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OFFICE OF LEGAL AFFAIRS

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

Opening remarks

by

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Trusteeship Council Chamber

Distinguished delegates,
Colleagues and friends,

I am pleased to see you all again and to deliver the opening statement for this year's Informal Meeting of the Legal Advisers from the capitals.

As you know, this is one of the highlights of my year. While every year it is a distinct pleasure for me to open this meeting, today it is particularly important and emblematic, as it marks the first time that we return to this Chamber after the difficult and unprecedented challenges that we faced from the COVID- 19 pandemic.

First of all, I wish to express my sincere gratitude to the delegation of Poland for coordinating the preparation of this year's meeting. I am very grateful to the Legal Adviser and Director of the Legal and Treaty Department in the Polish Ministry for Foreign Affairs, Mr. Konrad Marciniak as well as to Ambassador Krzysztof Szczerski and Katarzyna Padło-Pękala in the Permanent Mission of Poland here in New York for the committed work that they have invested in organizing this meeting. Dziękuję bardzo.

Before we begin and in keeping with our tradition, I would like to make some general observations on a few topics that have attracted the attention of the legal community during this year and that were reflected in the activities of my Office.

Distinguished colleagues,

You will agree with me that challenging times for peace are equally challenging for international lawyers. They require, more than ever, firm and thorough legal analysis and principled positions.

Which is why I keep repeating that it is important to counter sentiments that we now hear everywhere regarding a supposed general decline in respect for international law.

Such reflections are not novel. We have heard rumours of the death of international law before. For instance, in the 1960s and 1970s, when the newly independent States were challenging what had formerly been thought of as established international law. Also, after the 9/11 terrorist attacks. And after the military intervention in Iraq in 2003. And especially and repeatedly after February of this year.

Yet international law has always survived. The established rules of international law are definitely being challenged. But those who challenge them do so, not by rejecting the notion that there is any international law, but by articulating what they claim the law to be, or at the very least what they think the law should be. Others respond, also in the language of international law. The existing rules are reaffirmed. Or they change and adapt. But there is always international law.

Let me start these reflections by talking about a positive example of multilateralism in action, as this year marks the 40th anniversary of the adoption of the United Nations Convention on the Law of the Sea, occasion to be commemorated at the General Assembly on 8 and 9 December 2022.

Let me recall that back in 1982, the Convention was adopted as a “package deal”, addressing issues and balancing interests of negotiating States. Today, it is the centerpiece of the legal framework governing the sustainable development of the ocean and its resources and is complemented by an array of binding and non-binding instruments. It has achieved widespread acceptance, with 168 parties and recognition, including by non-parties, that many of its provisions reflect customary international law.

The Convention also includes several innovations, such as the concept of the exclusive economic zone and the regime for dispute settlement. Another innovation which I would like to highlight considering its relevance to the programme, is Part XI relating to the governance of the international seabed area lying beyond national jurisdiction, also known as the Area. The Convention provides that the Area and its resources are the common heritage of humankind. It also established the International Seabed Authority as the entity through which States Parties organize, regulate and control all mineral-related activities in the Area for the benefit of humankind as a whole.

The commemoration of the fortieth anniversary of the adoption of the Convention is befitting to recall past achievements under its auspices, including the conclusion of two implementing agreements, namely the 1994 Agreement relating to the implementation of Part XI of the Convention and the 1995 Fish Stocks Agreement. It also provides an opportunity to acknowledge the Convention as a framework agreement under which the law of the sea can be further elaborated.

It is under the Convention that we are engaged now in one of the most important multilateral processes in recent history, addressing issues covering approximately two thirds of the world's oceans.

Les développements concernant la Conférence intergouvernementale sur un instrument international juridiquement contraignant se rapportant à la Convention des Nations Unies sur le droit de la mer et portant sur la conservation et l'utilisation durable de la biodiversité marine des zones ne relevant pas de la juridiction nationale, convoquée en application de la résolution 72/249, sont particulièrement pertinentes pour certaines des discussions de la présente réunion.

Vous vous souviendrez que la Conférence examine un ensemble de questions, sous la question générale de la conservation et de l'utilisation durable de la biodiversité marine des zones situées au-delà de la juridiction nationale. Ces questions concernent : les ressources génétiques marines, y compris les questions sur le partage des avantages ; les outils de gestion par zone, y compris les aires marines protégées ; les évaluations d'impact sur l'environnement; et le renforcement des capacités et le transfert de technologie marine. Des questions transversales, telles que les dispositions institutionnelles et le règlement des différends, sont également examinées.

La quatrième session de la Conférence, qui a été reportée en raison de la pandémie de COVID-19, a eu lieu en mars de cette année. Cette session étant la dernière initialement mandatée par l'Assemblée générale dans sa résolution 72/249, la Conférence, à l'issue de la session, a estimé qu'une session supplémentaire s'imposait dès que possible. En conséquence, l'Assemblée générale a décidé de convoquer une cinquième session de la Conférence en août.

