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Report of the International Law Commission on the work of its seventy-fifth session (2024)

Topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-ninth session, prepared by the Secretariat

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I. Introduction

1. At its seventy-ninth session, the General Assembly, on the recommendation of the General Committee, decided at its 2nd plenary meeting, held on 13 September 2024, to include in its agenda the item entitled "Report of the International Law Commission on the work of its seventy-fifth session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 20th to 30th meetings, and at its 38th meeting, held from 21 to 30 October, and 22 November 2024. The Chair of the seventy-fifth session of the International Law Commission, Mr. Marcelo Vázquez-Bermúdez, introduced the report of the Commission on the work of that session (A/79/10) at the 20th meeting, on 21 October. The Committee considered the report in three clusters, namely: cluster I (chaps. I to III, VII, X and XI) at its 20th to 25th meetings, from 21 to 25 October; cluster II (chaps. IV and V) at its 25th to 29th meetings, from 25 to 30 October; and cluster III (chaps. VI, VIII and IX) at its 28th to 30th meetings, on 29 and 30 October.

3. At its 38th meeting, on 22 November, the Sixth Committee adopted draft resolution A/C.6/79/L.7 entitled "Report of the International Law Commission on the work of its seventy-fifth session", without a vote. After the General Assembly had considered the relevant report of the Sixth Committee (A/79/469), it adopted the draft resolution as resolution 79/121 at its 47th plenary meeting, on 4 December.

4. The present topical summary has been prepared pursuant to paragraph 41 of resolution 79/121, in which the General Assembly requested the Secretary-General to prepare and distribute a topical summary of the debate held on the report of the Commission at the seventy-ninth session of the General Assembly.

5. The present topical summary consists of two parts. The first part contains eight sections, reflecting the current programme of work of the Commission: settlement of disputes to which international organizations are parties (A/79/10, chap. IV); subsidiary means for the determination of rules of international law (*ibid*., chap. V); prevention and repression of piracy and armed robbery at sea (*ibid*., chap. VI); immunity of State officials from foreign criminal jurisdiction (*ibid*., chap. VII); non-legally binding international agreements (*ibid*., chap. VIII); succession of States in respect of State responsibility (*ibid*., chap. IX); sea-level rise in relation to international law (*ibid*., chap. X); and other decisions and conclusions of the Commission (*ibid*., chap. XI). The second part contains a summary of the topic general principles of law (A/78/10, chap. IV), on which the Commission completed its first reading at the seventy-fourth session and to which it will revert at the seventy-sixth session.

II. Topics and items on the current programme of work of the Commission

A. Settlement of disputes to which international organizations are parties

1. General comments

6. Delegations generally welcomed the second report of the Special Rapporteur on the topic (A/CN.4/766), noting the provisional adoption by the Commission of draft guidelines 3 to 6. Several delegations expressed support for the draft guidelines, considering them well balanced, realistic, comprehensive, grounded in relevant practice and reflective of the principle of free choice of means of dispute settlement. Others expressed concern over an excessive reliance on the practice of certain international organizations or regions of the world, a lack of prescriptive text and a perceived preference by the Special Rapporteur for third-party adjudication over informal means of dispute settlement.

7. Several delegations emphasized the relevance of the topic, noting its significance for the legitimacy, functionality and credibility of international organizations. Some delegations called for consistency with previous work of the Commission on international organizations, particularly with regard to the definition of such organizations.

8. The free choice of means of dispute settlement was highlighted by several delegations as the guiding principle of the work of the Commission, and some delegations expressed their support for a stronger emphasis on non-judiciary means of dispute settlement in the draft guidelines. Concern was voiced about the risks of overprioritizing mechanisms of dispute settlement the results of which were public over those that lacked publicity, opening the jurisdiction of the International Court of Justice to international organizations and a potential review of Security Council resolutions by judicial organs.

2. Specific comments

9. A number of delegations expressed support for **draft guideline 3** (scope of the present Part), welcoming the definition of the scope of Part Two of the draft guidelines on the basis of the parties involved in the dispute. Other delegations regretted the omission of references to the law applicable to the dispute, stating that disputes under international law and under national law should be analysed separately. Some delegations, while concurring with the Special Rapporteur on the challenges of establishing a clear distinction between international and non-international disputes, suggested that such a distinction might still be necessary, even if not reflected in the outcome of the work of the Commission.

10. Concern was raised about the inclusion of *sui generis* subjects of international law in the commentary to draft guideline 3 as potential parties to a dispute covered by Part Two, and the Commission was urged to further reflect on the issue. A question was raised regarding the international legal personality of private parties.

11. Disputes concerning headquarters agreements, privileges and immunities of international organizations, withdrawals from membership and the scope and limits of the powers and mandates of international organizations were highlighted by some delegations as examples of disputes covered by Part Two.

12. Several delegations voiced support for **draft guideline 4** (resort to means of dispute settlement), highlighting the accurate reflection of the principle of free choice of means of dispute settlement in the provision. In that connection, the addition of an express reference to the principle of free choice of means of dispute settlement in the text of the draft guideline was called for. Some delegations supported the formulation of the provision, which they considered avoided favouring certain means of dispute settlement over others. It was suggested that the text of the draft guideline should clarify that international disputes covered by Part Two ought to be settled first through means mutually agreed upon by the parties to the dispute.

13. Some delegations, while generally agreeing on the principle of free choice of means, stressed that the draft guideline should also refer to possible hierarchies among means of dispute settlement established by applicable treaties for certain organizations, such as the European Union.

14. Delegations generally welcomed the inclusion in draft guideline 4 of express reference to “good faith” and “a spirit of cooperation”, although the usefulness of replicating the text used in the Manila Declaration on the Peaceful Settlement of International Disputes, which applied to disputes between States, was questioned. A number of delegations also expressed support for the recommendation to settle disputes to which international organizations were parties by those means that might be most appropriate according to the circumstances and the nature of the dispute. It was observed that flexibility was critical for addressing the diverse types of disputes that international organizations encountered.

15. A more prescriptive text, the deletion of the reference to draft guideline 2, subparagraph (*c*), and the employment of a different term for “resort” in the Spanish version of draft guideline 4 were suggested. It was also suggested that the commentary should underline that an international organization endowed with judicial bodies should not engage in consultations with States parties while acting simultaneously as judge and party to a certain dispute.

16. A number of delegations expressed support for **draft guideline 5** (accessibility of means of dispute settlement), welcoming the notion of increased accessibility of means of dispute settlement. Some delegations expressed the view that the draft guideline did not

prioritize a specific means of dispute settlement over the others, and welcomed the express reference to arbitration and judicial settlement in the text, arguing that the availability of third-party adjudication was, at the very least, conducive to amicable settlement. Other delegations voiced concerns about a perceived preference for third-party adjudication, emphasizing that the express reference to arbitration and judicial settlement was unnecessary and that consistency with all the means enunciated in draft guideline 2, subparagraph (*c*), and the principle of "free choice" should be maintained throughout the text. In that vein, the deletion of the words "as appropriate" in draft guideline 5 was suggested.

17. Several delegations requested further clarification of the meaning of "more widely accessible" in draft guideline 5. It was stated that the provision was referring to pragmatic, rather than legal, accessibility and, in that sense, it was suggested that the Commission should develop practical model clauses to make the means of dispute settlement more widely accessible.

18. A clear definition of the scope and purpose of the accessibility of means of dispute settlement was called for, as it was considered that amicable means were always available to the parties, while third-party adjudication was generally provided for in a treaty or *ad hoc* agreement.

19. A number of delegations voiced support for **draft guideline 6** (requirements for arbitration and judicial settlement), stressing that independence, impartiality and due process were core requirements of third-party adjudication. Several delegations remarked that independence and impartiality of adjudicators were existing legal obligations under international law and, as a consequence, draft guideline 6 was a "declaratory" provision.

20. Some delegations raised concerns regarding the use of mandatory terms, such as "shall", in a non-binding set of guidelines. Other delegations regretted the absence of more prescriptive text in the draft guideline or recommended changes in some versions of the text to highlight the prescriptive nature of the provision.

