



UNITED NATIONS

**International Law Commission**

**Statement by Mr. Miguel de Serpa Soares,**

**Under-Secretary-**



UNITED NATIONS, OFFICE OF LEGAL AFFAIRS



NATIONS UNIES, Bureau des affaires juridiques



session, in the context of the seventy-eighth session, to continue its consideration of the

The Sixth Committee successfully concluded the consideration of the agenda items













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]*

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







*[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 guarant 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.

confirmed the decision that Mr. Kabuga was not fit to stand trial and that he was very *neither the Statute nor the jurisprudence of*

*in lieu of a trial* observed that the elements of such a procedure would appear to *circumvent statutory guarantees afforded to all accused before the Mechanism.*





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.





and organizations having represented them in the 2022-2023 reporting period (Annex 12.3 (en43) 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 (Annex 12.3 (en43)







*[Arbitration and Claims]*

My Office is following closely aware, my Office advises on the settlement of disputes arising out of contracts or other 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 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.

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 including consultants, individual contractors and UN Volunteers. I last mentioned in 2019









Fund, preparation of agreements with the Member States contributing personnel to the









In 2023, the Commission also adopted the **Guide on Access to Credit for Micro, Small and Medium-sized Enterprises**





- 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. T14.04 Tf1 0 0W\* nB ut ut





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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





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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







**[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.

