



**UNITED NATIONS  
OFFICE OF LEGAL AFFAIRS**

**International Law Commission**

**Statement by Mr. Miguel de Serpa Soares,  
Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel**

**Geneva, 2 July 2024**

*Mr. Chair,*

*Distinguished members of the International Law Commission,*

*Ladies and gentlemen,*

I convey to you all, the warm greetings of the Secretary-General and best wishes for a successful continuation of this session.

It is a pleasure to be here with you, in particular as the Commission is celebrating its seventy-fifth anniversary this year. For 75 years, the Commission has played a pivotal role in the progressive development of international law and its codification.

Sadly, we are meeting at this session in challenging times for the Organization. You are all aware of the liquidity crisis of the Organization, which, among many other measures, has led to the Commission's current session to be reduced from twelve to ten weeks. Despite the challenges the reduced session has brought, Mr. Chair, I congratulate you, and the Bureau on your election, and together with the Secretariat for the positive and determined spirit with which the session has been planned and is progressing. I am



informed that you have made great strides in your work during the first part and are on track to start a second reading and a brand new topic during the second part.

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*Distinguished Members of the International Law Commission,*

With this statement, I would like to continue the tradition of providing members with an overview of the activities over the past year of the Office of Legal Affairs, which is the central legal service of the Organization.

I will start with the Codification Division, your Secretariat.

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**[COD]**

Over decades, the Codification Division has been the silent force behind the Commission and the Sixth (Legal) Committee of the General Assembly and has served as repository of their functioning.

*[Sixth Committee]*

In 2023, the Sixth Committee was convened twice. From 10 to 14 April 2023, the Sixth Committee resumed its session in the context of the seventy-seventh session of the General Assembly, to continue its consideration of the item “Crimes against humanity”. From 2 October to 17 November 2023, the Committee was convened in the context of the seventy-eighth session of the Assembly. This year, the Committee held a second resumed





session, in the context of the seventy-eighth session, to continue its consideration of the item “Crimes against humanity” from 1 to 5 April and on 11 April.

The Sixth Committee successfully concluded the 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 at the seventy-eighth session, also without a vote, 17 resolutions and 12 decisions.

In relation to the work of the Commission, the Committee considered your 2022 report, with respect to the topic “Peremptory norms of general international law (*jus cogens*)”, and your 2023 report. The participation of the Commission members, including the Chair and the Special Rapporteurs, in the debate was important in ensuring the dialogue between the two bodies. The dialogue between the Commission and the Sixth Committee is one of the prime drivers of the progressive development of international law and its codification within the United Nations.

In its resolution 78/108, the General Assembly took note of the decision of the International Law Commission to include the topic “Non-legally binding international agreements” in its programme of work.

Furthermore, in resolution 78/109, the Assembly welcomed conclusion of the work on the topic “Peremptory norms of general international law (*jus cogens*)” and took note of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the annex and commentaries thereto. The Assembly also took note of the range of comments and observations on the draft conclusions and the annex and commentaries thereto, whether submitted in writing by





Governments or expressed in debates of the Sixth Committee, including those made at the seventy-seventh session of the General Assembly.

The Sixth Committee also considered the agenda items entitled “Responsibility of international organizations”, “Expulsion of aliens”, “Protection of persons in the event of disasters”, and “Crimes against humanity”, on the basis of the articles completed by the International Law Commission between 2011 and 2019. I remain optimistic that we will soon see some advance one way or another on these items.

I wish to note in particular that the work on the item “Crimes against humanity” remains of continuing interest for Member States. As I alluded to at the beginning of my statement, the Sixth Committee resumed its session in 2023 and 2024 to exchange substantive views on all aspects of the draft articles, and to consider further the recommendation of the Commission for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. Delegations had a rich and substantive debate during the two resumed sessions, and I look forward to the continuation of the work of the Committee later this year at the seventy-ninth session of the General Assembly.

Regarding the item “Protection of persons in the event of disasters”, I also wish to note that a Working Group of the Sixth Committee was established last year at the seventy-seventh session to examine the draft articles adopted by the Commission in 2016 and further consider the recommendation of the Commission for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles, or any other potential course of action. It is expected that





the Sixth Committee will also seek to take a decision on this matter at its forthcoming session in October.

