



**UNITED NATIONS**

**Reflections  
of the United Nations Legal Counsel  
on the work of the Office of Legal Affairs**

By

**Miguel de Serpa Soares**  
Under Secretary-



I will try to keep these remarks relatively brief. But I think it is important, for your understanding, as well as for framing our discussion, to describe what we do and how we do it.

First, given that we have an esteemed member with us in the room, let me address the International Law Commission, to which my office provides substantive support.

This year marks the seventieth anniversary of the International Law

Success, New York, where the United Nations had its temporary Headquarters at that time.

The mandate of the International Law Commission draws on Article 13, paragraph 1 (a) of the Charter of the United Nations, which explicitly instructs the General Assembly to encourage the progressive development and codification of international law. However, the codification movement predates the Charter by at least a century. It stems from the belief that written rules, rather than unwritten customary international law, form the foundation of a peaceful international order.

Early codifiers tended to consider their project a technical exercise, requiring them to clinically distil and write down rules derived from diplomatic practice. The League of Nations establish

ambitious Codification Conference in 1930. The Conference did not live up to expectations, as delegations failed to reach consensus on most of the agenda items.

This experience demonstrated that codification involves more than mechanically transcribing customary international law into written agreements; it also requires the progressive development of new rules, to fill gaps and resolve conflicts a political as much as a legal exercise.

These lessons were reflected in the Statute of the International Law Commission. It also encourages the Commission to actively interact with governments, who are regularly invited to comment on the Every year, the Commission submits a detailed report of its session to the Sixth (Legal) Committee of the General Assembly, where the report is extensively debated by legal advisers from capitals.





UNITED NATIONS,

work on the sources of international law to include the topics Identification of customary international law and Peremptory norms of general international law (*jus cogens*).

relevance to the progressive development of international law and its



UNITED NATIONS,

For example, marine biodiversity produces a third of the oxygen that we breathe, moderates global climate conditions, provides a valuable source of protein for human consumption, and is host to many organisms of interest to various sectors, including the pharmaceuticals industry.

However, the pressures on marine biodiversity are increasing. The First World



UNITED NATIONS,

international legally binding instrument under the United Nations Convention  
on the Law of the Sea on the conservation and sustainable use of marine  
ne



UNITED NATIONS,



UNITED NATIONS,







UNITED NATIONS,



These range from interpreting the Security Council resolution which provides the mandate for an operation; to drafting a status of forces agreement with the country hosting the peacekeeping operation; to reviewing the rules of engagement for the military which set forth the legal parameters under which force may be used by that operation.

It also includes advising on legal arrangements with partners. We are increasingly engaging with the EU and the AU in peace operations, and only recently advised on arrangements with the EU in respect of the G5 operation in the Sahel to address counter-terrorism in Mali.

It also includes accountab[1125(w)4(i)-3(l)-3(y)1343(r)8(i)-3(sc)8(l)4(d)-3(e)8(s)



targeted offensive operations to prevent the expansion of all armed groups,

The Force intervention example is a particularly evocative example of peace enforcement. By peace enforcement, I mean the use of military force to *compel* peace in a conflict.

Traditional peacekeeping comes after peace, or at least a ceasefire, has been reached between parties to a conflict, to monitor the implementation of the ceasefire or peace agreement.

While mandates to perform enforcement tasks are not new in UN operations, this is a particularly robust mandate, and has raised issues about the application of international humanitarian law to UN forces.

While the applicability of international humanitarian law to UN forces used to be a contentious issue, today the issue is not so much whether the UN force is bound by international humanitarian law, but rather, what are the ramifications for UN peacekeeping?

There is no issue about the UN applying international humanitarian law. Relevant international humanitarian law principles are regularly incorporated into the rules of engagement of a force, and are to be applied at all times where conditions for their application arise.

Overall, UN peacekeeping operations remain premised on the basic principles of peacekeeping: consent; impartiality; and non-use of force except in self-defence, or defence of the mandate. In this regard, they are different from peace enforcement actions, notwithstanding that their mandates may include peace enforcement tasks.

For the most part, the States contributing troops to UN peace operations do not expect their personnel to become engaged in armed conflict, and become subject to the application of international humanitarian law.

There are, of course, serious practical consequences of a UN operation becoming a party to an armed conflict, including that:

Members of the military, together with military objects, would be legitimate military targets;

Civilians, including UN police and any unarmed military observers, would be entitled to protection as civilians. However, to the extent that







Nonetheless, this new mandate may lead to a perception that the Mission is gradually drawn as a party into the conflict in the Sahel region.

In addition, the support to the G5 Sahel Force requires that the UN monitor the conduct of the G5 Sahel soldiers, to ensure that the UN does not condone, or facilitate, military operations that violate human rights and/or international humanitarian law. This, after all, would be exactly the contrary of one of

I hope that overview helps to illuminate some aspects of our work. I have not been able to address everything, but this should give you an idea of the breadth