



International Law Commission**Seventy-fifth session**

Geneva, 29 April–31 May and 1 July–2 August 2024

Study Group on sea-level rise in relation to international law**Report****A. Introduction**

1. At its seventy-first session (2019), the International Law Commission decided to include the topic “Sea-level rise in relation to international law” in its programme of work. The Commission also decided to establish an open-ended Study Group on the topic, to be co-chaired, on a rotating basis, by Mr. Bogdan Aurescu,¹ Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria. The Study Group discussed its composition, its proposed calendar and programme of work, and its methods of work. At its 3480th meeting, on 15 July 2019, the Commission took note of the joint oral report of the Co-Chairs of the Study Group.²

2. At its seventy-second session (2021), the Commission reconstituted the Study Group, and considered the first issues paper on the topic,³ which had been issued together with a preliminary bibliography.⁴ At its 3550th meeting, on 27th July 2021, the Commission took note of the joint oral report of the Co-Chairs of the Study Group.⁵

3. At its seventy-third session (2022), the Commission reconstituted the Study Group, and considered the second issues paper on the topic,⁶ which had been issued together with a preliminary bibliography.⁷ At its 3612th meeting, on 5 August 2022, the Commission considered and adopted the report of the Study Group on its work at the seventy-third session.⁸

4. At its seventy-fourth session (2023), the Commission reconstituted the Study Group, and considered the additional paper to the first issues paper on the topic,⁹ which had been issued together with a bibliography.¹⁰ At its 3655th meeting, on 3 August 2023, the

¹ At the present session, Mr. Aurescu was no longer with the Commission, as he had been elected to the International Court of Justice.

² *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10)*, paras. 265–273.

³ [A/CN.4/740](#) and [Corr.1](#).

⁴ [A/CN.4/740/Add.1](#).

⁵ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10)*, paras. 247–296.

⁶ [A/CN.4/752](#).

⁷ [A/CN.4/752/Add.1](#).

⁸ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10 (A/77/10)*, paras. 153–237.

⁹ [A/CN.4/761](#).

¹⁰ [A/CN.4/761/Add.1](#).



Commission considered and adopted the report of the Study Group on its work at the seventy-fourth session.¹¹

B. Consideration of the topic at the present session

5. At the present session, the Commission reconstituted the Study Group on sea-level rise in relation to international law, chaired by the two Co-Chairs on issues related to statehood and to the protection of persons affected by sea-level rise, namely Ms. Galvão Teles and Mr. Ruda Santolaria.

6. In accordance with the agreed programme of work and methods of work, the Study Group had before it the additional paper to the second issues paper on the topic (A/CN.4/774), prepared by Ms. Galvão Teles and Mr. Ruda Santolaria. A selected bibliography, prepared in consultation with members of the Study Group, was issued as an addendum to the additional paper (A/CN.4/774/Add.1).

7. The Study Group, which at the present session comprised 26 members, held 10 meetings, from 30 April to 9 May, from 2 to 8 July 2024.

8. At its xxxth meeting, on [26 July] 2024, the Commission considered and adopted the report of the Study Group on its work at the present session, as reproduced below.

1. Introduction of the additional paper (A/CN.4/774 and Add.1) to the second issues paper by the Co-Chairs

(a) Procedure followed by the Study Group

9. At the first meeting of the Study Group, held on 30 April 2024, the Co-Chair (Ms. Galvão Teles) indicated that the purpose of the six meetings scheduled in the first part of the session was to allow for an exchange of views on the additional paper to the second issues paper and any other matters related to the two subtopics under consideration. The outcome of the first part of the session would be a draft interim report of the Study Group, to be considered and complemented during the second part of the session. The draft report would then be agreed upon in the Study Group and subsequently presented by the Co-Chairs to the Commission, with a view to being included in the annual report of the Commission.

(b) Presentation of the additional paper to the second issues paper

10. At the first meeting of the Study Group the Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) made a general presentation of the additional paper. It was noted that the topic “Sea-level rise in relation to international law” had generated increasing interest among members of the Commission and Member States. Reference was made to the progress that had been achieved so far on all three subtopics under consideration, through in-depth discussions within the framework of the Study Group and the Commission, which had been further enriched by comments conveyed by Member States either in the Sixth Committee or in response to questions raised by the Commission. It was also emphasized that some States, including those most affected by the phenomenon, had been particularly active in drawing attention to the urgency of addressing the multiple challenges ahead and in identifying potential legal solutions. Particular attention was drawn to the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, adopted by the leaders of the States, countries and territories of the Pacific Islands Forum on 9 November 2023 (2023 Pacific Islands Forum Declaration).¹² Furthermore, it was noted that, in addition to the Commission, the Security Council, the General Assembly and various other United Nations bodies had addressed the topic of sea-level rise; it was also being considered by international and regional courts and tribunals in the context of the advisory proceedings relating to climate change, namely by the Inter-American Court of

¹¹ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/78/10)*, paras. 128–230.

¹² See 2023 submission by the Pacific Islands Forum, available at https://legal.un.org/ilc/guide/8_9.shtml.

Human Rights, the International Tribunal for the Law of the Sea and the International Court of Justice.

11. The Co-Chair (Ms. Oral) further reiterated the importance of the topic and emphasized its immediate relevance to Member States around the world. She presented the Study Group with an overview of events addressing the issue of sea-level rise that had taken place in 2023. In particular, she recalled that the Security Council had held a meeting on 14 February 2023 on the subject of “Sea-level rise: implications for international peace and security”, under the agenda item “Threats to international peace and security”, at which Mr. Aureescu, who was a Co-Chair of the Study Group at that time, had delivered a briefing on the progress of the Commission’s work. She also noted that the President of the General Assembly had convened an informal plenary meeting of the General Assembly on existential threats of sea-level rise amidst the climate crisis, on 3 November 2023. Finally, it was recalled that the General Assembly had decided to convene a high-level plenary meeting on 25 September 2024 to address existential threats posed by sea-level rise.

12. The Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) indicated that the purpose of the additional paper was to supplement and develop the content of the second issues paper (2022) on the basis of a number of suggestions by the Co-Chairs and members of the Study Group that were proposed during the debate on that paper during the seventy-third session of the Commission. Positions of Member States on both subtopics, including as expressed during the debates in the Sixth Committee of the General Assembly and submitted to the Commission for consideration, had been duly considered and reflected in the additional paper.

13. Introducing the subtopic on statehood, the Co-Chair (Mr. Ruda Santolaria) reiterated that, while sea-level rise was a phenomenon with different impacts around the globe, the problem it posed was of an existential character, with threats to low-lying coastal States, archipelagic States, small island States and small island developing States, as their land surface might be totally or partially submerged or rendered uninhabitable. The additional paper analysed the following points: the configuration of the State as a subject of international law and the continuity of its existence; scenarios linked to statehood in the context of sea-level rise and the right of the State to provide for its preservation; and eventual alternatives to face the phenomenon in relation to statehood.

14. With respect to the subtopic on the protection of persons affected by sea-level rise, the Co-Chair (Ms. Galvão Teles) firstly recalled some of the preliminary observations contained in the second issues paper on the topic, noting in particular that the current international legal frameworks that were potentially applicable to the protection of persons affected by sea-level rise were fragmented, mostly not specific to sea-level rise and required further development. She further recalled that relevant State practice was sparse at the global level and was not always specific to sea-level rise. Following the discussions in the Study Group in 2022, a number of elements for legal protection had been identified for further exploration in the additional paper, without prejudice to the possibility of further examining other issues as appropriate.