La cinquième session a examiné un nouveau projet de texte révisé d'un accord, préparé par la Présidente de la Conférence, Mme Rena Lee, en vue de faciliter la finalisation rapide des travaux de la Conférence. Après deux semaines de travail intense en plénière, en informelles informelles et en petits groupes, la Conférence, en examinant la voie à suivre le dernier jour, a décidé de suspendre la session et de la reprendre à une date ultérieure à déterminer. En conclusion, la Présidente de la Conférence a noté que les délégations avaient fait preuve de détermination, de souplesse et de créativité pour se rapprocher plus que jamais de la réalisation du mandat énoncé dans la résolution 72/249 de l'Assemblée générale et qu'un peu plus de temps était nécessaire. Elle a demandé à chacun de ne pas se décourager mais

de redoubler d'efforts pour que, à la reprise de la session, le processus puisse être mené à bonne fin.

La Présidente consulte actuellement les délégations en vue de déterminer des dates appropriées pour la reprise de la Conférence. Avec le bénéfice de nouvelles réflexions pendant la période intersessions sur les compromis requis, j'ai bon espoir qu'à la reprise de la session, l'intérêt commun et le changement transformateur nécessaire pour offrir aux générations futures un océan sain, résilient et productif, guideront les délégations vers un succès.

Let me turn now to a different topic, an issue on which we have repeatedly been asked for advice over the last couple of years is the range of interactions that the Secretariat may properly have with authorities that have come to power through unconstitutional means.

The UN is in a very different situation from a number of other international organizations. It has no equivalent to the AU's African Charter on Democracy, Elections and Governance, for example, or ECOWAS's Protocol on Democracy and Governance, which establish a general approach for those organizations with regard to unconstitutional changes of government.

The UN has no general position on such matters. Its competent intergovernmental bodies take each case as it comes — if I may put it like that. They may act as if nothing untoward has happened and treat the new authorities as the government of the State concerned. They may lament what has happened but treat the new authorities as the government. Or they may continue to treat the old authorities as being in office and call for effective power to be returned to their hands.

The Secretariat follows the guidance provided by the Organization's political organs. It treats as the government of the State concerned the authorities that the political organs treat as being its government; and it does not treat as the government those actors that the political organs treat as not being the government.

Where certain actors hold effective power, but the UN's political organs treat them as not being the government, the Secretariat does not have to totally ignore the facts on the ground. First and foremost, it will follow such guidance on permissible interactions with the de facto authorities as the Organization's competent political organs may give. Subject to that, we have generally drawn on the reasoning of the International Court of Justice in its advisory opinion in the Namibia case when it comes to advising on the parameters of permissible interaction.

Thus, in a number of recent cases, we have advised that interactions may be had with de facto authorities for what one might broadly describe as humanitarian purposes — ensuring the delivery of humanitarian assistance; protecting civilians; holding the de facto authorities responsible for the performance of the international obligations of the State concerned under international humanitarian law, international human rights law, international refugee law and other treaties and rules of a similarly humanitarian character; and, last, but not least, carrying out those development activities that, if not implemented, would have a direct, negative impact on the local population — what some have called "humanitarian-plus" and others, "development minus". It is on delineating the exact boundaries of this last domain that much of the discussion is now taking place.

Now, I would like to refer to the activities of the Office of Legal Affairs related to the advice provided to the Secretary-General, and all UN system entities, on a number of issues arising out of the Russian military offensive in Ukraine.

They have ranged from issues of privileges and immunities — such as the immunity of UN officials from national service obligations — to questions regarding the obligations owed by the parties to the conflict to ensure the safety and security of UN personnel.

Issues of procedure have been addressed—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.

We have also had to advise on 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 or the recent General Assembly resolution on the territorial integrity of Ukraine adopted on 12 October, at its resumed Eleventh Emergency Special Session.

Our advice has been based on the Purposes and Principles of the Charter of the United Nations as well as on a wide range on international instruments. I wish to

note in this regard the relevance of 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 on 24 October 1970, a Declaration that the International Court of Justice has repeatedly cited as stating rules of general international law.

The Office of Legal Affairs has provided advice in different situations and formats, from negotiations settings —such as those that led to the signature in July of the Black Sea Grain Initiative and the Memorandum of Understanding on promoting Russian food products and fertilizers to the world markets—to advising on statements of a legal nature delivered by UN officials, and in particular by the Secretary-General.

Dear colleagues,

I wish to finish by encouraging you all to continue to engage actively in the discussions of today with the same disposition and forthrightness which were at the basis of the creation of the informal meetings of legal advisers more than 30 years ago.

The impossibility of meeting in person in the recent past should also be a reminder for us of the need to value the rare opportunities of frank exchanges with our colleagues from all over the world and to use the time and presence in the most fruitful and productive way.

I thank you for your attention.