21. A number of additions and changes to the text were suggested, such as the expansion of the scope of the draft guideline to include "independent experts", a study on due process principles, a further elaboration of the concepts of "independence" and "impartiality", and the inclusion of an explicit reference to the rule of law in the text itself or in the title of the draft guideline. The development of practical model clauses that met the requirements of the rule of law was also recommended.

22. Some delegations stated that the requirements laid out in the draft guideline were not limited to disputes involving international organizations, nor limited to arbitration and judicial settlement, since they applied to all means of dispute settlement involving the engagement of third parties, such as mediation and conciliation. A new provision containing requirements common to all means of dispute settlement and a different provision containing the requirements specific to third-party adjudication were suggested.

23. A question was raised as to the usefulness of draft guideline 6, as it seemed to concern principles pertaining to the administration of justice rather than dispute settlement, and a change in the title of the draft guideline was suggested in that regard.

3. Future work

24. Delegations indicated that they were looking forward to the third report of the Special Rapporteur and future work on the topic. While several delegations expressed support for the inclusion of disputes of a private law character in the scope of the topic, others argued that the scope should be limited to "international" disputes. It was underscored that immunities should not be a barrier to accountability, particularly when international organizations failed to establish alternative mechanisms for settling disputes.

25. Some delegations suggested a deeper focus on certain aspects of the topic, such as enforcement of obligations of international organizations, the avoidance of impunity for breaches of obligations attributable to international organizations, privileges and immunities of international organizations, bundled claims, and the specificities of integration organizations and the United Nations in the consideration of the topic.

4. Final form

26. Delegations expressed support for the proposed outcome of the Commission's work in the form of draft guidelines. Some delegations encouraged a more prescriptive formulation, while others suggested a practical focus for the draft guidelines, calling for a specific, concrete and practice-oriented outcome. The inclusion of model clauses and best practices in the final outcome was suggested. The view was expressed that it was expected that the Commission would conclude its first reading of the topic in 2025.

B. Subsidiary means for the determination of rules of international law

1. General comments

27. Delegations generally welcomed the second report of the Special Rapporteur (A/CN.4/769) and the provisional adoption of draft conclusions 4 to 8 and the commentaries thereto. The importance of the topic was emphasized by several delegations. It was noted that the work on the topic complemented the Commission's work on sources of international law, which could provide a better understanding of Article 38 of the Statute of the International Court of Justice and achieve a coherent measure in the international lawmaking process.

28. The Commission was invited to promote further clarity on the topic to provide more practical utility. The view was expressed that the point of departure on the topic should be the primary role of States in the making of rules of international law. It was reiterated that the work of the Commission should not override the principle of sovereign equality of States and should distinguish between *lex lata* and theoretical assessments of the practical effects of subsidiary means.

2. Specific comments

29. Regarding **draft conclusion 4** (decisions of courts and tribunals), several delegations requested further clarification of the definition of "courts and tribunals". A number of delegations referred to the special characteristics of the International Court of Justice, while cautioning the Commission not to imply a hierarchical relationship among international courts and tribunals. Some delegations requested further elaboration on the weight of decisions by specialized or regional courts and tribunals. Some delegations welcomed the fact that the definition of "decisions" included final judicial rulings, advisory opinions and provisional measures. However, it was noted that not all decisions carried the same weight, which should be decided in each specific case. Some delegations questioned whether it was appropriate to remove the qualifier "judicial" before the word "decisions".

30. Some delegations supported the inclusion of the decisions of "any international body exercising judicial powers" tasked with determining the existence and content of rules of international law, as provided for in the commentary. However, the question arose as to whether quasi-judicial bodies, such as the Human Rights Committee and the Inter-American Commission on Human Rights, should be included. A view was expressed that the work of such bodies could offer useful guidance in determining the existence and content of rules of international law. According to another view, decisions of investment tribunals were not comparable to those of international courts as subsidiary means.

31. A number of delegations considered that a distinction should be drawn between decisions of international courts and tribunals and those of national courts. It was stated that there was no need to distinguish between decisions of international and national courts, which had no textual basis in Article 38 of the Statute of the International Court of Justice, and that the general criteria to assess subsidiary means in draft conclusion 3 did not make such a distinction. It was stressed that national court decisions could have two possible uses: as evidence of the constitutive elements of customary international law or as subsidiary means. It was considered beneficial to have further clarification regarding the circumstances in which national court decisions could be used as subsidiary means. It was also suggested that, when a national court decision had been overturned or was under appeal, it should not, as a matter of principle, be relied upon as a subsidiary means.

32. Some delegations questioned the use of the phrase “in certain circumstances” in paragraph 2 of draft conclusion 4, as it was different from the phrase “as appropriate” in the commentary. The words “as appropriate” were considered to allow for a more nuanced approach. It was suggested that the difference between dualist and monist legal systems should be taken into consideration. The Commission was invited to consider whether to expressly include representativeness in draft conclusion 4 in parallel with draft conclusion 5.

33. On **draft conclusion 5** (teachings), it was noted that teachings must be used with caution since their weight could vary. It was suggested that the commentary should more adequately reflect the importance of the quality and objectivity of teachings as subsidiary means. Some delegations considered that teachings did not seek to record the state of the law but rather reflected national or personal viewpoints for the development of international law. A textual proposal was made to emphasize that teachings “may be used” or “may serve” as subsidiary means.

34. The Commission was encouraged to elaborate on the assessment of the author’s “competence in international law”. Some delegations questioned the use of the term “especially”. The significance of individual scholarly work and private expert groups contributing to the understanding of international legal principles was underscored. Further analysis regarding the weight of individual opinions of international judges and the opinions and writings of scholars was requested. Some delegations stated that the draft conclusions should avoid suggesting that materials from persons other than experts in international law could serve as subsidiary means.

35. Several delegations welcomed the references to the representativeness of teachings. It was emphasized that geographical and racial diversity should be included explicitly in the draft conclusion. According to some delegations, since it was impossible to list all the factors in the assessment of representativeness, the second sentence of draft conclusion 5 should be removed. A view was expressed that gender was irrelevant in determining the weight to be given to teachings. A suggestion was made to place the elements to be considered when assessing representativeness in draft conclusion 3. The Commission was invited to elaborate on the impact of using subsidiary means that were not sufficiently representative.

36. Regarding **draft conclusion 6** (nature and function of subsidiary means), delegations concurred that the subsidiary means referred to in Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice were not sources of international law. Further elaboration on the differences between sources and subsidiary means, as well as an acknowledgment that the function of subsidiary means was to assist in the determination of the existence and content of rules of international law, was requested. While some delegations agreed that the use of materials as subsidiary means would not preclude other uses, further clarification was requested of what could be such other uses. The view was expressed that the use of the term “materials” could cause uncertainty and ambiguity as it was not used earlier in the draft conclusions. Suggestions were made to move draft conclusion 6 after draft conclusion 1, 2 or 3.

37. Delegations generally supported **draft conclusion 7** (absence of legally binding precedent in international law). Some delegations stressed that decisions had no binding force except between the parties and in respect of the particular case, in accordance with Article 59 of the Statute of the International Court of Justice. Some delegations suggested further explanation of the absence of *stare decisis* in international law.

38. Some delegations considered that the Commission should achieve a balance between the absence of binding precedent and the authoritative value of legal reasoning contained in decisions of international courts and tribunals. It was emphasized that references to judicial decisions by courts and tribunals were primarily premised upon similar judicial and factual characteristics for the purposes of consistency and predictability. Further explanation was requested of the circumstances in which international courts and tribunals were likely to follow or depart from previous case law, such as inconsistencies in the decisions of arbitral tribunals in international investment law. A concern was raised regarding judges having a disproportionate influence in international lawmaking. The Commission was requested to elaborate on the distinction between processes such as interpretation, application,

identification and ascertainment of law and the function of subsidiary means for the determination of the rules of international law.

39. On **draft conclusion 8** (weight of decisions of courts and tribunals), some delegations considered it useful to have specific criteria to assess the weight of decisions, in addition to the general criteria contained in draft conclusion 3, while other delegations considered that the criteria in draft conclusion 8 could lead to confusion. Further clarification was requested in relation to the relationship between draft conclusions 3 and 8 to avoid duplication and overlap. It was stressed that the criteria in draft conclusion 8 were of an illustrative nature, which should be reflected more explicitly in the text of the conclusion. A suggestion was made to delete the criteria listed in draft conclusion 8.