*[Programme of Assistance]*

As you know, the Codification Division is also responsible for the implementation of 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.

The activities of the Programme continue to include the organization and facilitation of high-quality training programmes in international law: 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.

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 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]**

I now turn to the activities of the Office of the Legal Counsel and will highlight a few issues of public international law dealt with by the Office.





*[Ukraine]*

The Office continued to provide advice on a number of issues arising out of the Russian military offensive in Ukraine. Of particular note are questions related to terminology. My Office is guided by the principal organs in this regard. In its resolution 78/221 of 19 December 2023 entitled “Situation of human rights in the temporarily occupied territories of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol”, the General Assembly refers to the “temporarily controlled or occupied territories of Ukraine”. The Assembly condemns, and I quote *[new text compared to resolution 77/229 is in bold]*, “the ongoing temporary **control or** occupation by the Russian Federation of part of the territory of Ukraine, **including** the Autonomous Republic of Crimea and the city of Sevastopol [...], **and certain areas of the Kherson, Zaporizhzhia, Donetsk and Luhansk regions** [...]”, end of quote *[last PP on page 2 of the resolution]*. The resolution also calls for “*bodies of the Russian Federation and their representatives in the temporarily occupied territories of Ukraine*” to be referred to as “*occupying authorities of the Russian Federation*” (OP10).

Relatedly, my Office has been monitoring recent proposals concerning the seizure of Russian assets and/or their proceeds for the purpose of the reconstruction and provision of humanitarian and military assistance to Ukraine. It is notable that some of these proposals have been drawing on the work of the Commission on the topic of “Jurisdictional Immunities of States and Their Property”, as further developed in the 2004 Convention, and also on the Responsibility of States for Internationally Wrongful Acts, including by seeking guidance from the work of the Commission in defining which States may be considered “injured” States and whether countermeasures, as a circumstance precluding





wrongfulness, may be taken by States *other* than the injured State in response to a breach of a peremptory norm of international law such as that said to be involved in the Russian military offensive in Ukraine. Additionally, the work of the Commission on the topic “Identification of Customary International Law” provides guidance in assessing relevant State practice in that regard.

*[Gaza]*

Since 7 October 2023, my Office has provided legal advice on several matters arising during the conflict in Gaza. The questions have ranged widely, spanning the status of Palestine, international humanitarian law, the provision of humanitarian assistance, and the inviolability of United Nations premises at times of armed conflict. Much of the advice provided has addressed the legal implications of possible public statements by senior United Nations officials on these matters. These events also prompted further reflection on the precise scope of inviolability of United Nations premises in times of armed conflict. For more than fifty years, the position of this Office has consistently been that the inviolability of United Nations premises applies both in times of war and in times of peace. This is because there are no stated qualifications to, or limitations on, the inviolability of premises in the Convention on the Privileges and Immunities of the United Nations. There is no reference there to situations of armed conflict, civil unrest or other emergency situations as constituting possible limitations on such inviolability. In our analysis, no elements of practice or *opinio juris* support the idea that the inviolability of the United Nations ceases in times of armed conflict. A review of the practice of the General Assembly and the Security Council indicates that our intergovernmental organs also share that view. Because of the similarity with rules on inviolability of the diplomatic premises





of States, it is helpful to bear in mind that the corresponding rules and practice in relation to diplomatic premises also confirm that inviolability applies in situations of armed conflict, whether non-international or international, and that it applies just as much to damaging premises as it does to entering them or otherwise physically penetrating them.

*[Privileges and immunities]*

Now turning to the Office's work on privileges and immunities, we continue to see tendencies among Governments to use negotiations of host country agreements as opportunities to depart from their obligations as parties to the 1946 Convention on the Privileges and Immunities of the United Nations. Governments continue to introduce limitations with respect to the immunities to be accorded to officials who are nationals or permanent residents of the host country. Governments also seek to apply the rules established for diplomatic and consular relations to the United Nations, such as with respect to taxation and social security, without due regard to the separate legal framework established for the United Nations.