2. Summary of the exchange of views

(a) General comments on the topic and the additional paper

15. Members of the Study Group expressed gratitude to the Co-Chairs (Ms. Galvão Teles and Mr. Ruda Santolaria) for a very well-documented and structured additional paper. They also welcomed the memorandum by the Secretariat identifying elements in the previous work of the Commission that could be relevant for its future work on the topic (A/CN.4/768).

16. Commenting on the topic in general terms, members of the Study Group reiterated the topic’s relevance and the crucial importance of the Commission’s discussion to the international community in general and particularly to States that are directly affected by sea-level rise. Some members also expressed a sense of urgency given the issues at stake and the gravity of the situation. It was also highlighted that the phenomenon affected persons in vulnerable situations, as well as having the effect of placing persons in such situations. It was also noted that sea-level rise was a direct consequence of the global climate change, with some members underlining the anthropogenic nature of the phenomenon.

17. Members recalled recent developments in the practice of Members States and international organizations, including those mentioned by the Co-Chairs, as well as the ongoing proceedings before various international and regional courts and tribunals, and emphasized the need for the Study Group to duly reflect such developments in its work.

18. While some members noted the need to draw from the past work of the Commission, the Study Group was cautioned against drawing too many parallels, in particular with the draft articles on the protection of persons in the event of disasters adopted by the Commission in 2016.¹³ The connection between all three subtopics under consideration and the need to ensure coherence between them was emphasized.

(b) Reflections on statehood

19. The Study Group considered Part One of the additional paper, entitled “Reflections on statehood”, at the first to third meetings of the Study Group, held on 1, 2 and 7 May 2024.

(i) Introduction by the Co-Chair

20. In introducing Part One of the additional paper, the Co-Chair (Mr. Ruda Santolaria) observed that while climate change-induced sea-level rise was a global phenomenon with differentiated impacts in the distinct regions of the world, it posed a particularly serious threat to small island developing States, whose land surface might be totally or partially submerged or rendered uninhabitable by rising sea levels. In his view, there existed a strong presumption of continuity in the case of States whose land surface might be totally or partially submerged or rendered uninhabitable by rising sea-levels caused by climate change. Accordingly, the continuity of statehood was linked to security, stability, certainty and predictability, as well as to considerations of equity and justice, and, as such, served as a manifestation of the applicability of the principles of self-determination, protection of the territorial integrity of the State, sovereign equality of States, permanent sovereignty of States over their natural resources, the maintenance of international peace and security, and the stability of international relations and international cooperation.

(ii) General comments

21. Members of the Study Group discussed the central question concerning the continuity of statehood in circumstances where the land surface becomes totally or partially submerged or rendered uninhabitable by rising sea levels. They supported in general terms the approach taken by the Co-Chair on that issue in the additional paper. It was observed that the conclusion drawn therein flowed also from the debate held at the previous session of the Commission on the implications of sea-level rise for the law of the sea. It was also noted by some members that the protection of persons affected by sea-level rise was linked to the question of the continuation of statehood, in that the potential loss of statehood raised the spectre of statelessness. Reference was made to the 1928 Arbitral Award in the *Island of Palmas case*,¹⁴ which had placed emphasis not only on the rights of States and the creation of rights or entitlements, but also on corollaries such as duties with regard to the protection of certain key interests.

22. Reference was made to the various views expressed by States during the debates in the Sixth Committee, as also detailed in the additional paper. Some members of the Study Group noted the need to carefully identify the precise rationale for those statements, without reading into them views that States had potentially consciously chosen not to put forward, since the topic of statehood was of relevance to many fields of international law. It was further observed that those States that supported the continuity of statehood could have made claims of several kinds, including (1) that there existed an established positive international law rule on the point; (2) that there could be flexibility in the application of a vague but still positive rule to address the point; (3) that there existed reasons why developing international law in a certain direction would go with the grain of the legal system, particularly when invoking

¹³ *Yearbook of the International Law Commission, 2016*, vol. II (Part Two), para. 48.

¹⁴ *Island of Palmas case (Netherlands, U.S.A.)*, Award, 4 April 1928, *Reports of International Arbitral Awards*, vol. II, pp. 829–871.

situations by analogy; and (4) that they were taking no position on the existence or desirability of positive rules at all and were simply indicating a policy preference.

(iii) *Creation of a State as a subject of international law and continued existence of the State*

a. Distinction between the criteria for the creation of a State and those for its continuity

i. Introduction by the Co-Chair

23. The Co-Chair (Mr. Ruda Santolaria) recalled that, when considering the legal basis for the continuation of statehood, the key reference point was article 1 of the Montevideo Convention on the Rights and Duties of States,¹⁵ of 1933, which had established a set of criteria for an entity to qualify as a State that had since come to be generally accepted in establishing the existence of a State as a subject or person of international law. In the view of the Co-Chair, a distinction could be drawn between situations where the provisions of article 1 of the Montevideo Convention were applicable in order for the State to be considered a subject of international law and situations in which circumstances arose in relation to existing States in which one or more of the criteria of article 1 of the Montevideo Convention ceased to be present. He observed that the Convention did not address the question of the loss of statehood but included, instead, the right of each State to preserve its continued existence and independence. Such position had been confirmed as recently as in the 2023 Pacific Islands Forum Declaration. The Declaration presumed the continuity of statehood regardless of the impact of sea-level rise.

ii. Summary of the debate

24. During the ensuing discussion in the Study Group, support was expressed for the position taken in the additional paper that the Montevideo Convention criteria did not address as such the question of continuing statehood. It was suggested that a distinction could be drawn between the creation of a right and its continuation. Reference was made again to the *Island of Palmas* Award which stated that “[a] distinction must be made between the creation of rights and the existence of rights”.¹⁶ According to one view, the Montevideo Convention was not decisive in any way with regard to the issue of the continued existence of rights. It was observed that the object of the Montevideo Convention was the rights and duties of States, and not the question of statehood or the recognition of statehood. The matter, therefore, was not whether the Convention applied to continuity, but rather whether the Convention reflected customary international law regarding the continuity of statehood. State practice seemed to suggest that the Convention did not do so. It was recalled that for a number of States in the twentieth century some of the requirements of the Montevideo Convention had either not been present at some point or only marginally so, but they had, nonetheless, continued to be recognized as States. Such overall assessment had been further substantiated by the fact that several States in the Sixth Committee had called on the international community to confirm the continuity of statehood in situations where the land surface of a State becomes totally submerged or rendered uninhabitable due to sea-level rise.

25. The view was expressed that advances in science and technology had, in fact, allowed for uninhabitable territory to be used and thus still continue to contribute to satisfying the elements of statehood. Likewise, it was recalled that, under the law of the sea, uninhabitability did not *a priori* affect the status of territory as territory of a State. Reference was made, by way of substantiation, to article 121 of the United Nations Convention on the Law of the Sea, of 1982,¹⁷ under which rocks that could not sustain human habitation or economic life of their own could nonetheless still generate a territorial sea.

