss specifics about the matter, the work will involve several of GLD's practice areas concerning criminal accountability, administrative law, the institutional legal framework, and arbitration and other commercial claims efforts.

In the area of criminal accountability of United Nations officials and experts on mission, GLD continues to support efforts to ensure criminal accountability of such personnel by referring credible allegations of criminal conduct to relevant national authorities. During the 2020-2021 reporting period, 35 referrals of UN officials and experts on mission were made upon credible allegations of criminal conduct. The majority of those particular cases involved alleged entitlement fraud, and a few cases involved allegations of sexual exploitation and abuse.

[Institutional Aspects of the UN's Legal Framework]

GLD is called upon to assist the Secretariat and the Funds and Programmes on a variety of legal issues that concern the institutional aspects of the UN's legal framework. For example, GLD continues to advise on the repositioning of the Resident Coordinator system and the implications for the Organization's development, technical assistance and humanitarian operations. GLD also continue to assist the UN Controller and the Funds and Programmes by negotiating standard terms for the acceptance of voluntary contributions that allow donors to comply with their respect national obligations while ensuring respect for the legal framework of the UN enshrined in the Charter of the United Nations.





Since I last reported to you, agreement was reached with 15 major Member State donors on the procedures for cooperating with such donors on reporting suspected cases of sexual exploitation and abuse and cases of sexual harassment arising out of activities funded by such voluntary contributions. GLD is also assisting the Controller in coordinating the UN systems relationship with the European Union under a two-decade-old framework agreement for their joint financial and administrative matters, particularly in areas of the reach of audit and oversight processes for voluntarily funded activities and on cooperation for the application by donors, including the European Commission, on national and regional restrictive-measures regulatory regimes that otherwise cannot otherwise be made to apply to the Organization's own operations.

[Administrative law]

GLD continues to represent the Secretary-General in all cases before the UN Appeals Tribunal and to assist human resources officers and lawyers in the Funds and Programmes in their appearances before the UN Dispute Tribunal. Our success rate in cases before the Appeals Tribunal is a function both of being selective in appealing only those UNDT decisions that clearly fail to follow the legal framework or to observe the mandates of the General Assembly with respect to the administration of the staff and financial resources of the Organization.

Since I last reported to you, we have been working closely with the Secretariat's management offices to develop proposals called for by the Member States to address divergences in the jurisprudence of the UN's new system for the Administration of Justice and of the International Labour Organization's Administrative Tribunal in cases involving the UN Common System of Salaries Allowances and Benefits. These proposals would address situations resulting from





recent judgments of these two tribunals that had diverged on the authority of the International Civil Service Commission to establish the post adjustment multiplier for professional staff compensation.

[Support for UN operations]

Finally, GLD continues to carry out legal support that is instrumental for the effective operations of the Organization's activities, including its peacekeeping, economic and social, and humanitarian operations. GLD lawyers continue to assist in the negotiation and conclusion of substantial contracts and in resolving procurement process matters, to assist in resolving complex commercial claims, including representing the Organization in arbitrating claims that cannot otherwise be amicably resolved, and to support efforts to resolve legal issues in supply chain and logistical processes for peacekeeping and humanitarian operations. These issues have been more prevalent as a result of the aggression against Ukraine, given the heavy reliance of the Organization on air operators from the Member States involved.

[ITLD]

I will now turn to the work of the International Trade Law Division (ITLD), in particular its ongoing work on judicial sale of ships, identity management and digital trade, and ISDS reform. The United Nations Commission on International Trade Law (UNCITRAL), which ITLD serves as the secretariat, is holding the fifty-fifth session in New York and what I am able to present to you is the work that is on-going as we speak.





[Judicial sale of ships]

Last week, the Commission adopted a new multilateral convention on judicial sale of ships establishing a harmonized regime for such sales, given the crucial role of shipping in international trade and transportation, and the high economic value of ships. Adequate legal certainty and protection for ship purchasers will benefit both shipowners and creditors, provided that adequate safeguards are implemented and enforced in the conduct of the sale.