The Organization also continues to face challenges with respect to its immunity in relation to labour disputes. It remains essential for the Organization that the legal framework set out in the General Convention for the appropriate settlement of disputes, including between the Organization and private parties in labour related disputes, is maintained and that the Organization's fundamental immunity from legal process is not eroded in any manner.







*[Accountability]*

Let me now turn to the area of accountability to update you on the most recent developments of the work of the international criminal courts and tribunals to which my Office provides support.

The Special Tribunal for Lebanon closed at the end of last year, marking the first closure of a UN assisted tribunal.

The International Residual Mechanism has completed its core judicial work. Of note is the trial of Mr. Félicien Kabuga, who was arrested in 2020. On 6 June 2023, the Trial Chamber found by a majority that Mr. Kabuga was not fit to stand trial and was very unlikely to regain fitness. The Trial Chamber raised a novel legal issue in its decision, deciding by a majority that it should conduct an alternative finding procedure, closely resembling a trial, in which the Prosecution would be required to prove both the means rea and the actus reus of each charge beyond a reasonable doubt. The Trial Chamber explained that, although this procedure could not result in a conviction, it would provide an opportunity for acquittal and was therefore the best way to guarantee Mr. Kabuga's rights to a fair trial and the objectives of the Mechanism, in particular combating impunity and contributing to the restoration and maintenance of peace in Rwanda.

On 7 August 2023, the Appeals Chamber dismissed the Prosecution's appeal and confirmed the decision that Mr. Kabuga was not fit to stand trial and that he was very unlikely to regain fitness. It further found that "*neither the Statute nor the jurisprudence of the Mechanism and its predecessor tribunals allows for an 'alternative finding procedure' in lieu of a trial*" and "*observed that the elements of such a procedure would appear to circumvent statutory guarantees afforded to all accused before the Mechanism.*"





Consequently, the Appeals Chamber invalidated the Trial Chamber's decision and remanded the matter to the Trial Chamber, which issued the prescribed indefinite stay of proceedings. Mr. Kabuga remains in detention at the UN Detention Unit, pending resolution of the issue of his provisional release.

On 15 May 2024, the Prosecutor announced that that the Tribunal has accounted for all fugitives indicted by the ICTR and the ICTY.

*[International Court of Justice]*

This year has seen a number of significant developments before the International Court of Justice, which remains busy with a full docket involving a wide range of legal issues and a number of high-profile cases related to major contemporary crises. There are currently 127 Member States from all the UN regional groups involved in proceedings before the Court, which can be partly attributed to the unprecedented number of written and oral submissions that the Court has received in its pending advisory proceedings, two of which I discussed last year and for which my Office submitted dossiers of documents.

The Court has received 57 written statements from States and international organizations in the advisory proceedings concerning the Occupied Palestinian Territory while 53 States and international organizations presented oral statements during the hearings held from 19 to 26 February 2024. The case is now under deliberation.

The Court also received 91 written statements from States and international organizations in the advisory proceedings concerning Obligations of States in respect of Climate Change. 24 June 2024 was fixed by the Court as the time-limit within which States





and organizations having presented written statements may submit comments on the other written statements.

**[GLD]**

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

*[Accountability]*

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 2022-2023 reporting period, 11 referrals of UN officials and experts on mission were made regarding allegations of sexual exploitation and abuse and fraud.<sup>1</sup>

*[Administrative law]*

In 2022 and 2023, the Secretary-General requested the General Assembly to amend the Statute of the United Nations Dispute Tribunal to clarify the scope of the review to be conducted by the UNDT in disciplinary cases.

The amendment was proposed following the issuance in 2022 of two United Nations Appeals Tribunal judgments<sup>2</sup> that were inconsistent with the regulatory framework established by the General Assembly on the Secretary-General's authority to impose disciplinary measures.<sup>3</sup> In those judgments, the UN Appeals Tribunal held that the UN

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<sup>1</sup> See Secretary-General's Report, A/78/248, "Criminal Accountability of UN Officials and Experts on Mission," Annex 1.

<sup>2</sup> See UNAT Judgments in Applicant (2022-UNAT-1187) and Appellant (2022-UNAT-1210).