¹⁵ Convention on the Rights and Duties of States (Montevideo, 26 December 1933), League of Nations, *Treaty Series*, vol. CLXV, No. 3802, p. 19.

¹⁶ *Island of Palmas* (see footnote 14 above), p. 845.

¹⁷ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982). United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.

26. The view was also expressed that the most important consideration was that States had the right to preserve their existence.¹⁸ Such understanding underpinned the notion that the Montevideo Convention criteria applied only to the creation of a State and could not be applied *a contrario* to deny the continuation of a State's existence. At the same time, the view was expressed that the permanence of the situation facing States at risk because of sea-level rise could be distinguished from that of the temporary loss of, for example, government, such that the considerations that arose in relation to the latter circumstances might not entirely apply to the permanent loss of one of the Montevideo Convention criteria, even if in practice the two situations might not be markedly different. While the relevance of the practice concerning governments in exile, referred to in the additional paper at paragraph 112, was questioned in light of the fact that it dealt with scenarios that were typically temporary in nature, the view was also expressed that such practice (for example, that in the context of the continuity of the Baltic States between 1940 and 1990) demonstrated the openness of international law to longstanding juridical continuity with limited or no factual control of territory, especially when anchored in continuing membership of universal international institutions.

27. A similar view was expressed that an analysis was warranted of the role of the recognition by other States of the continuity of statehood of a State whose land surface was submerged under the sea in part or in whole. Reference was made to views of James Crawford, who had described statehood as being not simply a factual situation, but a legally circumscribed claim of right, specifically to the competence to govern a territory. Whether such right was justified depended both on the facts and on whether it was disputed. This suggested that there existed a role for recognition in concluding whether an entity, even if it no longer fulfilled one of the relevant criteria, remained an entity that States continued to consider as a member of the international community, and one with whom they dealt on equal terms and which enjoyed international legal personality.

28. It was also suggested that the Montevideo Convention criteria could be understood as reflecting a general requirement of effectiveness. As such, the question being confronted by the Commission was whether the traditional conception of statehood as effectiveness applied in the situation being considered, or whether a modern conception of effectiveness might not necessarily require the spatially, geographically, coextensive application of all elements of statehood. A further view was that it was important, when considering the question of continuity of statehood, to focus on the viability of statehood when a large proportion of the affected State's land surface was submerged by sea. The view was expressed that it was important to establish criteria for the continuity of statehood in order to ensure that it be maintained in the face of any legal challenges that might emerge in circumstances where key elements of statehood ceased to exist permanently.

29. Furthermore, it was observed that the application of the right of self-determination of peoples and the right of each State to defend its territorial integrity and independence would serve to constrain States from prematurely withdrawing recognition granted to a State whose land surface could be totally submerged by rising sea levels. It was recalled that the additional paper had identified the existence of sovereignty or independence as being the key criteria with regard to the continuity of statehood, even if they were concepts usually conceived of by reference to a territory.

30. Another possible legal basis identified for the continuation of statehood was consent, which was a well-known concept in international law. It was observed that, in the period since the adoption of the Charter of the United Nations, there had been very few cases of extinction of States, and almost none of involuntary extinction. All the various scenarios and alternatives for States facing a loss of habitable land territory described in the additional paper had assumed consent on the part of the affected State.

¹⁸ See draft Declaration on Rights and Duties of States with commentaries, para. (49). *Yearbook ... 1949*, vol. I, pp. 287–290.

b. Presumption of the continuation of statehood

i. Introduction by the Co-Chair

31. It was recalled by the Co-Chair (Mr. Ruda Santolaria), among other members, that, as had been indicated in the second issues paper, considered in 2022, there existed a strong presumption of the continuity of statehood of States whose land surface could be partially or fully submerged by the sea or become uninhabitable because of sea-level rise caused by climate change. Such presumption arose from the fact, as discussed above, that fundamental changes in one or more of the requirements laid down in the Montevideo Convention for the establishment of a State did not traditionally result in the State ceasing to exist, in the sense of it being assumed that the State concerned could no longer maintain relations of various kinds with other members of the international community, including diplomatic relations, nor the treaty-making power or gain membership in universal and regional international organizations.

ii. Summary of the debate

32. General support was expressed in the Study Group in favour of the continuity of statehood. It was noted that non-continuity would have significant implications, including: the sudden creation of a legal vacuum with the disappearance of nationality, rendering the prior bearers of such nationality stateless; the implosion of resource management agreements for the seas concerning environmental or sustainable management of living resources; and the introduction of insecurity or instability, which could threaten international peace and security, for example, by calling into question the validity of existing maritime boundaries. Nor did international law envisage the possibility of the entire disappearance of international legal obligations as a consequence of anthropogenic developments for which small island developing States, in particular, held no responsibility. Terminating statehood solely because of the consequences of sea-level rise caused by climate change would be a profound injustice. The international community had a collective responsibility to support such States in preserving their territory and territorial integrity and safeguarding their people. It was suggested that even referring to the possibility of the “discontinuation” or “extinction” of statehood would be misleading, since such outcomes were inaccurate as a matter of existing law.

33. Different views were, however, expressed as to whether it was preferable to describe the prevailing legal situation as giving rise to a “presumption” of continuity or whether it was preferable to refer to the existence of a “principle” of continuity. Some members preferred admitting the existence of a “principle” out of concern that a presumption could be rebuttable. The question then would be under what circumstances could such rebuttal arise? It was conceivable that it could arise in situations where submergence had advanced to such an extent that the question of the continuance of statehood became contested. The view was further expressed that, in such scenario, the possible bases for departing from the presumption of continuity included: the position taken by the directly affected States themselves, such as in circumstances where an affected State chose not to continue, in one way or another, to exist because it decided to associate with another State; or the cessation of recognition by States. The view was expressed that there would be practical difficulties in ascertaining definitively whether and when a presumption was rebutted.

34. A different view was that the affirmation of a principle of continuity of statehood in general terms seemed to suggest that States had unlimited continuity in time. Such outcome would contradict the historical fact that States had ceased to exist. Furthermore, while the loss of land territory owing to sea-level rise would in and of itself not be sufficient to negate or rebut a presumption of continuity, a reference to the existence of such a “presumption”, as opposed to that of a “principle”, was nonetheless considered by some members as being more legally appropriate precisely because loss of statehood was conceivable in extreme cases where there arose an almost total loss of both territory and population. Furthermore, the concern was expressed that governments in different forums might become wary of the unintended collateral consequences of the existence of such a “principle”, in contexts which had nothing to do with those States that were actually facing a possible loss of statehood.

35. The Study Group was encouraged to stick to the narrow focus of the additional paper on the two categories of States that were vulnerable or susceptible to losing statehood because of sea-level rise. Those were the States whose land surface could be totally submerged, and the States whose land surface could be partially submerged or rendered uninhabitable by rising sea levels. Another view was that focusing only on the relatively small number of States that might be most directly affected risked minimizing the extent of the threat they faced, potentially leading to solutions that might not meet the needs of those particularly affected States.

