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# Sea-level rise in relation to international law

## Final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law, Patrícia Galvão Teles,* Nilüfer Oral** and Juan José Ruda Santolaria***

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# Introduction

# I. Inclusion of the topic in the Commission's programme of work; consideration of the topic by the Commission

1. At its seventieth session (2018), the Commission decided to recommend the inclusion of the topic "Sea-level rise in relation to international law" in its long-term programme of work.[1] Subsequently, in its resolution 73/265 of 22 December 2018, the General Assembly noted the inclusion of the topic in the long-term programme of work of the Commission, and in that regard called upon the Commission to take into consideration the comments, concerns and observations expressed by Governments during the debate in the Sixth Committee.

2. At its seventy-first session (2019), the Commission decided to include the topic in its programme of work. The Commission also decided to establish an open-ended Study Group on the topic, to be co-chaired, on a rotating basis, by Mr. Bogdan Aurescu, Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria. At its 3480th meeting, on 15 July 2019, the Commission took note of the joint oral report of the Co-Chairs of the Study Group.[2]

3. At its seventy-second session (2021), the Commission reconstituted the Study Group, chaired by the two Co-Chairs on issues related to the law of the sea, namely Mr. Aurescu and Ms. Oral. The Commission considered the first issues paper on the topic, concerning issues related to the law of the sea,[3] prepared by Mr. Aurescu and Ms. Oral. The paper was issued together with a preliminary bibliography.[4] The Study Group held eight meetings, from 1 to 4 June and on 6, 7, 8 and 19 July 2021. At its 3550th meeting, on 27 July 2021, the Commission took note of the joint oral report of the Co-Chairs of the Study Group. Chapter IX of the 2021 annual report of the Commission contains a summary of the work of the Study Group during that session on the subtopic of issues related to the law of the sea.[5]

4. At its seventy-third session (2022), the Commission reconstituted the Study Group, chaired by the two Co-Chairs on issues related to statehood and to the protection of persons affected by sea-level rise, namely Ms. Galvão Teles and Mr. Ruda Santolaria. The Commission considered the second issues paper on the topic, concerning issues related to statehood and the protection of persons affected by sea-level rise,[6] prepared by Ms. Galvão Teles and Mr. Ruda Santolaria. The paper was issued together with a selected bibliography.[7] The Study Group held nine meetings, from 20 to 31 May and 6, 7 and 21 July 2022. At its 3612th meeting, on 5 August 2022, the Commission considered and adopted the report of the Study Group on its work at that session. Chapter IX of the 2022 annual report of the Commission contains a summary of the work of the Study Group during that session on the subtopics of issues related to statehood and to the protection of persons affected by sea-level rise.[8]

5. At its seventy-fourth session (2023), the Commission reconstituted the Study Group, chaired by the two Co-Chairs on issues related to the law of the sea, namely Mr. Aurescu and Ms. Oral. The Commission considered an additional paper to the first issues paper on the topic, concerning issues related to the law of the sea,[9] prepared by Mr. Aurescu and Ms. Oral. A selected bibliography, prepared in consultation with members of the Study Group, was

[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), para. 369.
[2] *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10* (A/74/10), paras. 265–273.
[3] A/CN.4/740 and Corr.1.
[4] A/CN.4/740/Add.1.
[5] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), paras. 247–296.
[6] A/CN.4/752.
[7] A/CN.4/752/Add.1.
[8] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10* (A/77/10), paras. 153–237.
[9] A/CN.4/761.

issued as an addendum to the additional paper.[10] The Study Group held 12 meetings, from 26 April to 4 May and from 3 to 5 July 2023. At its 3655th meeting, on 3 August 2023, the Commission considered and adopted the report of the Study Group on its work at that session. Chapter VIII of the 2023 annual report of the Commission contains a summary of the work of the Study Group during that session on the subtopic of issues related to the law of the sea.[11]

6. At its seventy-fifth session (2024), the Commission reconstituted the Study Group, chaired by the two Co-Chairs on issues related to statehood and to the protection of persons affected by sea-level rise, namely Ms. Galvão Teles and Mr. Ruda Santolaria. The Commission considered an additional paper to the second issues paper on the topic, concerning issues related to statehood and to the protection of persons affected by sea-level rise,[12] prepared by the Co-Chairs. A selected bibliography, prepared in consultation with members of the Study Group, was issued as an addendum to the additional paper.[13] The Commission also considered a 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, in particular in relation to statehood and the protection of persons.[14] The Study Group held 10 meetings, from 30 April to 9 May and from 2 to 8 July 2024. At its 3694th and 3698th meetings, on 26 and 30 July 2024 respectively, the Commission considered and adopted the report of the Study Group on its work at that session. Chapter X of the 2024 annual report of the Commission contains a summary of the work of the Study Group during that session on the subtopics of issues related to statehood and to the protection of persons affected by sea-level rise.[15] Chapter II of the 2024 annual report also contains a summary of the work of the Study Group during that session.[16]

# II. Purpose and structure of the final consolidated report

7. In accordance with the syllabus for the topic prepared in 2018,[17] the Co-Chairs of the Study Group have prepared the present final consolidated report on “Sea-level rise in relation to international law”, which is based on their previous work, the debates in the Study Group and statements made by Member States in the Sixth Committee and other forums.

8. In addition, the Co-Chairs address the possible interlinkages between the three subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – in the present report.[18]

9. The report is therefore structured in the following manner. A summary is provided of the preliminary observations in the issues papers and the additional papers to the issues papers regarding the three subtopics will be presented. A summary is then provided of the statements made by Member States during the most recent debates in the Sixth Committee, and of the submissions by Member States to the Commission. There follows an overview of recent relevant developments, such as the General Assembly high-level meeting on sea-level rise, held in September 2024, regional and bilateral declarations and initiatives, the advisory proceedings on climate change before the International Tribunal for the Law of the Sea, the International Court of Justice and the Inter-American Commission on Human Rights, and other recent judicial developments such as in the European Court of Human Rights and the work of other bodies on sea-level rise. The cross-cutting issues and interlinkages between the three subtopics are then presented: stability, predictability and certainty; preservation of

[10] A/CN.4/761/Add.1.
[11] *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 10* (A/78/10), paras. 128–230.
[12] A/CN.4/774.
[13] A/CN.4/774/Add.1
[14] A/CN.4/768.
[15] *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 10* (A/79/10), paras. 331–417.
[16] *Ibid.*, paras. 40–45.
[17] A/73/10, annex B, para. 26.
[18] A/CN.4/774, para. 314.

existing rights; self-determination; permanent sovereignty over natural resources; equity and solidarity; international cooperation; and international law as adaptation.

10. In the conclusion, the Co-Chairs present reflections and final observations and outline possible ways forward.

11. An annex, containing a draft final report of the Study Group, is submitted for the consideration of the Study Group at the present session.

# III. Summary of the preliminary observations in the issues papers and the additional papers to the issues papers

## A. Law of the sea

12. The first issues paper contains a detailed study of the following issues: (a) possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces that are measured from the baselines; (b) possible legal effects of sea-level rise on maritime delimitations; (c) possible legal effects of sea-level rise on islands insofar as their role in the construction of baselines and in maritime delimitations is concerned; (d) possible legal effects of sea-level rise on the exercise of sovereign rights and jurisdiction of the coastal State and its nationals in maritime spaces in which boundaries or baselines have been established, especially regarding the exploration, exploitation and conservation of their resources, as well as on the rights of third States and their nationals (for example, innocent passage, freedom of navigation and fishing rights); (e) possible legal effects of sea-level rise on the status of islands, including rocks, and on the maritime entitlements of a coastal State with fringing islands; and (f) the legal status of artificial islands, reclamation or island fortification activities under international law as a response/adaptive measures to sea-level rise.[19] In addition, the Co-Chair (Mr. Cissé) gave a presentation to the Study Group on the practice of African States regarding maritime delimitation.[20]

13. The first issues paper contains several preliminary observations on the basis of this detailed study. With regard to the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces that are measured from the baselines and on maritime delimitations, the preliminary observations may be summarized as follows:

(a) At the time of the negotiation of the United Nations Convention on the Law of the Sea,[21] sea-level rise was not perceived as an issue that needed to be addressed;

(b) While some have interpreted the Convention as providing for ambulatory baselines, the ambulatory method would not respond to the concerns expressed by Member States in relation to the effects of sea-level rise, especially the need to preserve legal stability, security, certainty and predictability;

(c) An approach based on the preservation of baselines and outer limits of the maritime zones measured therefrom would respond to such concerns;

(d) The Convention does not prohibit the preservation of baselines and maritime zones;

(e) The obligation under article 16 of the Convention to give due publicity to and deposit copies of charts and lists of coordinates about baselines only refers to straight baselines and not to normal baselines. Even in the case of straight baselines, the Convention does not indicate an obligation to draw and notify new baselines when coastal conditions change;

[19] A/CN.4/740 and Corr.1, para. 48.
[20] A/76/10, paras. 259–261.
[21] United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.

(f) Nothing prevents Member States, after having deposited notifications with the Secretary-General in accordance with the Convention, to stop updating these notifications in order to preserve their entitlements;

(g) The ambulatory approach could bring into question effected maritime delimitations, which in turn would create legal uncertainty;

(h) It is necessary to preserve existing maritime delimitations, notwithstanding the coastal changes produced by sea-level rise, in order to maintain legal stability, certainty and predictability;

(i) Sea-level rise cannot be invoked as a fundamental change of circumstances under article 62, paragraph 2, of the 1969 Vienna Convention on the Law of Treaties,[22] as maritime boundaries enjoy the same regime of stability as any other boundaries.[23]

14. In relation to the possible effects of sea-level rise on the exercise of sovereign rights and jurisdiction of the coastal State and its nationals, as well as on the rights of third States and their nationals, in maritime spaces in which boundaries or baselines have been established, preliminary observations in the first issues paper include the following:

(a) In general, if the baselines and the outer limits of the various maritime spaces move landward, this means that the legal status and legal regime of the maritime zones change: for example, part of the internal waters becomes territorial sea, part of the territorial sea becomes contiguous zone and/or exclusive economic zone, and part of the exclusive economic zone becomes high seas, with implications for the specific rights of the coastal State and third States, and their nationals (innocent passage, freedom of navigation, fishing rights, etc.);

(b) Sea-level rise also poses a risk to an archipelagic State's baselines. As a result of the inundation of small islands or drying reefs, the existing archipelagic baseline could be impacted, resulting in the loss of archipelagic State status of baselines;

(c) The greatest loss in terms of rights of the coastal State and its nationals comes from the loss of maritime entitlements related to the exclusive economic zone should it become part of the high seas. In particular, developing States that derive important revenue from the natural resources, in particular living resources, in their exclusive economic zones could lose at least parts of this. In some cases, even a relatively small loss could have important developmental consequences;

(d) A question arises as to the possible effect on agreements such as licences for other economic activities in the exclusive economic zone, including offshore windfarms or for fisheries access agreements in the exclusive economic zone;

(e) Overall, third States stand to benefit at the expense of the coastal State, and such changes in maritime entitlements bring the risk of creating uncertainty, instability and the possibility of disputes;

(f) Consequently, in order to meet the need to preserve legal certainty, stability and predictability, and to maintain the existing balance between the rights of the coastal State and the rights of third States, the best option is the preservation of maritime entitlements.[24]

15. The purpose of the additional paper to the first issues paper was to supplement and develop the content of the first issues paper, on the basis of a number of suggestions by members of the Study Group that had been proposed during the debate on that paper, which had taken place during the seventy-second session.[25] On this basis, the additional paper examines the relationship between the views of Member States on legal stability, certainty and predictability in relation to the preservation of baselines and maritime zones.[26] It then examines the immutability and intangibility of boundaries, including the principle of *uti*

[22] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), *ibid.*, vol. 1155, No. 18232, p. 331.
[23] A/CN.4/740 and Corr.1, paras. 104 and 141.
[24] *Ibid.*, paras. 76 and 190.
[25] A/CN.4/761, para. 5.
[26] *Ibid.*, paras. 16–98.

*possidetis juris*;[27] fundamental change of circumstances (*rebus sic stantibus*) under article 62 of the Vienna Convention on the Law of Treaties;[28] the effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlap, and the issue of objective regimes; the effects of the situation whereby an agreed land boundary terminus ends up being located out at sea; the judgment of the International Court of Justice in the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* case;[29] the principle that "the land dominates the sea";[30] historic waters, title and rights;[31] equity;[32] permanent sovereignty over natural resources;[33] the possible loss or gain by third States resulting from any landward shift of baselines and maritime zones;[34] nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation;[35] and the relevance of other sources of law.[36]

16. On the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones, the preliminary observations made in the additional paper to the first issues paper include the following: (a) legal stability is linked to the preservation of maritime zones; (b) States affected by sea-level rise are not required to update their notifications of coordinates and charts, even if the physical coast moves landward because of sea-level rise; (c) no States – not even those with national legislation providing for ambulatory baselines – have expressed positions contesting the option of preserving baselines or maritime zones that have been lawfully established; and (d) the observations in paragraph 104 of the first issues paper were largely upheld by Member States, with the nuances presented above.[37]

17. On the issue of the immutability and intangibility of boundaries, including the principle of *uti possidetis juris*, the preliminary observations made in the additional paper to the first issues paper include the following: (a) the principle of stability of and respect for existing boundaries – that is, their immutability – is a rule of customary international law; (b) the same principle of stability of and respect for existing boundaries would apply to maritime boundaries, which share the same function of demarcating the extent of the sovereignty and the sovereign rights of a State; (c) concerns regarding preservation of the stability of boundaries would equally apply to maritime boundaries, which, if questioned, could create conflictual situations among States over maritime territory that had been settled by treaty or otherwise; and (d) the principle of *uti possidetis* provides an example under international law of the "freezing" of pre-existing boundaries in the interests of preserving stability and preventing conflict.[38]

18. On the issue as to whether sea-level rise represents a fundamental change of circumstances, in the context of article 62, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties, the preliminary observations include the following: (a) many States in the Sixth Committee have expressed the clear position that sea-level rise should not affect maritime boundaries fixed by agreement, and no State has expressed a contrary position; (b) the objective of article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties, under which treaties establishing boundaries are excluded from application of the principle of fundamental change of circumstances to terminate or suspend a treaty, is to maintain stability of boundaries in the interests of peaceful relations and avoiding conflict, and the same objective would clearly apply to maritime boundaries; (c) there is no clear

[27] *Ibid.*, paras. 99–111.
[28] *Ibid*., paras. 112–125.
[29] *Ibid*., paras. 126–147. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139.
[30] A/CN.4/761, paras. 148–155.
[31] *Ibid*., paras. 156–169.
[32] *Ibid*., paras. 170–183.
[33] *Ibid*., paras. 184–194.
[34] *Ibid*., paras. 195–214.
[35] *Ibid*., paras. 215–249.
[36] *Ibid*., paras. 250–280.
[37] *Ibid*., para. 98.
[38] *Ibid*., para. 111.

evidence that maritime boundaries were intended to be excluded from article 62, paragraph 2 (a); (d) the International Court of Justice has consistently concluded that article 62, paragraph 2 (a), does apply to maritime boundaries, in the interests of the stability of boundaries; and (e) the objective of preserving the stability of boundaries and peaceful relations under article 62 would equally apply to maritime boundaries, as underlined by the Court and arbitral tribunals in cases addressing this issue.[39]

19. In regard to the judgment of the International Court of Justice and the associated issues, the Co-Chairs note in the additional paper that the Court, in its recent jurisprudence (*Nicaragua v. Honduras* and *Costa Rica v. Nicaragua*),[40] has found concrete and practicable legal solutions to overcome the instability of the baseline and of the base points: using a fixed point at sea for the start of the maritime boundary might be interpreted as similar to fixing the baseline for the purposes of ensuring the stability of the maritime zones measured from it.[41]

20. In relation to the principle that "the land dominates the sea", the Co-Chairs' preliminary observations include the following: (a) the principle that "the land dominates the sea" is a judicial construction that was developed in relation to the continental shelf and the extension of the sovereign rights of the coastal State; (b) it is a rule of customary international law, but has been codified in neither the 1958 Geneva Conventions[42] nor the United Nations Convention on the Law of the Sea; (c) maritime entitlements derive not from the land mass *per se*, but from the sovereignty exercised by the State over the coastline; (d) while the principle that "the land dominates the sea" has had wide acceptance and application by courts and tribunals, as well as States, it is not an absolute rule; (e) the rigid application of the principle that "the land dominates the sea" would not provide a solution to the inequitable outcome of many States losing existing maritime entitlements because of sea-level rise; and (f) the principle should be assessed in the light of equity and other principles, such as the stability of boundaries, which is also a recognized customary rule.[43]

21. In regard to historic waters, title and rights, the Co-Chairs make the following preliminary observation: the principle of historic waters, title or rights provides an example of the preservation of existing rights in maritime areas that would otherwise not be in accordance with international law.[44]

22. Regarding equity in relation to sea-level rise and the law of the sea, the preliminary observations include the following: (a) equity plays different functions in law; (b) equity provides for methods of interpretation and allows for flexibility to ensure justice where strict application of rules may produce inequitable results; (c) the potential significant loss of maritime entitlements due to sea-level rise if the baseline shifts landward, or if islands are rendered unable to sustain human habitation or an economic life of their own, would constitute an inequitable outcome and would not fulfil the notions of justice under international law; (d) the preservation of existing maritime entitlements, on the other hand, would prevent potentially catastrophic consequences and provide for an equitable outcome; and (e) equity, as a method under international law for achieving justice, should be applied in favour of the preservation of existing maritime entitlements, the loss of which would result in catastrophic consequences for the most vulnerable States.[45]

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[39] *Ibid*., para. 125.

[40] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007*, p. 659; and *Maritime Delimitation in the Caribbean Sea and in the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)* (see footnote 29 above).

[41] A/CN.4/761, para. 147 (c).

[42] Convention on the High Seas (Geneva, 29 April 1958), United Nations, *Treaty Series*, vol. 450, No. 6465, p. 11; Convention on the Continental Shelf (Geneva, 29 April 1958), *ibid.*, vol. 499, No. 7302, p. 311; Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958), *ibid.*, vol. 516, No. 7477, p. 205; and Convention on Fishing and Conservation of the Living Resources of the High Seas (Geneva, 29 April 1958), *ibid.*, vol. 559, No. 8164, p. 285.

[43] A/CN.4/761, para. 155.

[44] *Ibid*., para. 168.

[45] *Ibid*., para. 183.

23. In relation to permanent sovereignty over natural resources, the Co-Chairs' preliminary observations include the following: (a) the principle of permanent sovereignty over natural resources is a rule of customary international law according to which a State cannot be deprived of its inherent and inalienable sovereign right over its natural resources, including marine resources; (b) the loss of marine natural resources important for the economic development of States as a result of sea-level rise would be contrary to the principle of permanent sovereignty over natural resources, whereas the legal and practical solution of the preservation of existing maritime entitlements would be consistent with this principle.[46]

24. In relation to the possible consequences on the rights and obligations of third States in maritime zones resulting from any landward shift of the baseline because of sea-level rise, resulting in a landward shift of the maritime zones, the preliminary observations include the following: (a) in cases where the baseline or outer limits of the baseline move landward, third States stand to gain additional rights overall to those to which they would otherwise be entitled; (b) these gains are at the considerable expense of the coastal State; (c) consideration should also be given to equity where one party stands to gain significantly more than another for circumstances that are not caused by the coastal State, as such changes in maritime entitlements bring the risk of creating uncertainty, instability and the possibility of disputes; (d) the preservation of existing rights and obligations – in other words, maintaining the *status quo* of maritime entitlements established in accordance with international law and the United Nations Convention on the Law of the Sea – would not result in any loss to either party.[47]

25. On nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation, the preliminary observations include the following: (a) nautical charts are principally used for the purposes of the safety of navigation, and the depiction of baselines or maritime zones is a supplementary function; (b) there is no evidence of general practice among States of updating their baselines on their nautical charts for the purposes of the safety of navigation under the United Nations Convention on the Law of the Sea or other sources of international law; and (c) there is no evidence of State practice in support of the view that an obligation exists under the Convention or other sources of international law to regularly revise charts for the purposes of updating baselines or maritime zones.[48]

26. Regarding other sources of law – such as relevant multilateral, regional and bilateral treaties or other instruments relating, for example, to fisheries management or the high seas that define maritime zones, or the 1959 Antarctic Treaty[49] and its 1991 Protocol on Environmental Protection,[50] the treaties of the International Maritime Organization defining pollution or search and rescue zones, or the 2001 Convention on the Protection of the Underwater Cultural Heritage,[51] and the regulations of relevant international organizations such as the International Hydrographic Organization –[52] the Co-Chairs make the following preliminary observation: sources of law other than the United Nations Convention on the Law of the Sea, as examined, are of very limited, if any, relevance.[53]

## B. Statehood

27. The second issues paper,[54] submitted in 2022, constituted an initial and preliminary approach to the question of statehood. Its purpose was to introduce the main aspects of the

[46] *Ibid*., para. 194.
[47] *Ibid*., para. 214.
[48] *Ibid*., para. 249.
[49] The Antarctic Treaty (Washington, 1 December 1959), United Nations, *Treaty Series*, vol. 402, No. 5778, p. 71.
[50] Protocol on Environmental Protection to the Antarctic Treaty (Madrid, 4 October 1991, and Stockholm, 17 June 2005 (Annex VI)), *ibid.*, vol. 2941, No. 5778, p. 3. See also *International Legal Materials*, vol. 30 (November 1991), p. 1461, and vol. 45 (January 2006), No. 1, p. 5.
[51] Convention on the Protection of the Underwater Cultural Heritage (Paris, 12 November 2001), *ibid.*, vol. 2562, part I, No. 45694, p. 3.
[52] A/76/10, para. 294 (a).
[53] A/CN.4/761, para. 280.
[54] A/CN.4/752 and Add.1; see, in particular, paras. 417–424.

issue and to present some points for discussion and an exchange of views. Although the starting point was that sea-level rise is a global phenomenon, emphasis was placed on the seriousness of its effects on small island developing States in particular.