<sup>3</sup> Article 97 of the UN Charter provides that the Secretary-General is the chief administrative officer of the United Nations. Staff regulation 10.1 further provides that the Secretary-General has the authority to impose disciplinary





Dispute Tribunal is required to conduct a review akin to that in a criminal trial where witness statements are not accorded any evidentiary value unless the witness testifies in court. The UNAT thereby discounted the value of independent fact-finding that the General Assembly has mandated be done by the UN Office of Internal Oversight Services. Under these UNAT judgments, disciplinary measures imposed by the Secretary-General would not be upheld unless the witnesses came to testify in judicial proceedings.

In December 2023, the General Assembly adopted a new article in the UN Dispute Tribunal’s Statute.<sup>4</sup> With the adoption of the new article, the General Assembly has clearly stated that the UN Dispute Tribunal “**shall** consider the record assembled by the Secretary-General” when reviewing an administrative decision imposing a disciplinary measure. This means that the UNDT has an obligation to consider evidence that was before the Secretary-General when the Secretary-General took the disciplinary measure, such as the sworn witness statements and other documentary evidence gathered during the investigation phase and disciplinary process. The contested disciplinary measure can be judicially upheld even if no witnesses testify in court. At the same time, the UN Dispute Tribunal retains the discretion to hear witnesses.

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measures on staff members who have been found to have engaged in misconduct. Since the General Assembly’s adoption of the UNDT Statute in 2008, the role of the UNDT when conducting a judicial review of the administrative decision to impose a disciplinary measure has been to determine whether the Secretary-General lawfully exercised his discretion to impose a disciplinary measure.

<sup>4</sup> See A/RES/78/248. Article 9.4 of the UNDT Statute reads as follows:

In hearing an application to appeal an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application by conducting a judicial review. In conducting a judicial review, the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant’s due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.





*[Arbitration and Claims]*

My Office is following closely the Commission’s current work on the topic “Settlement of disputes to which international organizations are parties”. As you may be aware, my Office advises on the settlement of disputes arising out of contracts or other disputes of a private law character, in accordance with the Organization’s obligation under section 29 (a) of the General Convention. When such disputes cannot be settled amicably, the parties resort to arbitration under the UNCITRAL Arbitration Rules. Since the mid-1990s, there has been an upward trend in arbitration of disputes between the United Nations and private parties arising out of a wide range of contracts. These matters are handled by my colleagues in the General Legal Division.

In response to the questionnaire of the Special Rapporteur on that topic, my Office has shared information on the Organization’s legal position and practice with respect to the implementation of Section 29 of the General Convention. Our responses to the questionnaire set out the established practice of the United Nations with respect to disputes concerning the Organization, including those arising at Headquarters, in the context of peacekeeping missions, and separately administered Funds and Programmes to the extent that such disputes are referred to my Office. While the Organization’s practice is constantly evolving, it is of crucial importance for the Organization that the Organization’s immunity from any legal process, which is set out unequivocally in the General Convention and the legal principle underpinning Section 29, is fully reaffirmed.

I would like to mention two developments in the context of dispute settlement between the United Nations and individuals who are referred to as “non-staff personnel”, including consultants, individual contractors and UN Volunteers. I last mentioned in 2019





that the General Assembly requested information about options for an expedited and less costly approach to arbitration for disputes between the UN and non-staff personnel. In response, two initiatives to improve measures for the prevention and resolution of disputes involving non-staff personnel have been developed by my Office. The first initiative is the development of an expedited and simplified arbitration procedure for UN consultants and individual contractors. To this end, the General Legal Division is revising the existing dispute settlement provisions contained in the form contract for consultants and individual contractors, to provide for a strengthened informal amicable settlement phase and an expedited and simplified arbitration procedure based on the recently promulgated UNCITRAL Expedited Arbitration Rules. The second initiative is the formulation of an arrangement with a neutral entity to provide arbitrator appointment, registry and administrative support and services in the arbitrations involving non-staff personnel. To this end, my Office established a framework of understanding with the Permanent Court of Arbitration to provide such support at an all-inclusive reduced fee, together with a commitment to appoint arbitrators who would be willing to act on a pro-bono basis or at significantly reduced fees.

*[PK and Operational Support]*

On 30 June 2023, the Security Council in resolution 2690 (2023) decided to terminate the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). OLA has been providing legal advice and support in





connection with MINUSMA's drawdown, withdrawal and liquidation, in the context of a challenging security situation.