36. The view was also expressed that it was not clear what the framing of the issue in terms of a claim of presumption of continuity, as distinguished from a claim to continuity or claim to statehood, added. Other framings were possible, including simply recognizing the continuity of statehood. Another suggestion was to focus on the lack of legal impediment to continuity, which avoided the question of whether a legal presumption or principle existed, but rather emphasized the principles of stability, certainty and predictability, as well as those of equity and fairness, especially where the causes of sea-level rise were not primarily of the making of the State affected. It was recalled that, in the 2023 Pacific Islands Forum Declaration, beyond the fact that it was affirmed that international law supported a presumption of continuity of statehood, it was also recognized that international law did not contemplate the demise of statehood in the context of climate change-related sea-level rise. Another view was that it was not clear how the absence of a legal impediment for the continuation of a legal status was different from a positive rule of continuity. It was also pointed out that it was precisely because the question of whether a State might or might not continue to exist in circumstances where it did not meet some of the criteria for the creation of a State as a subject of international law, depending on the circumstances, that a presumption in favour of continuity provided a useful starting point.

37. Nonetheless, the view was expressed that, regardless of the approach taken, what was important was to have a clear basis in international law for the notion of the continuity of statehood. It was pointed out that, while a temporary loss of one of the criteria established by the Montevideo Convention, such as in the case of the absence of a government, was tolerable – as discussed earlier, so as to maintain the presumption of the continuity of statehood – the situation was not entirely comparable to the permanent loss of one of those criteria. While it would be premature to assume loss of statehood in such circumstances, the question was posed as to how long the presumption would continue to apply and under what circumstances? Furthermore, what would happen if the State were to become extinct over time, or if States were to have differences as to the presumed continuity of a particular State? As such, it was considered necessary to develop a more objective set of elements supporting such presumption of continuity in international law by way of providing guidance.

38. Several ideas to be taken into account when ascertaining the legal basis for the continuity of statehood in situations where the land surface of the State was completely submerged or rendered uninhabitable as a result of sea-level rise were proposed, including:

- the need to prioritize legal stability, security, certainty and predictability in international relations
- the application of the principles of territorial integrity, sovereign equality of States and permanent sovereignty over natural resources, the maintenance of peace and security, and the application of the right to self-determination
- considerations of equity, such as the fact that the effects of an anthropogenic phenomenon such as sea-level rise were not caused by those States suffering its consequences the most
- the possibility of the existence at the national level of a general principle related to the presumption of continuity of statehood transposable to international law
- the possibility of deducing a principle of continuity of statehood, regardless of whether in relation to partial or total submergence of the land surface of a State, from the interpretation of existing treaties. The combined application of the Montevideo Convention, the United Nations Convention on the Law of the Sea and the Vienna

Convention on the Law of Treaties, of 1969¹⁹ was suggested. It was observed that neither the Montevideo Convention nor the United Nations Convention on the Law of the Sea explicitly addressed the potential disappearance of the State and that, under the law of the sea, once delineated the outer limit of the continental shelf remained permanent regardless of any change to the land to which it was connected, and maritime boundaries were not affected by the successful invocation of a fundamental change of circumstances, in accordance with article 62 of the Vienna Convention on the Law of Treaties

- the fact that membership of a State in international bodies established under the United Nations Convention on the Law of the Sea was assumed to continue and not to be automatically forfeited
- the fact that international law did not prescribe an established pattern for statehood²⁰
- the fact that there existed in international law an acceptance of a degree of flexibility as to what amount of public authority should be exercised in order to demonstrate a title
- the fact that State practice had revealed a degree of flexibility in the application of international law to the issues of statehood in the context of submergence of land surface due to sea-level rise.

39. The view was expressed that the Commission should not seek to address questions of statehood in general terms, which went beyond the mandate of the Study Group, nor to stray too far from the traditional criteria for statehood, including that of territory, since there existed certain fundamental rules of international law that could not be isolated from territory or statehood, for example, those concerning the exercise of jurisdiction. As such, any discussion as to the modification of the established criteria of statehood should be undertaken with caution, in particular in relation to that of territory.

(iv) *Scenarios relating to statehood in the context of sea-level rise and the right of the State to provide for its preservation*

a. Introduction by the Co-Chair

40. In introducing Part One, chapter III, section B, of the additional paper, the Co-Chair (Mr. Ruda Santolaria) observed that it was important to emphasize the right of the affected State to preserve its existence, as had been mentioned earlier in the discussion, by adopting different measures to ensure its continuity, by which it was understood its continuation of its sovereignty and sovereign rights, encompassing the land surface and the sea surface composed of the maritime areas under its jurisdiction, while conserving and sustainably using the natural resources existing there, as well as preserving biodiversity and ecosystems for the benefit of present and future generations of its population.

41. As had been discussed during the debate on the continuity of statehood, two scenarios were being envisaged. The first was where the land surface of the State concerned was affected by erosion, salinization and partial submergence, potentially becoming uninhabitable, despite only being partially submerged by the sea, due to the unavailability of a sufficient fresh water supply and thus resulting in the population having to move elsewhere within the territory of the affected State or migrating to another State or States. The second scenario was that of total submergence where the land surface of the affected State was completely covered by the sea.

42. It was observed that several coastal States had already been adopting measures to reduce the impacts of sea-level rise, including the installation or reinforcement of dikes,

¹⁹ Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331.

²⁰ Reference was made to the Advisory Opinion of the International Court of Justice in the 1975 *Western Sahara* Advisory Opinion (“No rule of international law, in the view of the Court, requires the structure of a State to follow any particular pattern”), and there may well be States of a special character. *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at pp. 43–44, paras. 94–95.

barriers or coastal defences, as well as the construction of artificial islands in the maritime areas under their jurisdiction, where parts of their population could settle. Various options were envisaged, including the possibility of combining the installation or reinforcement of coastal barriers or artificial islands with the use of natural means, such as the establishment of mangroves, which were more environmentally sustainable, the relocation of persons affected by sea-level rise to other places, as well as the installation of desalination plants to process seawater.

43. In addition, international cooperation through the provision of technical or logistical assistance, qualified human resources or financial assistance to States particularly affected by the phenomenon that lacked sufficient capacity of their own was considered essential. In addition to the interpretation and application of existing instruments, consideration needed to be given to the possibility of concluding new bilateral or plurilateral agreements between the most directly affected States and third States or instruments that could be adopted within the framework of regional or universal international organizations, particularly in the context of the United Nations system. In concluding such instruments, it was important to ensure that the formulas to be employed transcended short-term needs, while respecting individual rights and the right to self-determination of the peoples of the affected States.

b. Summary of the debate

44. During the ensuing debate, agreement was expressed with the assessment that the process was likely to be gradual and that a distinction could be drawn between the situations of partial and total submergence of the land surface. In both situations, affected States retained the right to provide for their preservation, which could take many forms. A further view was expressed that it was advisable to focus on the question of the legal consequences of the uninhabitability of a territory due to partial submersion owing to sea-level rise, which would occur before full submersion of the land surface.

45. Some members expressed agreement with the view taken in the additional paper that a State whose land surface had become totally submerged as a result of sea-level rise continued to exist as a State; a position that was closely related to the discussion on the law of the sea aspects of the topic undertaken at the Commission's session in 2023. It was further pointed out that the link between jurisdiction and territory was historically very recent and had not always necessarily been a prerequisite for the application of law. As had been mentioned during the earlier discussion, the need to ensure legal security and stability was an important consideration when addressing the issues and interests at stake.