40. Regarding subparagraph (*a*) on the specific competence of the court or tribunal, it was suggested that the practice of special international courts and arbitral tribunals should have greater weight when identifying rules of certain regimes of international law. The view was expressed that decisions of institutions with specific subject matter jurisdiction should be considered only within the scope of that competence. Some delegations stated that decisions of treaty bodies could be accepted for the purposes of clarity and the essential coherence of international law, but should be subject to the same rigorous assessment criteria as other subsidiary means. A suggestion was made to delete references to findings of non-judicial bodies in the commentary, as they should not be considered "decisions of courts and tribunals".

41. With regard to subparagraphs (*b*) (whether the decision is a part of a body of concurring decisions) and (*c*) (whether the reasoning remains relevant), while some delegations agreed that the weight of decisions depended on the quality of the legal reasoning and the consistency with other similar cases, a view was expressed that a series of concurring decisions did not necessarily mean that they were correct or should be afforded greater weight as subsidiary means. In terms of the potential contradiction between the two criteria, the essential role of subsequent developments was stressed.

42. Some delegations suggested other criteria to assess the weight of decisions, including compliance with due process, the extent to which a court's interpretation reflected State practice, the comprehensiveness of the evidence presented on the existence of the rule of law, the independence, impartiality and representativeness of the judges and the support received by the reasoning of the decision. For some delegations, the decisions of arbitral tribunals carried less weight compared with the decisions of permanent international courts. Textual suggestions were made to take into account the extent to which the decisions concerned the same rule of international law and how the decision was received by the international community. Several delegations noted that the authoritative value of national court decisions was dependent on the domestic hierarchy and the finality of the decision under domestic law. Some delegations highlighted the inherent differences and possible similarities between systems of civil and common law. The disproportionate reference to decisions of national courts from developed States in the commentary was also mentioned.

43. Some delegations proposed to place draft conclusion 8 after draft conclusion 4, which was closely related to the definition of decisions. A suggestion was made to amend the title of draft conclusion 8 to refer to the "weight to be attached to" decisions of courts and tribunals. It was also suggested that the term "should" be replaced with "may" in the *chapeau* of the draft conclusion to clarify that the factors to be considered would ultimately depend on the relevant circumstances. The Commission was encouraged to indicate in the commentary that the criteria were limited to serve as a form of guideline.

3. Future work

44. Some delegations expressed support for the examination of possible subsidiary means beyond those listed in Article 38, paragraph 1 (*d*), of the Statute of the International Court of Justice, as well as their relative weight in the determination of rules of international law. Some delegations stated that, if other subsidiary means were addressed in the draft conclusions, it would be important to specify relevant criteria for their assessment. Other delegations cautioned against undue expansion of subsidiary means. The view was expressed that other materials, such as decisions and resolutions of various bodies within the United

Nations, were of great relevance. Further study of the relationship between subsidiary means for the determination of rules of international law and the supplementary means of interpretation of treaties referenced in article 32 of the Vienna Convention on the Law of Treaties was requested.

45. Some delegations were of the view that, while the Commission had proposed a programme of work, due to the weight and importance of the issues being considered, a thorough and deliberate consideration of such issues would best serve the interests of States and the international community.

4. Final form

46. Several delegations supported the final form of work as draft conclusions, consistent with the outcomes of the Commission on topics pertaining to sources of international law and other related issues. Some delegations stated that the Commission should keep an open mind regarding the final form of the outcome. The Commission was urged to indicate where provisions were intended to codify existing rules and when they consisted of progressive development. It was stressed that a prescriptive nature should be avoided, so as not to limit the judicial autonomy of international courts and tribunals.

C. Prevention and repression of piracy and armed robbery at sea

1. General comments

47. Delegations generally expressed appreciation for the work of the Commission on the topic. Several delegations welcomed the second report (A/CN.4/770) of the former Special Rapporteur, Mr. Yacouba Cissé, in particular its comprehensive coverage of practice at the international, regional and subregional levels and the four proposed draft articles. A number of delegations commended the former Special Rapporteur for his work on the topic and congratulated the new Special Rapporteur, Mr. Louis Savadogo, on his appointment. The Secretariat was thanked for its second memorandum on the topic and the Commission was encouraged to review its commentaries to draft articles 1 to 3 in the light thereof.

48. Delegations highlighted the evolving threats of piracy and armed robbery at sea to maritime security and freedom of navigation. A number of delegations stressed the need for enhanced global and regional cooperation and coordination, improved information-sharing and increased capacity-building. Some delegations noted that attacks were shifting from open waters to coastal regions and even occurring in the internal waters and territorial seas of coastal States. The root causes of piracy and armed robbery at sea were also highlighted.

49. Delegations generally underscored that the United Nations Convention on the Law of the Sea was the starting point for the work on the topic. Several delegations reiterated the importance of consistency with the Convention and a cautious approach was encouraged. It was emphasized that resolutions adopted by the Security Council or the General Assembly should not be construed as altering or derogating from the norms established by the Convention. A number of delegations recalled the decision of the Commission not to duplicate existing frameworks and to avoid repetition, as well as the desirability of not altering or undermining existing treaties. The importance of examining State practice based on the Convention was highlighted. The need to take into account the views of States not party to the Convention was also raised, as was the relevance of other instruments, including treaties dealing with terrorism and international crimes.

50. A number of delegations stressed the importance of distinguishing between piracy and armed robbery at sea, which took place in different maritime zones and were subject to different legal regimes. Some delegations accordingly supported separate provisions on the two crimes. Caution was urged regarding assumptions that long-standing rules regarding piracy applied to armed robbery at sea. It was noted that, while the Convention did not explicitly address armed robbery at sea, it was the starting point for the relevant legal framework. The view was also expressed that the rules on piracy should apply to armed robbery at sea as far as possible, subject to the rights of coastal States in the areas under their jurisdiction. The importance of such rights was underscored.

2. Specific comments

51. Some delegations commented on draft articles 1 to 3, as provisionally adopted by the Commission at its seventy-fourth session. Concerning **draft article 1** (scope), the view was expressed that the provision was appropriate, as it addressed both prevention and repression. Further clarification on the duty to prevent was called for. The view was expressed that the broad interpretation in the commentary of the term "repression" did not necessarily imply a duty to investigate or prosecute.

52. It was noted that the definition of piracy contained in **draft article 2** (definition of piracy) was consistent with the Convention and had been accepted in customary international law. Some delegations considered that the scope of the term "piracy" should be based on, and be consistent with, the definition contained in the Convention, as well as other treaties dealing with terrorist acts and transnational organized crime. Some delegations sought clarification of the term "private ends" and questioned whether it referred to a desire for profit or personal benefit, or political or ideological purposes. The elimination of subparagraph (*a*) (i) was suggested to accommodate States not party to the Convention. The examination of the definition of "ship", in light of technological developments, was called for.

53. Regarding **draft article 3** (definition of armed robbery at sea), some delegations supported the use of the term "armed robbery at sea" instead of "armed robbery against ships". Clarification was requested of the concept of "armed robbery" in light of technological advances and whether it included acts against oil platforms or other types of transportation besides ships.

54. A number of delegations welcomed **draft article 4** (general obligations), as provisionally adopted by the Drafting Committee at the seventy-fifth session.[1] It was noted that its text was based on article 100 of the Convention, and the view was expressed that it appropriately streamlined the initial proposals for draft articles 4 and 5.

55. Support was expressed for a provision reflecting the general obligation of States to cooperate in combating piracy and armed robbery at sea. A number of delegations encouraged the Commission to clarify the terms used, including "prevent", "repress" and "cooperating", as they applied to both piracy and armed robbery at sea. The Commission was urged to clarify whether the obligation to cooperate was one of due diligence, means or result. The view was expressed that it was one of due diligence, based on the relative capacities of each State. According to another view, a duty to prosecute could be derived from the obligation to cooperate in combating and suppressing piracy in article 100 of the Convention.