28. The requirements for the creation of a State as a subject of international law were set out on the basis of the 1933 Convention on Rights and Duties of States,[55] which is the most usual reference on the matter. The Study Group also considered the 1936 Institute of International Law resolution concerning the recognition of new States and new Governments;[56] the Commission's 1949 draft Declaration on Rights and Duties of States;[57] the draft articles on the law of treaties presented to the Commission in 1956 by Special Rapporteur Sir Gerald Fitzmaurice;[58] and the opinions of the Arbitration Commission of the International Conference on the Former Yugoslavia (Badinter Commission) of 1991.[59] Examples were provided of actions taken by States, including the cases of Governments in exile in certain circumstances, and by other subjects of international law, and attention was drawn to elements of certain international instruments that demonstrate the right of the State to ensure its own preservation, in accordance with international law and without prejudice to the rights of other members of the international community.

29. At the same time, with regard to statehood in relation to sea-level rise, a number of situations to be taken into account were identified, such as the possibility that the land area of a State could be completely covered by the sea or rendered uninhabitable, potentially resulting in, among other things, an insufficient supply of drinking water for the population. Questions were also raised about the rights and legal status of nationals of particularly affected States when they were displaced to other States and countries, including the possible implementation of dual nationality or a common citizenship to preserve the link with the State of origin, provide protection and assistance to such persons and prevent situations of *de facto* statelessness. Other issues examined included the legal status of the Government of a State needing to take up residence in the territory of another State; the preservation by the States particularly affected of their rights and legal entitlements in respect of the maritime areas under their jurisdiction and the resources therein, and the need to maintain maritime boundaries established pursuant to agreements or judicial or arbitral decisions; and the right to self-determination of the populations of States and countries particularly affected by sea-level rise, including their right to preserve identities of various kinds.

30. Reference was also made to the fact that the measures adopted by States to address sea-level rise include the installation or reinforcement of coastal barriers, coastal defences and polders, and the construction of artificial islands to accommodate persons affected by sea-level rise. Attention was also drawn to the high costs of such measures and the need to evaluate their environmental impact.

31. Emphasis was placed on the legitimate interest of the States most directly affected by the phenomenon and on the importance of exploring possible alternatives regarding statehood, which could be considered by the United Nations or in the context of other international forums and organizations. The presumption in favour of continuing statehood was highlighted, and options or modalities were presented which, depending on case-by-case assessments and consultations with the populations concerned with regard to the right to self-determination, and also considering the interests of present and future generations, could include the ceding of a portion of territory by another State, with or without transfer of sovereignty; association with another State; establishment of or incorporation into confederations or federations; unification with another State; and possible development of hybrid or *ad hoc* schemes. Ideas and examples were provided that could be considered

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

[56] Institute of International Law, "Resolutions concerning the recognition of new States and new Governments" (Brussels, April 1936), *American Journal of International Law*, vol. 30, No. 4, Supplement: Official Documents (October 1936), pp. 185–187.

[57] Yearbook of the International Law Commission 1949, pp. 287 ff.

[58] Yearbook of the International Law Commission 1956, vol. II, document A/CN.4/101, pp. 107 ff.

[59] See "Conference on Yugoslavia Arbitration Commission: opinions on questions arising from the dissolution of Yugoslavia" (introductory note by M. Ragazzi), International Legal Materials, vol. 31, No. 6 (November 1992), pp. 1488 ff.

individually, or, depending on the circumstances, elements of different options could be combined.

32. In the 2024 additional paper[60] to the second issues paper (2022), it was noted that sea-level rise is a multidimensional global phenomenon that varies from one region of the world to another, but is of an existential nature for low-lying coastal States, archipelagic States, small island States and small island developing States, whose land territory may become completely or partially covered by the sea or become uninhabitable. The purpose of affirming this existential nature is not to cast doubt on the continuity of the States that are particularly affected by this phenomenon, but to highlight how it affects people's lives, the availability of water resources, the possibility of carrying out economic activities and the functioning of the State, which, for this very reason, faces a range of challenges and can take various measures to ensure its own preservation and provide for its population.

33. In the examination of statehood in the additional paper to the second issues paper, particular attention was paid to the discussions on the subject in the Commission's Study Group on the topic in 2022, the statements delivered on behalf of States in the Sixth Committee of the General Assembly in 2022 and 2023 and the submissions provided by States to the Commission through its secretariat, as well as other statements on the subject delivered by States either individually or as members of groups such as the Pacific Islands Forum.

34. One key issue that was emphasized is the distinction between situations in which the requirements set out in article 1 of the Convention on Rights and Duties of States, which is used as a reference for determining whether a State has been created and constituted as a subject of international law, have been met and situations where States that already exist as subjects of international law no longer meet all of those requirements.

35. The second issues paper and the additional paper conclude that there is a strong presumption in favour of continuing statehood and international legal personality for States whose land territory is partially or completely submerged or rendered uninhabitable by climate change-related sea-level rise. In this regard, the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, adopted by the leaders of the Pacific Islands Forum members on 9 November 2023, is of particular significance.[61]

36. In the 2023 Pacific Islands Forum Declaration, it is recognized that, under international law, there is a general presumption that a State, once established, will continue to exist and endure, and maintain its status and effectiveness, and that international law does not contemplate the demise of statehood in the context of climate change-related sea-level rise.[62]

37. It is essential to emphasize the right of the State concerned to safeguard its own existence by taking various measures – preferably of an environmentally sustainable nature – to ensure the maintenance of its territory, which is understood to be a unit, with a view to preserving its land area – whether or not covered by the sea – and the maritime areas or spaces under its jurisdiction, as well as the relevant legal entitlements. This right also includes the conservation and sustainable use of the natural resources existing therein, over which the State has permanent sovereignty in accordance with international law, and the preservation of its biodiversity and ecosystems. In this way, the State also safeguards and provides for its population, taking into consideration both present and future generations.

[60] A/CN.4/774 and Add.1; see, in particular, paras. 294–301.

[61] The text of the Declaration is available at https://forumsec.org/publications/2023-declaration-continuity-statehood-and-protection-persons-face-climate-change. Subsequently, an important development in relation to this matter was the adoption of the Declaration on Sea-Level Rise and Statehood by the Heads of State and Government of the Alliance of Small Island States on 23 September 2024. The text of the Declaration is available at https://www.aosis.org/aosis-leaders-declaration-on-sea-level-rise-and-statehood/. The main aspects of this Declaration are addressed below.

[62] A/CN.4/774 and Add.1, para. 87.

38. The idea is not to afford new rights to the States affected by sea-level rise, but to ensure the preservation of their legitimate rights and entitlements under international law, including those relating to their living or non-living natural resources and to the exploitation and sustainable use of those resources for the benefit of present and future generations of their populations. On the contrary, going against legal certainty and validly acquired rights would give rise to manifestly unjust, inequitable, arbitrary and unpredictable situations and serious risks for international peace and security. This could occur if there are limitations to or reductions in the maritime areas under the jurisdiction of the States concerned and, in the event that the land territory of those States becomes completely submerged, it is assumed that the States have ceased to exist or have lost the maritime areas under their jurisdiction, along with the resources existing therein, and that their nationals have become stateless persons.[63]

39. At the same time, it is important to emphasize the applicability of the principles of self-determination, protection of the territorial integrity of the State, sovereign equality of States and their permanent sovereignty over their natural resources, the maintenance of international peace and security, the stability of international relations and international cooperation.

40. Another relevant issue is the fact that, considering the progressive nature of the phenomenon of sea-level rise, different scenarios may be distinguished in respect of statehood, essentially between situations in which the land surface of the State concerned is affected by erosion, salinization and partial submergence, and may become uninhabitable despite not being totally covered by the sea, and other situations in which the land surface of the State concerned is totally submerged.

41. In addressing these situations from the perspective of statehood, it is necessary, as the Secretary-General has observed, to think of innovative legal and practical solutions to address the impacts of sea-level rise. Thus, on the basis of the strong presumption of continuity of the State, and always with respect for the right to self-determination of the populations of the States and countries most directly affected, including Indigenous Peoples, modalities may be suggested but are not intended to be univocal or exclusive answers. In some cases they could be made feasible through agreements between the States directly affected by the phenomenon and third States or with the cooperation of other States, or in the context of universal organizations – especially in the United Nations system – or regional organizations.

42. Among the practical aspects to be considered is the use of digital platforms through which nationals of States affected by the phenomenon who are in third States can connect with their State of origin and have access to certain services, such as the issuance or renewal of personal documentation. It should also be considered that, pursuant to changes in domestic laws or the conclusion of bilateral or multilateral agreements between the State most directly affected by the phenomenon and other States, nationals of that State may be able to acquire the nationality of one of the other States without losing their nationality of origin, or that, under a broader agreement, for example in the context of a confederation, the nationals of each State may acquire a common citizenship, which would not replace the nationality of origin.[64]

43. It would also be necessary to take into account the legal issues surrounding the possible establishment of the Government of a State directly affected by sea-level rise in the territory of another State, as well as other issues which, with regard to the independence of the State directly affected and without producing situations of subordination, concern the preservation of the international legal personality of that State, the maintenance of its membership of international organizations and the performance of its functions with respect to its nationals residing in other States, the maritime spaces under its jurisdiction and the resources existing therein.[65]

44. Depending on the circumstances of each case, on consultations with the populations concerned and on agreements that could be reached with other States or international organizations, the modalities to be employed for the purpose of statehood could include the

[63] *Ibid.*, para. 110.
[64] *Ibid.*, paras 106–108.
[65] *Ibid.*, paras 112–114.

ceding of a portion of territory, with or without transfer of sovereignty; association with other States; the establishment of a confederation; integration into a federation; unification with another State, including the possibility of a merger; or *ad hoc* formulas or regimes.

45. In the Study Group, there was general support for the views of the Co-Chair regarding statehood.[66] Accordingly, the Study Group supported the continuity of statehood and agreed that the criteria in article 1 of the Convention on Rights and Duties of States, generally accepted as establishing the requirements for the existence of a State as a subject of international law, did not address as such the question of the continuity of statehood. Indeed, State practice had revealed a degree of flexibility in the application of international law to the issues of statehood. The aforementioned 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, which presumed the continuity of statehood regardless of the impact of sea-level rise, was particularly illustrative. Drawing on the additional paper to the second issues paper, the Study Group discussed various bases for the continuity of statehood, including the right of States to preserve their existence, the role of recognition in the continuity of statehood, the right of each State to defend its territorial integrity, the right of peoples to self-determination and consent on the part of the State facing a loss of habitable territory. Reference was also made to security, stability, certainty and predictability, equity and justice, sovereign equality of States, permanent sovereignty of States over their natural resources, the maintenance of international peace and security, the stability of international relations and international cooperation.

46. In discussing scenarios relating to statehood in the context of sea-level rise, the Study Group agreed that a distinction should be drawn between situations of partial submergence of land surface that would be uninhabitable and situations of total submergence as a result of the phenomenon. States had a right to provide for their preservation, which could take many forms, including various adaptation measures to reduce the impacts of sea-level rise. International cooperation for such efforts was considered essential. Various possible future modalities were considered by the Study Group and reference was made to the need to consult and cooperate in good faith with the populations concerned, including Indigenous Peoples, and the need for international cooperation between affected States and other members of the international community based on the sovereign equality of States, as well as considerations of equity and fairness.[67]

## C. Protection of persons affected by sea-level rise

47. The second issues paper[68] contains a mapping exercise of the existing legal frameworks potentially applicable to the protection of persons affected by sea-level rise, followed by a preliminary mapping exercise of State practice and the practice of relevant international organizations and bodies regarding the protection of persons affected by sea-level rise. On the basis of those mapping exercises, preliminary observations and guiding questions for the Study Group on the subtopic are presented.

48. According to the preliminary observations on this subtopic in the second issues paper:[69]

(a) The current international legal frameworks that are potentially applicable to the protection of persons affected by sea-level rise are fragmented, mostly non-specific to sea-level rise but generally applicable in the context of disasters and climate change, and often of a soft-law character. Such international legal frameworks could be further developed in a more specific, coherent and complete manner in order to effectively protect persons who remain *in situ* or have to move because of the impact of sea-level rise;

[66] Report of the Commission to the General Assembly on the work of its seventy-fifth session, *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 10* (A/79/10), para. 42.
[67] *Ibid.*, para. 43.
[68] A/CN.4/752.
[69] *Ibid.*, paras. 429–434.

(b) A preliminary assessment of State practice shows that it is still sparse at the global level, but that it is more developed in States that are already feeling the impact of sea-level rise on their territory. Some of the practice that it has been possible to identify is not necessarily specific to sea-level rise, since it covers the wider phenomena of disasters and climate change, but it reveals relevant principles that may be used as guidance for the protection of persons affected by sea-level rise. International organizations and other bodies with relevant mandates in the field of human rights, displacement, migration, refugees, statelessness, labour, climate change and finance have been taking a proactive approach in order to promote practical tools to enable States to be better prepared with regard to issues related to human rights and human mobility in the face of climate displacement, including in the context of sea-level rise;

(c) Given the complexity of the issues at hand and taking account of the mapping exercise of the applicable legal frameworks and emerging practice presented in the second issues paper, it can be concluded that the principles applicable to the protection of persons affected by sea-level rise could be further identified and developed by the Study Group and the Commission;

(d) This identification and development exercise could build on the draft articles on the protection of persons in the event of disasters,[70] which provide a general framework for disaster response and the protection of persons, namely with regard to human dignity (draft article 4), human rights (draft article 5), the duty to cooperate (draft article 7) and the role of the affected State (draft article 10). This framework could be further developed to reflect the specificities of the long-term or permanent consequences of sea-level rise and to take account of the fact that affected persons may remain *in situ*, be displaced within their own country or migrate to another State in order to cope with or avoid the effects of sea-level rise;

(e) In addition to instruments of international and regional human rights law, other existing instruments that could usefully be taken into consideration in this respect include the Guiding Principles on Internal Displacement (1998),[71] the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009),[72] the New York Declaration for Refugees and Migrants (2016),[73] the Global Compact for Safe, Orderly and Regular Migration (2018),[74] the Sendai Framework for Disaster Risk Reduction 2015–2030 (2015)[75] and the Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (2015).[76] Guidance could also be drawn from the International Law Association's Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea-level Rise;[77]

(f) This exercise should also incorporate the relevant emerging practice of States and relevant international organizations and bodies, mapped in a preliminary and illustrative form in Part Three, section III, of the second issues paper. Special attention should be paid to recent decisions, such as that by the Human Rights Committee in *Teitiota v. New Zealand*,[78] according to which the effects of climate change, namely sea-level rise, in receiving States may expose individuals to a violation of their rights under articles 6 (right to life) or 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment)

[70] *Yearbook … 2016*, vol. II (Part Two), para. 48. It should be noted that, in the meantime, the General Assembly decided in 2024 to elaborate and conclude a legally binding instrument on the protection of persons in the event of disasters, by the end of 2027 at the latest. General Assembly resolution 79/128 of 4 December 2024, para. 4.

[71] E/CN.4/1998/53/Add.2, annex.

[72] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala, 23 October 2009), United Nations, *Treaty Series*, vol. 3014, No. 52375, p. 3.

[73] General Assembly resolution 71/1 of 19 September 2016.

[74] General Assembly resolution 73/195 of 19 December 2018, annex.

[75] General Assembly resolution 69/283 of 3 June 2015, annex II.

[76] Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol. 1 (December 2015).

[77] Resolution 6/2018, annex, in International Law Association, *Report of the Seventy-eighth Conference, Held in Sydney, 19–24 August 2018*, vol. 78 (2019), p. 35.

[78] CCPR/C/127/D/2728/2016.

of the International Covenant on Civil and Political Rights,[79] thereby triggering the *non-refoulement* obligations of sending States, and that given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

49. Based on the preliminary observations and the discussions in the Study Group in 2022, the Co-Chair (Ms. Galvão Teles) listed a number of points that she intended to further examine in the additional paper to complement the second issues paper with respect to the subtopic of protection of persons affected by sea-level rise, without prejudice to the possibility of further examining other issues as appropriate.[80]

50. The additional paper to the second issues paper[81] contains an analysis of selected developments in State practice and in the practice of international organizations; an analysis of relevant legal issues identified in the second issues paper that could constitute possible elements for legal protection of persons affected by sea-level rise, also building on the discussions in the Study Group and in the Sixth Committee and on the recent developments in State practice and in the practice of international organizations; and a brief discussion of possible future outcomes.

51. According to the preliminary observations on the protection of persons affected by sea-level rise in the additional paper to the second issues paper:[82]

(a) Developments since 2022, when the second issues paper was prepared, reveal that State practice and the practice of international organizations is continuing to evolve with regard to the protection of persons affected by sea-level rise. Such practice will likely develop further as several important advisory opinions are expected to be issued soon by international courts and tribunals, in particular the International Court of Justice and the Inter-American Court of Human Rights;

(b) The development of such practice allows some clarification as to existing levels of protection and existing protection frameworks, leaving room, however, for further development and clarification;

(c) In the second issues paper and the additional paper, and although no specific, dedicated legal framework exists, possibilities have been explored with regard to the extent to which existing principles and rules may apply to the protection of persons, in relation to such elements as human dignity, protection of persons in vulnerable situations, non-discrimination, protection of displaced persons, *non-refoulement*, avoidance of statelessness and the protection of cultural heritage. The additional paper has also covered the different obligations of different duty bearers, the importance of combining a needs-based and rights-based approach and the key relevance of international cooperation for the protection of persons affected by sea-level rise.

52. As elements for legal protection of persons affected by sea-level rise, the following are proposed in the additional paper:[83]

(a) the protection of human dignity applies as an overarching principle in the protection of persons affected by sea-level rise;

(b) a combination of needs-based and rights-based approaches should be taken as the basis for the protection of persons affected by sea-level rise;

(c) general human rights obligations – including with regard to civil, political, economic, social and cultural rights – apply in the context of the protection of persons affected by sea-level rise;

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

[80] A/77/10, paras. 234 and 236.

[81] A/CN.4/774.

[82] *Ibid.*, paras. 302–306.

[83] *Ibid.*, paras. 186–290 and 305.

(d) there are different human rights duty bearers in the context of sea-level rise and the scope of their obligations may differ;

(e) the protection of persons in vulnerable situations must be ensured in the context of sea-level rise, and the principle of non-discrimination respected;

(f) the principle of *non-refoulement* is significantly relevant in the context of the protection of persons affected by sea-level rise;

(g) the Global Compact for Safe, Orderly and Regular Migration and other soft-law instruments contain guidelines relevant to the protection of persons displaced as a result of sea-level rise;

(h) complementary protection in the context of refugee law may be applicable to persons affected by sea-level rise;

(i) States could develop humanitarian visas and similar administrative policies for the protection of persons affected by sea-level rise;

(j) States could develop tools for the avoidance of statelessness in the context of sea-level rise;

(k) the principle of international cooperation, including through institutional pathways for inter-State, regional and international cooperation, is key to ensuring the protection of persons affected by sea-level rise;

(l) the cultural heritage of individuals and groups that might be affected by sea-level rise should be protected.

53. As to possible future outcomes, these elements, and potentially others, could be used for the interpretation and application of hard- and soft-law instruments that are applicable *mutatis mutandis* to the protection of persons affected by sea-level rise, and/or could be included in a dedicated hard- or soft-law instrument at the regional or international level for the protection of persons affected by sea-level rise.[84]

54. The Study Group agreed with the Co-Chairs' conclusion contained in the additional paper that the current international legal frameworks that were potentially applicable to the protection of persons affected by sea-level rise were fragmented and mostly not specific to sea-level rise.[85]

55. The Study Group welcomed the analysis in the additional paper of possible elements for the legal protection of persons affected by sea-level rise based on such current international legal frameworks, such as human dignity as a guiding principle for any action to be taken in the context of sea-level rise; the need for combined needs-based and rights-based approaches as the basis for the protection of persons affected by sea-level rise; the need to delineate human rights obligations of different human rights duty bearers; the recognition of the importance of general human rights obligations in the context of the protection of persons affected by sea-level rise; the acknowledgement of the various tools that may be applicable to address the protection of persons; and the importance of the duty to cooperate for the protection of persons in the context of sea-level rise.[86]

56. The Study Group held a broad discussion of the 12 elements contained in the additional paper, which could be used for the interpretation and application of hard- and soft-law instruments applicable to the protection of persons affected by sea-level rise, and/or could be included in further such instruments concluded at the regional or international level. It was noted that such elements could be further developed and specified, and could be restructured according to their varying legal relevance.[87]

[84] *Ibid.*, para. 306.
[85] A/79/10, para. 44.
[86] *Ibid.*
[87] *Ibid.*

# IV. Debate in the Sixth Committee of the General Assembly and submissions by Member States to the Commission

## A. Law of the sea

57. In the first issues paper, the Co-Chairs of the Study Group observed that in the course of the debate in the Sixth Committee at the seventy-second session of the General Assembly, in 2017, 15 Member States had requested the inclusion of the topic in the programme of work of the Commission,[88] and that at the seventy-third session, in 2018, 50 statements had mentioned the topic following its inclusion.[89] Subsequently, in the additional paper to first issues paper,[90] the Co-Chairs reported that in 2021, 67 delegations delivered 69 statements in the Sixth Committee that referred to the topic, and that in 2022, 67 delegations delivered 68 statements.[91] While the majority of the statements delivered in 2022 referred to the subtopics of statehood and the protection of persons affected by sea-level rise, 17 statements also referred to issues related to the law of the sea in connection with sea-level rise.[92]

58. Significant developments in the views of States may be observed between 2020 and 2024. In the first issues paper, in 2020, the Co-Chairs observed that it was early to draw a definitive conclusion on the emergence of a particular or regional customary rule (or even of a general customary rule) of international law regarding the preservation of baselines and of outer limits of maritime zones measured from the baselines.[93] However, since then, a very strong trend – indeed, a convergence of views – has emerged among States across different regions in support of the following views: (a) that the United Nations Convention on the Law of the Sea does not require baselines or maritime zones to be modified because of climate change-related sea-level rise; (b) that the preservation of baselines and maritime zones is directly linked to stability, certainty and predictability; (iii) that there is no obligation under the Convention to review baselines and accordingly update nautical charts to account for changes to the coast as a result of sea-level rise; and (d) that the principle of fundamental change of circumstances cannot be applied to terminate or suspend maritime boundary agreements.