The Convention complements other international efforts to harmonize private law aspects of maritime law, for example provisions on the nationality and status of ships in UNCLOS. It also promotes institutional cooperation with the International Maritime Organization, which will assume the role of “repository” under the Convention.

At a time when multilateralism and the international rules-based order are under strain, the preparation of the Convention is a good example of multilateralism at work. And it provides an example despite the pandemic as most of the sessions were held in hybrid format with most delegations participating remotely. This is indeed a testament of the commitment of States and international organizations to the projects, with ITLD continuing perform its duties in providing the platform for the negotiations.

[Identity management and trust services]

This week, the draft UNCITRAL model on the use and cross-border recognition of identity management and trust services is expected to be adopted. This highlights the importance of identity and authentication in the digital age and will to validate the principles and approaches that UNCITRAL has applied for several decades in





the area of electronic commerce – the principles of non-discrimination, functional equivalence and technological neutrality .

The Office of Legal Affairs is also following with a particular interest the ongoing exploratory and preparatory work on legal issues related to the digital economy, for example, those relating to data transactions, artificial intelligence, digital assets and online platforms. In addition, OLA is supporting the stocktaking project to compile and analyse developments in dispute resolution in the digital economy, another field, which UNCITRAL is well-known for. After all, the legal characterization and assessment of emerging technologies and their applications is equally relevant to the operations of the United Nations as an organization, including in the implementation of the Secretary-General's Data Strategy.

[Other areas of work]

Progress is being made in other areas of international trade law. The recommendations to mediation centres on the use of the UNICTRAL mediation rules, which were adopted last week, completes the international legal framework for mediation, which has been achieved through the recent update of the mediation rules and the model law on mediation, both following the Singapore Mediation Convention.

The General Assembly at the end of last year granted additional resources (both conference and human resources) to support the reform efforts being made by Working Group III with regard to investor-State dispute settlement. Those additional resources will be particularly useful as the Working Group embarks on its third and final phase of work to develop and prepare concrete reforms options. It is expected that the first concrete results of that work will be realized next year,





with a code of conduct for adjudicators and the texts on alternative dispute resolution and dispute prevention being presented to the Commission by the Working Group.

Work is continuing to progress on access to credit for micro, small and medium-sized enterprises as well as on asset tracing and recovery and applicable law in insolvency proceedings. Next week, the Commission is likely to mandate new tasks to Working Groups that have completed their work, possibly in the areas of negotiable multi-modal transport documents, private law aspects of climate change, technology-related disputes, adjudication and warehouse receipts. We expect the discussions to be quite interesting, setting the stage for new developments in the area of international trade law.

Last but not least, let me emphasize that ITLD plays a crucial role in promoting the work of UNCITRAL through its technical assistance and capacity building activities. Such activities have expanded over the years despite the pandemic, partially by enhancing collaboration with partner organizations. The UNCITRAL Latin America Days and the Africa Days, which were modelled on the UNCITRAL Asia Pacific Days, have contributed to expanding the reach and engagement with academic partners. And launch of online courses and other online material as well as plans to rejuvenate the case law database, known as CLOUT, will be crucial in ITLD to continue to undertake its role as the guardians of the UNCITRAL texts.

[DOALOS]

Mr. Chair,





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

[COVID-19]

Regrettably, the COVID-19 pandemic continued to impact the oceans and ocean activities in both direct and indirect ways. To give just a few examples of these impacts, let me mention that disruptions to supply chains, combined with shifts in consumer preferences, have impacted maritime trade and economic recovery. Gaps in the supply and distribution of vaccines as well as visa and travel restrictions have led to significant hardships for people who depend on the ocean for their livelihoods, such as seafarers and fishers. They have also hindered tourism. Limits on data collection and marine scientific research have impacted the conservation and management of ocean resources. This list is, of course, far from being exhaustive.