56. Other delegations expressed the view that the provision departed from the Convention, which did not relate to the prevention of piracy. Several delegations emphasized the need to distinguish between piracy and armed robbery at sea, which posed challenges for cooperation since it was subject to national jurisdiction. A number of delegations recalled that article 100 did not require cooperation to prevent and repress armed robbery at sea.

57. Some delegations welcomed the inclusion of the phrase "in conformity with international law" in the *chapeau*, underscoring that measures must be consistent with international law, including the Convention. The addition of the phrase "in accordance with national and international laws and regulations", to cover the different elements of piracy and armed robbery at sea, was proposed. It was suggested that the obligation should be carried out subject to available resources or capabilities. Some delegations welcomed the breadth of the reference in subparagraph (*a*) to "effective legislative, administrative, judicial or other appropriate measures". Several delegations requested clarification of the terms "competent intergovernmental organizations", "other organizations" and "non-State actors" in subparagraph (*b*).

58. Several delegations expressed views concerning draft articles 6 and 7, as proposed by the former Special Rapporteur in his second report. The importance of **draft article 6**

[1] See A/CN.4/L.1000.

(criminalization under national law) in establishing a comprehensive framework for accountability for piracy and armed robbery at sea was acknowledged. The need for an adaptable legal framework that accommodated diverse legal systems was highlighted.

59. Support was expressed for extending responsibility to individuals who ordered, solicited or assisted in the commission of such crimes in paragraph 2. Concerning paragraphs 4 and 5, some delegations questioned the references to "pursuant to an order of a Government" and "performing an official function", in view of the "private ends" element of both crimes. Regarding paragraph 6, while some delegations expressed support for the imprescriptibility of piracy and armed robbery at sea, others encouraged the Commission to study the question further based on State practice.

60. Support was expressed for **draft article 7** (establishment of national jurisdiction), as establishing jurisdiction over piracy and armed robbery was considered to be essential for enhancing maritime security. A number of delegations questioned the proposal to extend universal jurisdiction to armed robbery at sea. It was doubted whether such jurisdiction was provided for by customary international law. Clarification of whether the obligation to establish jurisdiction would entail a duty to exercise that jurisdiction was requested. Further investigation into State practice on the commission of piracy from the air was urged.

3. Future work

61. A number of delegations expressed support for the continuation of the work on the topic. Support was also expressed for reflection on the way forward, including in a working group. A number of delegations encouraged the Commission to ground its work in an examination of the practice of States and international organizations. The conclusion of the former Special Rapporteur that State practice was not general, constant or uniform was highlighted. The Commission was encouraged to proceed with a thematic approach.

62. Several delegations urged the Commission to aim to identify and clarify issues of common concern. For example, some delegations encouraged the Commission to elaborate on elements of the existing legal framework, including by clarifying the definition of piracy and how it applied to novel or complex circumstances. Other issues raised included the scope of permissible exercise of jurisdiction over piracy, cooperation in the repression of piracy, including with respect to prosecution, human rights perspectives on efforts to combat piracy and the use of private military companies. The consideration of the concepts of due diligence, as developed in advisory opinions of international courts, and universal jurisdiction with regard to piracy and armed robbery at sea was requested. Some delegations proposed the identification of gaps in the framework, where progressive development might be appropriate. The Commission was once more encouraged to distinguish between instances of codification and progressive development. The need for further clarification of the legal basis for the repression of armed robbery at sea within national jurisdictions was noted. Several delegations also proposed topics for the next report of the Special Rapporteur.

4. Final form

63. A number of delegations welcomed the flexible approach of the Commission regarding the final form of the outcome of the topic. The Commission was encouraged not to rush to decide on the final form, and the need to take into account future elements of its work before deciding was noted. Others called for an early indication of the final form, so as to inform States' engagement with the Commission. The need for an outcome that could enhance cooperation and domestic practices was stressed.

64. While support was expressed for the development of draft articles on the topic, some delegations preferred other forms. The concern that legally binding articles could undermine the Convention was raised. The view was expressed that, in the absence of identified gaps or insufficiencies, a report by the Commission, possibly with draft conclusions, would be the most suitable outcome.

D. Immunity of State officials from foreign criminal jurisdiction

1. General comments

65. A number of delegations welcomed the work of the Commission on the topic, which a number of them considered promoted a common understanding of the legal regime relative to the immunity of State officials from foreign criminal jurisdiction. Several delegations noted the complexity and importance of the topic. Delegations generally congratulated the Special Rapporteur on his appointment and expressed appreciation for his first report (A/CN.4/775), with several delegations welcoming the extent to which the views of States had been taken into account. Delegations also expressed appreciation for the work of the two previous Special Rapporteurs.

66. The need to balance the sovereign equality of States with accountability for the most serious crimes under international law was underscored. Several delegations highlighted the importance of immunities of State officials to their ability to perform their functions, the promotion of friendly relations between States and the peaceful settlement of international disputes and the stability of international relations. Some delegations referred to the need to avoid abusive, arbitrary or politically motivated exercise of criminal jurisdiction by States over foreign State officials. The view was expressed that neither the principle of universal jurisdiction nor the obligation to extradite or prosecute should apply to officials enjoying immunity.

67. Several delegations called upon the Commission to distinguish between codification and progressive development in its work on the topic. Some delegations emphasized the need to base the work on the topic on rules of customary international law. Paragraph (12) of the general commentary, as adopted on first reading, was recalled, and the Commission was encouraged to continue contributing both to codification and progressive development.

68. A number of delegations highlighted the need for a balanced and representative analysis of State practice. It was stated that more than 96 per cent of the decisions of national courts cited in the commentary adopted on first reading emanated from the courts of developed States. The Special Rapporteur and the Commission were urged to address that issue as the Commission continued its second reading of the topic. The view was expressed, however, that such efforts should not unnecessarily delay the work of the Commission.

69. The need to exercise care to avoid the conflation of immunity from civil and criminal jurisdiction was raised. Some delegations highlighted the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, which promoted the investigation and prosecution of international crimes through detailed provisions on mutual legal assistance and extradition upholding due process. The relevance of domestic legislation to the topic was also underscored.

2. Specific comments

70. With respect to **draft article 1** (scope of the present draft articles),[2] a number of delegations considered that, although the provision adequately defined the scope of the draft articles, clarification of the scope of paragraph 2 was needed. A number of delegations supported further explanation in the commentary of the relationship between immunity and inviolability. Moreover, further clarity on the relationship between the draft articles and international humanitarian law, as well as whether members of the armed forces of a State fell within the scope of the draft articles, was called for.

71. As regards paragraph 3, several delegations supported the explicit reference to agreements establishing international criminal courts and tribunals, recognizing the autonomy of those legal regimes. Others questioned the need for the paragraph. The

[2] References to draft articles 1, 3, 4 and 5 [6] are to the text provisionally adopted by the Drafting Committee at the seventy-fifth session (2024). See A/CN.4/L.1001. References to the remainder of the draft articles are to the text provisionally adopted on first reading by the Commission at its seventy-third session (2022). See A/77/10, chap. VI.

clarification that the provision extended to rights and obligations "relating to the operation of" such courts and tribunals was welcomed. Delegations expressed differing views as to whether a reference to tribunals established by resolutions of international organizations was necessary. Clarification in the commentary that such tribunals were covered by paragraph 3 was called for, while some delegations sought clarification of whether hybrid or internationalized tribunals were within the scope of the paragraph. It was proposed to exclude expressly referrals by the Security Council to the International Criminal Court from the scope of the draft articles.

72. Delegations also expressed various positions on the need to retain the phrase "as between the parties to those agreements" in paragraph 3. It was noted that the phrase was essential to highlight the fundamental rule that a treaty applied only between its parties. It was recalled that the jurisdiction of an international criminal court or tribunal could extend to officials of States not parties to its statute. The view was expressed that agreements establishing international courts and tribunals should be without prejudice to the general rules concerning immunity.