59. This trend and convergence of views has been observed by many States. For example, the United States of America recognized that new trends were developing in the practices and views of States on the need for stable maritime zones in the face of sea-level rise.[94] The

[88] A/CN.4/740 and Corr.1, para. 8.

[89] *Ibid*., para. 9.

[90] A/CN.4/761, paras. 12 and 14.

[91] The plenary debate in the Sixth Committee as pertains to the topic is reflected in the summary records contained in the documents cited in the following footnotes, which contain a summarized form of the statements made by delegations. The full texts of the statements made by delegations participating in the plenary debate are available from the Sixth Committee's web page, at https://www.un.org/en/ga/sixth/.

[92] Croatia (A/C.6/77/SR.25, paras. 28–30); European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Montenegro, North Macedonia and Serbia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia, the Republic of Moldova and Ukraine) (A/C.6/77/SR.26, paras. 36–40); India (A/C.6/77/SR.26. paras. 91–92); United States of America (A/C.6/77/SR.27, para. 7); Romania (A/C.6/77/SR.27, para. 12); Germany (A/C.6/77/SR.27, para. 40); Cuba (A/C.6/77/SR.27, para. 83); Antigua and Barbuda (on behalf of the Alliance of Small Island States) (A/C.6/77/SR.28, para. 2); Samoa (on behalf of the Pacific small island developing States) (A/C.6/77/SR.28, para. 2); Thailand (A/C.6/77/SR.28, para. 96); Micronesia (Federated States of) (A/C.6/77/SR.28, para. 110–111); Cyprus (A/C.6/77/SR.28, para. 119); Indonesia (A/C.6/77/SR.29, para. 11); Papua New Guinea (A/C.6/77/SR.29, para. 20); Türkiye (A/C.6/77/SR.29, para. 48); New Zealand (A/C.6/77/SR.29, paras. 5556); and Bulgaria (A/C.6/77/SR.29, paras. 65–66).

[93] A/CN.4/740 and Corr.1, para. 104 (i).

[94] United States (A/C.6/78/SR.24**,** para. 70; see also A/C.6/77/SR.27, para. 6). See also United States, The White House, "Fact Sheet: Roadmap for a 21st-Century U.S.-Pacific Island Partnership", 29 September 2022:

European Union noted with great satisfaction that an ever-increasing number of States had expressed the view that the United Nations Convention on the Law of the Sea did not forbid or exclude the option of fixing or freezing baselines and had stressed the importance of interpreting the Convention with a view to preserving maritime zones.[95] Germany also stated that it was pleased to note that an ever-increasing number of States seemed to share that view, as highlighted in the Commission's report,[96] and that no State had contested that approach, not even States whose own laws provided for regular reviews and updates of baselines and outer limits.[97] Other States have also recognized this trend.[98] Estonia stated that State practice already generally supported the preservation of existing maritime delimitations.[99] The Philippines observed that there was a growing consensus among Member States that the Convention did not forbid or exclude the option of fixing baselines, and that Member States had stressed the importance of preserving maritime zones, noting that the Convention did not prohibit the freezing of baselines.[100] At an earlier session, Denmark, speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), had remarked on the evolving nature of State practice.[101]

### 1. Legal stability and the preservation of baselines and maritime zones

60. In the course of the debate in Sixth Committee at the seventy-eighth session of the General Assembly, in 2023, many Member States from different regions affirmed their interpretation of the United Nations Convention on the Law of the Sea as allowing coastal States to preserve baselines and maritime zones that have been lawfully established under the Convention and international law, regardless of the physical changes to the coastline as a result of sea-level rise. Many States expressly linked such preservation to the need to ensure legal stability, certainty and predictability.

61. States from the Caribbean and Latin America regions, for example, expressed support in favour of preservation of baselines and maritime zones, linking such preservation to legal stability, certainty and predictability.

62. Jamaica stated that while the drafters of the United Nations Convention on the Law of the Sea could not have foreseen the challenges now faced in respect of sea-level rise resulting from climate change, they had laid down principles by which States might delimit their boundaries, and that those boundaries, once established, must be preserved, acknowledged and respected especially in the context of sea-level rise. In its Maritime Areas Act, Jamaica had, like many other States, adopted legislation to preserve its baselines and maritime zones. The preservation of States' maritime rights was deeply connected to the preservation of their statehood.[102]

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Sea-level rise: The United States is adopting a new policy on sea-level rise and maritime zones. This policy recognizes that new trends are developing in the practices and views of States on the need for stable maritime zones in the face of sea-level rise, is mindful of the Pacific Island Forum's Declaration [on] Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, commits to working with Pacific island States and other countries toward the goal of lawfully establishing and maintaining baselines and maritime zone limits, and encourages other countries to do the same.

95 European Union (in its capacity as observer) (A/C.6/78/SR.23, para. 54).

96 A/78/10, paras. 141–142.

97 Germany (A/C.6/78/SR.24, para. 52).

98 See, for instance, Davor Vidas and David Freestone, "Legal certainty and stability in the face of sea-level rise: trends in the development of State practice and international law scholarship on maritime limits and boundaries", in *International Journal of Marine and Coastal Law*, vol. 37, No. 4 (November 2022), pp. 673–725; and Frances Anggadi, "What States say and do about legal stability and maritime zones, and why it matters", in *International and Comparative Law Quarterly*, vol. 71, No. 4 (October 2022), pp. 767–798.

99 Estonia (A/C.6/78/SR.24, para. 45).

100 Philippines (A/C.6/78/SR.28, para. 66).

101 Denmark (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/73/SR.20, para. 57).

102 Jamaica (A/C.6/78/SR.28, para. 31). See also the statement by Jamaica in 2019 (A/C.6/74/SR.27, paras. 2–3), in which it expressed hope that the Commission's work on sea-level rise would spur the

63. Cuba, following its statements in 2021 and 2022,[103] drew attention in 2023 to the economic consequences in relation to legal stability, stating that baselines and maritime boundaries should not be subject to change as a result of sea-level rise, which would imply an additional expense that would be very difficult for small island States to assume, in addition to the legal insecurity generated owing to the loss of natural resources necessary for the economy of those States.[104]

64. The Bahamas, in its submission to the Commission in 2024, explained that it was an archipelagic State that had declared baselines enclosing its archipelagic waters, consistent with the requirements of article 47 of the United Nations Convention on the Law of the Sea and under its domestic legislation. According to the Bahamas, once States had deposited details of their maritime baselines in accordance with the Convention, they did not update them, as evidenced by prevailing State practice, including that of the Bahamas in its legislation, and by the absence of any provisions in the Convention requiring revision or updates of such baselines.[105]

65. Moreover, the Bahamas underscored the importance of legal stability in the context of negotiated maritime boundaries. It expressed support for the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise and the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, and endorsed the 2024 Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood.[106]

66. Argentina, during the debate in the Sixth Committee at the seventy-eighth session of the General Assembly, in 2023, similarly expressed the view that if the baselines and the outer limits of the maritime spaces of a coastal or archipelagic State had been duly determined in accordance with the United Nations Convention on the Law of the Sea, which also reflected customary international law, there should be no requirement to readjust those baselines and outer limits should sea-level changes affect the geographical reality of the coastline.[107]

67. Chile, which in its statement in 2021 had expressed its agreement on the need for stability, security, certainty and predictability and the need to preserve the baselines and outer limits of maritime zones,[108] reiterated this position in its statement in 2023, stating that legal stability was dedicated to, and inherently linked to, the preservation of maritime zones as they were before the effects of sea-level rise, and that there was no requirement for States affected by sea-level rise to update notifications of coordinates and charts, even if the physical coast moved landward because of sea-level rise.[109]

development of the international law on climate change in a manner that supported security and stability and protected the most vulnerable communities and States.

[103] Cuba (A/C.6/76/SR.21, para. 31, and A/C.6/77/SR.27, para. 83).

[104] Cuba (A/C.6/78/SR.25), para. 91).

[105] Submission of the Bahamas in 2024, p. 1. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.

[106] *Ibid.*, pp. 2–3. Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, 6 August 2021, available at https://forumsec.org/publications/declaration-preserving-maritime-zones-face-climate-change-related-sea-level-rise; Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, 9 November 2023, available at https://forumsec.org/publications/reports-communique-52nd-pacific-islands-leaders-forum-2023; and Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood, 23 September 2024, available at https://aosis-website.azurewebsites.net/aosis-leaders-declaration-on-sea-level-rise-and-statehood/.

[107] Argentina (A/C.6/78/SR.28, para. 8). See also Argentina (A/C.6/76/SR.22, para. 32.

[108] Chile (A/C.6/76/SR.21, para. 55).

[109] Chile (A/C.6/78/SR.24, para. 96). See also Chile (A/C.6/76/SR.21, para. 56); and A/CN.4/761, para. 84.

68. Chile further noted that no States, not even those that had national legislation providing for ambulatory baselines, had contested the proposed interpretation of the United Nations Convention on the Law of the Sea in favour of fixed baselines.[110]

69. Guatemala, highlighting the impact of sea level-rise on small island developing States and developing coastal States, in particular countries in Central America and the Caribbean, agreed with the view of members of the Study Group that the concept of legal stability was encapsulated in the United Nations Convention on the Law of the Sea and contributed to the maintenance of peace and security. It noted that it was difficult to separate that concept from others, such as the principle of the immutability of borders.[111]

70. Colombia, which had initially approached the issues with some caution,[112] in its submission to the Commission in 2024 took a clear position that existing baselines and resulting maritime rights should be preserved, regardless of the physical changes caused by sea-level rise. Colombia added that its position was in line with the practice of other States, which maintained that there was no legal obligation to modify or update baselines according to physical changes resulting from rising sea levels.[113]

71. Colombia, while not a State party to the United Nations Convention on the Law of the Sea, agreed with the Co-Chairs' preliminary observations that the Convention did not prohibit the freezing of baselines and, in general, supported a reading that allowed for a more appropriate approach to the effects of rising sea levels. It agreed with other States that there was no obligation to adjust baselines as sea levels rose or fell.[114]

72. Colombia presented practical reasons for preserving stable maritime zones, some of which had been discussed in the first issues paper. First, the stability of maritime zones guaranteed the legal security necessary for the exercise of sovereignty in the territorial sea and for the management, preservation and sustainable exploitation of natural resources, both living and non-living, within the exclusive economic zone and the continental shelf. That was essential for the planning and development of economic activities such as fishing or hydrocarbon exploration, which depended on a clear framework regarding the areas in which they could be carried out.[115]

73. Second, Colombia noted that maintaining the stability of maritime borders facilitated international cooperation on issues such as the conservation of marine ecosystems, maritime traffic control and interdiction activities in the zone.[116]

74. Third, Colombia stated that any change in baselines or maritime borders as a result of rising sea levels could create difficulties in the application of international maritime law, generating instability and compromising peace and security in some regions.[117]

75. However, in the Sixth Committee in 2023, Brazil, while reaffirming the importance of legal stability, took a more cautious position, noting that current State practice regarding baselines and maritime zones was not sufficient to identify a clear rule on ambulatory or fixed baselines. Nonetheless, Brazil acknowledged that the United Nations Convention on the Law of the Sea did not set out explicitly any obligation to update published baselines.[118]

76. From the North American region, both Canada and the United States expressed support for the preservation of baselines and maritime zones. Canada recognized the

[110] Chile (A/C.6/78/SR.24, para. 96).
[111] Guatemala (A/C.6/78/SR.27, paras. 80–81).
[112] Colombia (A/C.6/78/SR.27, para. 44): it expressed concern that many base points and baselines, as well as maritime boundaries between States, had not yet established, and any emerging consensus on the preservation of existing maritime boundaries must balance concerns over sea-level rise and the need for States to establish their maritime boundaries in accordance with the applicable law of the sea.
[113] Submission of Colombia in 2024, p. 3. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[114] *Ibid.*, p. 6.
[115] *Ibid.*, pp. 3–4.
[116] *Ibid.*, p. 4.
[117] *Ibid.*
[118] Brazil (A/C.6/78/SR.23, para. 98).

particular concerns of many countries, including the members of the Pacific Islands Forum and the Alliance of Small Island States, and noted that sea-level rise would have life- changing consequences for many Canadian citizens, including coastal Indigenous Peoples. Recalling its own extensive coastlines, Canada reiterated the importance of maintaining stability of the jurisdiction of coastal States and preserving the legitimacy of baselines, maritime zones and associated rights and entitlements established in accordance with international law.[119]

77. The United States reiterated its commitment not to challenge lawfully established baselines and maritime zone limits that were not updated despite sea-level rise caused by climate change. It urged States that had not made similar commitments to do so to promote the stability, security, certainty and predictability of maritime entitlements that were vulnerable to sea-level rise.[120] It should be added that in a previous submission to the Commission, the United States had reported that it did not have a practice of modifying its maritime boundary delimitation agreements based on changes due to seal-level rise.[121]

78. States from Europe expressed clear support for the preservation of baselines and the outer limits of maritime zones.

79. Denmark, speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), stated that the Nordic States agreed with the members of the Study Group who had stated that sea-level rise was of direct relevance to the question of peace and security. The Co-Chairs had acknowledged that the Nordic countries had referred to predictability and stability in a statement before the Sixth Committee in 2021. Denmark clarified that the Nordic countries agreed that the fixing of baselines or outer limits could provide legal stability, especially for States affected by sea-level rise.[122]

80. The European Union and its member States expressed agreement with the preliminary observations of the Study Group and an increasing number of States that the United Nations Convention on the Law of the Sea did not forbid or exclude the preservation of baselines and the outer limits of maritime zones in the context of climate change-induced sea-level rise once established and deposited with the Secretary-General in accordance with the Convention, as a legal way to ensure the preservation of maritime zones and their legal stability.[123]

81. Bulgaria, Cyprus, Germany, Hungary and Slovenia expressly aligned themselves with the statement by the European Union, and provided additional comments.

82. Specifically, Germany, reiterating its view as presented in its submission to the Commission at its seventy-fourth session,[124] stated that a contemporary reading and interpretation of the rules regarding the stability of baselines established in the United Nations Convention on the Law of the Sea allowed for the freezing of baselines and outer limits of maritime zones once they had been duly established and, as applicable, published and deposited in accordance with the Convention.[125]

83. In relation to submerged territories, Germany added that the principle of legal stability should apply to baselines and maritime zones derived from islands and rocks, pursuant to

[119] Canada (A/C.6/78/SR.25, para. 119).

[120] United States (A/C.6/78/SR.24, paras. 69–70); and submission of the United States in 2024, p. 2, available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.

[121] Submission of the United States in 2022, p. 2. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.

[122] Denmark (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/78/SR.23, paras. 70–71). It further clarified the view of the Nordic States that that concept must be approached with caution, however, with full respect for the United Nations Convention on the Law of the Sea and taking into consideration all possible implications, including those concerning existing rights and obligations under international law.

[123] European Union (in its capacity as observer) (A/C.6/78/SR.23, para. 54).

[124] Submission of Germany in 2022, pp. 1–2. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms. See also Germany (A/C.6/76/SR.21, para. 80).

[125] Germany (A/C.6/78/SR.24, para. 52).

article 121, paragraphs 1 and 3, of the United Nations Convention on the Law of the Sea, when those natural land features were subsequently submerged owing to sea-level rise.[126]

84. The submission of Germany to the Commission in 2022 was referred to in detail in the additional paper to the first issues paper.[127] In its submission in 2023, Germany reiterated its view:

> [S]tates, while being entitled to update their baselines, are under no obligation to do so, even when the low-water line changes due to sea-level rise. From this it follows that the territory and maritime zones remain stable until the coastal [S]tate decides to update them. This solution to preserving the territory and maritime zones of [S]tates can be reached in a manner consistent with the United Nations Convention on the Law of the Sea, namely through a contemporary reading and interpretation of its intents and purposes, rather than through the development of new customary rules. In this way, the integrity of the Convention as it stands can be preserved, and legal uncertainty in the maritime domain can be prevented.[128]

85. Bulgaria, reiterating its previous position, stated in 2023 that the United Nations Convention on the Law of the Sea did not contain a legal obligation for States to regularly review and update their baselines and the delimitation of their maritime boundaries that had been established in accordance with the applicable rules of the Convention.[129] It cautioned that "[C]onclusions that a periodic review should be carried out by States could potentially have a negative impact on the relations between coastal States and may affect the stability in different regions of the world, especially in cases of already established maritime delimitations."[130]

86. Hungary agreed with the conclusion that there existed no obligation to regularly update baselines and shared the view that it was essential to maintain legal stability.[131]

87. Cyprus had, before the Sixth Committee at previous sessions of the General Assembly, expressed the view that coastal States should be entitled to designate permanent baselines pursuant to article 16 of the United Nations Convention on the Law of the Sea, and that baselines must be permanent and not ambulatory, in order to ensure greater predictability with regard to maritime boundaries, in line with the Convention and international jurisprudence.[132] In its statement in 2023, Cyprus stressed that legal stability with regard to baselines and maritime zones was vital for the preservation of the rights of coastal States under international law, and it welcomed observation of the Study Group that the concept of legal stability contributed to the maintenance of international peace and security. It added its view that the Convention did not forbid or exclude the possibility of preserving maritime zones by fixing or freezing of baselines.[133]

88. Estonia, in its statement in the Sixth Committee at the seventy-sixth session of the General Assembly, in 2021, had recalled the need to preserve legal stability, security, certainty and predictability in international relations.[134] In 2023, at the seventy-eighth session, it expressly linked stability, predictability and certainty to the preservation of existing maritime boundaries. It stated that the same principle of stability of and respect for existing boundaries would apply to maritime boundaries, which shared the same function of demarcating the extent of the sovereignty and the sovereign rights of a State, and that the

[126] Germany (*Ibid.*, para. 53).
[127] A/CN.4/761, para. 91; and submission of Germany in 2022 (see footnote 124 above).
[128] Submission of Germany in 2023, p. 4. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[129] Bulgaria (A/C.6/78/SR.28, para. 18; and A/C.6/77/SR.29, para. 66).
[130] Bulgaria (statement in 2023, p. 3; available from https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_bulgaria_1.pdf) (see also A/C.6/77/SR.29, para. 66).
[131] Hungary (A/C.6/78/SR.24, para. 51).
[132] Cyprus (A/C.6/76/SR.22, paras. 103–104; and A/C.6/77/SR.28, paras. 120–121).
[133] Cyprus (A/C.6/78/SR.28, para. 44).
[134] Estonia (A/C.6/76/SR.21, para. 119).

need to preserve legal stability and prevent conflict in international relations must be kept in mind.[135]

89. Greece reiterated its view that predictability, stability and certainty, which were inherent in the United Nations Convention on the Law of the Sea and guided its application, required the preservation of baselines and of the outer limits of maritime zones, and of the entitlements deriving therefrom.[136] The Convention did not impose an obligation on States to review or recalculate baselines or outer limits of maritime zones that had been established in accordance with its provisions and deposited with the Secretary-General. Baselines and outer limits of maritime zones were therefore not affected by climate change-related sea-level rise unless a coastal State chose to review and update them.[137] Greece added that concepts such as equity and the principle that "the land dominates the sea" must be examined in the light of the principle of stability of boundaries and the need to preserve baselines and outer limits of maritime zones.[138]

90. France, in its statement in the Sixth Committee in 2021, had expressed its opinion that the principles of stability, security, certainty and predictability, which were key underpinnings of the United Nations Convention on the Law of the Sea, were equally relevant to the issue of sea-level rise, and that the Commission should therefore be guided by those principles when addressing issues related to the consequences of sea-level rise, especially in its work on the nature of baselines and outer limits of maritime zones and on the status of islands, rocks and low-tide elevations.[139] Subsequently, in its submission to the Commission in 2022, France stated that "[t]he Convention leaves it to coastal States to decide whether to make modifications to this data, which means that so long as a coastal State does not decide to make such modifications, the initially declared data remains in force".[140] France also considered that the notion of "other natural conditions" under article 7, paragraph 2, of the Convention could be understood to apply to situations resulting from sea-level rise.[141] That view was shared by Germany.[142]

91. On the issue of stability, Italy emphasized the importance of ensuring stability, security and legal certainty with regard to maritime delimitation and expressed support for the view that the issue of legal stability was closely connected to the preservation of maritime zones as they had been before the effects of sea-level rise. In that regard, Italy considered that the United Nations Convention on the Law of the Sea did not seem to preclude baselines from being considered as fixed. It reiterated its position in favour of seeking solutions that did not involve modifications to applicable international law, with particular reference to the Convention. At the same time, it welcomed the suggestion by the Study Group that a meeting of States parties to the Convention might be considered with a view to interpreting the instrument and its relevant provisions.[143]

