Thank you Chair. I also wish to thank the Secretary-General of the International Maritime Organization (IMO), Mr. Koji Sekimizu, for holding this meeting and inviting the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, to participate therein.

Distinguished delegates,

Ladies and gentlemen, colleagues,

At the outset, the Division wishes to underline the vital importance and urgent need for the international community to strengthen its cooperation to stop the continuous and increasing loss of life at sea and the human rights abuses, among other issues, associated with migration by sea.

It is clear that not one State nor organization can achieve this alone. Addressing mixed migration by sea, including unsafe practices, necessitates enhanced cooperation and coordination at global, regional and national levels. It is a very complex issue not only in terms of the potentially different legal status of those who migrate by sea and the various legal regimes and stakeholders involved, but also because it cannot be considered in isolation of the root causes.

This has also been recognized by the Member States of the United Nations in the General Assembly resolutions on oceans and the law of the sea, among others. In its most recent resolution on oceans and the law of the sea, resolution 69/245, adopted on 29 December 2014, the General Assembly calls upon States to continue to cooperate in developing comprehensive approaches to international migration and development, including through dialogue on all their aspects.

In this presentation, the Division will highlight the obligations in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which are particularly relevant to mixed

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1 This statement represents a consolidation of the two statements that were delivered on 4 and 5 March 2015 respectively.
migration by sea, some implementation challenges and then address how the United Nations General Assembly has provided global policy direction regarding mixed migration by sea, including unsafe practices.

The General Assembly annually reaffirms that UNCLOS provides the legal framework within which all activities in the oceans and seas must be carried out. With 167 States parties, UNCLOS has been widely accepted, also by non-parties who regard many of its provisions as reflective of customary international law. As a framework Convention, UNCLOS provides for, and/or mandates the further development of international rules and regulations. It is thus possible to build upon the provisions and principles in UNCLOS without amending the Convention. Indeed, UNCLOS is already complemented by a number of legal instruments. Furthermore, as stated in its preamble “Matters not regulated by UNCLOS continue to be governed by the rules and principles of general international law”, one of which is the principle of “non-refoulement”.

Three key obligations in UNCLOS are particularly relevant to the issue we are considering:

First, the obligation to ensure that ships comply with the measures necessary to ensure safety at sea. UNCLOS requires the flag State to exercise its jurisdiction and control over ships flying their flag and ensure that they comply with relevant international rules and regulations. Such rules and regulations are contained in a number of international conventions, including IMO conventions and other legal instruments. In that regard, the operation of unseaworthy ships and the carriage of large number of passengers on vessels not equipped for that purpose constitute a violation of such rules and regulations which needs to be addressed.

A port State is required by UNCLOS to prevent a ship within its port or offshore terminal from sailing if such ship violates applicable international rules and standards relating to seaworthiness. However, enforcing safety regulations, especially with regard to small craft leaving from areas within national jurisdiction, present challenges for many coastal States.

In its most recent resolution on oceans and the law of the sea, resolution 69/245, the General Assembly reaffirms that flag, port and coastal States all bear responsibility for ensuring the effective implementation and enforcement of international instruments relating to maritime security and safety, in particular UNCLOS. The Assembly, inter alia, calls upon flag and port States to take all measures consistent with international law
necessary to prevent the operation of substandard vessels. It also recognizes the ongoing need for the IMO and other relevant organizations to assist, in particular, developing States to take effective action to address, to the extent feasible, the issue of unseaworthy ships and small craft within their national jurisdiction.

The second obligation the Division wishes to emphasize is the duty to render assistance to any person found at sea in danger of being lost or in distress. UNCLOS restates this long-standing maritime duty and tradition, first codified in 1910, which is also contained in the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR).

Under article 98, the flag State must require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost, and, to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.

This duty to render assistance to persons in distress at sea is applicable to all ships and not only on the high seas, but also in other maritime zones. Assistance to persons in distress is to be provided to any person, and as SAR states "regardless of the nationality or status of such a person or the circumstances in which that person is found".

UNCLOS requires not only flag States but also coastal States to act to enforce the duty of rendering assistance to any person in distress at sea.

The coastal State is required in article 98 of UNCLOS to promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on or over the sea. If circumstances so require, this must be done by way of mutual regional arrangements and the coastal State is to cooperate with neighbouring States for this purpose.

While UNCLOS provides the framework for legal action, the detail of any search and rescue obligations is to be found in SOLAS and SAR. The latter Convention, which was amended in 1998 and 2004, defines "rescue" as involving not only "an operation to retrieve persons in distress, provide for their initial medical or other needs" but also to "deliver them to a place of safety".
However, not all States are parties to SAR and SOLAS and not all States have accepted the SAR and SOLAS amendments. In addition, some States have not concluded arrangements establishing SAR regions. Furthermore, neither UNCLOS, SAR nor SOLAS contain a clear obligation for the rescuing State to also disembark survivors in its territory. A further challenge that may compound the issue is the varying capacities and resources of (potential) disembarkation States. This may lead to delays in disembarkation. It can be noted that while UNCLOS was being drafted during the Third United Nations Conference on the Law of the Sea, thousands of people left Viet Nam by boat, which led initially to the adoption of a programme known as the Disembarkation Resettlement Offers followed later by the Rescue-at Sea Resettlement Offers Scheme.²

Disembarkation may be further challenging as a result of coastal States’ national legislation. UNCLOS gives a coastal State the right to prevent and punish the loading or unloading of persons contrary to its immigration laws and regulations in its territorial sea and contiguous zone. Although UNCLOS prescribes that such laws and regulations must be adopted in conformity with it and other rules of international law, States may not always be fully aware of the convergence of rights and duties emanating from a number of conventions. For example, a purely criminal or law enforcement approach may result in a marginalization or failure to recognize the rights of refugees/asylum seekers, victims of trafficking and of smuggled migrants and migrant workers.