46. Another view was taken that it was more advisable to focus on both the notion of preservation of legal entitlements and the protection of certain interests that were worthy of legal protection. In doing so, it was important to go beyond a State-centred approach to the preservation of rights and to also consider indigenous identities, languages and all the various elements that might, in certain contexts, go beyond the notion of cultural heritage or protection of cultural heritage, but nonetheless had to do with legal norms that should be respected. As such, what was called for was less the right to ensure the maintenance of territory, which related more to the establishment of physical barriers and other mitigation efforts, but more the preservation of legal entitlements to land and maritime spaces under the affected State's jurisdiction. It would thus be necessary to consider the precise duties of States in relation to such preservation of legal entitlements and statehood. It was maintained that such issues were best dealt with at regional or local levels, with a view to devising arrangements, which could take into consideration, for instance, the different approach to considering applications from individuals who wanted to be relocated versus taking a collective approach. It was important to adopt innovative and expeditious solutions in order to avoid competing interests. It was also suggested that the Study Group analyse the notion of acquired rights and its relationship with international human rights law.²¹

47. Agreement was also expressed with the view that it was essential for the Commission to focus on the duty of cooperation, whether as a general principle of law or as a rule of

²¹ International Covenant on Civil and Political Rights (New York, 16 December 1966), United Nations, *Treaty Series*, vol. 999, No. 14668, p. 171.

customary international law. Reference was made to the provisions on cooperation in the United Nations Convention on the Law of the Sea that merited further consideration in the present context. It was recalled that the obligation to cooperate had also featured in some of the Commission's earlier work.

48. It was also pointed out that there existed multiple obligations to cooperate, some expressed in a "softer" form, as in the case of draft article 7 of the draft articles on the protection of persons in the event of disasters, than others that were formulated in more stringent terms, as in the case of article 197 of the United Nations Convention on the Law of the Sea.

(v) *Possible alternatives for addressing the phenomenon in relation to statehood*

a. Introduction by the Co-Chair

49. In introducing the question of possible scenarios, the Co-Chair (Mr. Ruda Santolaria) recalled the observation of the Secretary-General that the far-reaching effects of the phenomenon of sea-level rise on the legal and human rights spheres required innovative legal and practical solutions. In the view of the Co-Chair, as long as the land surface was not totally covered by the sea, the State's Government could be installed or could function from some point on the unsubmerged land surface, where a portion of the population, however small, could be symbolically maintained. The population of the affected State would be considered to be those persons who could continue to reside somewhere within the territory of the State, as well as those who possessed the nationality of the State, despite being physically located in the territory of another State. It was not a matter of attributing new rights to the States affected by sea-level rise, but of ensuring the preservation of existing rights that the affected States legitimately possessed under international law.

50. Furthermore, in order to ensure that the nationals of a State affected by the phenomenon of sea-level rise who reside in other States have adequate assistance or protection and efficient access to certain basic services and documentation that would usually be provided by the affected State, it was necessary to strengthen assistance through consular offices in States where the largest number of individuals moving from that State were concentrated, as well as to organize or strengthen digital platforms connecting nationals of the State scattered around the world with the affected State.

51. In addition, consideration had to be given to the possibility that, by virtue of amendments to domestic legislation or bilateral or plurilateral agreements between the affected State and other States, nationals of the former could be granted longer residence rights and/or the nationality of one of the latter States without losing their nationality of origin or that, in the context of a broader agreement in the framework, for example, of a possible confederation of States, they could acquire the citizenship of the latter without losing their nationality of origin.

52. Reference was made to the example of the European Union, as a possible further model for the establishment of common citizenship of belonging to more than one State, existing in addition to the nationality of origin, and giving rise to new and specific rights, such as those existing within the framework of the European Union whereby, if no diplomatic or consular representation of a particular European Union State exists, another State member of the Union could provide assistance and protection on the basis of the existence of a common European Union citizenship. In such circumstances, it was not that the common citizenship replaced the nationality of the State, but that it existed in addition to the nationality of the State on the basis of membership in the European Union.

53. The point of departure is the strong presumption of the continuity of the statehood and the international legal personality of the State directly affected by the phenomenon. The sovereignty of the State over its territory should be preserved, including the land surface covered or not by the sea and the sovereign rights in its maritime zones, as well as the natural resources therein in favour of the present and future generations of its population. It was explained that some of the options set out in the additional paper envisaged a State whose land surface had become uninhabitable or totally submerged by rising sea level nonetheless retaining its legal status, while other alternatives envisaged the State being integrated into

another State, but preserving the core aspects of its identity and retaining a sufficient degree of autonomy and the authority to exercise certain powers despite becoming part of that other State. In addition, it would be necessary to consider the legal aspects relating to the possible establishment in another State's territory of the Government of the State directly affected by the rise in sea level, as well as other issues related to the preservation of the international legal personality of that State.

54. With a view to respecting the self-determination of the peoples of the States and countries affected by the phenomenon, the formula used in each case should be subject to a consultation procedure with the population concerned. Among the various modalities envisaged was the possibility that an affected State could acquire, with or without transfer of sovereignty, a portion or extension of land in the territory of another State, or enter into an association agreement with other States or into a confederation through agreements that would make possible the continuity of the affected State and its international legal personality. A further scenario was integration into a federation with another State, where, although the affected State would no longer exist as such, it could nonetheless retain a high degree of autonomy. A similar option was unification with another State, where some form of autonomy could also be contemplated in favour of the affected State, and which would imply that it had ceased to exist as an independent State. Finally, the additional paper identified the possibility of the resort to *ad hoc* legal formulas or regimes allowing affected States to preserve their international legal personality, and their rights with respect to maritime spaces and the resources existing therein.

b. Summary of the debate

55. During the ensuing discussion in the Study Group, it was noted that the progressive inability to perform State functions could present a critical challenge well before the land surface was totally covered by the sea. The question thus arose as to what would happen to the natural resources of a State that had lost its ability to exercise its functions, and how people could access the benefits of such resources in the future.

56. It was suggested that the international community could assist with the restoration of territorialized statehood. As such, the Commission could envisage interim forms of administration that could assist affected States to recuperate the effectiveness required for the preservation of their statehood. It was likewise important to consider the practices that existed within the United Nations system, although not fully transferrable to the sea-level rise context, such as those related to United Nations-administered territories, or the governance of resources by an appropriate international organization on behalf of the affected State and/or its peoples.

57. The view was expressed that, while the modalities outlined in the additional paper, such as land acquisition, association, confederation, federation, unification and *ad hoc* legal regimes offered feasible avenues for affected States, a more in-depth analysis was required. It was necessary to comprehend the implications of each option, particularly concerning national security and the ongoing functioning of government administration, including aspects like defence capacity, border control, resource management and the ability to maintain essential services for citizens. Only through such a nuanced examination could it be ensured that such modalities truly supported the long-term security and well-being of affected States.

58. The reference in the additional paper to a nation *ex situ* as a legal framework for States whose land surface was totally submerged was mentioned as a step towards addressing what were unprecedented challenges. While it disrupted the traditional territorial basis for statehood, such an innovative approach compelled the consideration of new solutions in the face of a rising sea level. Nonetheless, further study and consideration of the concept of States *ex situ* was called for, with a view to considering the possibility of developing a new legal regime for those States. Further reflection would also be needed as regarded the question of the impact on ongoing negotiations with neighbouring States regarding maritime boundaries.