Some of the issues that GLD has advised on include the application of the status-of-forces agreement between the UN and Mali; arrangements relating to the repatriation of contingent personnel, contingent-owned and UN-owned equipment; the status of UN personnel and assets remaining in Mali; arrangements with the Host Country authorities regarding the hand-over of sites and assets; the downsizing of personnel; and termination of contracts with commercial providers of goods and services.

Further, on 2 October 2023, the Security Council, acting under Chapter VII of the Charter, adopted resolution 2699 (2023), authorizing Member States to form and deploy a Multinational Security Support mission in Haiti (MSS) to support the efforts of the Haitian National Police to re-establish security in Haiti and build security conditions conducive to holding free and fair elections. The Security Council also requested the Secretary-General to (i) establish a trust fund to facilitate voluntary contributions to the MSS to enable and operationalize its mandate and (ii) provide "logistical support packages to the MSS, when requested by the MSS and MSS donors, subject to the full financial reimbursement to the United Nations through available voluntary contributions".

It is important to highlight that the MSS is not a United Nations operation. Rather, it is an operation of several Member States that have notified the Secretary-General of their participation in the MSS, in close cooperation and coordination with the Government of Haiti.

OLA has been providing legal advice and support in relation to the creation of the MSS Trust Fund, preparation of agreements with Member States contributing to the Trust





Fund, preparation of agreements with the Member States contributing personnel to the MSS, and other legal issues relating to the United Nations' support to the MSS.

**[ITLD]**

Mr. Chair,

Allow me now to turn to the activities of the International Trade Law Division.

As the core legal body of the United Nations in the field of international trade law, the United Nations Commission on International Trade Law (UNCITRAL) finalized six legislative texts during its annual session in 2023.

The Commission has tasked its Working Group III with a broad mandate to reform investor-State dispute settlement and to proceed in three stages. The Working Group is at the stage of delivering individual reform elements to the Commission for its adoption, awaiting their inclusion into a multilateral framework convention. During the last session, the Commission adopted the first four reform elements of the investor-State dispute settlement reform, two of which concern the use of mediation for resolving investment disputes. The **UNCITRAL Model Provisions on Mediation for International Investment Disputes** contain a set of treaty provisions on mediation for inclusion into past and future investment agreements, which provide States and investors a firm legal basis to use mediation as an appropriate alternative. The **UNCITRAL Guidelines on Mediation for International Investment Disputes** explain the benefits of mediation and how it can be used to resolve investment disputes. Considering that mediation is being underutilized for investor-State dispute settlement, both texts aim to promote its use as a credible







alternative dispute resolution mechanism and to eventually facilitate the amicable settlement of investment disputes.

Two more reform elements were adopted at this session: a **Code of Conduct for Arbitrators in International Investment Dispute Resolution** and the **Code of Conduct for Judges in International Investment Dispute Resolution**, each with a commentary. The codes contain key obligations of adjudicators involved in investor-State dispute settlement (including candidates and former adjudicators), reinforcing their duty of independence and impartiality, expanding disclosure requirements, and introducing rules on so-called “double-hatting” (where an adjudicator functions as a counsel in another proceeding involving similar legal issues) which has been considered problematic in the context of investment arbitration. The code for judges will eventually apply to those appointed to serve in a standing mechanism for resolving investment disputes, which is another reform element still being developed.

It is expected that the 57<sup>th</sup> session of the Commission, which commenced its deliberations on 24 June and will conclude on 12 July 2024, will adopt further reform elements. It will deliberate on the adoption of the statute of an advisory centre to assist and represent States involved in investor-State disputes, following the pattern of the Advisory Centre on WTO Law established to assist States involved in trade disputes. While the context of investment disputes differs largely from trade disputes, assistance to States or even representation should allow for the alleviation of the important costs involved in investment cases and restore the balance towards impecunious States having to face them. The Commission will also deliberate upon a toolkit on dispute prevention and mitigation of international investment disputes.