92. Romania had previously reported that its national legislation could be interpreted as favouring an ambulatory system of baselines, and that preserving the baselines and outer limits of maritime zones was crucial to legal stability.[144] At the seventy-eighth session, Romania once again expressed its support for the interpretation that the United Nations Convention on the Law of the Sea did not forbid or exclude the option of fixing baselines and the outer limits of maritime zones as a legal solution to ensure the preservation of maritime zones in the context of climate change-induced sea-level rise.[145]

93. Similarly, Ireland reported its own practice whereby normal baselines were ambulatory and were determined by the low-water line along the coast as marked on the

[135] Estonia (A/C.6/78/SR.24, para. 44).
[136] Greece (A/C.6/78/SR.27, para. 107; see also A/C.6/76/SR.22, para. 129).
[137] Greece (A/C.6/78/SR.27 para. 107).
[138] Greece (*ibid.*, para. 108).
[139] France (A/C.6/76/SR.20, para. 46).
[140] Submission of France in 2022, p. 2. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[141] *Ibid.*
[142] Germany (A/C.6/78/SR.24, paras. 52–54; see also A/CN.4/761, para. 91).
[143] Italy (A/C.6/78/SR.23, para. 127).
[144] Romania (A/C.6/76/SR.21, para. 21; A/C.6/77/SR.27, para. 12; see also A/CN.4/761, para. 66).
[145] Romania (A/C.6/78/SR.25, para. 14).

officially recognized charts, which were revised from time to time.[146] In its statement at the seventy-eighth session, Ireland stated that, as was now widely acknowledged, the drafters of the United Nations Convention on the Law of the Sea had assumed stable sea levels; however, such an assumption was no longer valid. Ireland agreed with other delegations that arrangements must now be made to ensure that baselines established in accordance with the Convention were to be regarded as permanently settled. Only through such arrangements would it be possible to achieve the legal stability needed to avoid future conflict while also properly reflecting the principle of a State's permanent sovereignty over its natural resources, including those located within its duly delineated maritime limits.[147] In the view of Ireland, an effective and pragmatic way both to preserve States' maritime limits in the context of rising sea levels and to maintain the integrity of the Convention could found by drawing on the precedents established by the two decisions taken at the meetings of States Parties to the Convention in 2001[148] and 2008[149] on the interpretation of article 4 of annex II to the Convention relating to the 10-year period for making submissions to the Commission and to the content of any such submission, respectively. For example, at a meeting of States Parties to the Convention, it could be decided that, as a result of rising sea levels, the baselines established by a State party in accordance with the Convention on the date on which it entered into force for that State were to be regarded as permanent. A decision of that type would constitute a subsequent agreement between States parties regarding the interpretation of the Convention or the application of its provisions, as contemplated by article 31, paragraph 3 (a), of the Vienna Convention on the Law of Treaties.[150]

94. Slovenia was also of the view that the United Nations Convention on the Law of the Sea did not forbid or exclude the option of fixing baselines and preserving maritime zones, and expressed support for the view that the Convention must be interpreted in such a way as to effectively address the challenges posed by sea-level rise and provide practical guidance to affected States.[151]

95. In addition to the statements reflected above, the following States emphasized legal stability, certainty and predictability and the preservation of baselines and maritime zones. Slovakia expressed a positive view of the option of fixing baselines and preserving maritime zones, in the interests of predictability and security in the affected regions.[152] Türkiye noted that it stood ready to contribute to efforts under the auspices of the United Nations to support small island developing States and maintain legal certainty, security, predictability and stability in relation to maritime zones.[153] Poland stated that the United Nations Convention on the Law of the Sea and corresponding customary law, as well as general principles of international law, were aimed at ensuring the stability of such boundaries.[154] Portugal observed that if baselines were considered ambulatory, sea-level rise would inevitably affect the delineation of maritime entitlements. As a result, the rights and obligations of States, including sovereign rights, associated with certain maritime areas were likely to be affected.[155] Liechtenstein expressed its appreciation for efforts to institutionalize the fixing of maritime zones, so that they could not be challenged or reduced as a result of sea-level rise.[156]

96. Malta stated that no effort should be spared to ensure that any sovereign nation whose territorial integrity was affected by sea-level rise did not lose any existing rights. It also took

[146] Submission of Ireland in 2022, p. 1. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[147] Ireland (A/C.6/78/SR.25, para. 42).
[148] SPLOS/72.
[149] SPLOS/183.
[150] Ireland (A/C.6/78/SR.25, para. 43).
[151] Slovenia (A/C.6/78/SR.27, para. 13) (see also statement in 2023, p. 5; available from https://www.un.org/en/ga/sixth/78/summaries.shtml#27mtg).
[152] Slovakia (A/C.6/78/SR.25, paras. 22–23).
[153] Türkiye (A/C.6/78/SR.27, para. 94).
[154] Poland (A/C.6/78/SR.24, para. 36).
[155] Portugal A/C.6/78/SR.24, para. 82).
[156] Liechtenstein (A/C.6/78/SR.23, para. 115).

note of the Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise issued by the Pacific Islands Forum in 2021.[157]

97. The United Kingdom of Great Britain and Northern Ireland, in its submission to the Commission in 2024, reported in detail on its position on the subtopic of issues related to the law of the sea as set out in a written ministerial statement made on 28 October 2024 by the Minister of State for Development. According to that written statement:

> [The United Nations Convention on the Law of the Sea] sets out the legal basis on which States can establish [baselines and maritime zones]. When [the Convention] was drafted, significant sea-level rise and changes in coastlines as a result of the climate crisis were not contemplated by the drafters, and no provision was made for this. However, with sea-level rise, coastlines are likely to regress, and some features may be completely inundated and lost.[158]

98. The written ministerial statement went on:

> Once a State has established its maritime zones in accordance with [United Nations Convention on the Law of the Sea], it is permitted to maintain those maritime zones, and the rights and entitlements that flow from them, notwithstanding changes to coastlines and physical features that result from sea-level rise caused by the climate crisis.[159]

99. The United Kingdom also drew attention in its submission to the Apia Commonwealth Ocean Declaration, adopted on 26 October 2024 at the Commonwealth Heads of Government Meeting held in Samoa from 21 to 26 October 2024, and specifically to paragraph 13 thereof, which provided as follows:

> [We, the Heads of Government of the Commonwealth:] In view of the urgent threat of climate change-related sea-level rise, and the fundamental need to secure the rights, entitlements, and interests of all States and peoples of the Commonwealth, *affirm* that members can maintain their maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with [the United Nations Convention on the Law of the Sea], and the rights and entitlements that flow from them, [which] shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.[160]

100. The Kingdom of the Netherlands had previously underscored the principles of legal certainty, stability and security and the primacy of the United Nations Convention on the Law of the Sea.[161] However, in its statement in 2023, it clarified that it had not yet taken a position on whether the Convention contained an obligation to regularly review and update baselines and outer limits of maritime zones.[162]

101. Many Member States from the Asian region expressed their positions in favour of the preservation of baselines and maritime zones and the importance of legal stability, certainty and predictability.

102. Indonesia, in its statement in the Sixth Committee at the seventy-eighth session of the General Assembly, in 2023, stated that the principles of legal stability, certainty and predictability should be respected and the balance of rights and obligations under the United Nations Convention on the Law of the Sea should be preserved. The stability of baselines and outer limits of maritime zones, as established under the Convention, should be maintained, irrespective of sea-level rise. Existing maritime boundary agreements should be respected; the law of treaties should prevail.[163] In its statement at the seventy-ninth session, in 2024, Indonesia highlighted the need to ensure that States retained their rights over

[157] Malta (A/C.6/78/SR.27, para. 36).
[158] Submission of the United Kingdom in 2024, para. 4. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[159] *Ibid.*, para. 4.
[160] *Ibid.*, para. 5. See also https://thecommonwealth.org/apia-commonwealth-ocean-declaration.
[161] Netherlands (Kingdom of the) (A/C.6/76/SR.20, para. 76; see also A/CN.4/761, para. 64).
[162] Netherlands (Kingdom of the) (A/C.6/78/SR.24, para. 59).
[163] Indonesia (A/C.6/78/SR.27, para. 68).

maritime zones and resources, which were essential for the survival and prosperity of their populations.[164]

103. Japan, in 2023, stressed that legal stability and predictability based on international law were the necessary foundations for States to tackle the challenges posed by sea-level rise. For that reason, the primacy of the United Nations Convention on the Law of the Sea, which set out the legal framework for all activities in the oceans and seas, must be maintained. Taking into account the Commission's work on the topic and State practice, such as the adoption of the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise by the leaders of the Pacific Islands Forum, Japan had officially taken the position that it was permissible to preserve existing baselines and maritime zones established in accordance with the Convention, notwithstanding the regression of coastlines caused by climate change.[165]

104. The Philippines, noting that there was a growing consensus among Member States that the United Nations Convention on the Law of the Sea did not forbid or exclude the option of fixing baselines and that Member States had stressed the importance of preserving maritime zones, also noted that the Convention did not prohibit the freezing of baselines. The approach to sea-level rise must be based on legal stability, security, certainty and predictability in international law. In that regard, it drew attention to the Co-Chair's observation that Member States had adopted a pragmatic approach, referring to legal stability as inherently linked to the preservation of maritime zones.[166]

105. The Republic of Korea recalled that in May 2023, acknowledging the special circumstances faced by Pacific islands and their related concerns in relation to sea-level rise, it had expressed its support for the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, in which the leaders of the Pacific Islands Forum had proclaimed that maritime zones established in accordance with the United Nations Convention on the Law of the Sea and the rights and entitlements that flowed from them would continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.[167]

106. Singapore, with respect to agreed and adjudicated maritime boundaries, expressed agreement with the preliminary observation of the Co-Chairs that, in the interests of promoting the stability of and respect for existing maritime boundaries, the applicability of treaties and the decisions of international courts or tribunals delimiting such boundaries should not be easily called into question.[168]

107. Thailand noted that no State, regardless of its economic power, geographical size or military might, was immune from the effects of rising sea levels. It reiterated that it attached great importance to legal stability, and that maritime boundaries, once determined by treaties or through decisions of international courts and tribunals, should be final, regardless of sea-level rise. Furthermore, the sovereign and jurisdictional rights of States in each maritime zone, as enshrine in the United Nations Convention on the Law of the Sea, must be protected.[169]

108. Viet Nam stated that it attached the utmost importance to the examination from a legal perspective of sea-level rise, its consequences for the sustainable development of States and even the territory of small island States, and the broader stability and security of international relations. The United Nations Convention on the Law of the Sea was of paramount importance in addressing maritime concerns, including those stemming from sea-level rise. It stressed the need for legal stability and agreed that the concept was encapsulated in the Convention. Consequently, maritime boundaries established in accordance therewith should remain unchanged despite the effects of sea-level rise.[170]

[164] Indonesia (A/C.6/78/SR.27, para. 30).
[165] Japan (A/C.6/78/SR.28, para. 13).
[166] Philippines (A/C.6/78/SR.28, para. 66).
[167] Republic of Korea (A/C.6/78/SR.28, para. 16).
[168] Singapore (A/C.6/78/SR.23, para. 82; see also A/C.6/76/SR.20, para. 23).
[169] Thailand (A/C.6/78/SR.25, paras. 67–68; see also A/C.6/77/SR.28, para. 96).
[170] Viet Nam (A/C.6/78/SR.25, para. 87; see also A/C.6/76/SR.21, para. 83).

109. Malaysia stated that it shared the view of several Member States that there was no provision in the United Nations Convention on the Law of the Sea that obligated States parties to update their baselines or that prohibited the freezing of baselines. Malaysia noted that it was still a matter of debate whether baselines were permanent or ambulatory, and that sea-level rise should not be used to legitimize measures to preserve maritime spaces without the existence of credible scientific assessment that corroborated the risks posed. The Study Group should prepare concrete solutions to the practical problems of States directly affected by sea-level rise rather than considering possible interpretations of the Convention or preparing proposals to amend it.[171]

110. China, as other States, recognized that issues related to sea-level rise had not been under discussion at the time of conclusion of the United Nations Convention on the Law of the Sea, which provided that fixed baselines could be established in only two cases: where the coastline was highly unstable because of the presence of a delta and other natural conditions (art. 7, para. 2); and in the case of the outer limits of the continental shelf (art. 76, para. 9). Unlike other States, though, China was of the view that it should not be presumed that the Convention permitted the use of fixed baselines in other instances.[172] However, it should be noted that China supported the view expressed by the Co-Chairs that the principle that the "land dominates the sea" should not be rigidly applied.[173] The Russian Federation expressed a similar view, stating that the rights over maritime spaces depended not on the land *per se*, but on sovereignty over the coastline.[174]

111. Several Member States from Asia, while not making statements in the Sixth Committee at the seventy-eighth or seventy-ninth sessions of the General Assembly, had at previous sessions expressed support for the approach that the United Nations Convention on the Law of the Sea allowed for the preservation of baselines and maritime zones: for example, Sri Lanka,[175] Maldives[176] and Jordan.[177]

112. Several States from the African region expressed support for the preservation of baseline and maritime zones and noted the relationship to legal stability.

113. Cameroon stated that the preservation of baselines and maritime entitlements gave expression not only to the foundational principles of equity and legal stability, but also to notions of climate justice that were deeply rooted in human rights and general principles of international law. The principle of the immutability of borders was fundamental and the States with national legislation providing for ambulatory baselines should continue to interpret the United Nations Convention on the Law of the Sea as requiring the fixing of baselines.[178] Côte d'Ivoire stated that it shared the views expressed in favour of the immutability and intangibility of maritime boundaries, subject to further study of the case of submerged territories.[179] Eritrea, in its statement at the seventy-ninth session, emphasized the need for stable maritime zones and stressed the importance of preserving baselines and maritime boundaries and protecting States' sovereign and jurisdictional rights over their maritime spaces, in accordance with traditional sources of international law.[180] Sierra Leone, in its statement, emphasized that the principle that maritime zones must remain intact if the baseline changed as a result of sea-level rise was "vital to preserving the economic

[171] Malaysia (A/C.6/78/SR.27, paras. 56–57; see also A/C.6/76/SR.21, para. 154).
[172] China (A/C.6/78/SR.27, para. 73).
[173] China (A/C.6/78/SR.27, para. 74). However, in the same statement, China went on to express disagreement with the Co-Chairs. It recalled that, in their discussion of the principle that the "land dominates the sea" in the additional paper to the first issues paper, the Co-Chairs cited judgments of the International Court of Justice reflecting the Court's view that the distance criterion superseded the principle of natural prolongation. China stated that it did not agree with that view: the continental shelf system was established on the basis of the principle of natural prolongation, which should therefore be fully respected.
[174] Russian Federation (A/C.6/78/SR.26, para. 60).
[175] Sri Lanka (A/C.6/76/SR.21, para. 111).
[176] Maldives (A/C.6/75/SR.13, paras. 57–58; and A/C.6/76/SR.21, paras. 140–141).
[177] Jordan (A/C.6/76/SR.24, paras. 126–127).
[178] Cameroon (A/C.6/78/SR.25, paras. 99–100).
[179] Côte d'Ivoire (A/C.6/78/SR.28, para. 21).
[180] Eritrea (A/C.6/79/SR.22, para. 56).

livelihoods of African coastal and small island States, which depend on maritime resources for survival".[181]

114. Other Member States from the African region had previously expressed support for the approach of preserving baselines and the outer limits of maritime zones, including Egypt[182] and Algeria.[183]

115. From the Middle East region, Lebanon stated that legal stability was inherently linked to the preservation of maritime zones.[184] The Islamic Republic of Iran, referring to the judgment of the International Court of Justice in the 1969 *North Sea Continental Shelf* cases, in which the Court had expressed the principle that "the land dominates the sea", noted that the question arose as to what would happen to delimitation lines when a State lost land territory.[185]

116. The Pacific island States have consistently advocated an interpretation of the United Nations Convention on the Law of the Sea that supports the preservation of baselines and maritime zones that have been established and deposited with the Secretary-General in compliance with the Convention. These views were reiterated in the Sixth Committee at the seventy-eighth session of the General Assembly, with some additional views.

117. Fiji, speaking on behalf of the Pacific Islands Forum, drew attention to the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, adopted by the leaders of the Forum in 2021:

> The Declaration represents our formal, collective view on how [United Nations Convention on the Law of the Sea] rules on maritime zones apply amid climate change-related sea-level rise, rooted in its underpinning legal principles, in particular those of stability, security, certainty and predictability.[186]

Australia,[187] Micronesia (Federated States of),[188] Papua New Guinea[189] and New Zealand[190] aligned themselves with this statement.

118. Papua New Guinea reaffirmed its support for the Study Group's preliminary observation, contained in the first issues paper, that the United Nations Convention on the Law of the Sea did not exclude an approach based on the preservation of baselines and outer limits of maritime zones in the face of climate change-related sea-level rise, once information about such maritime zones had been established and deposited with the Secretary-General. It noted that preservation of the maritime rights of States was closely linked to the continuity of statehood and permanent sovereignty over natural resources.[191]

119. The Federated States of Micronesia echoed the observation of the Co-Chairs, in the additional paper to the first issues paper, that the loss of maritime resources as a result of climate change-related sea-level rise would be contrary to the principle of permanent sovereignty over natural resources, which was a principle of customary international law. Indeed, international law generally favoured legal stability with respect to the existence and

[181] Statement of Sierra Leone in 2024, para. 27. Available from https://www.un.org/en/ga/sixth/79/summaries.shtml#21mtg. See also Sierra Leone (A/C.6/79/SR.21, para. 78).
[182] Egypt (A/C.6/76/SR.20, para. 58).
[183] Algeria (A/C.6/76/SR.22, para. 99).
[184] Lebanon (A/C.6/78/SR.28, para. 56).
[185] Iran (Islamic Republic of) (A/C.6/78/SR.24, para. 115); and *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.
[186] Statement of Fiji, on behalf of the Pacific Islands Forum, in 2023, para. 8. Available from https://www.un.org/en/ga/sixth/78/summaries.shtml#23mtg. See also Fiji (on behalf of the Pacific Islands Forum) (A/C.6/78/SR.23, para. 56).
[187] Australia (A/C.6/78/SR.23, para. 90).
[188] Micronesia (Federated States of) (A/C.6/78/SR.27, para. 49).
[189] Papua New Guinea (A/C.6/78/SR.27, para. 88).
[190] New Zealand (A/C.6/78/SR.25, para. 123).
[191] Papua New Guinea (A/C.6/78/SR.27, paras. 87–88).

scope of State sovereignty once lawfully established, including with regard to permanent sovereignty over natural resources.[192]

### 2. Updating of charts

120. Following up on discussions in the Study Group in 2021, the Co-Chairs, in the additional paper to the first issues paper, examined the purpose and functions of nautical charts and whether there was an obligation under the United Nations Convention on the Law of the Sea or other sources of international law for States to update nautical charts in relation to coastlines that were receding owing to sea-level rise. In conducting the study, the Co-Chairs drew on the following: State practice according to submissions and statements of Member States; [193] information provided to the Commission by the International Hydrographic Organization and the International Maritime Organization;[194] and a survey by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, of charts or lists of geographical coordinates deposited with the Secretary-General.[195]

121. According to the preliminary observations of the Co-Chairs: (a) nautical charts are principally used for the purposes of the safety of navigation, and the depiction of baselines or maritime zones is a supplementary function; (b) there is no evidence of general practice among States of updating their baselines on their nautical charts for the purposes of the safety of navigation under the United Nations Convention on the Law of the Sea or other sources of international law; and (c) there is no evidence of State practice in support of the view that an obligation exists under the Convention or other sources of international law to regularly revise charts for the purposes of updating baselines or maritime zones.

122. The latter preliminary observation – that there is no evidence of State practice in support of the view that an obligation exists for States to regularly revise charts for the purposes of updating baselines or maritime zones – is supported by the statements and submissions of many Member States from across different regions and by statements of regional bodies.

123. Brazil, while taking the view that current State practice regarding baselines and maritime zones was not sufficient to identify a clear rule on ambulatory or fixed baselines, acknowledged that the United Nations Convention on the Law of the Sea did not set out explicitly any obligation to update published baselines.[196] Chile agreed with the decision of Member States affected by sea-level rise not to update their notifications of coordinates and charts, thus fixing their baselines even if the physical coastline moved landward because of sea-level rise.[197] Jamaica underscored the view expressed by Samoa on behalf of the Alliance of Small Island States that States did not have a legal obligation under the Convention to keep the baselines and outer limits of their maritime zones under review or update charts or list of geographical coordinates after depositing them with the Secretary-General in accordance with the provisions of the Convention. [198] Colombia stated that, despite the variable nature of the baselines – their potential modification owing to the evolution of the coast and the low-water line – there was no specific obligation to modify or update the official maps representing them.[199]

124. The European Union and its member States noted that while the principle that "the land dominates the sea" was an underlying premise for the attribution of maritime zones, it did not necessarily imply that coastal States would be legally obliged to periodically review or update the relevant charts and coordinates. More precisely, States were not under an express obligation under the United Nations Convention on the Law of the Sea to periodically review and update the charts on which straight baselines were shown, or the list of

[192] Micronesia (Federated States of) (A/C.6/78/SR.27, para. 52).
[193] A/CN.4/761, paras. 216–228.
[194] *Ibid.*, paras. 235–241.
[195] *Ibid.*, paras. 242–244.
[196] Brazil (A/C.6/78/SR.23, para. 98).
[197] Chile (A/C.6/78/SR.24, para. 96). See also A/CN.4/761, para. 84.
[198] Jamaica (A/C.6/78/SR.28, para. 31).
[199] Submission of Colombia in 2024, p. 3 (see footnote 113 above).

geographical coordinates of the points from which straight baselines were drawn.[200] Bulgaria,[201] Germany,[202] Portugal,[203] Romania[204] and Greece[205] individually aligned themselves with this position.