59. It was suggested that the emphasis should be placed on the interpretation and innovative application of existing treaties and arrangements, since it was not realistic to expect that an entirely new treaty, or even amendments to existing treaties, would be adopted

to cover the issues under consideration by the Study Group. Nonetheless, it was pointed out that some issues mentioned in the additional paper, such as the availability of digital solutions for the provision of diplomatic and consular rights, visas, privileges and immunities etc., were already a reality for some States.

60. It was suggested that a distinction be drawn between three different sets of issues: the legal entitlements relating to the nature of the sovereignty or relating to the statehood of the State that continued to exist (concerning the competencies and entitlements in relation to the land surface which might be submerged); the practical arrangements around the nationality of the members of the community in question (practical arrangements concerning government etc); and the possibilities that might arise where the State actually ceased to exist on the basis of unification with another State or merger with another State into a federation (where the international legal personality of the State ceased).

61. The concern was expressed that the Study Group was going beyond its mandate by proposing essentially political solutions, which were more appropriately considered by States. In particular, some members of the Study Group cautioned against making proposals that could prove difficult to implement (such as promoting the notion of a digital nation) or which raised sensitive political considerations (such as proposing the modification of laws relating to nationality). It was also important to guarantee that the results of the Commission's work in the Study Group did not threaten in any way existing legal provisions, for example in a situation where persons opted to preserve their nationality of origin. A further view was expressed that it was advisable to draw a sharper line between legally relevant considerations and desirable policies, with the Commission being better suited to consider the former than the latter. Any discussion of alternatives was considered by some members to be inherently speculative, since it was not possible to suggest a one-size-fits-all solution.

62. It was proposed that the Commission could, instead, focus on certain basic parameters, including the requirement of ensuring the consent of the affected peoples, proposing the adoption of bilateral, regional, or multilateral agreements and emphasizing the obligation to cooperate. The following parameters were also proposed by members of the Study Group in the course of the debate:

- the sovereignty and sovereign rights of a State over its territory and in the surrounding maritime zones should be preserved; these would comprise the land territory, any land territory that had become submerged owing to sea-level rise to which sovereignty still applied, and the maritime areas under its jurisdiction.
- the right to self-determination of the affected peoples should be preserved, in keeping with the unity and territorial integrity of the State concerned.
- the right to self-determination of the affected peoples extended to the rights of indigenous peoples in the context of sea-level rise, and included their right to organize themselves and to handle their own affairs, as well as the right to participate in decision-making.
- consultations with the relevant persons, including indigenous peoples, were essential, since the interests and needs of affected persons were a fundamental consideration to be taken into account in any future arrangements.
- States affected by sea-level rise retained the responsibility for ensuring the protection of their population affected by sea-level rise, including with respect to human rights duties, political status, culture, cultural heritage, identity and dignity, and meeting essential needs.
- in order to preserve cultural, social and political identity, the State must consult with its population on any future arrangements, including those remaining on the territory, and those that might have had to move elsewhere.
- any arrangements for the relocation of a Government to another State or regarding the political status of relocated peoples should be set out in an agreement addressing issues such as the establishment and functioning of the Government, its independence, the manner in which it would operate, the scope of its functions or competences, the modalities for consulting its nationals, the administration of the maritime areas under

its jurisdiction, financial arrangements, the protection and preservation of cultural heritage, and the conduct of international relations.

- any such arrangements must uphold the human rights of the affected persons and preserve the culture, cultural heritage, identity and language of the affected populations.
- any such arrangements would need to give consideration to the nationality of affected persons, the status of persons who no longer resided in a State affected by the impacts of sea-level rise, and to the consular assistance and diplomatic protection of affected populations.
- in addressing the impacts of sea-level rise, international cooperation was required between affected States and other members of the international community; cooperation had to be based on the sovereign equality of States, as well as considerations of equity and fairness.
- agreements and modalities adopted by States should recognize the importance of legal stability, security, certainty and predictability in international relations and should respect the human dignity of persons directly facing the impacts of sea-level rise.

63. As regarded the right to self-determination of indigenous peoples in particular, reference was made to article 4 of the United Nations Declaration on the Rights of Indigenous Peoples²² which referred to self-governance and autonomy as being the central element of self-determination. The question then was how to guarantee such autonomy in situations related to the detrimental impact of sea-level rise and how such rights were to be transferred to new States in which affected persons could find themselves. Furthermore, it was recalled that the right of self-determination had been principally related to the process of decolonization and its applicability should be linked to the application of other principles of international law, such as that of territorial integrity and the non-interference in the internal affairs of other States, since its (the right to self-determination) application outside of the context of decolonization had given rise to disputes in practice.

64. In connection with the question of nationality, it was suggested, in contrast with the possibility of considering experiences of common citizenship such as in the European Union, that the Commission take into account its own prior work in the context of the articles on nationality of natural persons in relation to the succession of States.²³ It was recalled that those articles, although applicable in a context different from sea-level rise, where there was a strong presumption of the continuity of statehood, operated under an imperative to avoid statelessness, and that the corresponding commentary provided interesting practical solutions, including the right to opt for the nationality of the predecessor State or that of the successor State, as well as the conclusion of international agreements between States to regulate the question of nationality with a view to avoiding statelessness. In addition, attention was drawn, in particular, to article 5 and the commentary thereto, as well as to articles 12 and 13. Another view was that those articles were not directly relevant as they, by their own terms, limited their applicability to situations of succession, which was conceptually opposite to that of the continuity of statehood.

(c) Protection of persons affected by sea-level rise

65. The Study Group considered Part Two of the additional paper, entitled “Protection of persons affected by sea-level rise”, at its fourth and fifth meetings, held on 7 and 8 May 2024.

(i) Introduction by the Co-Chair

66. During the general introduction of Part Two, at the first meeting of the Study Group, the Co-Chair (Ms. Galvão Teles) had explained that the additional paper examined selected developments in State practice and in the practice of international organizations, as well as

²² General Assembly resolution 61/295 of 13 September 2007.

²³ The articles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook ... 1999*, vol. II (Part Two), paras. 47-48. See also General Assembly resolution 55/153 of 12 December 2000, annex.

the relevant legal issues identified in the second issues paper that could form possible elements for legal protection of persons affected by sea-level rise. She had noted that the additional paper analysed possible elements for the legal protection of persons affected by sea-level rise, *inter alia*, highlighting the different obligations of distinct duty bearers, the importance of combining a needs-based and a rights-based approach, as well as the importance of international cooperation. In terms of possible outcomes for the subtopic, the Co-Chair observed that elements identified in the additional paper could be either used for the interpretation and application of hard and soft-law instruments that were applicable *mutatis mutandis* to the protection of persons affected by sea-level rise, and/or could be included in further such instruments concluded at the regional or international levels.

67. At the fourth meeting, the Co-Chair (Ms. Galvão Teles) also observed that the list of the 12 elements for possible legal protection of persons, as proposed in the additional paper to the second issues paper, was mostly based on the findings of the second issues paper, and the discussions thereof in the Study Group. She noted that one additional element related to the protection of cultural heritage had been included at a later stage, with a view to the importance that had been given to cultural rights and cultural heritage in the 2023 Pacific Islands Forum Declaration. She further recalled the relevance of the Commission's past work, recalling that the additional paper should be read in conjunction with the memorandum by the Secretariat on the two subtopics (A/CN.4/768). The Co-Chair also referred to the Committee on International Law and Sea-Level Rise of the International Law Association, noting the natural synergy between its work and that of the Study Group. She then reiterated the importance of recent judgments and decisions of the European Court of Human Rights, as well as the upcoming advisory opinions by the International Court of Justice, the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights. The Co-Chair then gave brief introductions to each of the possible elements for legal protection of persons affected by sea-level rise, making references to the relevant parts of the additional paper.