In 2023, the Commission also adopted the **Guide on Access to Credit for Micro, Small and Medium-sized Enterprises**, which discusses the legal framework for businesses to obtain financing for their operations and how States can improve their domestic legal framework to facilitate such financing means. This work builds on previous work by the Commission in the field of secured transactions, mainly the *UNCITRAL Model Law on Secured Transactions*. The Guide also examines regulatory and policy measures that can help reduce barriers to access to credit, such as issuance of personal guarantees, credit guarantee schemes, infrastructure to facilitate the assessment of creditworthiness of businesses, rules and guidance on fair lending practices, and the promotion of financial literacy. Importantly, the Guide further recognizes that women-owned micro, small and medium-sized enterprises often face higher barriers than those owned by men and thus recommends that requirements for access to credit should not discriminate against potential borrowers based on their gender.

In the area of dispute settlement, the Commission adopted the **guidance text on early dismissal and preliminary determination** for inclusion in the *UNCITRAL Notes on Organizing Arbitral Proceedings*. The guidance note, aiming to assist arbitration practitioners and users to understand the discretionary power of the arbitral tribunal under the *UNCITRAL Arbitration Rules* and other arbitration rules, outlines the arbitral tribunal's ability to dismiss a claim or defence on the ground that it is manifestly without merit or that it manifestly lacks jurisdiction, or to make a preliminary determination to that effect.

In addition to finalizing these texts, the Commission also confirmed the work programme of six working groups:





- Working Group I will start working on a draft model law on warehouse receipts. I am pleased to inform you that the draft model law on warehouse receipts along with its guide to enactment have been presented to the Commission for adoption during its 57<sup>th</sup> session;
- Working Group II will continue working on the topics of technology-related dispute resolution and adjudication. At its 57<sup>th</sup> session, this year, the Commission is expected to adopt model clauses on specialized express dispute resolution, which offer customizable solutions tailored to the specific circumstances and preferences of the parties, to make international arbitration even more agile and flexible;
- Working Group III will continue its work on the reform of investor-State dispute settlement;
- Working Group IV will continue working in parallel on the formulation of default rules on data provision contracts and principles on automated contracting;
- Working Group V will continue its work on civil asset tracing and recovery as well as on applicable law in insolvency proceedings; and
- Working Group VI will continue its consideration of a new international instrument on negotiable cargo documents.

As regards future work not assigned to any working group, the Commission took note of activities undertaken by the secretariat to further advance the work on the impact of COVID-19 on international trade law. The Commission commended the contributing States and the secretariat for the work done and authorized the secretariat to finalize and publish the “COVID-19 and international trade law instruments: a legal toolkit”.





In respect of the topic on climate change mitigation, adaptation and resilience, the Commission commended the secretariat for having organized the Colloquium on Climate Change and International Trade Law to consider areas in which international trade law could effectively support the achievement of climate action goals set by the international community, the scope and value of legal harmonization in those areas and the need for international guidance for legislators, policymakers, courts and dispute resolution bodies. As regards next steps, the Commission requested the secretariat, within UNCITRAL's mandate and in cooperation and collaboration with the secretariat of UNFCCC, UNIDROIT, the HCCH and other organizations with relevant expertise, to consult with all Member States of the United Nations (particularly developing countries) with a view to developing a more detailed study on the aspects of international trade law related to voluntary carbon credits. A detailed study, including contributions by numerous member States, will be presented to the 57<sup>th</sup> session of the Commission.

The Commission requested the secretariat to continue and finalize its work on the preparation of a guidance document on legal issues relating to the use of distributed ledger systems in trade, within existing resources, and in cooperation with other concerned organizations, as appropriate.

The Commission requested the secretariat to continue to implement the stocktaking project with regard to developments in dispute resolution in the digital economy and to put forward proposals for possible legislative work with a focus on the topics of the recognition and enforcement of electronic awards and electronic notices of arbitration and their service, as well as to report on further progress made overall. It is expected that during its 57<sup>th</sup> session the Commission will give mandate to its Working Group II to start exploring the way the





arbitration community can be encouraged to embrace electronic communications while safeguarding the enforceability of arbitral awards.