In addition, many ocean-related meetings, conferences and events were cancelled or postponed at global, regional and national levels, although virtual or hybrid formats were adopted to the extent possible.

All these impacts have delayed or perhaps even reversed progress in the achievement of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, including the “Ocean” Goal 14 on the “conservation and sustainable use of the oceans, seas and marine resources for sustainable development”. Particularly affected are vulnerable groups for whom existing inequalities have been exacerbated, such as women and girls and migrant workers, as well as ocean-based economies, especially small island developing States and





least developed countries, including due to reductions in capacity-building activities.

As we work to “build back better”, concerted efforts will be needed to ensure the conservation and sustainable use of the ocean and its resources for present and future generations.

Mr. Chair,

[United Nations Convention on the Law of the Sea and the General Assembly]

This year is marked by celebratory events to commemorate the 40th anniversary of the adoption and opening for signature of the United Nations Convention on the Law of the Sea. An informal commemorative plenary meeting of the General Assembly was held on 29 April 2022, where the heads of the three bodies established under the Convention, namely, the International Tribunal for the Law of the Sea, the International Seabed Authority and the Commission on the Limits of the Continental Shelf, as well as the former President of the Third United Nations Conference on the Law of the Sea, hailed the Convention’s achievements. More than 30 delegations and regional groups also made statements.

These celebrations will culminate in two days of General Assembly plenary meetings on 8 and 9 December.

The universal and unified character of the Convention, now with 168 parties including the European Union, continues to be recognized annually by the General Assembly, in addition to the role of this important international instrument in setting out the legal framework within which all activities in the oceans and seas must be carried out. As reaffirmed every year by the General Assembly, the integrity of the Convention must be maintained.





[ILC Study Group on sea-level rise in relations to international law]

I have noted the progress made by the International Law Commission in respect of its ongoing study on the topic, “Sea-level rise in relation to international law” and the subtopic on the law of the sea.

I recall, in particular, the issues paper by the Co-Chairs of the Study Group, Bogdan Aurescu and Nilufer Oral, and the information presented on the practice arising from the deposit or registration of treaties. In this regard, I would also like to recall the resolutions and decisions of the General Assembly and some of its processes on this subject, which were also noted in the report by the Co-Chairs, including the outcome of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (the “Informal Consultative Process”) from its twenty-first meeting held in June 2021 on the theme “Sea-level rise and its impacts”. The discussions at the twenty-first meeting benefitted from a panel presentation by the members of the International Law Commission and Co-Chairs of the Study Group who provided an overview of its mandate and work.

We look forward to the outcome of the discussions of the Commission on this subject and to receiving the consolidated and substantive report by the Study Group on the topic. My colleagues in the Division for Ocean Affairs and the Law of the Sea remain available to provide information to the Commission on technical aspects of the Convention and to share their know-how and experience with the Study Group.

Allow me now to elaborate on the other meetings serviced by that Division since last year.

[Informal Consultative Process, Regular Process and Fisheries]





The twenty-second meeting of the Informal Consultative Process was held from 6 to 10 June 2022 and focused on “Ocean observing”. The meeting highlighted the importance of the data generated through ocean observing tools worldwide in providing a scientific basis for understanding the ocean and making informed decisions relating to its use. This data is essential in supporting the sustainable development of the ocean and its resources, including understanding and responding to climate change, protecting and preserving the marine environment and supporting various sectors of the blue economy.

I note that States hold differing views on whether the regime for marine scientific research, as established under Part XIII of the Convention, is applicable to ocean observations. The panelist presentations at the meeting, therefore, focused on technical issues related to ocean observations and not legal issues.

The meeting also served as an important complement to other ocean-related processes focused on the role of ocean science in supporting sustainable development, notably the ongoing United Nations Decade of Ocean Science for Sustainable Development (2021-2030). I further note that the United Nations Ocean Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development, which was just held in Lisbon from 27 June to 1 July 2022, was convened under the overarching theme “Scaling up ocean action based on science and innovation for the implementation of Goal 14: stocktaking, partnerships and solutions”. It is hoped that the political declaration adopted by that Conference will energize even more the international community towards taking concrete steps toward the sustainable use and conservation of the oceans.





