



# UNITED NATIONS

## International Law Commission

### Statement by

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Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel

**New York, 9 May 2018**

Mr. Chairman,

Distinguished members of the International Law Commission,

Ladies and gentlemen,

On behalf of the Secretary-General, I am delighted to welcome you to New York, where the Commission is holding the first part of its session this year. It is a great pleasure for us, in the Secretariat, to host you at the United Nations Headquarters. The last time we had this honour was in 1998, so this is indeed a very special occasion.

Your presence in New York is all the more special because this year marks the 70th anniversary of the International Law Commission. The Commission's first session, in 1949, took place not far from here, at the temporary headquarters of the United Nations in Lake Success on Long Island. This in many ways then is a journey back to where it all started for the Commission.

As you know, New York is also home to the General Assembly and its Sixth Committee, the Commission's counterpart in the progressive development and codification of international law. For the past seventy years, the two bodies have worked closely together in advancing both the scope and the substance of the international legal system. As in any long-standing relationship, the develop





Codification Division has also been instrumental in identifying new topics for codification and progressive development.

Moreover, as the secretariat of numerous diplomatic conferences, from the 1958 Geneva Conference on the Law of Sea to the 1998 Rome Conference on the Establishment of an International Criminal Court, the Codification Division has guided many of the Commission's texts through diplomatic negotiations, resulting in international conventions that have laid the foundation for our modern international legal order.

There is perhaps no one more aware of the vital role of the Codification Division than you, Mr Chair, who for many years served as one of its officers. It is a great point of pride for us at the Secretariat to see you chairing the Commission today, personifying the close bond between the Commission and the Codification Division.

In the past year, much effort of the Codification Division has been devoted, as can be imagined, to the organization of the commemorative events for the 70th anniversary of the Commission. In addition, the Division completed an extensive memorandum on "Ways and means for making the evidence of customary international law more readily available", to aid the Commission in its second reading of the draft conclusions on the topic "Identification of customary international law".

Another significant mandate of the Codification Division is the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The training programmes and the UN Audiovisual Library of International Law are two main components of the Programme of Assistance. This year, the Division succeeded once again in offering a full range of Regional Courses in international law, in the Asia-Pacific region, Africa and Latin America and the Caribbean, as well as organizing the International Law Fellowship Programme in The Hague. I am grateful to many of the members who have contributed their time and expertise to deliver lectures at these courses. Last year, the Codification Division developed an International Law Handbook for the courses, which offers a comprehensive collection of international law instruments for teaching purposes. I am pleased to let you know that a French version of the Handbook, the *Recueil de droit international*, will be available in July in time for the International Law Fellowship Programme.

Since its creation in 2008, the Audiovisual Library has been accessed by over 1.5 million users in 193 Member States and non-Member States. While it was created primarily for the benefit of lawyers o





Outside the regular session of the Committee, the Codification Division provided information briefings to delegates to familiarize them with the topics and the working methods of the Committee and the Commission. In March of this year, a briefing was held on State responsibility; and in April, in anticipation of your







uniformed personnel left Liberia in February and March of this year, UNMIL had already completed the transfer of its security responsibilities almost two years prior, in June 2016, to the Liberian security services. The remaining tasks, particularly those in support to security sector reform, governance and the rule of law, were the last handed over. These were transferred to the United Nations country team upon the Mission's closure.

Despite the closure of MINUSTAH, Haiti remains a country hosting a peacekeeping operation. However, this is now on a much smaller scale. The new mission has not retained a military component, although it has retained formed police units authorized to provide operational support to the Haitian National Police. Additionally, the mandate of MINUJUSTH is already defined in time by the Council, which requested that the Secretary-General present a two-year exit strategy to a non-peacekeeping United Nations presence in Haiti that will be dedicated to peacebuilding exclusively, leaving all security responsibilities to the Haitian security forces.

As you know, my Office is also involved at the beginning of a peacekeeping operation. The establishment of MINUJUSTH was no exception in this regard. Our immediate role is to facilitate the conclusion of a Status of Forces agreement with the host country of the peacekeeping operation. The signing of such agreements arises from the long-established practice of the Secretariat in the field of peacekeeping. The Status of Forces agreements continue to be crucial tools to ensure that the peacekeeping operation and its members enjoy the privileges, immunities, rights and facilities needed for the proper implementation of the mission's mandate. The resolution creating MINUJUSTH did not include a clause providing that, pending the signature of a status of forces agreement, the Model SOFA shall be applicable to the new mission. This rendered the signing of a Status Agreement for MINUJUSTH all the more urgent.

Initially, we sought the mutatis mutandis application of the MINUSTAH Status Agreement to MINUJUSTH. This had been done in the past, for instance upon the transition from ONUB, the former peacekeeping mission in Burundi, to BINUB.







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the end of 2017, his successor, Secretary-General António Guterres, concluded that significant progress had not by then been made towards arriving at a full agreement for the solution of the controversy, he would choose the International Court of Justice as the next means of settlement, unless the Governments of Guyana and Venezuela jointly requested that he refrain from doing so.