125. Denmark, speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), likewise expressed the view that there was no explicit provision in the United Nations Convention on the Law of the Sea requiring States parties to update their published baselines and outer limits of maritime zones. However, it noted that there was a difference between legally freezing baselines and not updating published baselines.[206]

126. Ireland observed that the fact that the United Nations Convention on the Law of the Sea did not impose on States an express obligation to resurvey straight baselines regularly or deposit with the Secretary-General revised charts or lists of coordinates was helpful in developing a pragmatic legal solution. The question of how to fix baselines formed by the low-water line along the coast was more problematic; however, it still believed that a pragmatic solution could be found.[207]

127. In its submission to the Commission in 2022, Ireland also expressed the following view:

> [C]oastal States are not required by the [United Nations Convention on the Law of the Sea] to deposit details of normal baselines with the Secretary-General as the low-water line along the coast may be established from the relevant official large-scale charts, being nautical charts produced to the relevant international standard, suitable and reliable for navigation.[208]

128. The Kingdom of the Netherlands, in its submission to the Commission in 2022, explained its national practice of regularly updating the maritime limits on its nautical charts, noting that those "changes are not deposited with the Secretary-General of the United Nations on a regular basis".[209] However, it also noted, in its statement in 2023, the Commission's observations that the United Nations Convention on the Law of the Sea contained no explicit provision requiring States to regularly review and update their baselines and outer limits of maritime zones, and clarified that it had not yet taken a position on that question.[210]

129. France expressed a clear position, in its submission to the Commission in 2022, that the United Nations Convention on the Law of the Sea "does not provide for an obligation to update the charts and lists of geographical coordinates, once published pursuant to its provisions".[211]

130. Germany, in its submission to the Commission in 2024, observed:

> There appears to be a high level of convergence that [the United Nations Convention on the Law of the Sea] does not impose any obligation on coastal States to regularly review or update their baselines, delimitation lines or the outer limits of their maritime zones, provided these have been delineated in accordance with the Convention and their charts and lists of geographical coordinates have duly been published and deposited with the Secretary-General of the United Nations.

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200 European Union (in its capacity as observer) (A/C.6/78/SR.23, paras. 53–54.
201 Bulgaria (A/C.6/78/SR.28, para. 18).
202 Germany (A/C.6/78/SR.24, para. 52).
203 Portugal (A/C.6/78/SR.24, para. 81).
204 Romania (A/C.6/78/SR.25, para. 14).
205 Greece (A/C.6/78/SR.27, para. 107).
206 Denmark (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/78/SR.23, para. 72).
207 Ireland (A/C.6/78/SR.25, para. 43).
208 Submission of Ireland in 2022 (see footnote 146 above), p. 2.
209 Submission of the Kingdom of the Netherlands in 2022, p. 2. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
210 Netherlands (Kingdom of the) (A/C.6/78/SR.24, para. 59).
211 Submission of France in 2022 (see footnote 140 above), p. 4.

> Consequently, such baselines, delimitation lines and outer limits remain stable unless and until the coastal State voluntarily decides to update them.[212]

131. The United Kingdom, in its submission to the Commission in 2024, reported that according to a written ministerial statement:

> [The] Government takes the view that [the United Nations Convention on the Law of the Sea] imposes no express or affirmative obligation on States to keep their baselines or the outer limits of maritime zones derived from them under review, or to update them once they have been established in accordance with [the Convention]. [The Convention] provides that baselines and outer limits of the maritime zones are as shown on the relevant chart or specified by coordinates. It does not expressly require coastal States to update those charts or coordinates. This position is consistent with the object and purpose of [the Convention] as a regime for securing a stable division of maritime space.[213]

132. A number of States from the Asian region were also of the view that the United Nations Convention on the Law of the Sea did not prescribe an obligation to update charts or coordinates once they had been duly deposited.

133. Indonesia expressed the view that charts or lists of geographical coordinates of baselines that had been deposited with the Secretary-General pursuant to the United Nations Convention on the Law of the Sea should remain in effect.[214] According to Malaysia, there was no provision in the Convention that obligated States parties to update their baselines or that prohibited the freezing of baselines.[215] Singapore agreed that there was no obligation under the Convention to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates once deposited with the Secretary-General, although the one caveat was that such baselines and outer limits must have been defined in strict accordance with the Convention.[216] The Philippines, in its submission to the Commission, reported its own practice:

> The updating of charts due to coastal changes is done as soon as possible for [the] purposes of navigational safety and coastal zone management. … However, absent clear legal guidance on the matter, [the national mapping agency] would seek the concurrence of relevant authorities before publishing such changes.[217]

134. States from the Pacific region reiterated their long-standing position, as expressed by Samoa on behalf of the Alliance of Small Island States, that States were not obligated under the United Nations Convention on the Law of the Sea to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates deposited with the Secretary-General.[218] The Federated States of Micronesia, aligning itself with that position, agreed that the Convention imposed no affirmative obligation to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates, once deposited with the Secretary-General. It noted that there existed subsequent practice that was relevant as a means of interpreting the Convention in line with the declarations of the Pacific Islands Forum and the Alliance of Small Island States; perhaps there were even subsequent agreements in that regard, at least among the States that had adopted the declarations. It stressed that a lack of action qualified as practice, especially when explained and justified by such declarations grounded in law, which represented sovereign intent to maintain the status quo with respect to baselines and outer limits of maritime zones in the face of climate change-related sea-level rise.[219] Similarly, Tonga stated

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[212] Submission of Germany in 2024, paras. 16 and 17. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms. See also submission of Germany in 2022, pp. 2–3 (see footnote 124 above).

[213] Submission of the United Kingdom in 2024 (see footnote 158 above), para. 4.

[214] Indonesia (A/C.6/78/SR.27, para. 68).

[215] Malaysia (A/C.6/78/SR.27, para. 56).

[216] Singapore (A/C.6/78/SR.23, para. 81).

[217] Submission of the Philippines in 2022, p. 2. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.

[218] Samoa (on behalf of the Alliance of Small Island States) (A/C.6/78/SR.27, para. 3).

[219] Micronesia (Federated States of) (A/C.6/78/SR.27, para. 49).

that there was no obligation under the Convention for States to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates once deposited with the Secretary-General.[220]

135. Australia noted that it was encouraging to see that the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, adopted by the leaders of the Pacific Islands Forum in 2021, had garnered support beyond the Pacific region, thus contributing to the progressive development of international law and State practice on the interpretation of the United Nations Convention on the Law of the Sea. It called for continued support for the Declaration.[221]

136. New Zealand, in its submission to the Commission in 2022, reported its own practice whereby it had not updated its nautical charts since they were deposited and noted that it did not intend to do so in the future in relation to sea-level rise.[222]

137. Notably, between 2019 and 2024, no Member States have expressed the view in the Sixth Committee or submissions to the Commission that the United Nations Convention on the Law of the Sea imposes an obligation on States parties to update maritime zones on charts or lists of geographical coordinates once they are deposited with the Secretary-General. Moreover, as observed in the additional paper to the first issues paper, there is no evidence of general practice among States of updating their baselines on their nautical charts for the purposes of the safety of navigation under the Convention or other sources of international law.[223]

### 3. Fundamental change of circumstances

138. Since 2020, many States across different regions have expressed a clear view that the principle of fundamental change of circumstances (*rebus sic stantibus*) does not apply to sea-level rise.

139. Argentina expressed agreement with the observation of the Co-Chairs of the Study Group that the principle of fundamental change of circumstances (*rebus sic stantibus*) within the meaning of the Vienna Convention on the Law of Treaties was not applicable to treaties establishing boundaries.[224] Chile stated that the principle of *rebus sic stantibus*, enshrined in article 62 of the Vienna Convention, was not applicable to maritime boundaries as a result of sea-level rise.[225] Peru stated that the principle of fundamental change of circumstances would not apply to maritime borders.[226]

140. Cyprus stated that it welcomed the observations of members of the Study Group that the principle of fundamental change of circumstances (*rebus sic stantibus*), enshrined in article 62, paragraph 1, of the Vienna Convention on the Law of Treaties, was not applicable to maritime boundaries because the latter involved the same element of legal stability and permanence as land boundaries and were thus subject to the exclusion foreseen in article 62, paragraph 2 (a), of the Vienna Convention.[227]

141. France stated that it approved of the cautious approach taken by the Study Group in addressing the principle of fundamental change of circumstances. That principle had a very narrow application, and France agreed with the Study Group's assertion that the principles of legal stability and the certainty of treaties would accordingly support an argument against the use of the principle of *rebus sic stantibus* to upset the maritime boundaries treaties resulting from the rise in sea levels.[228] Italy shared the view that sea-level rise did not

[220] Tonga (A/C.6/78/SR.28, para. 43).
[221] Australia (A/C.6/78/SR.23, para. 90).
[222] Submission of New Zealand in 2022, p. 1. Available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms.
[223] A/CN.4/761, para. 249 (b).
[224] Argentina (A/C.6/78/SR.28, para. 8).
[225] Chile (A/C.6/78/SR.24, para. 98).
[226] Peru (A/C.6/78/SR.25, para. 50).
[227] Cyprus (A/C.6/78/SR.28, para. 46; see also A/C.6/76/SR.22, para. 105, and A/C.6/77/SR.28, para. 122).
[228] France (A/C.6/78/SR.23, para. 109). See also A/78/10, para. 172.

constitute a fundamental change of circumstances under article 62 of the Vienna Convention on the Law of Treaties.[229]

142. Malta was of the view that sea-level rise could not be invoked as a fundamental change of circumstances, within the meaning of the Vienna Convention on the Law of Treaties, for the purposes of terminating or withdrawing from a treaty that established a maritime boundary.[230]

143. Estonia expressed the view that the fundamental interest of ensuring stability of boundaries with a view to preserving peaceful relations was an object and purpose of article 62, paragraph 2, of the Vienna Convention on the Law of Treaties. It shared the view that the same interest would apply to maritime boundaries, as underlined by the International Court of Justice and arbitral tribunals in cases addressing the issue. There were still many disputed maritime boundaries, and the prospect of new boundaries being created in addition to the boundaries that were already settled would create uncertainty. State practice already generally supported the preservation of existing maritime delimitations.[231]

144. Cameroon, also underscoring legal stability, stated that the principle of fundamental change of circumstances was not applicable to maritime boundaries because the latter involved the same element of legal stability and permanence as land boundaries and were thus subject to the exclusion foreseen in article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties.[232]

145. Likewise, the Islamic Republic of Iran stated that the principle of *rebus sic stantibus* would not apply to delimitation lines, as they were subject to the exclusion set forth in article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties.[233] However, the Russian Federation urged caution with regard to the argument that the principle of *rebus sic stantibus* could not be applied to maritime spaces on the grounds that the principle of legal stability and certainty applied.[234]

146. The Bahamas, in its submission to the Commission in 2024, expressed the following view:

> [T]reaties establishing [maritime] boundaries are generally regarded as having a special status, including their permanence. [Article 62, paragraph 1, of the Vienna Convention on the Law of Treaties] makes provision for the termination or withdrawal from a treaty in some cases where there has been a "fundamental change of circumstances". However, [article 62, paragraph 2 (a)], in a provision consistent with customary international law, specifically excludes treaties establishing a boundary (which include maritime boundaries) from the application of this exception. The [Vienna Convention] and customary international law support the legal stability and permanence of boundaries for the sake of peace and security. Modifying or constantly renegotiating maritime boundaries would create tremendous legal insecurity for States if their coasts were in constant flux, leading to potential conflicts and a perennial state of instability.[235]

147. It should be noted that since 2020, no Member States have expressed a contrary view in the Sixth Committee or submissions to the Commission.

[229] Italy (A/C.6/78/SR.23, para. 128; see also A/C.6/76/SR.20, para. 87).
[230] Malta (A/C.6/78/SR.27, para. 35).
[231] Estonia (A/C.6/78/SR.24, para. 43).
[232] Cameroon (A/C.6/78/SR.25, para. 101).
[233] Iran (Islamic Republic of) (A/C.6/78/SR.24, para. 116).
[234] Russian Federation (A/C.6/78/SR.26, para. 60).
[235] Submission of the Bahamas in 2024, p. 2 (see footnote 105 above).

## B. Statehood

148. Statehood issues have been widely debated in the Sixth Committee. This is clear from the relevant paragraphs of the 2022 second issues paper[236] and the 2024 additional paper[237] to the second issues paper.

149. In 2024, a large number of States made comments under the subtopic of statehood in the Sixth Committee, and some States provided submissions in writing. These comments and submissions are summarized below and are categorized under the same headings used in the additional paper to the second issues paper. Afterwards, some considerations are set out with respect to the issues raised by States.

### 1. Configuration of a State as a subject of international law and continued existence of the State

150. An important point to be borne in mind is that the intention is not to rewrite key questions of international law but to analyse, on the basis of international law, situations involving existing States from the perspective of statehood and in the specific context of sea-level rise.

151. One issue on which States commented is whether the criteria set out in article 1 of the Convention on Rights and Duties of States, which are usually considered in this connection, can be said to refer essentially to the creation or constitution of a State as a subject of international law, while the principle of continuity of statehood operates in respect of situations that may arise subsequently. This, as noted in the additional paper to the second issues paper, takes on greater force in cases such as those of the States most affected by a phenomenon such as sea-level rise.[238]

152. Following are the views or assessments of States in this regard.

153. Brazil emphasized that, while the elements set out in article 1 of the Convention on Rights and Duties of States were essential for the creation of States, they were not necessarily indispensable for the continued existence of States.[239]

154. Along the same lines, Slovenia pointed out that:

> “Although the Montevideo Convention introduced a set of criteria for an entity to qualify as a State, once acquired, statehood could not be extinguished, even if one or more of those criteria were no longer met.”[240]

155. Romania stressed that:

> “The Co-Chairs of the Study Group had rightfully concluded in their additional paper that the criteria for statehood, as outlined in article 1 of the Montevideo Convention, referred to the existence of States as subjects of international law, and that failure to meet one of those criteria, such as the loss of a defined territory, would not extinguish the legal personality of a State; that conclusion was referred to in the additional paper as ‘the presumption of continuity’.”[241]

156. Singapore, noting that it was disproportionately vulnerable to the impact of climate change-related sea-level rise, expressed its agreement with

> “the view … that a distinction should be drawn between the criteria for the establishment of a State and those for its continued existence. That approach was consistent with considerations relating to equity for small and vulnerable low-lying States facing climate change-related sea-level rise”.[242]

[236] A/CN.4/752 and Add.1, paras. 23–40.
[237] A/CN.4/774 and Add.1, paras 61–64.
[238] *Ibid.*, para. 86.
[239] A/C.6/79/SR.20, para. 73.
[240] *Ibid.*, para. 81.
[241] *Ibid.*, para. 134.
[242] A/C.6/79/SR.21, para. 22.

157. Cuba stressed that it was vital to uphold the principle that, in the event that a small island State were to lose its territory as a result of sea-level rise, it would not lose its status as a subject of international law, with all the attributes thereof. International cooperation would play an essential role in that regard.[243]

158. South Africa noted that the partial submersion or total physical disappearance of the territory of a State as a result of sea-level rise might call into question the traditionally recognized criteria or requirements for statehood reflected in article 1 of the Convention on Rights and Duties of States. The issue raised complex questions of international law and practical challenges.[244]

159. France noted that it did not yet have a definitive position on the question of whether, in the case of a State whose territory was totally submerged, there would be a presumption of the continuation of statehood.[245]

160. Portugal agreed that, while the Convention on Rights and Duties of States established objective criteria for the establishment of a State, it did not address the question of continuing statehood.[246]

161. The Kingdom of the Netherlands concurred that a distinction must be made between the criteria for the creation of a State as a subject of international law and the considerations that applied for the subsequent continued existence of the State. However, the right of self-determination of peoples was applicable to both situations.

162. State practice demonstrated the existence of a presumption of continuity, linked to the right of self-determination, in cases in which one or more criteria for statehood were no longer met. In respect of the Government, a distinction must be made between the actual exercise of authority and the right or title to exercise that authority to the exclusion of anyone else.[247]

163. Samoa, speaking on behalf of the Alliance of Small Island States, expressed the Alliance's agreement that the criteria of the Convention on Rights and Duties of States did not apply to the continuation of States.[248]

164. El Salvador expressed the view that the criteria for statehood in the Convention on Rights and Duties of States should not be applied *a contrario sensu* to deny a State continued existence.[249]

165. The Republic of Korea agreed that the Convention on Rights and Duties of States did not regulate the issue of continuity of statehood in the context of sea-level rise.[250]

166. Egypt stated that the principle of continuity of statehood confirmed that States no longer meeting all the criteria listed in the Convention on Rights and Duties of States did not lose their status as States.[251]

167. Liechtenstein noted that the Convention on Rights and Duties of States established the criteria for the existence of a State but did not address the question of loss of statehood.[252]

168. In the view of Malta, changes related to the criteria for the establishment of a State laid down in the Convention on Rights and Duties of States caused by sea-level rise should not preclude the continuation of statehood and the rights emanating therefrom.[253]

[243] *Ibid*., para. 32.
[244] *Ibid*., para. 35.
[245] *Ibid*., para. 49.
[246] *Ibid*., para. 86.
[247] *Ibid*., paras. 92–94.
[248] A/C.6/79/SR.22, para. 4.
[249] *Ibid*., para. 26.
[250] *Ibid*., para. 37.
[251] *Ibid*., para. 83.
[252] *Ibid*., para. 96.
[253] *Ibid*., para. 101.

169. New Zealand agreed that the criteria set forth in article 1 of the Convention on Rights and Duties of States related to the establishment of statehood and did not address the continuity of statehood.[254]

170. In the view of Morocco, the elements of statehood set forth in article 1 of the Convention on Rights and Duties of States reflected customary international law.[255]

171. Malaysia mentioned the need to exercise caution in respect of criteria that went beyond the Convention on Rights and Duties of States. Priority should be given to exploring precautionary solutions that would enable States directly affected by sea-level rise to preserve their statehood.[256]

172. In the view of the Russian Federation, it seemed that there were no rules of international law establishing the need for a distinction between a situation in which a State was being created and a situation in which a State already existed. However, it might be appropriate to draw such a distinction in the context of sea-level rise.[257]

173. Chile stated that there were no rules of international law in force that regulated the loss of statehood. The provisions of the Convention on Rights and Duties of States had been widely recognized as reflecting customary international law, but they did not regulate that matter.[258]

174. Jamaica pointed out that:

> "a distinction should be drawn between the criteria for the creation of a State and those for its continuity. The Montevideo Convention did not address the loss of statehood."[259]

175. Equatorial Guinea expressed the view that the Convention on Rights and Duties of States was not conclusive on the issue of continued existence of rights. Equatorial Guinea supported any principle based on the continuity of statehood in situations of sea-level rise.[260]

176. The United Republic of Tanzania believed that the criteria for the creation of a State and those for its continued existence were worth considering.[261]

177. Cyprus recognized that the criteria for the creation of a State were codified in the Convention on Rights and Duties of States and noted the Commission's analysis concerning the loss of statehood and the right of each State to preserve its continued existence and independence. The delegation cited the work of James Crawford in that regard.[262]

178. In its submission to the Commission in regard to "Sea-level rise in relation to international law: sea-level rise, statehood and protection of persons", submitted by a note dated 21 November 2024, the Bahamas expresses support for the view that the criteria of the Convention on Rights and Duties of States apply only to the creation or recognition of a State and cannot be interpreted to deny the continuation of a State.[263]

### 2. Scenarios relating to statehood in the context of sea-level rise and the right of the State to provide for its preservation

179. Given the progressive nature of sea-level rise, different scenarios based on different situations arising from this phenomenon have been posited, including the possibility that the land territory of the States most affected could be partially or completely submerged or

[254] *Ibid*., para. 121.
[255] A/C.6/79/SR.23, para. 23.
[256] *Ibid*., para. 56.
[257] A/C.6/79/SR.24, para. 31.
[258] *Ibid*., para. 43.
[259] *Ibid*., para. 58.
[260] *Ibid*., para. 88.
[261] *Ibid*., para. 111.
[262] A/C.6/79/SR.25, para. 33. See J. Crawford, *The Creation of States in International Law*, Oxford, Oxford University Press, 2006.
[263] Submission of the Bahamas in 2024. Submissions from States on the topic are available from the Commission's website: https://legal.un.org/ilc/guide/8_9.shtml#govcoms.

become uninhabitable. The State concerned could provide for its preservation by taking various measures to preserve its rights and legal entitlements, protect the land and maritime areas under its jurisdiction and the living and non-living natural resources existing therein, and provide for its population, considering both present and future generations, in accordance with the relevant rules and principles of international law.