73. A number of delegations expressed their support for the decision of the Drafting Committee to consider, with a clear view of the draft articles as a whole, the definitions in **draft article 2** (definitions) at the next session of the Commission. While support was expressed for the provision, some delegations requested the refinement of the definitions of "State official" and "act performed in an official capacity" either in the text of the draft article or the commentary thereto. Some delegations called for further explanation of the treatment of *ultra vires* acts and the relationship between the draft articles and the articles on responsibility of States for internationally wrongful acts. Clarification of the position of *de facto* State officials was also requested. Support was expressed for a presumption of immunity in respect of all acts of a State official. The need for the phrase "who represents the State" was questioned.

74. Several delegations called for either the definition or further explanation of additional terms, including "immunity", "criminal jurisdiction", "exercise of criminal jurisdiction" and "criminal proceedings". The Commission was invited to clarify whether the draft articles applied to State organs implementing arrest warrants issued by international criminal courts and tribunals. Further explanation, in the commentary, of the decision to use the term "*représentant*" in French was requested.

75. Several delegations welcomed **draft articles 3** (persons enjoying immunity *ratione personae*) and **4** (scope of immunity *ratione personae*), expressing the view that the provisions reflected customary international law. A number of those delegations emphasized that immunity *ratione personae* was limited to Heads of State, Heads of Government and Ministers for Foreign Affairs ("the troika"). A number of other delegations considered that the category of officials covered by the provision should be broader, in line with the realities of international relations. Further clarification of the position of other high-level officials was requested. The view was expressed that rules concerning immunity *ratione materiae* applied to other high-level officials. While the decision to replace the expression "term of office" with "period of office" was questioned, several delegations welcomed it as it better reflected reality and was consistent with the terminology used by the International Court of Justice.

76. A number of delegations supported the merger of **draft articles 5** and **6**, as adopted on first reading, which they considered had resulted in a simpler text, namely **draft article 5 [6]** (scope of immunity *ratione materiae*). The view was expressed that draft article 5 [6] reflected customary international law. According to another view, the merger had created an imbalance between Parts Two and Three of the draft articles. Support was expressed for the deletion of the phrase "acting as such", because it could have extended immunity to *ultra vires* acts. Other textual adjustments made by the Commission were welcomed as they had enhanced the clarity of the provision, but more information concerning such adjustments was requested. The Commission was encouraged to revisit a previous proposal to add "subject to draft article 7" to the text of draft article 5 [6]. It was suggested to merge the respective third paragraphs of draft articles 4 and 5 [6]. It was proposed to change the title of draft article 5 [6] to "Persons enjoying immunity *ratione materiae*".

77. Delegations highlighted the importance of **draft article 7** (crimes under international law in respect of which immunity *ratione materiae* shall not apply), as adopted on first reading. The differing views both in the Commission and among States on draft article 7 were recalled. Several delegations expressed their support for the provision. Some identified what they considered to be a discernible trend in international law against the application of immunity *ratione materiae* for the most serious crimes under international law.

78. Others considered that, under customary international law, such immunity did not automatically apply to such crimes. Several delegations considered that the draft article did not reflect customary international law or a discernible trend, as relevant practice was limited to a few States and broad *opinio juris* was lacking. The concern was raised that the provision could facilitate politically motivated prosecutions and interference in the internal affairs of States. The Commission was encouraged to clarify whether the provision reflected customary international law in the commentary. Some delegations highlighted their own State practice in respect of immunity *ratione materiae*, or the lack thereof, for crimes under international law. Other delegations highlighted the need to consider abstentionist practice, as a decision not to prosecute may reflect relevant *opinio juris*. It was proposed to replace the list by a general reference to "the most serious crimes under international law". The Commission was encouraged not to rely on conventions that did not enjoy universal ratification to identify relevant crimes. It was suggested to reframe the provision as an enumeration of factors to be considered in determining whether immunity *ratione materiae* applied on a case-by-case basis.

79. A number of delegations urged the Commission to add the crime of aggression to the list of crimes for which immunity *ratione materiae* did not apply. It was noted that aggression was inherently international in character and often linked to the commission of other crimes already listed in draft article 7.

80. The importance of the procedural safeguards in **Part Four** of the draft articles, as adopted on first reading, was underscored. Their importance in balancing the interests of the forum State and the State of the official was emphasized. It was stated that it might be necessary to distinguish between rules that applied to personal immunity from those dealing with functional immunity. The view was expressed that Part Four was insufficient to balance the risks posed by draft article 7. It was also suggested that the Commission should include the proposed safeguards in an annex to the draft articles, as they were neither proposals for progressive development nor instances of codification.

81. With regard to specific safeguards, the need for notification to the State of the official as a first safeguard was underscored. The importance of dialogue between the forum State and the State of the official was emphasized. The need to reflect confidentiality considerations in **draft article 13** (requests for information) was raised. With respect to **draft article 14** (determination of immunity), paragraph 3, it was proposed to replace the phrase "appropriately high level" with a more precise term to remove ambiguity. The lack of an opt-out clause in **draft article 18** (settlement of disputes) was welcomed. Support was expressed for the negotiation of a suspension of national proceedings pending international dispute settlement by the States concerned. Including an additional safeguard providing for the primacy of the jurisdiction of the State of nationality or the forum State, provided such jurisdiction was exercised in a genuine and independent manner, was suggested.

3. Future work

82. A number of delegations expressed support for the decision of the Special Rapporteur to pursue the second reading over several years. The Commission was urged to take sufficient time to reflect and not to rush to finalize the second reading. According to another view, the Commission should be able to complete its work in 2025. Several delegations supported the focus on the views of States and new developments in conducting the second reading. The view was expressed that the Commission should not consider already settled issues *de novo* on second reading. Regret was expressed that the Special Rapporteur had not covered the entire set of draft articles in his report and that the views of States expressed before the conclusion of the first reading had not been directly addressed in that report.

83. Several delegations emphasized the need to reflect current State practice in the Commission's work; the application of the inductive methodology endorsed by the Commission in its conclusions on identification of customary international law was encouraged. Some delegations expressed the concern that efforts in relation to the progressive development of international law in respect of the topic could have a negative impact on international cooperation. The need to address any inconsistencies in the text of the draft articles and the commentary thereto, adopted on first reading, was highlighted.

4. Final form

84. A number of delegations supported the development of draft articles intended to be the basis of a convention on the topic. The view was expressed that such a convention would reduce the fragmentation of national practice. It was stated that a draft convention would be an appropriate outcome for the Commission's work if some of the draft articles did not reflect customary international law, as negotiating a treaty would allow States the opportunity to shape them and decide whether to be bound by them. Other delegations expressed a preference for a non-binding output, in particular with respect to the procedural safeguards.

85. Several delegations considered a decision on the final form to be premature. Others preferred leaving the decision on whether a treaty ought to be developed from the draft articles to States. A cautious approach was encouraged and the importance of achieving an outcome based on consensus was underscored.

E. Non-legally binding international agreements

1. General comments

86. Delegations welcomed the work of the Commission and, in particular, the first report of the Special Rapporteur (A/CN.4/772). Delegations acknowledged the significant practical relevance of the topic given the increasing number of non-legally binding international agreements concluded, and emphasized that the work of the Commission should focus on practical aspects related to the topic.

87. Several delegations stressed that the work of the Commission should not be prescriptive despite the interest in legal certainty. The Commission was urged to exercise caution to avoid potentially limiting the freedom of States to use non-legally binding international agreements or converting non-binding agreements into binding ones.

88. Some delegations highlighted that the practice of States examined by the Commission should be representative of different regions, legal systems, forms of agreements and legal issues. A number of delegations indicated that the work on the topic carried out by regional institutions should be taken into account to avoid fragmentation or conflict between the regionality and universality of the issue.

2. Specific comments

89. Differing views were expressed with regard to the use of the term "**agreements**" in the title of the topic. Several delegations were open to maintaining it. It was suggested that the final outcome should clarify that such a term referred exclusively to a "meeting of the minds" and was without prejudice to the legal nature of the agreements examined. Several other delegations expressed concern regarding the use of the term "agreements", since the practice of several States reserved such a term to denominate legally binding instruments. Some delegations suggested that, while the preparatory works of the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations could bring clarity as to whether an agreement could be legally binding or not, the use of the term "agreements" might create confusion. A number of delegations expressed a preference for the use of the term "instruments". According to another view, such a term would risk broadening the scope of the topic, thereby even possibly including procedural documents in some States. Some delegations suggested the term "arrangements". However, a view was expressed that such a term would not bring much clarification.