On 30 January 2018, the Secretary-General announced that he had carefully analysed developments in the good offices process during 2017 and had concluded that significant progress had not been made towards arriving at a full agreement for the solution of the controversy. Accordingly, he chose the International Court of Justice as the means that is now to be used for the solution of the controversy.

At the same time, the Secretary-General also reached the conclusion that Guyana and Venezuela could benefit from the continued good offices of the United Nations through a complementary process established on the basis of the powers of the Secretary-General under the Charter of the United Nations. These good offices could contribute to the use of the ICJ as the new means of settlement; help the parties reach an out of court settlement; and help them to address other issues in their bilateral relations.

Following the Secretary-General's decision, Guyana filed an Application with the Court on 29 March 2018, asking it to confirm the legal validity and binding effect of the 1899 Arbitral Award. In its Application, Guyana has founded the Court's jurisdiction on the combined effect of the 1966 Geneva Agreement and the Secretary-General's decision of 30 January 2018 as the means that is now to be



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*[Privileges and Immunities]*

To conclude on the work of the Office of the Legal Counsel, I turn, briefly, to challenges relating to the status, privileges and immunities of the Organization. As in previous years, I regret to report to you that matters have not improved. We continue to face challenges on taxation, social security and the validity of existing bilateral agreements in South America. The Secretariat has also had to deal with difficult matters relating to the interpretation of the UN-US Headquarters Agreement relating to the issuance of visas, geographical restrictions, status of the premises of permanent missions to the UN and their personnel.

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**[GLD]**

*[Administration of justice]*

I will now turn to the activities of the General Legal Division. My Office's work to promote accountability includes providing extensive support to the Secretary-General initiatives to ensure that the United Nations Secretariat and its staff



intensifying awareness raising efforts. In all of these initiatives, the Office of Legal Affairs has been an active and engaged partner.

A policy that can encourage individuals to report sexual exploitation and abuse, sexual harassment and other types of misconduct will ultimately enhance the trust of individuals and Member States in the Organization. Accordingly, the Secretary-General has emphasized the importance of a robust policy on protection against retaliation. My Office has supported the Secretary-General's efforts to strengthen the policy, through expanding its scope of protection to consultants and individual contractors who report misconduct. The policy has also been revised so that reports of misconduct committed by a broader range of actors (including contractors and peacekeepers) will also trigger protections under the policy.

The internal administration of justice system continues to be an essential pillar of the accountability system of the United Nations. Since their establishment in 2009, the UN Dispute Tribunal and the UN Appeals Tribunal have delivered 1551 and 809 judgments, respectively, to date. The Office of Legal Affairs represents the Secretary-General in appeals proceedings and plays a key role in the development of policy regarding the administration of justice.

***[Criminal accountability]***

The Office of Legal Affairs, and the General Legal Division in particular, has also continued its work with respect to the criminal accountability of UN officials and experts on mission.

Pursuant to General Assembly resolution 62/63, the Office of Legal Affairs, on behalf of the Secretary-General, brings credible allegations that reveal that a crime may have been committed by UN officials or experts on mission to the attention of their state of nationality.

As reflected in the Secretary-General's most recent report on the subject(A/72/205), between 1 July 2016 and 30 June 2017, 35 cases were referred to states of nationality. Of these cases, 2 involved allegations of sexual exploitation and / or abuse and 30 involved allegations of fraud or corruption.

My Office has also continued to facilitate the administration of justice, pursuant to article V, section 21 of the Convention on the Privileges and Immunities of the United Nations, by responding to requests for cooperation from national authorities of Member States in relation to ongoing investigations and criminal proceedings.

[Unfortunately, the Office of Legal Affairs receives few responses to these referrals. At the time of the publication of the last report by the Secretary-General, in 100 of the 124 cases that have been referred we had not been informed by Member States whether referrals have been taken up by national law enforcement authorities.



Even more strikingly, to date, my Office has not been informed of any referral to a Member State which has led to the relevant official or expert on mission being prosecuted.

With a view to encouraging responses from Member States, my Office, through the General Legal Division and pursuant to the resolutions adopted by the General Assembly on this topic, follows up with by letter 3, 6, and 12 months after the referral.

With regard to allegations of sexual exploitation and abuse, an enhanced system for follow-up has recently been introduced under which I have personally engaged with the Permanent Representatives of relevant Member States to the United Nations in order to underline the need for action by national authorities in such cases.]

### *[Arbitration and Claims]*

Another core function of the General Legal Division is to provide legal advice with respect to commercial claims and disputes involving operational activities of the Organization, its organs and funds and programmes. However, should such a matter not be resolved amicably, the aggrieved party has the right under its contract to have the dispute resolved by *ad hoc* international commercial arbitration conducted under the UNICTRAL Arbitration Rules.

Given the multitude of operational activities, the Division has been frequently called upon to advise upon arbitration proceedings concerning claims that arise from operations at Headquarters, in peacekeeping missions, and from the operations of the many UN funds and programmes.