180. Following are the comments of States in this regard.

181. The European Union, in its capacity as observer, highlighted its financial contribution and that of its member States to initiatives to improve the resilience of small island developing States' infrastructure to climate change, and emphasized the ability of peoples, including those inhabiting small island developing States, to dispose of their natural resources.[264]

182. Iceland, speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), highlighted the discussions on situations where land surface was totally or partially submerged and might become uninhabitable as a result of sea-level rise.[265]

183. The Nordic countries drew attention to existing international legal obligations that found application in the continuity of statehood and the protection of persons affected by the phenomenon.[266]

184. All measures adopted to address sea-level rise, including the continuity of statehood and the protection of persons, must be in keeping with legal stability, certainty and predictability.[267]

185. Austria believed that the Commission should confine itself to defining criteria for the continuation of statehood, drawing a clear distinction between situations of partial and complete loss of territory.[268]

186. Poland noted that, since the adoption of the Charter of the United Nations, there had been no cases of a State's involuntary extinction, and thus agreed that States had the right to preserve their existence. In the context of sea-level rise, that could be achieved through the appropriate interpretation of the criteria set out in the Convention on Rights and Duties of States and on the basis of the collective practice of States, including the recognition of the continuity of statehood by the organs of international organizations.[269]

187. Singapore agreed that States had the right to provide for their preservation. They could do so using international cooperation.[270]

188. The Kingdom of the Netherlands invited the Commission to consider different scenarios. For example, when a State was fully submerged and fully uninhabitable and its population became displaced, several issues merited further consideration, such as how the Government of a State that continued to exist could exercise jurisdiction over its population that resided in a third State, and how to implement the right of self-determination and the human rights of the population.[271]

189. Japan found it appropriate to distinguish between two possible scenarios – that of partial submergence of a State's land surface and that of its total submergence – given the progressive nature of sea-level rise.[272]

190. In the view of Türkiye, it was important to enhance the climate change adaptation capacities and resilience of developing countries through financial support and the sharing of technology, best practices and know-how.[273]

264 A/C.6/79/SR.20, para. 48.
265 *Ibid*., para. 55.
266 *Ibid*., para. 56.
267 *Ibid*., paras. 57 and 58.
268 *Ibid*., para. 98.
269 *Ibid*., para. 108.
270 A/C.6/79/SR.21, para. 22.
271 *Ibid*., para. 99.
272 A/C.6/79/SR.22, para. 14.
273 *Ibid*., para. 93.

191. Malta noted that the Coalition for Addressing Sea-level Rise and its Existential Threat supported the most affected countries and communities, enabling them to adapt.[274]

192. In the view of Nigeria, addressing sea-level rise would require unprecedented levels of international cooperation. Nigeria considered that affected States retained the right to provide for persons affected by the phenomenon, including in cases where the State's land territory had been submerged.[275]

193. New Zealand agreed that affected States had a right to provide for their preservation and that international cooperation was required.[276]

194. Morocco agreed that the Convention on Rights and Duties of States referred to the right of each State to defend its integrity and independence and to provide for its conservation and prosperity.[277]

195. Jamaica noted that its Government had implemented coastal resilience and climate change adaptation projects. International cooperation was a critical aspect to consider.[278]

196. Argentina stated that international cooperation was essential.[279]

197. The United Republic of Tanzania noted that, with ample scientific data attesting to rising sea levels and guided by the principle of common but differentiated responsibilities, States should take reasonable measures to mitigate the effects of the phenomenon.[280]

198. Bulgaria urged the international community to prioritize its support for affected communities.[281]

199. Serbia emphasized that no legal norms had been created to address the consequences of sea-level rise for statehood. The political process relating to that issue must be conducted in accordance with the principles and rules of international law, in particular those relating to State cooperation under the Charter of the United Nations.[282]

200. In its submission to the Commission in regard to "Sea-level rise in relation to international law: sea-level rise, statehood and protection of persons", submitted by a note dated 21 November 2024, the Bahamas emphasizes that small island States cannot be expected to shoulder the burden of sea-level rise alone and that the duty of cooperation compels Member States to tackle the issue.[283]

### 3. Possible alternatives for addressing the phenomenon in relation to statehood

201. In view of the words of the United Nations Secretary-General on the need to think of innovative legal and practical solutions to address the impacts of sea-level rise in terms of statehood, States' comments on possible alternatives for addressing the phenomenon are set out below.

202. Latvia, speaking on behalf of the Baltic States (Estonia, Latvia and Lithuania), noted that:

> "The Baltic States continued to believe that statehood was not affected by sea-level rise … The presumption of continuity of statehood ensured that affected States, particularly low-lying coastal and small island States, retained their sovereignty even if they lost any territory owing to sea-level rise. There was a need for legal certainty

[274] *Ibid*., para. 103.
[275] *Ibid*., paras. 106 and 107.
[276] *Ibid*., para. 121.
[277] A/C.6/79/SR.23, para. 23.
[278] A/C.6/79/SR.24, para. 61.
[279] *Ibid*., para. 80.
[280] *Ibid*., para. 109.
[281] *Ibid*., para. 117.
[282] A/C.6/79/SR.25, para. 52.
[283] Submission of the Bahamas in 2024.

in that regard, in keeping with the international principles of equity, stability and justice.”[284]

The Baltic States also stressed the importance of preventing statelessness.[285]

203. Brazil favoured the notion of continuity of statehood in the case of States whose land surface might be submerged due to sea-level rise. Any practical alternatives should not create relationships of suzerainty or subservience, nor should they result in a new form of trusteeship between formerly independent States.[286]

204. Slovenia stressed that the continuity of statehood was closely linked to the principles of self-determination, protection of the territorial integrity of States, sovereign equality of States and permanent sovereignty of States over their natural resources. There was a strong presumption of continuity of statehood and international legal personality in the case of States affected by sea-level rise.

205. Sea-level rise was a common responsibility of humankind. It was essential to preserve the legal entitlements of affected States to land and maritime areas under their jurisdiction.[287]

206. Italy highlighted the need to ensure the continuity of statehood as a key principle of international law.[288]

207. Austria expressed the view that the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise would be a useful starting point for drafting the final report on the topic as a whole.[289]

208. Poland stated that fundamental principles, such as sovereignty and the right to self-determination, should always be taken into account for the appropriate interpretation of international law.[290]

209. Mexico emphasized that security, stability, certainty, predictability, equity and justice were central to statehood. Discussions should be guided by fundamental principles of international law, such as self-determination, territorial integrity and sovereign equality of States, and the goals of maintaining international peace and security, stability in international relations and international cooperation.[291]

210. Romania pointed out that the restoration of territorialized statehood in the case of total submergence of land could be possible as a result of technological progress.

211. The total loss of territory owing to sea-level rise would not affect the right to self-determination; Romania thus recognized the importance of agreement by the concerned populations with any solution identified.[292]

212. Slovakia noted that due regard should be had for well-established principles and rules of international law. The approach that a country might take with regard to statehood would depend on its circumstances. Realistic alternatives should be analysed, including the possibility of integration with other States, for the protection of the rights of affected populations and for the preservation of the rights of States to their maritime zones, in cases of loss of land territory resulting from sea-level rise.[293]

213. Ireland noted that there were a number of principles of international law that could provide guidance on the question of continuing statehood in situations of sea-level rise. The principles of self-determination and permanent sovereignty over natural resources supported a presumption in favour of the continuity of statehood. Once a people had exercised its right

[284] A/C.6/79/SR.20, para. 61.
[285] *Ibid*., paras. 62 and 63.
[286] *Ibid*., para. 73.
[287] *Ibid*., paras. 82 and 83.
[288] *Ibid*., para. 90.
[289] *Ibid*., para. 100.
[290] *Ibid*., para. 108.
[291] *Ibid*., para. 124.
[292] *Ibid*., para. 134.
[293] *Ibid*., para. 144.

of self-determination by establishing a State, that State enjoyed permanent sovereignty over the natural resources located within its land territory and appurtenant maritime zones. Permanent sovereignty so established could not be extinguished by rising sea levels.

214. However, there were practical issues that might require further consideration, such as the implications of a State's loss of land territory in terms of the organization, funding and political independence of its Government and the provision of services by the Government to its citizens. Ireland took note of the different possible modalities mentioned, including the possibility of tailored solutions.[294]

215. Singapore supported efforts to identify legal and practical modalities by which States affected by sea-level rise could maintain legal personality and territory and continue to exercise their rights and discharge their obligations. Questions of equity and fundamental principles such as self-determination, territorial integrity and the sovereign equality of States should be taken into account.[295]

216. In the view of France, a cautious approach should be taken to applying some of the fundamental principles of international law, such as territorial integrity, non-interference and the right of self-determination, to the context of sea-level rise.[296]

217. Thailand stressed that legal stability must be taken into consideration when examining the question of statehood.[297]

218. Israel stressed the need to maintain legal stability, certainty and predictability. In addressing the impacts of sea-level rise, international cooperation between affected States and other members of the international community was required.[298]

219. Sierra Leone considered the principle of State continuity, even in cases of partial or total submergence, to be foundational. In the *Island of Palmas* case,[299] it had been emphasized that sovereignty and a State's rights were preserved despite physical territorial changes. Sierra Leone was fully aligned with the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise.[300]

220. Portugal supported the pursuit of legal solutions to the challenges posed by sea-level rise that were consistent with the cardinal principles and rules of international law, such as self-determination, sovereign equality and human dignity. It agreed that there was a general presumption of continuity of statehood.[301]

221. In the view of the Kingdom of the Netherlands, the right of self-determination was linked to the continuity of statehood not only in the context of decolonization but also in other situations. The right of self-determination beyond the colonial context was not a one-off exercise but a continuing right.

222. It could be argued that the Government continued to possess an exclusive title to exercise authority over the area within the formal boundaries of that State and over the people of that State even if they were displaced as a result of sea-level rise. That would constitute a sound legal basis for the continuity of statehood, at least in those particular situations.[302]

223. In the view of Czechia, a cautious approach should be taken to the question of the continuity of the existence of a State in the context of sea-level rise. The focus should be on

294 A/C.6/79/SR.21, para. 18.
295 *Ibid*., para. 22.
296 *Ibid*., para. 50.
297 *Ibid*., para. 54.
298 *Ibid*., para. 67.
299 *Island of Palmas (Netherlands/United States of America)*, award of 4 April 1928, United Nations, *Reports of International Arbitral Awards*, vol. II (Sales No. 1949.V.1), pp. 829 ff.
300 A/C.6/79/SR.21, para. 77.
301 *Ibid*., para. 86.
302 *Ibid*., paras. 96 and 97.

realistic and practical approaches to specific situations, taking into account the protection of persons affected by the phenomenon.[303]

224. Australia fully supported the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, which, together with the Forum's own 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, set out regional positions with respect to the novel and complex issues posed by sea-level rise. Australia was committed to transforming the Declarations into concrete action, such as the Australia-Tuvalu Falepili Union Treaty,[304] which recognized, for the first time in a legally binding instrument, the continuing statehood and sovereignty of Tuvalu, notwithstanding the impact of sea-level rise.[305]

225. In the view of Croatia, international courts and tribunals played an important role in clarifying the rules that guided the conduct of States and other actors in dealing with climate change issues, including sea-level rise.[306]

226. Samoa, speaking on behalf of the Alliance of Small Island States, stressed that the physical reality of land territory disappearing or becoming uninhabitable must not be conflated with the legal rules concerning statehood and sovereignty, including permanent sovereignty over natural resources. It also highlighted the Declaration on Sea-Level Rise and Statehood, adopted in September 2024 by the Heads of State and Government of the members of the Alliance. In the Declaration, it was stated that continuity was a principle rather than a presumption, since, in the context of sea-level rise, it would be inequitable to consider that the continuation of a State was a presumption and therefore subject to rebuttal by another State, particularly a State that was a cause of climate change. It was more appropriate to describe it as a principle, which could be terminated only through the free exercise of the right to self-determination by the relevant population.

227. The Alliance also reiterated that cooperation was not only a legal obligation but also a matter of equity.[307]

228. Tonga, speaking on behalf of the members of the Pacific Islands Forum with a presence at the United Nations (Australia, Fiji, Kiribati, the Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands and Tonga), referred to the Declarations adopted in 2021 and 2023, which articulated the Forum's views on the relationship between sea-level rise and international law, expressed appreciation of other States' formal support for those declarations and stressed the importance of continuing such support, consistent with the duty to cooperate and the principles of equity and fairness.

229. The significance of the Declaration on Sea-Level Rise and Statehood adopted by the Heads of State and Government of the Alliance of Small Island States in 2024 and of the high-level plenary meeting on addressing the existential threats posed by sea level rise, held by the General Assembly in September 2024, was also highlighted.[308]

230. Japan noted that, given that the topic could have direct implications for questions of peace and security around the world, it was crucial that the international community cooperate to preserve the territory and territorial integrity of States affected by sea-level rise, safeguard their populations, and ensure legal stability and predictability.[309]

231. Viet Nam referred to the necessity and urgency of advancing the codification of international rules through a process that adhered to fundamental principles such as respect

303 *Ibid*., para. 105.
304 Concluded in Rarotonga on 9 November 2023. The text of the Treaty is available at https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty.
305 A/C.6/79/SR.21, paras. 112 and 113.
306 *Ibid*., para. 117.
307 A/C.6/79/SR.22, paras. 2, 5 and 6.
308 *Ibid*., paras. 9 and 10.
309 *Ibid*., para. 13.

for national sovereignty, sovereign rights and territorial integrity, the sovereign equality of States and their permanent sovereignty over their natural resources.[310]

232. El Salvador took the view that a legally binding instrument should be developed to establish the legal basis for the continuity of statehood. The principle of preserving the international legal personality of the affected State must be reaffirmed, focusing on basic parameters with regard to sovereign equality and the right to self-determination of peoples, including the requirement of ensuring the consent of the affected peoples and proposing the adoption of bilateral, regional or multilateral agreements that would regulate the duty to cooperate as a primary responsibility of States.[311]

233. Indonesia stated that assertion of the continuity of statehood for States whose territories might become partially or fully submerged as a result of rising sea levels was the most favourable path forward. International cooperation was also indispensable.[312]

234. The Republic of Korea expressed the view that discussions of the continuity of statehood must take into account the fact that the international recognition of continued statehood arose from the consideration of the special circumstances of small island developing States in the specific context of sea-level rise.[313]

235. In the view of the Philippines, issues relating to the effects of sea-level rise must be approached on the basis of legal stability, certainty and predictability in international law. It was crucial to safeguard the sovereignty and statehood of the affected States. There must be a presumption, if not a principle, in favour of the continued existence of statehood and the legal basis for such a presumption or principle must be ascertained.[314]

236. Eritrea welcomed the fact that equity and legal stability were guiding principles of the work on sea-level rise in relation to international law.[315]

237. Hungary acknowledged the existence of a strong presumption of continuity of statehood and emphasized the importance of self-determination.[316]

238. The State of Palestine, in its capacity as observer, stressed that the principle of sovereignty over natural resources and the right to self-determination, including through statehood, were foundational, unassailable and inalienable. Statehood remained a valid form of expression of self-determination until the peoples concerned decided to express their right to self-determination through another political status.[317]

239. Canada stressed that the Study Group's lines of enquiry were essential to developing a global understanding of the unprecedented legal implications of sea-level rise for statehood, displaced populations and delimitation.[318]

240. Egypt expressed the view that there was a principle – not a presumption – of continuity of statehood in the case of States whose land surface was partially or fully submerged by the sea or became uninhabitable because of sea-level rise.[319]

241. Liechtenstein noted that the right to self-determination had particularly relevant implications for the law on statehood. There existed a strong presumption of continuity in the case of States affected by sea-level rise.

242. Liechtenstein would support the establishment of criteria for the continuity of statehood and supported the proposal made by Tuvalu for an ambitious declaration that would

[310] *Ibid*., para. 20.
[311] *Ibid*., paras. 25 and 26.
[312] *Ibid*., para. 30.
[313] *Ibid*., para. 37.
[314] *Ibid*., paras. 46 and 47.
[315] *Ibid*., para. 54.
[316] *Ibid*., para. 60.
[317] *Ibid*., paras. 68 and 69.
[318] *Ibid*., para. 75.
[319] *Ibid*., para. 83.

establish principles relating to the continuity of statehood and affirm that sea-level rise did not affect the right to self-determination.[320]

243. Malta stated that it was in favour of a presumption of the continuity of statehood. No effort should be spared to ensure that any sovereign nation whose territorial integrity was affected by sea-level rise did not lose any existing rights, and that a territory that became partially inundated or fully submerged because of sea-level rise was not considered to be a non-existent territory.[321]

244. In the view of Nigeria, the sovereignty and sovereign rights of a State over its territory and in the surrounding maritime zones should be preserved in accordance with international law. While the obligation to cooperate was important, any international intervention must have the consent of the affected State and be guided by international law concerning the principles of sovereignty and non-interference. Regional mechanisms had an important role to play.[322]

245. Cameroon noted that there existed a presumption of the continuity of States directly affected by sea-level rise, which would have implications for the preservation of States' sovereign rights over their territories, including the maritime spaces under their jurisdiction. Going against legal certainty and acquired rights of the States concerned would give rise to manifestly unjust, inequitable, arbitrary and unpredictable situations, and serious risks for international peace and security. States' nationals could see their rights and status undermined, including by potentially being left stateless.[323]

246. New Zealand pointed out that the leaders of the Pacific Islands Forum countries had made clear their position that their statehood, sovereignty and maritime zones, and the associated legal rights and entitlements, would continue regardless of sea-level rise. The Forum had also called for international cooperation.

247. In the view of New Zealand, the continuity of statehood was inherently linked to the protection of persons.[324]

248. The United States of America noted that its policy was that sea-level rise should not cause any country to lose its statehood or its membership of the United Nations, the specialized agencies thereof or other international organizations. The United States was committed to working with Pacific island States and others on issues relating to sea-level rise and statehood.[325]

249. Spain agreed that emphasis should be placed on the principles of sovereign equality of States, permanent sovereignty over natural resources, and the legal stability of boundaries, as well as considerations of equity.[326]

250. In the view of Morocco, caution must prevail in associating the issue of statehood in the context of sea-level rise with the right to self-determination.[327]

251. Colombia stressed that the Commission should ensure that any conclusion it reached in that regard was derived from what the relevant international law actually provided.

252. It should continue to study the question of the presumption of continuing statehood. Colombia was of the view that affected States had the right to preserve their existence and that the presumption of continuing statehood was therefore probably desirable for the collective future of the international community. It invited the Commission to review all relevant sources of law.[328]

[320] *Ibid*., paras. 96 and 97.
[321] *Ibid*., paras. 101 and 102.
[322] *Ibid*., para. 107.
[323] *Ibid*., para. 113.
[324] *Ibid*., paras. 119 and 122.
[325] A/C.6/79/SR.23, para. 5.
[326] *Ibid*., para. 15.
[327] *Ibid*., para. 23.
[328] *Ibid*., paras. 35 and 37.

253. Malaysia stated that it could accept a presumption of continuity for a coastal State if supported by evidence in the form of the measures that the State had undertaken to preserve its statehood pursuant to international law, as well as scientific evidence of the imminent threat posed by sea-level rise to its statehood.

254. It would be advisable to focus on practical measures that affected Member States could take in the near future, such as the freezing of baselines or other actions to prevent factors that might contribute to the loss of their statehood.[329]

255. India expressed the view that greater caution was needed in considering the presumption of continuing statehood for States directly affected by sea-level rise, in particular from the perspective of the criteria set out in the Convention on Rights and Duties of States.[330]

256. Guatemala stressed that it was imperative that States recognize and promote the presumption of continuity of statehood, based on the principle of territorial continuity. Bilateral, regional or multilateral agreements could be adopted for that purpose.[331]

257. The Federated States of Micronesia stated that while climate change-related sea-level rise posed existential threats of a physical nature to the lives, livelihoods, security and well-being of peoples and communities throughout the world, particularly in low-lying islands and atolls in small island developing States, it did not pose an existential legal threat to the statehood of States established under international law. That was a core element of the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, as well as the 2024 Alliance of Small Island States Declaration on Sea-Level Rise and Statehood.

258. Statehood could not be extinguished except through a voluntary act by the population of a State, in particular an act of self-determination. Acceptance of that principle was required for international law to remain stable, equitable and just.[332]

259. The Russian Federation expressed the view that the question of the continuing statehood of affected countries could be resolved either through the establishment of a *sui generis* legal regime or through the recognition of each individual country.

260. There were precedents for the continuation of statehood based on recognition, for example in the case of Governments in exile. Sovereignty and independence were the key criteria with regard to the continuity of statehood.

261. The right of States to preserve their existence, and their ability to ensure their independence and to effectively perform the usual functions of a State, as well as their participation in international cooperation, were of fundamental importance. The issue of prevention of statelessness merited more detailed study.[333]

262. Chile took the view that it was preferable to refer to a presumption of continuity rather than to a principle of continuity; affirming the existence of such a principle as a source of international law would seem to suggest that States had unlimited continuity in time, which was incorrect. The legal foundation for the presumption of continuity lay primarily in the right to self-determination of peoples, but also in the right of States to preserve their existence and in the principles of stability and legal certainty.[334]

263. Jamaica reiterated that, under international law, there was a strong presumption of the continuity of statehood of States affected by sea-level rise. Once States existed, they benefited from a presumption of continuity. Legal stability, security, certainty and predictability must be prioritized.[335]

[329] *Ibid*., para. 55.
[330] A/C.6/79/SR.24, para. 7.
[331] *Ibid*., para. 10.
[332] *Ibid*., paras. 12 and 13.
[333] *Ibid*., paras. 31–33.
[334] *Ibid*., para. 44.
[335] *Ibid*., paras. 58 and 59.

264. Estonia recalled that one of the possible alternatives for addressing sea-level rise in relation to statehood was to ensure that nationals of affected States residing in other States were able to receive adequate assistance. It was necessary to organize or strengthen digital platforms connecting such persons scattered around the world with their State of nationality.[336]

265. Argentina stressed that the right of self-determination had been principally related to the process of decolonization and its applicability should be linked to the application of other principles of international law, such as that of territorial integrity and non-interference in the internal affairs of States.[337]

266. Equatorial Guinea expressed support for any principle based on the continuity of statehood in situations where States were affected by sea-level rise, in order to ensure stability, security, certainty and predictability in international law.[338]

267. Algeria recognized the importance of the principles of continuity of statehood and self-determination, which were intertwined with sovereignty over natural resources and the territorial integrity of States.[339]

268. Maldives noted its support for the 2024 Alliance of Small Island States Declaration on Sea-Level Rise and Statehood. Rising seas did not erase nations; the identity and sovereignty of nations resided in their people, their language and their customs. International cooperation was an essential legal duty.[340]

269. Bulgaria stated that it supported the presumption of continuity of statehood for countries affected by rising sea levels. It was vital for maintaining international stability, securing sovereign rights and upholding the principles of self-determination and territorial integrity.[341]

270. Papua New Guinea highlighted its support for the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise and the 2024 Alliance of Small Island States Declaration on Sea-Level Rise and Statehood.