(ii) *Summary of the debate on possible elements for legal protection of persons affected by sea-level rise*

a. General comments

68. Members of the Study Group agreed with the conclusion contained in the additional paper that the current international legal frameworks that were potentially applicable to the protection of persons affected by sea-level rise were fragmented and mostly not specific to sea-level rise. It was further noted that sea-level rise presented new challenges that the current legal frameworks were not fully equipped to resolve. The absence of specialized protection mechanisms within international law for persons internally displaced due to sea-level rise or environmental migrants was emphasized. A view was expressed that it was important to incorporate an eco-centric approach into the analysis, reflecting upon the need to repair damage to ecosystems affected by sea-level rise.

69. The analysis in the additional paper of possible elements for the legal protection of persons affected by sea-level rise was welcomed. Some members observed that the list of elements was very broad and that it was not possible for the Study Group to explore them in depth. It was also noted that such elements required further development and specification, as they were of varying legal relevance and in that regard could be restructured.

70. Some members considered it crucial for the Study Group to closely consider the positions of Member States, as well as the practice of relevant international organizations. It was regretted that only a limited number of States had submitted information in response to the Commission's requests. The importance of keeping track of ongoing proceedings before various international and regional courts and tribunals was also emphasized. Similarly, the potential relevance of decisions of domestic courts was also noted.

71. Differing views were expressed as to whether the Commission's 2016 draft articles on the protection of persons in the event of disasters²⁴ could serve as a good basis for the Commission's work on the subtopic on the protection of persons affected by sea-level rise. Support was voiced for the use of the draft articles as the basis for future work of the Commission, given that the draft articles could be applicable to sea-level rise as a slow onset disaster, and thus it would be more efficient to build upon the broader framework of the protection of persons in the event of disasters. According to another view, the draft articles should not be a reference point for the Study Group, as disaster legal frameworks typically prioritized obligation of the affected States to seek assistance and provided a limited set of obligations for third States, while in the context of climate change-induced sea-level rise, affected States were more likely to request assistance and third States had a wider array of responsibilities under international law. It was suggested, as a middle-ground approach, that while the sea-level rise phenomenon might not be fully classified as a disaster, within the meaning of the draft articles, many of its manifestations did fall under such category. Therefore, such manifestations, including the consequences of sea-level rise, could be considered as a disaster on a case-by-case basis.

b. Human dignity as an overarching principle

72. Agreement was expressed with the conclusion of the additional paper that human dignity should constitute a guiding principle for any action to be taken in the context of sea-level rise. It was noted that the qualification of this principle in the additional paper as "overarching" should be understood to mean that the principle had influenced and underpinned various international instruments. Examples of international agreements and jurisprudence reflecting the principles of human dignity and humanity were recalled. Some members were of the view that human dignity was an overly general concept and questioned whether it could be of practical use. It was suggested that the Study Group could determine the normative value and functions of the principle with a view to operationalizing it. Some members also noted that the principle of human dignity brought up the question of the extraterritorial application of human rights.

c. Combination of needs-based and rights-based approaches

73. Support was voiced for the conclusions of the additional paper on the question of the combined needs-based and rights-based approaches as the basis for the protection of persons affected by sea-level rise. Several members emphasized that the approaches were not mutually exclusive, so that it was not necessary to seek a compromise between them. A question was raised, however, as to how to quantify the needs-based approach? It was further noted that the origins of the legal status of the needs-based approach and its relationship to human rights was not fully clear and required further consideration. A concern was also raised that there existed a risk in conflating the complex policy matters related to needs with legal rights and obligations. It was noted that diluting the border between legal rights and obligations and policy could diminish the significance of the former. A proposal was made to also consider incorporating the capacity-based perspective to take into account the resources and capacities of both the affected and assisting States.

d. General human rights obligations

74. Members of the Study Group noted the importance of general human rights obligations in the context of the protection of persons affected, including by sea-level rise. Some members highlighted the applicability of civil and political rights, including the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right to property. A view was expressed that the Study Group should prioritize the consideration of economic, social, and cultural rights, as they were more likely to be impacted. According to another view, it was preferable to avoid drawing any hierarchy between civil and political and economic, social, and cultural rights, as that could result in their misapplication. The need to highlight the indivisibility of human rights was also

²⁴ The draft articles adopted by the Commission and commentaries thereto are reproduced in *Yearbook ... 2016*, vol. II (Part Two), paras. 48–49.

emphasized. It was proposed that the Study Group should shift its focus from considering general human rights obligations to exploring more closely the work of United Nations specialized agencies and other relevant specialized institutions. It was emphasized that States affected by sea-level rise bore primary responsibility to proactively protect rights of people under their jurisdiction. A suggestion was made to list separately human rights obligations of States on their territory and those that also existed extraterritorially. Some members noted the importance of addressing applicability of collective rights. A suggestion was also made to further explore relevance of the right to participation. Some members made references to relevant judgments and decisions of international and regional human rights courts and tribunals, addressing the general human rights obligations of States. It was also proposed that the Commission should explore the relationship between sea-level rise and the issue of poverty.

e. Different human rights duties and different human rights duty bearers

75. While addressing the section of the additional paper on different human rights duties and different human rights duty bearers, the need to analyse the distribution of obligations between States and the substantive content of such duties was emphasized by some members of the Study Group. In particular, it was noted that in the context of migration induced by sea-level rise, it was necessary to determine and delineate the duties of States of origin and transit, as well as of receiving States. The question of extraterritorial applicability of human rights was again considered to be of high relevance. It was noted that the conclusion made in paragraph 215 of the additional paper that the exercise of jurisdiction over a person, irrespective of whether it was exercised territorially or extraterritorially, was the criterion for determining that the duty bearer, while generally correct, could be not applicable to certain human rights treaty regimes and required further consideration. It was also noted that derogations and limitations of human rights should not apply in the sea-level rise context since, unlike other emergency situations, sea-level rise constituted a permanent threat. The need for affirmative action in the sea-level rise context was emphasized. The decision of the Human Rights Committee in *Billy et al. v. Australia*²⁵ was recalled and highlighted as a significant step forward in the development of legal frameworks that specifically addressed human rights challenges presented by sea-level rise.

f. Protection of persons in vulnerable situations

76. With respect to the issue of protection of persons in vulnerable situations, the Study Group was urged to adopt a granular approach and distinguish the vulnerability of areas potentially exposed to climate-related hazards, the vulnerability of particular groups or regions, and individual vulnerability of persons. A suggestion was made to develop an illustrative list of vulnerable groups to avoid leaving the term “vulnerable persons” to be interpreted by decision makers. The Sixth Assessment Report from the Intergovernmental Panel on Climate Change,²⁶ containing a list of groups and persons susceptible to the impacts of climate change, was suggested as an example.

g. Principle of *non-refoulement*

77. Members agreed that the principle of non-refoulement was well established in international law and that it could be relevant for the protection of persons affected by sea-level rise. The importance of the Views adopted by the Human Rights Committee in *Teitiota v. New Zealand*²⁷ was recalled. At the same time, a question was raised as to whether the principle was useful and capable of providing a lasting solution, as it generally applied to individual cases, and not to mass migrations. Accordingly, given that the law was still developing, it was suggested that the Study Group take a cautious approach when considering

²⁵ CCPR/C/135/D/3624/2019.