The Division, as the secretariat of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the “Regular Process”), serviced the fifteenth meeting of the Ad Hoc Working Group of the Whole, which was held via correspondence from 14 July to 28 September 2021 due to COVID-19. For the third cycle of the Regular Process (2021 to 2025), the meeting adopted a number of constitutive documents for the Pool of Experts, the Group of Experts, the National Focal Points and for Intergovernmental Entities.

The Regular Process, through its World Ocean Assessments, continues to provide the latest ocean-related data and information to support policymaking. During the twenty-first meeting of the Informal Consultative Process in 2021, several delegations stressed the importance of developing partnerships between practitioners and scientists and indicated that a global science-based platform, such as the Regular Process, could strengthen the link between science and policy by allowing parties and relevant stakeholders to collaborate under one platform.

This year also marks the return of meetings on sustainable fisheries at United Nations Headquarters. In May, the fifteenth round of Informal Consultations of States Parties to the United Nations Fish Stocks Agreement was held on the topic, “Implementation of an ecosystems approach to fisheries management”. It also served as a preparatory meeting for the resumed Review Conference on the Agreement, which will take place in 2023. In November, the General Assembly will also review the actions taken to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks.

[Meeting of States Parties to the Convention]





The three bodies established under the Convention, the Commission, the Tribunal and the Authority, also continued to conduct their work in 2022 to support implementation of the Convention. The thirty-second Meeting of States Parties was held last month, inter alia, to elect 21 members of the Commission on the Limits of the Continental Shelf. Due to the lack of sufficient nominations of members from the Eastern European Group of States, the Meeting was only able to elect 20 members and thus the Meeting invited the Group to continue seeking suitable candidates to fill the vacancy.

You will recall that the thirty-first Meeting of States Parties decided to extend the five-year term of office of the current members of the Commission until 15 June 2023, on an exceptional basis, owing to the unprecedented circumstances arising as a result of the COVID-19 pandemic. The decision was made without prejudice to article 2, paragraph 4, of annex II to the Convention and without constituting a precedent for the Commission or for other bodies of the Convention or the United Nations with elected members.

[Commission on the Limits of the Continental Shelf]

Following the postponement of its sessions in 2020 and the early part of 2021 due to the COVID-19 pandemic, the Commission on the Limits of the Continental Shelf held sessions in the second half of 2021 and at the beginning of 2022.

As at 22 April 2022, 74 States Parties have made submissions, either individually or jointly. Overall, the Commission has received 101 submissions, including nine





revised submissions. In the past year, the Commission has received five new or revised submissions.

With 11 subcommissions currently established for the consideration of submissions and 55 submissions awaiting consideration, the waiting time between the making of a submission and the establishment of a subcommission by the Commission exceeds ten years.

I remain hopeful that long-term and sustainable solutions to the heavy workload of the Commission and the ongoing challenges regarding the conditions of service of its members can be found by States Parties at their thirty-second Meeting.

[Intergovernmental Conference on an international legally binding instrument]

Concerning the Intergovernmental Conference on an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, convened pursuant to resolution 72/249 (the “Intergovernmental Conference”), the fourth session, which was postponed due to the pandemic, took place from 7 to 18 March 2022. The discussions focused on the revised draft text of an agreement, prepared by the President of the Intergovernmental Conference with the assistance of the Division.

Since the fourth session was the last one initially called for by the

General Assembly in resolution 72/249, at the end of this session the Intergovernmental Conference considered that an additional session was required as soon as possible and decided, by consensus, to request the President of the Conference to take the necessary steps, with a view to the General Assembly deciding that the fifth session of the conference be convened in August 2022.