These claims arise from contracts entered into with commercial contractors in support of the above operations and often involve million-dollar claims. In addition, arbitration under the UNCITRAL Arbitration Rules is also the standard settlement mechanism for disputes arising out of contracts between the Organization and individuals, such as individual contractors and consultants, UN Volunteers or service provider in the context of the funds and programmes. Recently, Member States have been increasingly interested in the resolution of disputes with such individuals, who are collectively referred to as non-staff personnel. They have expressed concern that *ad hoc* arbitrations under the UNCITRAL Rules do not constitute an effective remedy for those individuals, as they are often engaged by the Organization for the provision of services in the field or other remote locations.

[On 9 February 2012, the General Assembly, in resolution 66/237, requested that the Secretary-General submit to the Assembly a proposal for implementing a mechanism for expedited procedures for consultants and individual contractors.







qui pourraient justifier une réforme. L'importance de la thématique se retrouve dans la position du Groupe de travail selon laquelle une analyse factuelle devrait être complétée par un examen des opinions exprimées sur le sujet tant ces dernières sont également pertinentes pour les États qui prennent des décisions de politique



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performs numerous functions mandated by the General Assembly in its ocean-related resolutions, particularly the annual resolutions on oceans and the law of the sea and



days in this month, incorporating a new format, which will include a discussion panel. Pursuant to the recommendation of the resumed Review Conference in 2016, the informal consultations of States Parties to the Agreement will be dedicated, on an annual basis, to the consideration of specific issues arising from the implementation of the Agreement. Thus, it was decided that the thirteenth round in 2018 will focus on the topic “Science-policy interface”, while the fourteenth round in 2019 will focus on the topic “Performance reviews of regional fisheries management organizations and arrangements”.

The Division also provides substantive support to the General Assembly and its subsidiary organs, including in connection with the annual consideration of law of the sea and ocean affairs and sustainable fisheries. Let me now, in that context, briefly address several major ocean-related processes.



Convention and other applicable international instruments, is the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects. The Process is now in its second cycle, which started in 2017 and will be completed in 2020.

The two main outputs for this second cycle are the preparation of a second world ocean assessment and the Regular Process support for other ocean-related intergovernmental processes, including the preparation of three process-specific technical abstracts.

In 2017, the Group of Experts of the Regular Process prepared three technical abstracts of the outcome of the first cycle, namely the first World Ocean Assessment. The abstracts provide a synthesis of its information and findings for the benefit of policy-makers, in a concise and accessible format. They deal with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; the ocean and the Sustainable Development Goals under the 2030 Agenda for Sustainable Development; and the impacts of climate change and related changes in the atmosphere on the oceans. These technical abstracts, together with the hard copy publication of the first World Ocean Assessment, were launched in June 2017 in the margins of the “Ocean Conference”.

In addition, the second part of the 2017 marked the successful completion of the



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2014 sur la transparence dans l'arbitrage entre investisseurs et États fondé sur des traités.

Les différents instruments conventionnels mentionnés constituent une infime partie du riche répertoire des quelques 600 traités multilatéraux déposés auprès du Secrétaire général. Ils mettent surtout en lumière la grande variété de questions juridiques que la Section des Traités est amenée à traiter au quotidien.

Tout récemment, on peut par ailleurs relever la question du retrait d'un Etat Partie au Statut de Rome. Le 17 mars 2018, la République des Philippines a également notifié au Secrétaire général sa volonté de se retirer du Statut de Rome, retrait qui sera effectif le 17 mars 2019, conformément aux dispositions de l'article 127 de celui-ci. Si j'avais eu l'occasion, lors de mon intervention de l'année dernière, de me réjouir de la décision de la République de Gambie et de la République sud-africaine de retirer leurs notifications de retrait du Statut avant que ceux-ci ne prennent effet, je ne peux que regretter la notification de retrait effectuée par la République des Philippines.

Je voudrais conclure par les éléments marquants évoqués par l'Assemblée Générale dans le cadre de sa dernière résolution 72/119 relative à « L'état de droit aux niveaux national et international ». Tout en rappelant le rôle des processus d'établissement des traités multilatéraux dans la promotion de l'état de droit, l'Assemblée a salué les efforts du Secrétariat et réaffirmé son soutien aux initiatives de renforcement des capacités en matière de traités. L'Assemblée n'a pas manqué l'occasion de rappeler que l'enregistrement des traités auprès du Secrétariat constitue une obligation imposée par l'article 102 de la Charte des Nations Unies. Elle s'est également félicitée des efforts déployés en vue du développement et de l'amélioration de la base de données des traités et de leur accès en ligne, ainsi que de la cérémonie annuelle des traités. Au cours de la dernière édition de cette Cérémonie,



pris note du rapport du Secrétaire général, gageons que ses prochains débats conduiront à l'adoption d'un Règlement amendé et adapté aux nouvelles pratiques des Etats Membres.

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**[Conclusion]**

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This concludes my overview of the work of the Office of Legal Affairs in the past year