²⁶ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Geneva, 2023).

²⁷ CCPR/C/127/D/2728/2016.

the general applicability of the principle of *non-refoulement* to persons who had been affected by climate change and sea-level rise.

h. Guidelines in the Global Compact for Safe, Orderly and Regular Migration and other soft-law instruments

78. The importance of relevant soft-law instruments, including the Guidelines in the Global Compact for Safe, Orderly and Regular Migration,²⁸ was noted. At the same time, some members underlined that it was crucial to draw a clear distinction between *lex lata* and *lex ferenda*. It was considered necessary to explicitly indicate that soft-law instruments were not legally binding and were of a policy nature.

i. Applicability of complementary protection

79. On the issue of complementary protection, it was recalled from the outset that the Convention relating to the Status of Refugees²⁹ in 1951 limited access to international protection to five grounds of persecution, thus excluding many other typical drivers of forced migration, such as natural disasters and sea-level rise. It was suggested that the Study Group could consider approaches adopted in different regional contexts and reflect on how this could influence the general framework of refugee protection in international law. The examples of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa³⁰ and the Cartagena Declaration on Refugees³¹ were recalled.

j. Humanitarian visas and similar administrative policies

80. Questions related to humanitarian visas and similar administrative policies were considered to be relevant to the subtopic. In that regard, several examples of regional international cooperation in the area of humanitarian visas were recalled, with a special focus on Latin America, the Caribbean and Pacific regions, where climate change mobility had become part of international arrangements. At the same time, it was noted that matters of admission of foreign nationals fell under the purview of domestic authorities. Furthermore, the Study Group was cautioned against assuming that people affected by sea-level rise would always want to relocate.

k. Tools for the avoidance of statelessness

81. Some members noted the primary way to avoid statelessness in the context of sea-level rise was to provide for the continuity of States. However, it was noted that in situations where the land surface of a State would be totally covered by the sea, there would in any event be a general obligation to prevent statelessness. The relevance of the 1954 Convention on the Status of Stateless Persons³² and the 1961 Convention on the Reduction of Statelessness³³ was noted.

l. International cooperation

82. Several members of the Study Group recalled the importance of international cooperation in sea-level rise context, as previously discussed. Several members were of the

²⁸ General Assembly resolution 73/195 of 19 December 2018, annex.

²⁹ Convention relating to the Status of Refugees (Geneva, 28 July 1951), United Nations, *Treaty Series*, vol. 189, No. 2545, p. 137.

³⁰ OAU [Organization of African Unity] Convention Governing the Specific Aspects of Refugee Problems in Africa (Addis Ababa, 10 September 1969), United Nations, *Treaty Series*, vol. 1001, No. 14691, p. 45.

³¹ Cartagena Declaration on Refugees, adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, held in Cartagena, Colombia, 19–22 November 1984. Available at www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf.

³² Convention relating to the Status of Stateless Persons (New York, 28 September 1954), United Nations, *Treaty Series*, vol. 360, No. 5158, p. 117.

³³ Convention on the Reduction of Statelessness (New York, 30 August 1961), United Nations, *Treaty Series*, vol. 989, No. 14458, p. 175.

view that there should be a general duty to provide assistance and discussed whether such duty was already grounded in international law. It was suggested that the Commission's 2016 draft articles on the protection of persons in the event of disasters, in particular draft article 7, could be used as a potential basis for developing a substantive duty to cooperate in the context of sea-level rise. According to another view, the duty to cooperate contained therein was limited and insufficiently specific to sea-level rise. It was suggested that the Study Group could consolidate and further develop the existing rules on cooperation, also by providing for procedural measures, such as the exchange of information. At the same time, given the significant divergence of the scope and content of the principle of cooperation, a call for caution was made against inferring a general rule. Several members emphasized the need to address the relationship between cooperation and the principle of common but differentiated responsibilities. It was also suggested that the relevance of the principles of solidarity, equity, and prevention be considered.

m. Protection of the cultural heritage

83. It was noted that the issue of the protection of the cultural heritage of individuals and groups that might be affected by sea-level rise was closely linked to the rights of indigenous peoples. It was recalled that the case law of the Inter-American Court of Human Rights had recognized a connection between the cultural heritage and indigenous lands. A question was raised as to how it would be possible to achieve the transfer of cultural rights of peoples relocated due to sea-level rise, in particular to States with limited protection of such rights. Reference was made to the need to consult and cooperate in good faith with indigenous peoples, as contained in article 19 of the United Nations Declaration on the Rights of Indigenous Peoples.

(d) Working methods of the Study Group and future work on the topic

(i) Summary of the debate

84. In connection with the Study Group's future work and working methods, a concern was expressed that the scope of the subtopics was too broad and it was suggested that the number of questions under examination be reduced. The limits set forth in the syllabus prepared in 2018 on the scope of the topic were recalled. It was also observed that the Study Group had raised a large number of pertinent questions but was yet to provide definitive answers to most of them. According to another view, the added value of the Study Group had been precisely in raising questions and that its work had already had significant influence on State practice.

85. Several members supported the plan for the Study Group to consider a joint final report on the topic as a whole, in 2025, to be prepared by the Co-Chairs consolidating the work undertaken on the three subtopics, with a set of draft conclusions to be discussed by the Study Group. The importance of analysing the possible linkages between the three subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – in the joint final report was emphasized. It was suggested that the final report should address duties and responsibilities of States and possible consequences of sea-level rise, without attempting to rewrite the existing international legal frameworks. Some members recalled that the Commission had agreed, in the syllabus prepared in 2018,³⁴ to limit the Study Group's mandate so that it would not propose any amendments to the United Nations Convention on the Law of the Sea. At the same time, questions were raised with regard to the overall role of the Study Group. It was noted that it should aim to identify and develop rules of international law relevant in the context of sea-level rise, and not engage in policy discussions.

86. In addition to the proposals voiced during the previous sessions, various proposals were made concerning the possible outcome of the Study Group's work, including drafting a framework convention on issues related to sea-level rise or seeking to introduce the sea-level rise dimension into the ongoing negotiations about the possible elaboration of a convention on the basis of the draft articles on the protection of persons in the event of

³⁴ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, annex B.

disasters. It was proposed that the Study Group could finalize its mapping exercise, group the existing legal principles and indicate areas that were in need of further development. It was suggested that the views of States, particularly the ones most affected by sea-level rise, should play an important role in defining the direction of the Study Group's future work.

(ii) *Conclusion by the Co-Chair*

87. Concerning the future work of the Study Group, the Co-Chair (Ms. Galvão Teles) made reference to paragraphs 307 to 314 of the additional paper and reiterated that a joint final report on the topic as a whole, consolidating the work undertaken so far on the three subtopics, with a set of conclusions, would be submitted by the Co-Chairs for consideration of the Study Group at the Commission's next session in 2025.