90. A number of delegations agreed that the **scope** of the topic should include written agreements between States, States and international organizations and international organizations themselves, while further study on which international organizations would be considered within the scope of the topic was encouraged. Several delegations expressed support for the exclusion of non-binding provisions of treaties from the scope of the topic. Some delegations considered that agreements between States and private persons should not be covered by the topic. For other delegations, the topic could potentially cover agreements between subjects of international law other than States and international organizations. Some delegations urged the Commission not to include agreements concluded with non-State actors, in particular non-State armed groups. Some delegations were of the view that agreements between or among subjects that did not have international legal personality should be excluded from the scope of the topic.

91. As regards the consideration of inter-institutional agreements between sub-State entities, several delegations considered that including them would inappropriately broaden the scope of the topic and further complicate it with diverse and incoherent practice. Other delegations saw merit in their inclusion, as sub-State entities were frequently involved in the conclusion of non-legally binding international agreements. Another suggestion was that the Commission should not make a categorical decision and could instead identify specific types of inter-institutional agreements relevant to its work or define the terms “inter-institutional” or “sub-State agreements” exclusively for the topic to guarantee clarity and certainty.

92. Delegations welcomed the exclusion of unilateral acts, including resolutions of international organizations, from the scope of the topic. Some delegations suggested that the acts adopted within the framework of intergovernmental conferences that did not have separate legal personalities should be excluded as such acts were often dependent on the specific institutional context in which they had been adopted. A view was expressed that it could be useful to study such acts due to their potential effects under the rules of treaty interpretation. Some delegations were of the view that the Commission should study the issue to determine whether such acts should be included in the scope of its work.

93. As to the **criteria for distinguishing treaties from non-legally binding international agreements**, several delegations concurred with the Special Rapporteur that a holistic approach, considering objective and subjective criteria, was appropriate. The primary role of the intention of the parties was emphasized. Some delegations considered that objective criteria should be considered only when the parties to the agreement did not expressly indicate whether they considered it legally binding. A view was expressed that only the parties to the instrument had the authority to express their intention. According to another view, the focus should be on the intention of parties as demonstrated in the texts and practices rather than constructed from other evidence.

94. It was suggested that the objective criteria included: the wording used in the text, including imperative terms or obligations; the form of the instrument; the presence of final clauses, monitoring or dispute settlement mechanisms; and the circumstances surrounding the instrument’s formation. It was noted that clauses expressly excluding the legally binding character of an agreement were relevant but not determinative of its legal nature. A number of delegations highlighted that relevant factors should be considered together on a case-by-case basis.

95. The view was expressed that the Commission should not engage in an exercise to determine, even for research purposes, which act was a treaty and which was a non-binding agreement. For some delegations, the Commission ought to be careful when indicating whether judicial bodies should have the authority to reclassify the nature of international agreements. It was noted that there should be no presumption of whether an agreement was legally binding.

96. In relation to the **regime of non-legally binding international agreements**, a number of delegations stated that non-legally binding international agreements were not governed by the law of treaties. Some delegations were of the view that the Vienna Convention on the Law of Treaties could be applied *mutatis mutandis* to aspects such as the drafting, interpretation and implementation of non-legally binding international agreements. Several delegations emphasized that States and international organizations were bound by certain

rules of international law when concluding non-legally binding international agreements, including peremptory norms of general international law (*jus cogens*), the principles of good faith, sovereign equality of States and peaceful settlement of disputes. Moreover, it was suggested that the non-performance of non-legally binding international agreements would not entail international responsibility and could not justify any resort to countermeasures. Some delegations considered that the use of the term "regime" was misleading and the Commission was advised to refrain from creating a specific legal regime for non-legally binding international agreements in parallel to the law of treaties.

97. With regard to the (**potential) legal effects of non-legally binding international agreements**, several delegations indicated that the distinction between "legally binding force" and "legal effects" should be further explored. Proposals were made to replace the term "legal effects" with "implications" or "consequences" to avoid confusion. It was suggested that the previous work of the Commission should be taken into consideration, including in treaty interpretation, the identification of the existence of customary international law and the provisional application of treaties. Some delegations considered that non-legally binding international agreements could only give rise to indirect legal effects. The view was expressed that the effects associated with each non-legally binding international agreement depended solely on the intention of the parties involved. For some delegations, the non-legally binding nature of agreements determined that those agreements were not capable of producing any legal effects.

3. Future work

98. Delegations generally looked forward to the Commission's future work on the topic and welcomed its proposal to request information on the practice of States and international organizations. Further examination of the scope of the topic, the criteria used to distinguish treaties from non-legally binding international agreements, the applicable law and their potential legal effects was welcomed and encouraged. A view was expressed that the task of the Commission was to determine whether international law was applicable to non-legally binding international agreements instead of assessing the legal nature of certain documents or establishing criteria for such assessments.

4. Final form

99. Draft conclusions or draft guidelines were considered appropriate, while some delegations expressed a preference for draft conclusions, as draft guidelines could be considered more prescriptive in nature. Delegations generally supported a non-prescriptive approach by the Commission, taking into consideration the freedom of States and the need for legal certainty. A concern was raised that producing draft conclusions would resemble the work of the Commission in relation to sources of international law.

100. It was suggested that the Commission could prepare a list of specific terminology or model clauses without prejudice to the formulation of provisions or preference for terms in non-legally binding international agreements. In contrast, a concern was raised about best practices, model clauses and other recommendations being excessively prescriptive. A view was expressed that an analytical report would be preferrable.

F. Succession of States in respect of State responsibility

1. General comments

101. Several delegations expressed appreciation for the work of the Commission and took note of the re-establishment of the Working Group on the topic. Delegations thanked the Chair of the Working Group, at the seventy-fourth and seventy-fifth sessions of the Commission, for his efforts and congratulated the new Chair of the Working Group, to be established at the seventy-sixth session, on his appointment. Delegations also expressed their gratitude for the contribution of the previous Special Rapporteur to the work on the topic.

102. The complexity of the topic was underscored. Several delegations recalled the methodological difficulties the Commission had faced, in particular the scarcity and

inconsistency of State practice. Some delegations noted that State practice in the field was often motivated by political considerations and reflected the specific context. A relative lack of relevant judicial practice was also noted. While the priority ascribed by the Commission to agreements between the States concerned was welcomed, it was questioned whether conclusions about the content of customary international law could be drawn from such agreements. It was recalled that the sufficiency of State practice had already been a question before the Commission when it decided to include the topic in its long-term programme of work.

2. Future work

103. Several delegations took note of the discussions in the Working Group on the way forward. Some delegations highlighted outstanding substantive aspects of the topic, such as whether it was responsibility or the rights and obligations that arose therefrom that would be transferred upon succession; whether a parallel with cases of succession to State debts was appropriate; and the relationship between the topic and the law concerning unjust enrichment and the rules pertaining to the legal consequences of internationally wrongful acts. Some delegations stressed the importance of maintaining consistency with the prior work of the Commission, in particular on other aspects of succession of States and on responsibility of States for internationally wrongful acts.

104. A number of delegations emphasized the need for the Commission to take into account wider and more geographically representative State practice. While several delegations called upon the Commission to focus on the codification of existing rules, others called for a balance between codification and progressive development. It was suggested that a clearer distinction between codification and progressive development merited further discussion.

3. Final form

105. Delegations took note of the decision of the Commission to re-establish the Working Group at its next session for the purpose of drafting a summary report that would bring the work of the Commission on the topic to an end. Several delegations expressed support for that decision. Differing views were expressed on what the content of such a report should be. It was stated that the report should not cover the substance of the topic. According to another view, the report should comprehensively examine and reflect the practice of the widest possible range of States. Some delegations requested that the Commission incorporate its previous work on the topic into the report. It was emphasized that the report should not be accorded the same status as work adopted on first or second reading.

106. Some delegations expressed a preference for the completion of work on the draft guidelines. It was stated that the decision of the Commission reflected a departure from its normal practice.