We are proud of the engagement of States and other stakeholders in the promotion and implementation of UNCITRAL texts, through partnerships and the flagship events of the UNCITRAL Days in Asia and the Pacific, in Latin America and the Caribbean and now also in Africa. We eagerly await the launching of the UNCITRAL Days for the Arab Region announced for the fall of this year.

**[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.

*[BBNJ Agreement]*

I am pleased to start this part by celebrating a new milestone, namely the adoption on 19 June 2023 of the *Agreement 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*, or BBNJ Agreement. This landmark agreement is the third Implementing Agreement to the United Nations Convention on the Law of the Sea (UNCLOS), thus further strengthening the legal framework governing the ocean.

The BBNJ Agreement opened for signature on 20 September 2023 and will remain open until 20 September 2025. It will enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession. As of 1 July 2024, 90 States and the European Union have signed the Agreement, with eight signatories,





namely, Palau, Chile, Seychelles, Belize, Monaco, Mauritius, Micronesia and Cuba having ratified it.

In accordance with the Agreement and as approved by the General Assembly in its resolution 77/321 of 1 August 2023, the Secretary-General will perform the depositary functions for the Agreement and DOALOS will perform the secretariat functions until the secretariat to be established under article 50 of the Agreement commences its functions.

In line with resolution 77/321, DOALOS is implementing a programme of activities to promote a better understanding of the BBNJ Agreement and to prepare for its entry into force, including regional workshops, technical assistance at the national level, briefings and side events, and the development of capacity-building and outreach tools and materials.

In terms of next steps, the General Assembly, in resolution 78/272 of 24 April 2024, established a Preparatory Commission to prepare for the entry into force of the BBNJ Agreement and the convening of the first meeting of the Conference of the Parties. Pursuant to that resolution, the Preparatory Commission serviced by DOALOS held a meeting from 24 to 26 June 2024 in New York to discuss organizational matters, including a programme of work for the Preparatory Commission.

*[ILC study on sea-level rise]*

As in the past, we follow with interest the work of the International Law Commission on sea-level rise and look forward to the finalization of the report of the Study Group on the topic as a whole, scheduled for 2025. I have noted that the Study Group's consideration of the subtopic on statehood has touched upon the rights of States in respect to the maritime zones. My colleagues in DOALOS remain available to provide information to the





Commission on technical aspects of UNCLOS and to share their expertise and experience with the Study Group, as done previously.

In relation to climate change more generally, following the request by the Commission of Small Island States on Climate Change and International Law on 21 May 2024, the International Tribunal for the Law of the Sea delivered an **advisory opinion concerning the obligations of State Parties to UNCLOS regarding climate change**. Numerous States, intergovernmental organizations and non-governmental organizations contributed to the proceedings. The United Nations submitted a written statement, prepared by my Office, on 8 June 2023.

In the advisory opinion, the Tribunal found, most notably, that anthropogenic greenhouse gas emissions into the atmosphere and excess energy stored in the atmosphere and absorbed by the ocean constitute pollution of the marine environment within the meaning of “pollution” in UNCLOS. States have the specific obligation to take all necessary measures to prevent, reduce and control this type of pollution and to cooperate to adopt relevant rules and standards directly or through competent international organizations continuously, meaningfully and in good faith. States parties also have the general obligation to protect and preserve the marine environment, including from climate change impacts and ocean acidification.

I note that two other advisory opinions on the obligations of States in relation to climate change, including under the law of the sea, are pending before the International Court of Justice and the Inter-American Court of Human Rights.





*[ILC work on piracy and armed robbery at sea]*

Similarly, the work of the International Law Commission on the topic “Prevention and repression of piracy and armed robbery at sea” continues to be of special interest to my Office. Piracy and armed robbery against ships remain grave threats to international navigation and the lives and livelihoods of seafarers. Enhancing international cooperation through the uniform and consistent application of the relevant provisions of UNCLOS is, therefore, essential.

*[Regular Process]*

Through its World Ocean Assessments, the **Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (Regular Process)** continues to provide the latest ocean-related data and information to support policymaking, in line with the outcome of the 2022 United Nations Ocean Conference, which recognized the importance of strengthening the science-policy interface for implementation of SDG Goal 14 and its targets and ensure policy is informed by the best-available science and relevant indigenous, traditional and local knowledge. The Regular Process is in its third cycle with the third World Ocean Assessment expected to be published in January 2026.