In its resolution 69/245 on oceans and the law of the sea, the General Assembly calls upon States to ensure that masters on ships flying their flag take the steps required by relevant instruments to provide assistance to any persons in distress at sea. It urges States to cooperate and to take all measures necessary to ensure the effective implementation of the amendments to SAR and SOLAS relating to the delivery of persons rescued at sea to a place of safety, as well as of the associated IMO Guidelines.

At the same time, the General Assembly also recognizes that all States must fulfil their search and rescue responsibilities under international law, including UNCLOS, and the ongoing need for the IMO and other relevant organizations to assist, in particular, developing States to increase their search and rescue capabilities, including through the establishment of additional rescue coordination centres and regional sub-centres.

² For additional information see: http://www.unhcr.org/3ae68cbc20.html.
The General Assembly further notes the ongoing work of the IMO, UNHCR and other relevant actors in relation to disembarkation of persons rescued at sea and the need to implement all relevant and applicable international instruments.

The third obligation the Division wishes to highlight is related to the suppression of illicit activities at sea. As mentioned above, under UNCLOS, a coastal State has the right to prevent and punish the loading or unloading of persons contrary to its immigration laws and regulations. Such laws and regulations must be in conformity with UNCLOS and other rules of international law, for example, human rights and refugee law.

The importance of upholding such rights, including the principle of non-refoulement, also arises in the context of enforcement measures taken by States on the high seas and in the exclusive economic zone, pursuant to UNCLOS or other treaties, such as the Protocol against the Smuggling of Migrants by Land, Sea and Air.

Under UNCLOS, warships or government ships on non-commercial service can exercise, for example, the right of visit, which includes the boarding and inspection of ships under certain circumstances and in particular, where there are reasonable grounds for suspecting that the ship is without nationality. The exercise of the right of visit under UNCLOS with respect to ships without nationality, which includes ships flying two flags or more and using them according to convenience, is particularly relevant to the context of what we are discussing here since such ships tend to be unseaworthy and used for illicit purposes.

In its resolution 69/245, the General Assembly recognizes the importance of enhancing international cooperation at all levels to fight, detect and suppress transnational criminal activities at sea. It, inter alia, calls upon States to consider becoming parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to take appropriate measures to ensure their effective implementation.

Implementation challenges can arise in the context of unsafe mixed migration by sea if the distinction between enforcement action and a rescue operation becomes blurred.

While saving life at sea has to be the primary objective, there is a need to delineate more clearly the scope of rescue, the right of visit, as well as interventions that may threaten the integrity of the search and rescue regime.
It would also be useful to develop more guidance on the level of assistance that should be provided in a “distress” situation and in what circumstances, the extent of the rescuing States’ obligations as they relate to disembarkation, and burden-sharing strategies.

Distinguished delegates,

Ladies and gentlemen, colleagues,

Since unsafe mixed migration by sea falls within the realm of peace and security, economic and social development, human rights, refugee rights, migration, organized crime, law of the sea and maritime law, it is important that the different policy-making bodies and organizations involved are aware of the linkages between their work.

Bearing in mind that capacity-building activities for States, in particular developing States, are critical for promoting effective implementation of UNCLOS and other legal instruments, it is also important to urgently identify capacity gaps in the countries of origin, transit and destination, and assist States in addressing such gaps. This should also include addressing the root causes of migration.

For its part, and as a matter of priority, the Division will continue to provide upon request, advice and assistance to States in the uniform and consistent application of the provisions of UNCLOS and support the General Assembly in its consideration of mixed migration by sea. Furthermore, it will strengthen its dissemination of information on the legal regime and policy developments, including within the context of its capacity-building initiatives.

While the Division will continue to perform these functions, it considers that enhanced cooperation and coordination with other relevant intergovernmental organizations would increase the impact of such activities.

Relevant organizations have already been collaborating over the years, including through the interagency group on the treatment of persons rescued at sea. However, collaboration between relevant organizations could be further enhanced through targeted priorities and multi-sectoral action points which would assist States and the respective organizations address unsafe mixed migration by sea in a more concerted, cohesive, integrated, effective and sustainable manner. For example, in the context of capacity-building and to

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3 Composed of ILO, IMO, IOM, OHCHR, UNHCR, UNODC and the Division for Ocean Affairs and the Law of the Sea.
promote the adoption of measures by States that facilitate the implementation of relevant Conventions in an effective, consistent and integrated manner, relevant organizations could jointly identify key elements that could be considered for inclusion by States when developing such measures.

In conclusion, I wish to thank the Secretary-General of IMO again for this initiative and also the High Commissioner for Refugees for his Dialogue on Protection Challenges last year. These initiatives which are aimed at looking at the issue from a comprehensive perspective represent very good steps in the right direction of finding solutions to the complex challenge that the international community is faced with.

Thank you.