***

Distinguished Members of the International Law Commission

Despite the distance between us, I intend, in my statement, to continue to follow the tradition of providing you with an overview of the activities of the Office of Legal Affairs in the preceding year. The provision of centralized legal services to the Organization remains the primary focus of the Office. I am of course mindful of the ever- expanding scope of legal activities of the United Nations system wide.

I will start with your Secretariat, the Codification Division.

***

[COD]

Mr. Chair,

Now that the majority of the substantive work on the

Committee, the General Assembly adopted, without a vote, 24 resolutions and 7 decisions.

In relation to your own work programme, it was gratifying to see many of you attend and participate in the “International law week,” the General Assembly, in resolution 73/265 of 22 December 2018, recommended that the Commission continue its work on the topics in its current programme of work, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee, while taking note of the decision of the Commission to include the topic “General principles of law” in its programme of

At the end of 2018, the Residual Mechanism for International Criminal Tribunals completed its first year as a stand-alone single institution tasked with maintaining the legacies of the two *ad hoc* tribunals, ICTY and ICTR. On 20 March, the Mechanism rendered the appeal judgment in one of the major ICTY cases, largely upholding the verdict against Radovan Karadžić, bringing those long-running proceedings to an end.

Mr. Karadzic, who is one of the highest-ranking officials to be tried by the International Tribunal for the former Yugoslavia and by the Residual Mechanism, was found guilty of genocide for the 1995 Srebrenica massacre, crimes against humanity and violations of the laws or customs of war and was sentenced to life imprisonment.

The Mechanism is seized of one other appeal, in the case of General Ratko Mladić, and a retrial in the case of former senior Serbian security officials, Messrs. Stanišić and Simatović. The conclusion of all the substantive cases of both the ICTR and the ICTY therefore now moves into clear sight.

Other tribunals are also reaching defining stages of their work. Last year saw some important progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC) with the issuance of the trial judgement in Case 002/02, where the most senior former Khmer Rouge leaders indicted before the Chambers, Nuon Chea and Khieu Samphan, were convicted for genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949. This is the first case in the ECCC in which evidence related to charges of genocide was heard. Notably, the genocide charges were not in relation to the Khmer population itself, but were

restricted to charges of genocide against

This represents a significant new approach, focusing on supporting the prosecution efforts of other stakeholders rather than conducting own prosecutions.

Two years ago, I referred to the establishment of such a mechanism in the Syrian context, the International, Impartial and Independent Mechanism on Syria (the IIIM). And last year, I reported on the establishment of a similar mechanism in Iraq. Today, I can report that OLA is currently working, together with OHCHR, on the establishment of the third mechanism of this nature, this time regarding the situation in Myanmar.

The establishment of these mechanisms reinforces the idec.*loesheoesanheoesw 36.82hhT-3(4(at

restrictive immunity, such that the “commercial activities” exception applied to foreign sovereigns would apply to international organizations.

While the IFC and other *amicus curiae* argued that this could potentially open the floodgates of litigation, the U.S. Supreme Court was not swayed by these arguments, noting the following: (a) the constituent instruments of international organizations can always provide for a different level of immunity; (b) it is not clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA; and (c) there are other requirements that must be met under the FSIA, including that the commercial activity must have a sufficient nexus to the United States.

Looking forward, while it is possible that future lawsuits will not have a sufficient nexus to the United States to allow for the suits to ultimately go forward, the Specialized Agencies will nonetheless be required to expend significant reso40091Tm0 g0 (l)4(l

Whatever the political and moral rights and wrongs, the law in this regard is clear; and this is so, even if we accept, for argument's sake, that the situation in the country can be said to constitute a disaster or other similar emergency.

As was remarked during this Commission's work on its draft articles on the Protection of Persons in the event of disasters, the law may be evolving towards greater recognition of a duty on the part of a State that is affected by a disaster to seek external assistance if its domestic response capacity is overwhelmed and, with that, towards greater recognition of a duty to accept offers from others to provide it with assistance of the kind and in amounts that it needs.

But, even if we were to go further than that and assume that there is a concrete legal obligation on the part of the affected State to consent to the entry of humanitarian assistance on to its soil, it would still remain the case that, if the affected State were to withhold its consent and refuse the assistance offered to it, that would not mean that external actors could lawfully deliver that assistance on its territory.

To think otherwise would be to commit the fallacy that the International Court of Justice pointed out nearly seventy years ago in its advisory opinion in the Interpretation of *Peace Treaties* : if a State fails to do what it is legally obliged to do, the fact that that failure is a violation of its obligations under international law does not mean that other States can treat it as having done what it ought rightfully to have done.

Even if it did not have the lawful right to do so — and it is most doubtful that it did not have that right — the Government of Venezuela therefore retained at all times the legal ability to prevent the lawful entry

for “appropriate modes of settlement” of disputes arising out of contracts or other

GDPR standards for handling personally identifiable data. Consequently, various States or entities with whom UN System organizations interact for the delivery of mandated activities have sought to require UN System organizations to comply with the GDPR. In some instances, such States and entities have refused to accept personally identifiable data from or to transfer such data to UN System organizations without assurances that they would not be subject to penalties for doing so. All of this has threatened to impair the ability of UN System organizations to deliver their mandated activities.