*[Fisheries]*

With regard to sustainable fisheries, the resumption of the **Review Conference on the United Nations Fish Stocks Agreement (UNFSA)** in May 2023 resulted in a strengthened set of recommendations to guide the work of States and regional fisheries management organizations and arrangements in the coming years. The Review Conference







will be resumed at a date no earlier than 2028, as decided by the Informal Consultations of States Parties. Since 2016, the Informal Consultations have focused on specific topics of relevance to the implementation of UNFSA, with a view to sharing experiences and best practices, most recently, “Sustainable fisheries management in the face of climate change”.

*[Meeting of States Parties to the Convention]*

The thirty-third **Meeting of States Parties to UNCLOS** held in June 2023 elected seven members of the Tribunal for a nine-year term of office ending on 30 September 2032. One member of the Commission on the Limits of the Continental Shelf (Commission) was also elected during a by-election in November 2023.

During the thirty-fourth Meeting of States Parties last month, the Meeting conducted another by-election for vacant seats in the Commission allocated to the Group of Eastern European States and elected one member of the Commission.

*[Commission on the Limits of the Continental Shelf]*

Since my last report, the **Commission** held three sessions, including the first session for the newly elected members who were sworn in at the fifty-eighth session and will serve until 15 June 2028.

The Commission adopted recommendations regarding the submissions made by Nigeria and the Russian Federation in respect of the southeastern part of the Eurasia Basin in the Arctic Ocean, bringing to 40 the total number of recommendations adopted to date. It suspended consideration of the submission made by Trinidad and Tobago following receipt of a communication requesting that the Commission not consider and qualify that





submission.

As at May 2024, 74 States Parties have made submissions, either individually or jointly. Overall, the Commission has received 104 submissions, including 11 revised submissions.

*[Capacity-building]*

To round off this section, let me note that the full implementation by States of UNCLOS and its Implementing Agreements, as well as the effective participation by States in ocean processes at the United Nations, depends on their capacity to do so. DOALOS is proud to work with an increasing number of partners to meet the capacity needs of States, including the Norwegian Agency for Development Cooperation, the European Union, the World Bank, the Food and Agriculture Organization of the United Nations, the United Nations Institute for Training and Research and the Nippon Foundation. DOALOS is also benefiting from the generous support by the European Union and other mostly State donors to the trust funds that it administers. By working together on national and regional training courses, technical assistance projects and fellowship programmes, DOALOS does its part to strengthen legal and institutional frameworks for ocean governance at national, regional and global levels.

**[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.





As I mentioned, the BBNJ was opened for signature on 20 September 2023 during the annual Treaty Event and shall remain open for signature by all States and regional economic integration organizations until 20 September 2025.

Additionally, on 17 November 2023, the Convention on the Contract for International Carriage of Goods by Rail was adopted at the seventy-seventh session of the Working Party on Rail Transport of the Inland Transport Committee of the United Nations Economic Commission for Europe (UNECE). It will remain open for signature by all States until 31 March 2025.

The theme of the 2023 Treaty Event organized by my Office on the sidelines of the seventy-eighth General Debate was “Towards Universal Participation in Multilateral Environmental Agreements for a Healthy Planet”. The four-day event in September saw over one hundred treaty actions undertaken by eighty-five States representing all regional groups. The majority of these were signatures of the BBNJ Agreement on its opening day.

Finally, my colleagues in the Treaty Section support the work of the Sixth Committee on the agenda item “Strengthening and promoting the international treaty framework”. The General Assembly decided in resolution 78/236 to undertake a technical exchange of views on treaty-related topics and the Treaty Section was mandated to support the regular debates, including with the preparation of a Secretary-General report. A report with information on Member States and international organizations’ practice on a specific subtopic will enhance our understanding of States’ treaty practice and will surely benefit the work of the Commission. The upcoming debate during the eightieth session of the General Assembly will focus on “the role of technology in shaping treaty-making practice”.

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**[Conclusion]**

*Distinguished Members of the International Law Commission*

Allow me once more to wish the Commission all the success in fulfilling its mandate and a fruitful continuation of this session. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication.

Thank you very much.