G. Sea-level rise in relation to international law

1. General comments

107. Delegations generally commended the Study Group for its dedicated work on the topic. They expressed appreciation to the Co-Chairs, in particular, for the additional paper to the second issues paper on the topic (A/CN.4/774), in which they addressed the subtopics statehood and protection of persons affected by sea-level rise. Appreciation was also expressed for the memorandum prepared by the Secretariat identifying elements in the previous work of the Commission that could be relevant for its future work on the topic.

108. Delegations emphasized once more that sea-level rise was an urgent issue of real and global concern, and of critical importance. It was noted that sea-level rise was a serious and imminent threat causing devastating effects on local communities across the world, in particular low-lying coastal States, archipelagic States, small island States and small island developing States. The existential threat that sea-level rise posed to some island States was highlighted. It was observed that sea-level rise had direct implications for peace and security, including food security and access to vital resources by developing States. The importance

of international cooperation in addressing sea-level rise was emphasized and the duty to cooperate was mentioned in that context.

109. Several delegations underlined that the work on the topic should be guided by basic principles of international law, such as sovereign equality of States, non-intervention in internal affairs, international cooperation, equity and human dignity. Several delegations supported the principle of common but differentiated responsibilities in relation to sea-level rise. The principle of permanent sovereignty over natural resources was also mentioned. The importance of maintaining legal stability, certainty and predictability was underlined. At the same time, a call for caution was made when applying fundamental principles of international law in the context of sea-level rise. The need to avoid duplication with the work of the General Assembly and other forums was mentioned.

110. Several delegations referred to the most recent scientific findings of the Intergovernmental Panel on Climate Change and to the 2023 report of the World Meteorological Organization on the state of the climate in the South-West Pacific. The 2024 Declaration on Sea-Level Rise and Statehood of the Alliance of Small Island States, the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise of the Pacific Islands Forum and the 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise of the Pacific Islands Forum were also recalled. Some delegations made reference to the work of the General Assembly, including the high-level plenary meeting on 25 September 2024 addressing the existential threats posed by sea-level rise, as well as the ongoing interest of the Security Council on the topic.

111. The importance and relevance of advisory proceedings before the International Court of Justice, the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights were emphasized.

2. Specific comments

(a) Statehood

112. Some delegations welcomed the distinction made by the Study Group between the scenarios related to statehood in the context of sea-level rise, in particular situations of partial submergence in which the land surface of a State concerned was becoming uninhabitable and situations in which the land surface of the affected State was completely covered by the sea.

113. Several delegations supported the view that 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. Some delegations noted in that context the principle of continuity of statehood. The view was expressed that international law needed to evolve; according to another view, no legal norms had been created to deal with the consequences of sea-level rise on statehood and State boundaries. It was stated that it was premature to state definitively that there existed a presumption of continuity and the need for caution was underlined. It was observed that the criteria set forth in the Convention on Rights and Duties of States (the Montevideo Convention) applied only to the creation of a State and were not conclusive regarding the continuation of the existence of a State. The view was expressed that a flexible interpretation of the criteria would support the presumption of continuity of statehood. The example of the continuity of the Baltic States between 1940 and 1990 was mentioned. It was also noted in that context that loss of effective governmental control over the territory of a State was temporary, while the submergence of territory due to sea-level rise was permanent. A proposal was made for the Commission to define or consider the criteria for continuation of statehood. Caution was urged in the face of multiple interpretations or the use of new concepts not defined in international law.

114. Some delegations reiterated that the work on the subtopic should be guided by the principles of sovereign equality of States, territorial integrity, permanent sovereignty of States over their natural resources, as well as by the right of peoples to self-determination. The direct relevance of the principles of legal certainty, equity, stability and justice was noted. The need for solutions based on international human rights law was emphasized. Regarding the alternatives for addressing the phenomenon in relation to statehood, it was

emphasized that possible solutions should not create relationships of suzerainty or subservience nor establish a new form of trusteeship between formally independent States. The importance of consultations with the concerned populations on any possible solution was underlined. It was observed that the available options would largely depend on specific situations and that the choice of appropriate options should be made by concerned States.

115. It was noted that States should have the right to preserve their existence. Support was expressed for a study by the Commission of legal and practical modalities for the preservation of legal personality and territory of States. A view was expressed that statehood could be preserved through a *sui generis* legal regime or, in individual cases, through international recognition. It was suggested that the Commission should confine itself to defining criteria for the continuation of statehood, drawing a clear distinction between situations of partial or complete loss of territory. Regarding the right to self-determination, some delegations expressed the view that it was primarily related to the process of decolonization and that its applicability was linked to the observance of other principles of international law, such as territorial integrity and non-interference in the internal affairs of other States.

(b) Protection of persons

116. Some delegations observed that the existing legal frameworks were fragmented and general in nature and called for further development and enhancement of legal mechanisms to safeguard persons displaced by sea-level rise. The need to ensure the protection of the fundamental human rights of persons vulnerable to the phenomenon was underlined. The importance of preventing statelessness was also emphasized. Several delegations noted that the principle of human dignity should guide the work of the Study Group. The importance of combining rights-based and needs-based approaches was underlined. A view was expressed that the obligation was primarily on the affected State to protect the rights of affected persons. The duty to cooperate in the protection of persons affected by sea-level rise was also emphasized.

117. The work of the Study Group in identifying 12 elements for possible legal protection of persons was commended. It was noted that those elements could help delineate future obligations and non-binding commitments and policies that could contribute to the protection of persons in the context of sea-level rise; according to another view, the 12 elements required further consideration. It was stated that certain legal issues, such as the applicability of the principle of *non-refoulement* and the extraterritorial application of human rights, needed to be approached with increased caution due to their complexity and sensitivity. The Study Group was requested to explore the relationship between the elements. A suggestion was made to define the term “particularly vulnerable persons”.

118. A proposal was made to expand the Global Compact for Safe, Orderly and Regular Migration to specifically address migration related to sea-level rise. The importance of preserving and protecting cultural heritage was underlined.

119. Several delegations recalled the importance of international cooperation in the context of sea-level rise, including technical assistance, financing and relocation mechanisms to ensure that affected persons were not left unprotected. Some delegations welcomed the proposal for the Study Group to consolidate and further develop the existing rules on cooperation. The need to create safeguards for the rights of displaced individuals and those affected by sea-level rise to ensure the dignity, identity and rights of those persons were respected and protected was stressed. The need to ensure consistency with State practice, existing legal instruments and previous work by the Commission was emphasized.

120. Some delegations suggested that the draft articles on the protection of persons in the event of disasters, adopted by the Commission in 2016, could serve as a basis for the work of the Commission and fill a significant gap in the law and help bring coherence to the legal framework.[3]

[3] *Yearbook … 2016*, vol. II (Part Two), paras. 38–49.

(c) Law of the sea

121. Delegations also commented on the Commission's work, at its seventy-fourth session in 2023, on the law of the sea component of the topic. Some delegations reiterated that baselines and maritime zones, once established in accordance with the United Nations Convention on the Law of the Sea, should not be subject to reconsideration and change despite coastline changes. It was noted that the Convention did not contain a legal obligation for States parties to regularly review and update their baselines and the borders of their maritime zones. Some delegations emphasized the importance of preserving and respecting baselines and boundaries in the context of sea-level rise and stressed that the resulting maritime entitlements should not be affected by any loss of territory owing to sea-level rise. Reference was made in that context to the need for legal certainty, protection of the rights to natural resources and climate justice, as well as the presumption of continuity of statehood. It was reiterated that the principle of *rebus sic stantibus* would not apply to maritime delimitations in accordance with the Vienna Convention on the Law of Treaties.

122. Several delegations underlined the fundamental role of the United Nations Convention on the Law of the Sea and the need to preserve its integrity. It was stressed that any interpretation of the applicable rules of international law should be made in conformity with and in full respect of the letter and spirit of the Convention. It was observed that any suggestions that might be proposed in the final report of the Commission on the topic should uphold and strengthen the legal framework established by the Convention. At the same time, it was recalled that the Convention was not universal and that the Study Group should not overlook other relevant sources of international law. The importance of principles of legal stability and predictability was underlined.

