



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,

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Geneva, Switzerland

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



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.





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





“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, s2[(he)3.6(l).4(m)4.71.ths u 7(ir -1.713(s89[(im)12.8ht)8.7 of)3.7nds ots Ho





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





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





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 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





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





of such residual functions in the most efficient and practical manner. One way may be through a common administrative hub, which 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.





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





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





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 ~~and~~ applicable domestic law, including ~~in~~ 8.5(p)3.51(a) 12.2(e)3.6(v) 2.3(2) 3.6] 8.7(Te)3.6(ch3.6(ne)12.





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 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.







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





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 lega







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





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 multimodal 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. The 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





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 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, the “conservation and sustainable use of the oceans, seas and marine resources for sustainable development”. Particularly affected are vulnerable groups for who





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.





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 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 thirteenth 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 process required

as soon as possible





[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~~ ~~in~~ ~~this~~ ~~year~~. Your invaluable contribution to the work of the Commission, and to international law, did not go unnoticed. To those members, who were ~~replaced~~, I want to wish the best of luck and fruitful work in your new term of office. International ~~law~~ ~~is~~ ~~the~~ ~~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