271. The principle of permanent sovereignty over natural resources should be considered in the context of the possible legal implications of sea-level rise for maritime entitlements as well as for statehood and the protection of persons affected by sea-level rise.[342]

272. In the view of Cyprus, there was a need, in ascertaining the legal basis for the continuity of statehood, to prioritize legal stability, security, certainty and predictability in international relations and to apply the principles of territorial integrity, sovereign equality of States and permanent sovereignty over natural resources. It should be borne in mind that self-determination had become a principle of international law in the context of decolonization and had always been applied to situations of colonial rule and foreign occupation.[343]

273. Serbia pointed out that one of the fundamental principles of international law was the protection of the territorial integrity and political independence of States. It supported the development of international law in order to safeguard the interests of the international community, in particular the legitimate interests and rights of States facing the consequences of sea-level rise.[344]

274. Armenia noted that the consequences of sea-level rise for the continuation of statehood raised fundamental questions of international law. Although a presumption of

[336] *Ibid*., paras. 70 and 71.
[337] *Ibid*., para. 81.
[338] *Ibid*., para. 88.
[339] *Ibid*., para. 103.
[340] *Ibid*., paras. 105 and 107.
[341] *Ibid*., para. 115.
[342] *Ibid*., paras. 122–124.
[343] A/C.6/79/SR.25, paras. 34 and 35.
[344] *Ibid*., paras. 53 and 55.

continuity of statehood would be consistent with State practice in other situations, it was unclear to what extent such a presumption would assist in addressing the novel problem of permanent submergence. A flexible interpretation of the population criterion could enable a submerged State to retain its statehood even if most or all of its population was relocated to the territory of another State.[345]

275. Tuvalu stressed that sea-level rise posed a direct and immediate threat to the survival of Tuvalu and other low-lying atoll nations. Communities were being displaced, fresh water was becoming scarce due to salinization, and rising tides were resulting in land loss.

276. The continuity of statehood was a fundamental principle of international law that must be recognized and upheld to ensure that vulnerable States remained sovereign entities that enjoyed full international recognition, regardless of any changes to their physical territory.

277. At the high-level plenary meeting of the General Assembly on addressing the existential threats posed by sea level rise, held in September 2024, Tuvalu had called for a new international declaration in which the right of States like Tuvalu to continue to exist, regardless of the physical impacts of climate change, was acknowledged.[346]

278. In its submission to the Commission in regard to "Sea-level rise in relation to international law: sea-level rise, statehood and protection of persons", submitted by a note dated 21 November 2024, the Bahamas states that there is a presumption of the continuation of statehood that is unaffected by the provisions of the Convention on Rights and Duties of States, as those provisions do not appropriately address the question of continuing statehood. The expression of the right to self-determination is paramount.[347]

279. Germany, in its submission of December 2024 on the issue of "Sea-level rise, international law and its impact on statehood", reaffirms that the United Nations membership of Member States affected by sea-level rise is enduring. Germany believes that a presumption of continuity of statehood is consistent with important principles and rights of international law, such as self-determination, stability in international relations, equity and fairness, maintenance of peace and security, the right of a State to ensure its preservation, and the duty of cooperation.[348]

280. A range of practical solutions grounded in international law must be explored, as they could help to preserve the international legal personality of island States at risk of submergence and/or becoming uninhabitable.[349]

281. To assume that there is a principle of continuity of statehood, which implies unlimited continuity, appears to be contradicted by the historical fact that States have ceased to exist.[350]

282. The presumption of continuity would allow for upholding statehood even if the following (cumulative) circumstances affected a State: submergence of territory caused by sea-level rise, loss of territory or the habitability of territory, loss of access to drinking water, loss of the ecosystem within the territory and loss of cultural heritage.[351]

283. The stability of maritime zones afforded by the United Nations Convention on the Law of the Sea[352] could provide new insights into how the international legal personality of island States may be preserved even after land territory has increasingly been submerged or become uninhabitable.[353] The territorial sea forms part of the State's territorial integrity[354] and the jurisdiction of the State within its territorial sea would also persist.[355]

345 *Ibid*., paras. 59 and 60.
346 *Ibid*., paras. 65, 66 and 69.
347 Submission of the Bahamas in 2024.
348 Submission of Germany in 2024, para. 4.
349 *Ibid*., para. 8.
350 *Ibid*., para. 11.
351 *Ibid*., para. 13.
352 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1834, No. 31363, p. 3.
353 Submission of Germany in 2024, para. 19.
354 *Ibid*., para. 20.
355 *Ibid*., para. 21.

284. The affected State may recover part or all of its submerged land territory and retain its sovereign right to construct artificial installations and structures on its submerged land territory. The population of the affected State would continue to enjoy the right to live in or return to the area within its internationally recognized boundaries. The affected coastal State would also retain the right to explore and exploit the living and non-living resources within its territorial sea and the submerged land therein, as well as within its adjacent exclusive economic zone and continental shelf.[356]

285. The Falepili Union Treaty between Australia and Tuvalu could serve as a precedent for addressing such questions.[357]

286. Colombia, in its submission of December 2024 on the work of the Commission on sea-level rise, makes comments on the issue of statehood. It points out that international law does not contain any provisions on the disappearance of the territory of a State as a result of sea-level rise and that article 1 of the Convention on Rights and Duties of States, which is used as a reference with regard to statehood, deals with the requirements for the establishment of a State but does not expressly address the requirements for the continuity of a State in exceptional circumstances such as the physical disappearance of its territory.

287. Rising sea levels can result in the partial submergence of territory, which could become uninhabitable, or the total submergence of the land surface; in either situation, sea-level rise should not lead to the automatic disappearance or extinction of a State as such.

288. A State's continuity does not depend exclusively on the physical existence of the territory. However, in the view of Colombia, these matters are not fully covered by existing international law and must therefore be regulated by States through unilateral or joint declarations and regional or global practices that may give rise to custom or treaties.[358]

289. In its submission on its practice concerning sea-level rise in relation to international law, submitted by a note dated 20 December 2024, the United States notes that, in September 2023, a new United States policy on sea-level rise and statehood was announced. Under that policy, sea-level rise driven by climate change should not cause any country to lose its statehood or its membership in the United Nations, its specialized agencies, or other international organizations. The United States also expresses its commitment to working with Pacific island States and others on issues relating to sea-level rise and statehood.[359]

290. In the submission from the United Kingdom of Great Britain and Northern Ireland, submitted by a note dated 30 December 2024, the United Kingdom notes that approaches to statehood in this context should be grounded in international law.[360]

291. The United Kingdom recognizes that sea-level rise presents a particular challenge for small island developing States specially affected by the phenomenon and that it is an indispensable requirement that the practice of specially affected States be taken into account when identifying customary law.[361]

### 4. Considerations in respect of States' comments

292. The work on the present topic has involved an extensive review of relevant sources, including treaty provisions, customary rules and various fundamental principles of international law.

293. This task entails combining a variety of existing rules and principles of law which, though not expressly conceived in relation to sea-level rise, can nonetheless be validly applied in addressing this phenomenon. This does not preclude the use of various political or legal means to strengthen the rights of the affected States or to address practical issues related to efforts to deal with the phenomenon or particular manifestations of it in specific cases.

[356] *Ibid*., paras. 22–24.
[357] *Ibid*., para. 27.
[358] Submission of Colombia in 2024.
[359] Submission of the United States in 2024.
[360] Submission of the United Kingdom in 2024, para. 7.
[361] *Ibid*., para. 9.

294. The main issues related to statehood in the context of sea-level rise are addressed in the second issues paper and the additional paper to the second issues paper. The analysis is based on a principle of State continuity, which is reflected in a strong presumption of the continuity of statehood and State sovereignty and the maintenance of the State's international legal personality and membership of international organizations; the preservation of its rights, legal entitlements and resources for the benefit of present and future generations of its population; and respect for the self-determination of the populations concerned.

295. As will be seen below, and as noted in the two papers mentioned above, self-determination is not confined to situations of decolonization. It has been validly expressed when, for example, the people of a Non-Self-Governing Territory have opted for the constitution of an independent State, but it could also be manifested at a later stage when, in the context of sea-level rise, the people of a State that became independent years ago and that is particularly affected by this phenomenon decide to maintain that State or freely opt for a different form of organization, within the range of alternatives outlined in the second issues paper and the additional paper.

296. At the same time, as has been rightly emphasized in the comments of States, it is vitally important to consider that a State's territorial integrity is not restricted to its land territory – which remains under its sovereignty and to which it retains its legal title even if such territory is partially or completely covered by the sea – but also extends to, for example, the territorial sea.

297. In situations where a State's land territory becomes partially or completely submerged or becomes uninhabitable, it is important not to rule out the possibility that the State could, with support from international cooperation, gain access to potential technological advances that would enable it to restore the territory to its previous condition. Additionally, artificial structures could be installed within the area encompassed by the affected State's internationally recognized boundaries and could even accommodate part of its population and one or more organs of its Government.

298. In any case, it would be essential to preserve the autonomy and independence of the affected State by ensuring that the Government is not subordinated to any other State or international organization and is therefore able to continue acting on behalf of the State at the international level, engaging in international cooperation, performing the primary functions of the State with respect to the areas and resources under its jurisdiction and providing services to its nationals residing in other parts of the world through means such as digital platforms. Such nationals could acquire the nationality of their State of residence or host State without losing the nationality of their State of origin or could enjoy a common citizenship under a scheme involving both States, with a view to preventing situations of *de facto* statelessness and ensuring that effective assistance or protection is provided to nationals of the State most affected by sea-level rise.

299. As pointed out in the additional paper to the second issues paper, in each specific case it would be necessary to address – through the respective domestic laws and any agreements between States directly affected by sea-level rise and third States that host their nationals or to whose territory the Governments of the affected States might be relocated – issues related to the legal status of nationals with respect to their State of origin and their host State or State of residence, the exercise of rights by such persons, mechanisms for consultation and participation in matters involving their State of origin, the use of the State's resources for the benefit of its nationals and practical matters relating to the functioning of the Government in the territory of another State, its independence from the latter, the enjoyment of immunities and privileges recognized under international law and the effective performance of State functions.

## C. Protection of persons affected by sea-level rise

300. Despite initial reservations expressed by a few delegations during debates in the Sixth Committee,[362] delegations have, since 2018, generally expressed support for the inclusion of the subtopic of the protection of persons affected by sea-level rise in the work of the Study Group.[363]

301. The following were the main themes highlighted in the debate in the Sixth Committee in 2024, during the seventy-ninth session of the General Assembly, with regard to the protection of persons affected by sea-level rise: (a) the need to examine the adequacy of existing instruments and international legal frameworks to protect persons affected by sea-level rise; (b) agreement on the principle of human dignity as a guiding, overarching

[362] Belarus (A/C.6/74/SR.28, para. 22; and A/C.6/76/SR.20, para. 63), Iran (Islamic Republic of) (A/C.6/76/SR.20, para. 38), the Russian Federation (A/C.6/76/SR.22, para. 95) and the United States (A/C.6/73/SR.29, para. 27; and A/C.6/74/SR.30, para. 126) expressed reservations as to the inclusion of the subtopic of the protection of persons affected by sea-level rise, mainly citing a lack of State practice. Belarus did not reiterate its reservations in 2024, simply noting that the Study Group should take a cautious approach and not exceed its mandate (A/C.6/79/SR.20, para. 119). Similarly, the Islamic Republic of Iran did not explicitly restate its concerns, but referred to the views that it had shared at previous sessions (A/C.6/77/SR.23, para. 19; see also the statement of the Islamic Republic of Iran in 2024, p. 3, available from https://www.un.org/en/ga/sixth/79/summaries.shtml#23mtg). The Russian Federation expressed reservations to the effect that determination of the reasons for sea-level rise was not part of the Study Group's mandate (A/C.6/79/SR.24, para. 30). The United States agreed that States must protect the human rights of persons on their territory affected by sea-level rise and supported further discussion on that important issue (submission of the United States in 2024, p. 2 (see footnote 120 above)).

[363] See, for instance, statements delivered since 2018 by Argentina (A/C.6/74/SR.29, para. 35), Bangladesh (A/C.6/74/SR.31, para. 49), Belize (on behalf of the Alliance of Small Island States) (A/C.6/75/SR.13, para. 24), Brazil (A/C.6/76/SR.21, para. 26), Canada (A/C.6/73/SR.22, para. 65), Chile (A/C.6/76/SR.21, para. 57), China (A/C.6/74/SR.27, para. 92), Colombia (A/C.6/74/SR.30, para. 113; and A/C.6/76/SR.23, para. 24), Costa Rica (A/C.6/76/SR.23, para. 15), Cuba (A/C.6/76/SR.21, para. 33), Cyprus (A/C.6/73/SR.23, para. 48; A/C.6/74/SR.30, para. 102; and A/C.6/76/SR.22, para. 101), Egypt (A/C.6/74/SR.30, para. 30; and A/C.6/76/SR.20, para. 59), El Salvador (A/C.6/76/SR.20, para. 70), Estonia (A/C.6/74/SR.30, para. 61), European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Montenegro, North Macedonia and Serbia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia, the Republic of Moldova and Ukraine) (A/C.6/76/SR.19, para. 73), Fiji (on behalf of the Pacific Islands Forum) (A/C.6/76/SR.19, para. 74), France (A/C.6/76/SR.20, para. 47), Germany (A/C.6/76/SR.21, para. 81), Hungary (A/C.6/76/SR.21, para. 67), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/76/SR.19, para. 88), India (A/C.6/76/SR.23, para. 10), Ireland (A/C.6/74/SR.29, para. 43), Israel (A/C.6/73/SR.23, para. 32), Italy (A/C.6/74/SR.28, para. 29; and A/C.6/76/SR.20, para. 87), Jamaica (A/C.6/74/SR.27, para. 2), Japan (A/C.6/74/SR.30, para. 34), Jordan (A/C.6/76/SR.24, para. 126), Latvia (A/C.6/76/SR.22, para. 75), Lebanon (A/C.6/76/SR.22, para. 134), Liechtenstein (A/C.6/74/SR.30, para. 95; and A/C.6/76/SR.21, para. 3), Malaysia (A/C.6/74/SR.30, para. 83; and A/C.6/76/SR.21, para. 153), Maldives (A/C.6/76/SR.21, paras. 137–139), Mexico (A/C.6/74/SR.29, para. 114), Micronesia (Federated States of) (A/C.6/76/SR.21, para. 150), Netherlands (Kingdom of the) (A/C.6/74/SR.28, para. 79), Norway (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/74/SR.27, para. 86), Papua New Guinea (A/C.6/73/SR.23, para. 33; A/C.6/74/SR.30, para. 18; A/C.6/75/SR.13, para. 39; and A/C.6/76/SR.22, para. 38), Philippines (A/C.6/74/SR.31, para. 9; and A/C.6/76/SR.23, para. 17), Peru (A/C.6/74/SR.31, para. 5), Portugal (A/C.6/74/SR.29, para. 108; and A/C.6/76/SR.21, para. 10), Republic of Korea (A/C.6/75/SR.13, para. 67), Romania (A/C.6/74/SR.28, para. 15; and A/C.6/76/SR.21, para. 20), Samoa (on behalf of the Pacific small island developing States) (A/C.6/76/SR.19, para. 71), Sierra Leone (A/C.6/76/SR.20, para. 29), Slovenia (A/C.6/74/SR.29, para. 146; and A/C.6/76/SR.21, para. 97), Solomon Islands (A/C.6/76/SR.22, para. 79), South Africa (A/C.6/73/SR.23, para. 15; and A/C.6/76/SR.20, para. 77), Thailand (A/C.6/73/SR.22, para. 18; A/C.6/74/SR.29, para. 99; and A/C.6/76/SR.22, paras. 4–5), Tonga (A/C.6/73/SR.22, para. 63; and A/C.6/76/SR.22, para. 120), Tuvalu (A/C.6/76/SR.23, para. 5), United Kingdom (A/C.6/76/SR.21, para. 146), Viet Nam (A/C.6/76/SR.21, para. 85) and Holy See (Observer) (A/C.6/76/SR.23, para. 28–29).

principle in the protection of persons affected by sea-level rise; and (c) support for combining needs-based and rights-based approaches to the subtopic.

### 1. Need to examine the adequacy of existing instruments and international legal frameworks to protect persons affected by sea-level rise

302. As at previous sessions,[364] a common starting point among Member States in their statements was the recognition that the existing international legal frameworks were fragmented and general in nature.[365] In line with statements from previous sessions,[366] Thailand and Chile, for instance, reiterated that there was no binding international legal instrument that specifically addressed the protection of persons forcibly displaced owing to the adverse effects of climate change, such as sea-level rise.[367]

303. Following the trend at previous sessions,[368] several States emphasized the need to take into account all relevant existing legal frameworks and to examine the adequacy of existing instruments and international legal frameworks for the protection of persons affected by sea-level rise.[369]

304. In previous debates in the Sixth Committee, States had referred to international human rights law, humanitarian law, refugee and migration law, and disaster and climate change law.[370] Similar references were made in 2024.

305. A number of States highlighted the need to address further the role of international human rights law,[371] with the Federated States of Micronesia expressing support for the elements proposed in the additional paper to the second issues paper.[372] Reference was made to the right to a clean, healthy and sustainable environment, recognized by the General

[364] See, for instance, statements delivered in the debate in the Sixth Committee in 2022 by Slovakia (A/C.6/77/SR.27, para. 59), Germany (A/C.6/77/SR.27, para. 40), Australia (A/C.6/77/SR.27, para. 73), Portugal (A/C.6/77/SR.27, para. 88), Philippines (A/C.6/77/SR.27, para. 94), Russian Federation (A/C.6/77/SR.28, para. 78), Thailand (A/C.6/77/SR.28, para. 95), Czechia (A/C.6/77/SR.28, para. 117), Peru (A/C.6/77/SR.29, para. 39), Hungary (A/C.6/77/SR.27, para. 3), Sierra Leone (A/C.6/77/SR.27, para. 28) and Holy See (Observer) (A/C.6/77/SR.29, para. 71).

[365] Austria (A/C.6/79/SR.20, para. 98), Croatia (A/C.6/79/SR.21, para. 117), Czechia (A/C.6/79/SR.21, para. 106), Guinea (A/C.6/79/SR.24, para. 76), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, para. 56), Indonesia (A/C.6/79/SR.22, para. 30), Jamaica (A/C.6/79/SR.24, para. 60), Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98), Philippines (A/C.6/79/SR.22, para. 48), Portugal (statement in 2024, p. 8; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#21mtg) (see also A/C.6/79/SR.21, para. 87), Sierra Leone (A/C.6/79/SR.21, para. 78), Slovakia (A/C.6/79/SR.20, para. 145) and Spain (A/C.6/79/SR.23, para. 16).

[366] Cyprus (A/C.6/77/SR.28, para. 126) and Micronesia (Federated States of) (A/C.6/77/SR.28, para. 109).

[367] Chile (A/C.6/79/SR.24, para. 45) and Thailand (A/C.6/79/SR.21, para. 55).

[368] Slovakia (A/C.6/77/SR.27, para. 59), Hungary (A/C.6/77/SR.27, paras. 2 and 4), Brazil (A/C.6/77/SR.27, para. 52), Chile (A/C.6/77/SR.28, paras. 90–92), Russian Federation (A/C.6/77/SR.28, para. 78), Japan (A/C.6/77/SR.29, para. 3), Jamaica (A/C.6/77/SR.29, paras. 27–28), New Zealand (A/C.6/77/SR.29, para. 54) and Italy (A/C.6/77/SR.26, para. 107).

[369] Czechia (A/C.6/79/SR.21, para. 106), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, para. 56) and India (A/C.6/79/SR.24, para. 7).

[370] For example, Italy (A/C.6/77/SR.26, para. 107).

[371] Chile (A/C.6/79/SR.24, para. 45), China (statement in 2024, p. 7; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#21mtg) (see also A/CN.6/79/SR.21, para. 11), Colombia (submission in 2024, pp. 9, 10 and 13; see footnote 113 above); France (A/C.6/79/SR.21, para. 51), Indonesia (A/C.6/79/SR.22, para. 30), Jamaica (A/C.6/79/SR.24, para. 60), Mexico (A/C.6/79/SR.20, para. 125), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98), Romania (A/C.6/79/SR.20, para. 135), Spain (A/C.6/79/SR.23, para. 14), United States (A/C.6/79/SR.23, para. 6), Peru (A/C.6/79/SR.22, para. 131), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6), Singapore (A/C.6/79/SR.21, para. 24) and State of Palestine (Observer) (A/C.6/79/SR.22, para. 68).

[372] Micronesia (Federated States of) (A/C.6/79/SR.24, para. 14).