Consequently, on 23 May 2022 the General Assembly decided to convene a fifth session of the Intergovernmental Conference and it will take place from

15 to 26 August.

The President was also requested to prepare a further revised draft text of an agreement, with a view to facilitating the prompt finalization of the work of the Conference. This text, which will form the basis of negotiations at the fifth session, was prepared by the President who also had benefitted from the support of the Division.

[Capacity-building]

I would be remiss if I did not also highlight the Division's increasing capacity-building activities, which are vital to promoting the full and effective implementation of the legal framework for oceans and the law of the sea by all States. These include global programmes, such as the four-year Programmes of Assistance to Meet the Strategic Capacity Needs of Developing States funded by the Norwegian Agency for Development Cooperation (Norad) and regional programmes, such as the Ocean Economy and Trade Strategies Project implemented together with the United Nations Conference on Trade and Development in the Caribbean region.

Capacity-building activities also include technical assistance at the national level, for example, most recently for the Kingdom of Saudi Arabia and Somalia.

Furthermore, the Division also administers fellowships, such as the

United Nations-Nippon Foundation Fellowship Programmes, as well as a number of Trust Funds.





I note that these Trust Funds serve a critical role in assisting developing States to not only implement the legal framework, but also to participate in ocean-related processes of the General Assembly, including the Intergovernmental Conference. The increasing number and scope of the Division's capacity-building activities continue to reaffirm the importance of capacity development in oceans and the law of the sea.

[Treaty Section]

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

Over the past year, significant developments occurred with regard to multilateral agreements deposited with the Secretary-General in the field of the protection of the environment. Two sets of amendments to environmental treaties entered into force. In particular, amendments to the Text and to Annexes I, II, III, IV, VI and VIII to the 1998 Protocol on Persistent Organic Pollutants entered into force on 20 January 2022. Similarly, amendments to the Text of and Annexes Other than III and VII to the 1998 Protocol on Heavy Metals entered into force on 8 February 2022.





Significant results were also achieved in relation to efforts to enhance the transparency of the international treaty framework and promote wider knowledge of the law of treaties. A modernized regime for treaty registration and publication, under the General Assembly Regulations to give effect to Article 102, has applied since 1 February 2022. This was the outcome of a five-year review process in the Sixth Committee, which concluded with the adoption of General Assembly resolution 76/120 of 9 December 2021 including the amended Regulations. In effect, the Regulations were streamlined with the latest developments in treaty practice and information technology, thus enabling the Treaty Section to better support Member States in the implementation of Article 102. Amongst other amendments, the Regulations were updated with respect to the registration of treaties that are provisionally applied – a timely update, since it coincides with the Commission’s recent adoption of the Guide to provisional application of treaties.

In a related development, the Sixth Committee’s consideration of the agenda item ‘Strengthening and promoting the international treaty framework’ has enhanced interest in discussions on treaty law and practice. Thus, under General Assembly resolution 76/120, a forum was established in the Sixth Committee under this agenda item to foster a technical exchange of views between Member States on treaty-making practice and other treaty-related topics. Next year, Member States will kickstart the discussion by focusing on the subtopic “Best practices of depositaries of multilateral treaties”. My Office welcomes this promising direction, not least because it may enrich our understanding of contemporary State practice, as well as contribute to the work of the Commission regarding the progressive development and codification of the law of treaties.





[Conclusion]

Distinguished Members of the International Law Commission

As I conclude, allow me once more to wish the Commission all the success for a fruitful session. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication.

The Commission will convene with a new composition at the next session. I want to express my deep gratitude to members, whose term ends this year. Your invaluable contribution to the work of the Commission, and to international law, did not go unnoticed. To those members, who were re-elected, I want to wish the best of luck and fruitful work in your new term of office. International law undergirds international society and relations among States. Your contributions to the progressive development of international law, and its codification help to bring certainty and predictability to the rules that ought to apply, and help to foster friendly relations among States.

Thank you very much to you all for your kind attention.