At the request of the Legal Advisors of the UN System organizations, I am spearheading consultations on behalf of the UN System organizations with the European Commission. The Commission has acknowledged that the GDPR does not apply *per* se to UN System organizations, and the Commission is aware that the GDPR has created complications for the UN System and other international organizations. Through our consultations, we are seeking to find practical solutions to avoid having the GDPR impair the activities mandated for our

[Development System reform]

The Office of Legal Affairs has been assisting the Executive Office of the Secretary-General with the implementation of the repositioning of the United Nations development system. Pursuant to General Assembly resolution 72/279, of 31 May 2018, the functions of the UN Resident Coordinator were separated from those of the Resident Representative of the United Nations Development Programme (UNDP) as of 1 January 2019. The Resident Coordinator's functions are being performed by a separate individual from the UNDP Resident Representative. Also, pursuant to the same General Assembly resolution, the UN Development Operations Coordination Office (DOCO), which supports the UN Development Group (UNDG) and the Resident Coordinators system, was transferred from UNDP to the UN Secretariat as a standalone office. DOCO has been renamed as the Development Coordination Office, and the UNDG has been renamed as the UN Sustainable Development Group and is chaired by the Deputy Secretary-General.

The separation of Resident Coordinators' functions from those of UNDP Resident Representative has meant, among other things, that a new legal framework has to be established with host Governments applicable to the Resident Coordinator and the Resident Coordinator's Office in the country. [The Secretary-General has proposed to the host Governments that UNDP's Standard Basic Assistance Agreement (SBAA) be applied, *mutatis mutandis*, to the Resident Coordinators and the Resident Coordinator's Offices.] My office is working closely with the Development Coordination Office in negotiating necessary arrangements with relevant host Governments. [We have already seen that some countries wish to

take this opportunity to negotiate a new agreement and we anticipate that there may be attempts to limit the scope of certain privileges and immunities, such as taxation, but my Office will continue to take the position that we must adhere to the immunities and privileges set forth in the 1946 Convention without any restrictions.] My Office is also assisting the Development Coordination Office with other issues relating to the repositioned UN development system.

[Criminal Accountability]

OLA and GLD, in particular, have also continued work with respect to the criminal accountability of UN officials and experts on mission. Pursuant to General Assembly resolution 62/63, OLA, 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 Criminal accountability of UN officials and experts on mission (A/72/205), between 1 July 2017 and 30 June2018, 24 cases were referred to states of nationality. Of these cases, 8 involved allegations of sexual exploitation and abuse, and 14 cases involved allegations of fraud or corruption.

The Office has also continued to respond to requests for cooperation from national authorities of Member States in relation to ongoing investigations and criminal proceedings. Such cooperation in order to facilitate the proper administration of justice by Member States is required by Section 21 of the General Convention.

***

[ITLD]

The second session took place from 25 March to 5 April 2019. A President's aid to negotiations, which included treaty language and options, facilitated focused discussions and text-based negotiations in the Informal working groups on the four topics of the package agreed in 2011 and on cross-cutting issues. The second session ended on a high note. Many delegations expressed satisfaction with the progress achieved.

The President of the Conference was requested to prepare, for the third session, a document with the aim of enabling delegations to negotiate the text of the future instrument. Such a document will be structured in a form more akin to a treaty and contain treaty language.

The third session of the Conference will be held from 19 to 30 August 2019 and the fourth session in the first half of 2020.

Let me now turn to matters related to substantive support that the Division also provides to the General Assembly and its subsidiary organs, including in connection with the annual consideration by the Assembly of oceans and law of the sea and sustainable fisheries.

Another process of considerable importance serviced by the Division is the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the Regular Process). The Regular Process is an intergovernmental process guided by international law, including the Convention and other applicable international instruments and is directly accountable to the General Assembly.

The Regular Process is now in its second cycle, which started in 2016 and will be

bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks.

The review will focus on the implementation of a number of paragraphs of resolutions 64/72, 66/68 and 71/123, with a view to ensuring effective implementation of the measures therein and to make further recommendations. As in the past, the review will be informed by a report of the Secretary-General and a two-day multi-stakeholder workshop.

It is very important to highlight that all the new developments that I have mentioned also come with new and increased capacity requirements for States, as they endeavour to respond to ongoing and rapid developments in ocean affairs. In this regard, the Division continues to provide and enhance its assistance to States in building human and institutional capacity, including through needs-based training programmes, fellowships and trust funds.

By way of example, a new capacity-building programme, the United Nations – Nippon Foundation Sustainable Ocean Programme began last year, which provides both thematic capacity-building to mid-level ocean professionals and critical capacity assistance to government officials from developing States, in particular least developed States (LDCs) and small island developing States (SIDS). The Programme also provides training for individuals involved in the ongoing negotiation process on an International Legally Binding Instrument 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. An additional expansion of the project is envisaged.

***

[Conclusion]

Distinguished Members of the International Law Commission

This concludes my statement for today. Let me once again wish you all the success for a fruitful session in Geneva. The Office of Legal Affairs will continue to serve the Commission with the highest standards of diligence, professionalism and dedication. Thank you very much.