3. Future work and final form

123. Delegations welcomed the plan to prepare, at the seventy-sixth session of the Commission, a joint final report on the topic, consolidating the work carried out so far on the three subtopics, with a set of conclusions. It was suggested that, in its final report, the Study Group should consider or analyse the possible links between the three subtopics. At the same time, a request was made for the Study Group to clarify the format of the outcome of its work. A view was expressed that the Study Group should not engage in drafting a framework convention on issues related to sea-level rise. The Study Group was also cautioned against using the term "conclusions" in its final report, to clearly differentiate it from the more formal outcomes of the Commission. According to another view, the outcome of the work of the Commission on the subtopic of protection of persons affected by sea-level rise could take the form of a set of draft conclusions. It was stated that the Study Group could develop a set of criteria to determine the "most affected States" under international law.

124. The importance of preserving the connection and consistency among the three subtopics was underlined. Some delegations also noted the need to reflect relevant developments in the practice of States and international organizations, as well as judgments, decisions and advisory opinions of international and regional courts and tribunals.

125. The Study Group was requested to clearly delineate matters of law and policy, as well as explicitly differentiate between codification and progressive development. The Commission was urged to provide clear guidance on whether there was a need for the progressive development of the law of the sea. The importance of distinguishing between *lex lata* and *lex ferenda* was highlighted. It was stated that certain aspects of the topic required essentially political considerations and solutions by States and were not suitable for legal consideration by the Study Group. The need to pay close attention to State practice, in particular that of the most affected States, was underlined.

126. The Commission was urged to focus only on legal considerations and to keep in mind the overall role of the Study Group in identifying the relevant international law standards in the context of sea-level rise, as well as gaps that were to be filled by States. It was stated that the output of the Commission needed to be legally well founded and based on existing international law and not isolated practices or the views of only a few States. It was stressed that the Study Group did not have a mandate to propose modifications to existing international law. In that connection, several delegations emphasized that the Commission

should exercise caution and respect the mandate of its work. The Commission was encouraged to review whether it would be possible to produce a joint final report on the topic in one year. Differing views were expressed on whether the Study Group should address the issue of responsibility for sea-level rise in its final report. The need to avoid rewriting existing legal frameworks was highlighted. A view was expressed that the Study Group should primarily focus on addressing the practical solutions that could be employed in the near future by States affected by sea-level rise.

H. Other decisions and conclusions of the Commission

1. Future work of the Commission

127. A number of delegations welcomed the inclusion of the topics "Compensation for the damage caused by internationally wrongful acts" and "Due diligence in international law" in the Commission's long-term programme of work, which they considered to be of practical significance for States and would make a significant contribution to international law. It was stated that the work on the topic "Compensation for the damage caused by internationally wrongful acts" should be aligned with the articles on responsibility of States for internationally wrongful acts. According to another view, including the topic "Due diligence in international law" in the programme of work of the Commission would be premature since the scope of the topic seemed too broad. The Commission was urged to conduct its work on those topics in a rigorous, prudent and balanced manner, taking into account the practice of States and *opinio juris*, while carefully considering the jurisprudence of international courts and tribunals.

128. The topics "Extraterritorial jurisdiction" and "Universal criminal jurisdiction" were proposed by some delegations for inclusion in the Commission's programme of work. Suggestions were made for the Commission to focus on topics related to international investment law, cyberspace, the use of new technologies in international relations, such as artificial intelligence, and private international law.

2. Programme and working methods of the Commission

129. Delegations generally welcomed the work of the Commission, stressing its important role in the progressive development and codification of international law.

130. Delegations congratulated the Commission on its seventy-fifth anniversary and welcomed the commemoration events. A number of delegations expressed regret that the seventy-fifth session of the Commission had to be shortened owing to the liquidity crisis of the Organization, as well as the fact that the webcasting of plenary meetings had been discontinued due to the crisis. Several delegations expressed support for the work of the Planning Group. The work of the Working Group on methods of work and procedures was welcomed and so was the preparation of a handbook, which would increase transparency and provide States with a greater understanding of the Commission's working methods. Several delegations welcomed the new format of chapter II of the report of the Commission, containing a summary of its work at the relevant session.

131. A concern was raised regarding the process for filling casual vacancies in the Commission; the Commission was encouraged to consider establishing clearer rules and timelines for filling such vacancies to align them with the high standards of regular elections. The importance of gender parity among the Commission membership was underscored. Support was voiced for the Trust Fund on assistance to Special Rapporteurs of the International Law Commission, established by General Assembly resolution 77/103, and matters ancillary thereto.

132. The importance of enhancing the dialogue between the Commission and the Sixth Committee was emphasized and, in that connection, several delegations expressed support for the Commission to hold the first part of its seventy-seventh session (2026) in New York. Some delegations reiterated the importance, in their view, of cooperation between the Commission and regional international law bodies and commissions.

133. More clarity and transparency on the choice of taxonomy of the outcomes of the Commission's work was once again called for. The Commission was urged to clearly distinguish in the outcomes of its work between provisions reflecting the codification of existing international law and those reflecting progressive development. It was emphasized that, whether engaging in codification or progressive development, the Commission should take into account State practice and *opinio juris*.

134. A number of delegations reiterated their call for the Commission to continue to take the views and concerns of States into account; it was stated that only through close cooperation between the Commission and States would the Commission be able to prepare legal texts that reflected the genuine collective will of the international community. The Commission was encouraged to allow sufficient time to receive and reflect on the input of Member States and not rush its consideration of topics in its programme of work. In that connection, the Commission was urged to be guided by the needs of all States, as well as to fully hear their views when selecting new topics and drafting reports to ensure that progressive development and codification were aligned with the needs of the international community. The importance of taking decisions by consensus in the Commission was stressed.

135. The Commission was once again encouraged to reflect the practice of States and *opinio juris* from all regions in its work and to consider the diversity of legal traditions. A more inclusive approach in its work, including linguistic diversity of the sources used in the outcomes of the Commission, was called for. The importance of multilingualism was stressed. Support for the International Law Seminar was reiterated.

III. Topics on which the Commission completed work on first reading at its seventy-fourth session

General principles of law

1. General comments

136. Support for the work of the Commission on the topic was expressed.

2. Specific comments

137. While support was voiced for **draft conclusion 1**, clarification was sought regarding the method for identification of general principles of law, as well as their functions and relationship with other sources of international law. With regard to **draft conclusion 2**, the view was expressed that the term "community" was widely used in various international instruments and the provision was generally consistent with Articles 1 and 2 of the Charter of the United Nations, but reservations were raised concerning paragraph (5) of the commentary to draft conclusion 2 related to the role of international organizations. It was stated, in that connection, that international organizations did not have the same standing, structural character, obligations and responsibilities as sovereign States. Further analysis of the role of international organizations and the formation of general principles of law was called for. A suggestion was made to replace the phrase "recognized by the community of nations" with "recognized by States" or "recognized by the practice of States". Support was expressed for **draft conclusions 3** and **4**.

138. Support was voiced for **draft conclusion 5**, but the view was expressed that the word "common" in paragraph 1 thereof was subjective and criteria were needed to apply the provision. In relation to paragraph 2, the view was also expressed that a comparative analysis should be done not only according to different regions but also according to the economic, social and cultural relations on a case-by-case basis. On **draft conclusion 6**, it was stated that, in deciding which general principles of law might be transposed to the international legal system, relevant criteria, such as variety and diversity, must be considered.

139. While support was voiced for **draft conclusion 7**, the view was expressed that subparagraph 2 thereof widened the scope of a general principle of law and might render the

condition of having the community of nations recognize the principle as intrinsic to the international legal system ultimately irrelevant. A comparative analysis between the identification of existing general principles of law that were derived from national legal systems and those formed within the international legal system was requested. The Commission was encouraged to exercise caution when determining the nature of principles, as well as their applicability to issues presented before international courts and tribunals under **draft conclusion 10**. Regarding **draft conclusion 11**, it was stressed that the emergence of a general principle of law was dependent on its compatibility with every single treaty and customary rule in the context in which it was to be applied.