Assembly in its resolution 76/300 of 28 July 2022.[373] Colombia underscored the relevance of non-discrimination, the right to life and personal integrity, the right to due process and access to basic services in the specific context of climate migration.[374]

306. One point raised was the question of the extraterritorial application of human rights, which was considered crucial to determining the scope of States' obligations.[375] In that regard, the United States noted that the obligations of States under international human rights law and international refugee law generally did not apply extraterritorially.[376] The Russian Federation observed, as had other States at previous sessions, that it was necessary to draw a distinction between the duties of the States of origin of persons affected by sea-level rise, the States of transit and the receiving States.[377]

307. Papua New Guinea noted that the principle of permanent sovereignty over natural resources was consistent with the provisions of international human rights covenants and should be considered in the context of the possible legal implications of sea-level rise on the protection of persons affected.[378] The importance of the protection of cultural heritage was also noted by a number of States, especially as an expression of the rights of Indigenous Peoples.[379] Malta stressed that there was an urgent need to include cultural heritage considerations in plans and policies aimed at addressing sea-level rise, and that the international community must reinvigorate its cooperation with the United Nations Educational, Scientific and Cultural Organization with a view to facilitating the provision of technical assistance and the collective protection of cultural heritage while forging new climate change adaptation and resilience strategies.[380] In that regard, Germany noted that it was supporting the Rising Nations Initiative, under which solutions were being developed to preserve the statehood and cultural heritage of small island developing States, including digitally documenting cultural heritage and designing a blueprint for digital citizenship.[381]

308. States also referred to international humanitarian law[382] and refugee and migration law.[383] Some States referred to the applicability and pertinence of the principle of *non-refoulement* to the protection of persons affected by rising sea levels.[384] The United States noted that the *non-refoulement* obligations of States under existing international law were not necessarily affected by sea-level rise.[385]

309. Echoing previous debates, Singapore suggested that issues related to the protection of persons *in situ* and issues related to the protection of persons in displacement be analysed separately.[386] Furthermore, the observation had previously been made that the status of persons affected by sea-level rise was closely linked to issues of statehood, and was reiterated in 2024 by Papua New Guinea and New Zealand, specifically in the light of the 2023 Pacific

[373] Statement of Spain (p. 11; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#23mtg) (see also A/C.6/79/SR.23, paras. 14–16) and State of Palestine (Observer) (A/C.6/79/SR.22, para. 68).
[374] Submission of Colombia in 2024, p. 12 (see footnote 113 above).
[375] France (A/C.6/79/SR.21, para. 52).
[376] United States (A/C.6/79/SR.23, para. 6). See also submission of the United States in 2024, p. 2 (see footnote 120 above).
[377] Russian Federation (A/C.6/79/SR.24, para. 33).
[378] Papua New Guinea (A/C.6/79/SR.24, para. 124). See also State of Palestine (Observer) (A/C.6/79/SR.22, para. 68).
[379] Colombia (submission in 2024, p. 11; see footnote 113 above), Hungary (A/C.6/79/SR.22, para. 60), Malta (A/C.6/79/SR.22, para. 103), Mexico (A/C.6/79/SR.20, para. 125), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 14) and Portugal (A/C.6/79/SR.21, para. 86).
[380] Malta (A/C.6/79/SR.22, para. 103).
[381] Germany (A/C.6/79/SR.21, para. 2).
[382] China (statement in 2024, p. 7; see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11), Guatemala (A/C.6/79/SR.24, para. 11) and Spain (A/C.6/79/SR.23, para. 14).
[383] Brazil (A/C.6/79/SR.20, para. 74), Chile (A/C.6/79/SR.24, para. 46), Morocco (A/C.6/79/SR.23, para. 24), Sierra Leone (A/C.6/79/SR.21, para. 78) and United States (A/C.6/79/SR.23, para. 6).
[384] Chile (A/C.6/79/SR.24, para. 46); Colombia (submission in 2024, p. 12; see footnote 113 above), France (A/C.6/79/SR.21, para. 52) and United Republic of Tanzania (A/C.6/79/SR.24, para. 110).
[385] United States (A/C.6/79/SR.23, para. 6). See also submission of the United States in 2024, p. 2 (see footnote 120 above).
[386] Singapore (A/C.6/79/SR.21, para. 23).

Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise.[387] Related to that issue, the importance of preventing statelessness was again stressed,[388] Brazil highlighting its own migration policy aimed at protecting stateless persons.[389]

310. Morocco noted that the Global Compact for Safe, Orderly and Regular Migration could serve as a key legal instrument in the Commission's consideration of climate migration in terms of the human impact of sea-level rise.[390] Sierra Leone stated that the Global Compact should be expanded to address migration related to sea-level rise specifically, and referred to the Human Rights Committee's decision in *Teitiota v. New Zealand* (2019).[391] The United States agreed that non-binding frameworks, such as the Global Compact, could be valuable tools for coordinating national approaches on climate mobility.[392] Chile emphasized the importance of considering existing regional practices, especially the Cartagena Declaration on Refugees and its broad definition of refugees, which had been interpreted to encompass persons displaced by climate change.[393]

311. The United Kingdom noted with interest the possible solutions that States had already adopted, such as the Australia-Tuvalu Falepili Union,[394] entailing obligations to work together to help citizens of Tuvalu to remain in their homes with safety and dignity while also providing for a special human mobility pathway to provide citizens of Tuvalu with access to Australia, and it welcomed the consideration of alternative arrangements for mobility pathways.[395] The United States also supported States in choosing to develop complementary protection pathways for persons displaced by the effects of climate change.[396]

312. As in previous debates, references were made to disaster law[397] and climate change law.[398] In particular, several States noted that the Commission's draft articles on the

[387] New Zealand (A/C.6/79/SR.22, para. 122) and Papua New Guinea (A/C.6/79/SR.24, para. 122).

[388] Indonesia (A/C.6/79/SR.22, para. 30), Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62) and Russian Federation (A/C.6/79/SR.24, para. 33).

[389] Brazil (A/C.6/79/SR.20, para. 74).

[390] Morocco (A/C.6/79/SR.23, para. 24).

[391] Sierra Leone (A/C.6/79/SR.21, para. 78). See also statement in 2024, p. 20 (see footnote 181 above); and Human Rights Committee, *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016).

[392] United States (A/C.6/79/SR.23, para. 6). See also submission of the United States in 2024, p. 2 (see footnote 120 above).

[393] Chile (A/C.6/79/SR.24, para. 45).

[394] See https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty.

[395] Submission of the United Kingdom in 2024 (see footnote 158 above), para. 13.

[396] Submission of the United States in 2024 (see footnote 120 above), p. 2.

[397] Austria (A/C.6/79/SR.20, para. 99), Brazil (A/C.6/79/SR.20, para. 74), Cameroon (A/C.6/79/SR.22, para. 116), Chile (A/C.6/79/SR.24, para. 46), Colombia (A/C.6/79/SR.23, para. 38), El Salvador (A/C.6/79/SR.22, para. 25), Italy (A/C.6/79/SR.20, para. 90), Jamaica (A/C.6/79/SR.24, para. 60), Maldives (A/C.6/79/SR.24, para. 106), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 15), Nigeria (A/C.6/79/SR.22, para. 107), Philippines (A/C.6/79/SR.22, para. 48), Romania (A/C.6/79/SR.20, para. 135), Slovakia (A/C.6/79/SR.20, para. 145), United Republic of Tanzania (A/C.6/79/SR.24, para. 110), Thailand (A/C.6/79/SR.21, para. 55) and Asian-African Legal Consultative Organization (Observer) (A/C.6/79/SR.30, para. 155).

[398] Australia (A/C.6/79/SR.21, para. 114), Brazil (A/C.6/79/SR.20, para. 74), Chile (A/C.6/79/SR.24, para. 45), China (statement in 2024, p. 7; see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11), Cuba (A/C.6/79/SR.21, paras. 30 and 34), Egypt (A/C.6/79/SR.22, para. 84), European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, paras. 44–48), France (A/C.6/79/SR.21, para. 51), Germany (A/C.6/79/SR.21, para. 2), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, paras. 55–56 and 58), Malta (A/C.6/79/SR.22, para. 99), Mexico (A/C.6/79/SR.20, para. 126), Philippines (A/C.6/79/SR.22, para. 48), Portugal (A/C.6/79/SR.21, para. 86), Republic of Korea (A/C.6/79/SR.22, para. 36), Romania (A/C.6/79/SR.20, para. 135), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6), Singapore (A/C.6/79/SR.21, para. 24), Tonga (on behalf of the members of the Pacific Islands Forum with a presence at the United Nations, namely Australia, Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands and

protection of persons in the event of disasters might be drawn upon,[399] especially as sea-level rise was considered a slow-onset disaster.[400] Jamaica observed that building on the draft articles would bring coherence to the applicable legal framework.[401] Colombia expressed agreement with the proposal made in the context of the discussions in the Study Group that efforts be made to introduce the sea-level rise dimension into the ongoing negotiations about the possible elaboration of a convention on the basis of the draft articles.[402] Chile note that the Co-Chairs should explain the relationship between those draft articles and any potential future draft articles or draft conclusions on the protection of persons affected by sea-level rise.[403] A number of States, on the other hand, cautioned against overreliance on the draft articles, pointing out that, unlike natural disasters, climate change was a human-made phenomenon, and addressing sea-level rise as a disaster on the basis of the approach taken in the draft articles would limit the options available under international law to address both the impact of sea-level rise and the underlying causes of anthropogenic climate change.[404]

313. A number of States emphasized the relevance of international climate change law.[405] Germany, for instance, indicated that it attached great importance to global efforts to address the adverse effects of climate change.[406] Sierra Leone and Argentina pointed in particular to the emphasis in climate change law on the principle of common but differentiated responsibilities.[407] States advocated an approach guided by that principle, suggesting that any future obligations to provide protection and assistance to persons affected by sea-level rise should reflect the national capacity of non-affected States.[408]

314. Several States invited the Commission to pay particular attention to initiatives carried out in the framework of the General Assembly, and those undertaken in regional forums and organizations. States put particular emphasis on the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, issued by the leaders of the Pacific Islands Forum in November 2023,[409] which set forth the commitment by Forum members to protecting persons affected by climate change-related

Tonga) (A/C.6/79/SR.22, para. 8), Türkiye (A/C.6/79/SR.22, para. 93), United Republic of Tanzania (A/C.6/79/SR.24, para. 109) and State of Palestine (Observer) (A/C.6/79/SR.22, para. 70).

399 Austria (A/C.6/79/SR.20, para. 99), Cameroon (A/C.6/79/SR.22, para. 116), Chile (A/C.6/79/SR.24, para. 46), Colombia (A/C.6/79/SR.23, para. 38), Italy (A/C.6/79/SR.20, para. 90), Jamaica (A/C.6/79/SR.24, para. 60), Nigeria (A/C.6/79/SR.22, para. 107), Philippines (A/C.6/79/SR.22, para. 48), Romania (A/C.6/79/SR.20, para. 135), Slovakia (A/C.6/79/SR.20, para. 145), United Republic of Tanzania (A/C.6/79/SR.24, para. 110) and Asian-African Legal Consultative Organization (Observer) (A/C.6/79/SR.30, para. 155).

400 Philippines (A/C.6/79/SR.22, para. 48), Thailand (A/C.6/79/SR.21, para. 55), United Republic of Tanzania (A/C.6/79/SR.24, para. 110.) and Asian-African Legal Consultative Organization (Observer) (A/C.6/79/SR.30, para. 155).

401 Jamaica (A/C.6/79/SR.24, para. 60).

402 Colombia (A/C.6/79/SR.23, para. 38).

403 Chile (A/C.6/79/SR.24, para. 45).

404 Maldives (A/C.6/79/SR.24, para. 106) and Micronesia (Federated States of) (A/C.6/79/SR.24, para. 15).

405 China (statement in 2024, p. 7; see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11) and Egypt (A/C.6/79/SR.22, para. 84).

406 Germany (A/C.6/79/SR.21, para. 2).

407 Argentina (A/C.6/79/SR.24, para. 80) and Sierra Leone (statement in 2024, para. 30; see footnote 181 above) (see also A/C.6/79/SR.21, para. 78).

408 Argentina (A/C.6/79/SR.24, para. 80), Brazil (A/C.6/79/SR.20, para. 72), Malaysia, (A/C.6/79/SR.23, para. 57) and Mexico (A/C.6/79/SR.20, para. 126).

409 Australia (A/C.6/79/SR.21, para. 112), Austria (A/C.6/79/SR.20, para. 100), El Salvador (A/C.6/79/SR.22, para. 24), Malta (A/C.6/79/SR.22, para. 99), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 12), New Zealand (A/C.6/79/SR.22, para. 122), Papua New Guinea (A/C.6/79/SR.24, para. 122), Peru (statement in 2024, para. 8; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#22mtg) (see also A/C.6/79/SR.22, paras. 131–132), Romania (A/C.6/79/SR.20, para. 133) and Tonga (on behalf of the members of the Pacific Islands Forum with a presence at the United Nations, namely Australia, Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands and Tonga) (A/C.6/79/SR.22, para. 9).

sea-level rise, including with respect to human rights.[410] States also referred to the 2024 Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood.[411] Beyond regional initiatives, States invited the Commission to take note of the high-level plenary meeting of the General Assembly on addressing the existential threats posed by sea-level rise, held on 25 September 2024,[412] and Assembly decision 78/558 of 1 August 2024 on enhancing action on sea-level rise, including by strengthening international cooperation and partnerships to enhance comprehensive and effective responses to sea-level rise.[413]

315. Several States noted that it was important for the Commission's work to take into account proceedings before international courts and tribunals, in particular the proceedings relating to requests for advisory opinions before the International Tribunal for the Law of the Sea and the International Court of Justice, and before regional courts and tribunals.[414]

316. Building on previous statements regarding the fragmented landscape of relevant legal frameworks and the gaps therein, some States advocated further interpretation of principles and rules in existing international law for the purposes of the protection of persons affected by sea-level rise. El Salvador encouraged the Commission to provide innovative *de lege ferenda* solutions.[415] Some States noted that the Commission should draw a clear distinction between its proposals *de lege lata* and those *de lege ferenda*.[416] Some cautioned that the Commission should limit itself to determining the current state of international law.[417]

317. Other States expressed support for the view that there was a need to fill gaps in existing frameworks with new bilateral or multilateral international legal instruments to strengthen the protection of persons affected by sea-level rise.[418] Romania, for instance, expressed support for the Commission's call for the development of new legal protections to safeguard the rights of climate-displaced individuals.[419]

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410 Australia (A/C.6/79/SR.21, para. 112).

411 Bahamas (submission in 2024, p. 3; see footnote 105 above), Maldives (A/C.6/79/SR.24, para. 105), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 12), Papua New Guinea (A/C.6/79/SR.24, para. 123), Peru (statement in 2024, para. 8; see footnote 409 above) (see also A/C.6/79/SR.22, paras. 131–132), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6) and Tonga (on behalf of the members of the Pacific Islands Forum with a presence at the United Nations, namely Australia, Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands and Tonga) (A/C.6/79/SR.22, para. 10).

412 Indonesia (A/C.6/79/SR.22, para. 30), Jamaica (statement in 2024, p. 2; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#24mtg) (see also A/C.6/79/SR.24, para. 57), Malta (A/C.6/79/SR.22, para. 99), Portugal (statement in 2024, p. 9; see footnote 365 above) (see also A/C.6/79/SR.21, para. 87), Tuvalu (A/C.6/79/SR.25, para. 69) and United Republic of Tanzania (A/C.6/79/SR.24, para. 108).

413 Indonesia (A/C.6/79/SR.22, para. 30).

414 Argentina (A/C.6/79/SR.24, para. 80), Australia (A/C.6/79/SR.21, para. 114), Chile (A/C.6/79/SR.24, para. 45), Croatia (A/C.6/79/SR.21, para. 117), El Salvador (A/C.6/79/SR.22, paras. 25 and 27), European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 45), Malta (A/C.6/79/SR.22, para. 99), Philippines (A/C.6/79/SR.22, para. 48), Portugal (A/C.6/79/SR.21, para. 86), Romania (A/C.6/79/SR.20, para. 136), Tonga (on behalf of the members of the Pacific Islands Forum with a presence at the United Nations, namely Australia, Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands and Tonga) (A/C.6/79/SR.22, para. 8) and United Republic of Tanzania (A/C.6/79/SR.24, para. 109).

415 El Salvador (A/C.6/79/SR.22, para. 24).

416 Colombia (submission in 2024, p. 9; see footnote 113 above), France (A/C.6/79/SR.21, para. 52), Guinea (A/C.6/79/SR.24, para. 75), Republic of Korea (A/C.6/79/SR.22, para. 37) and Singapore (A/C.6/79/SR.21, para. 25).

417 Colombia (A/C.6/79/SR.23, para. 35), Czechia (A/C.6/79/SR.21, para. 106), France (A/C.6/79/SR.21, para. 52), Hungary (A/C.6/79/SR.22, para. 60), Israel (A/C.6/79/SR.21, para. 68) and Viet Nam (A/C.6/79/SR.22, para. 20).

418 China (statement in 2024, pp. 7–8; see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11), El Salvador (A/C.6/79/SR.22, para. 27) and South Africa (A/C.6/79/SR.21, para. 36).

419 Romania (A/C.6/79/SR.20, para. 136).

318. In that context, the work of the Co-Chairs in identifying 12 possible elements for legal protection of persons affected by sea-level rise was welcomed.[420] It was noted that the elements provided a useful broad-based understanding of possible obligations and non-binding commitments and policies that could contribute to the protection of persons in the context of sea-level rise.[421] According to another view, the 12 elements required further consideration.[422]

### 2. Agreement on the principle of human dignity as a guiding, overarching principle in the protection of persons affected by sea-level rise

319. A large number of States agreed that respect for human dignity should constitute a guiding principle for any action to be taken for the protection of persons affected by sea-level rise.[423] Indeed, a number of those States explicitly stated that they shared the position that human dignity should serve as a guiding principle for addressing the implications of sea-level rise in general.[424] Brazil referred to human dignity as one of the basic principles of international law that should guide discussions.[425] The Federated States of Micronesia referred to human dignity as an overarching principle.[426] Portugal referred to human dignity as one of the cardinal principles and rules of international law, stating that it believed that human dignity was an overarching principle for any action to be taken in the context of sea-level rise.[427] Colombia stressed in particular that the preservation of human dignity, as a universal principle, encompassed also the safeguarding of the cultural identities of affected communities.[428] Others referred to human dignity as a chief concern.[429] Mexico emphasized the importance of guaranteeing fundamental rights and preserving human dignity.[430] El Salvador similarly stated that human dignity must be the central focus of any measure or norm to be considered in the future.[431] Nigeria noted that it recognized the importance of human rights protections, including the protection of the dignity of affected persons.[432] Bulgaria emphasized that it was crucial that the international community create the necessary safeguards for protecting the dignity, identity and rights of persons displaced or otherwise affected by the phenomenon of sea-level rise.[433]

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420 El Salvador A/C.6/79/SR.22, para. 25), Hungary (A/C.6/79/SR.22, para. 60), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 14), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98), Republic of Korea (A/C.6/79/SR.22, para. 37), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6), Singapore (A/C.6/79/SR.21, para. 23) and United States (A/C.6/79/SR.23, para. 6).

421 Singapore (A/C.6/79/SR.21, para. 23).

422 United Kingdom (submission in 2024, para. 13; see footnote 158 above) and United States (A/C.6/79/SR.23, para. 6).

423 Austria (A/C.6/79/SR.20, para. 99), Brazil (A/C.6/79/SR.20, para. 72), Bulgaria (A/C.6/79/SR.24, para. 117), Colombia (submission in 2024, pp. 10–11; see footnote 113 above), El Salvador (A/C.6/79/SR.22, para. 27), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, para. 56), Ireland (A/C.6/79/SR.21, para. 19), Israel (A/C.6/79/SR.21, para. 68), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 14), Portugal (A/C.6/79/SR.21, para. 86), Romania (A/C.6/79/SR.20, para. 135) and Spain (A/C.6/79/SR.23, para. 16).

424 Austria (A/C.6/79/SR.20, para. 99), El Salvador (A/C.6/79/SR.22, para. 27), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, para. 56) and Romania (A/C.6/79/SR.20, para. 135).

425 Brazil (A/C.6/79/SR.20, para. 72).

426 Micronesia (Federated States of) (A/C.6/79/SR.24, para. 14).

427 Portugal (A/C.6/79/SR.21, para. 86).

428 Submission of Colombia in 2024, p. 11 (see footnote 113 above).

429 Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 63), Malta (A/C.6/79/SR.22, para. 104), Mexico (A/C.6/79/SR.20, para. 125) and Russian Federation (A/C.6/79/SR.24, para. 33).

430 Mexico (A/C.6/79/SR.20, para. 125).

431 El Salvador (A/C.6/79/SR.22, para. 27).

432 Nigeria (A/C.6/79/SR.22, para. 107).

433 Bulgaria (A/C.6/79/SR.24, para. 117).

320. The Russian Federation stated that the elements of the protection of persons should be based on respect for human dignity and the principle of non-discrimination.[434] Indonesia argued that a comprehensive, people-centred approach that upheld the dignity, safety and human rights of individuals affected by sea-level rise was required.[435] Spain stated that a comprehensive response, anchored in human dignity, a needs-based and rights-based approach and the duty of States to cooperate, should be developed.[436]

321. Latvia, speaking on behalf of the Baltic States (Estonia, Latvia and Lithuania), made clear that the Baltic States stood ready to work with the international community to protect sovereignty and human dignity in the fight against sea-level rise.[437] Malta stressed that it would continue to spare no effort to support collective endeavours to respond to the critical challenge posed by sea-level rise and find legal solutions that upheld human dignity.[438] Australia illustrated the importance of human dignity by pointing to the Australia-Tuvalu Falepili Union Treaty, under which Australia and Tuvalu had committed to working together to help the citizens of Tuvalu to stay in their homes with safety and dignity.[439]

### 3. Support for combining needs-based and rights-based approaches to the subtopic

322. As at previous sessions,[440] an increasing number of States recognized that a rights-based approach appeared to be insufficient to protect victims of sea-level rise, favouring instead a combination of needs-based and rights-based approaches in order to adequately address the differential essential needs of persons affected by sea-level rise.[441]

323. Austria recalled the connection with the draft articles on the protection of persons in the event of disasters, noting that the Commission had indicated in paragraph (1) of the commentary to draft article 2 that "[t]he prevailing sense of the Commission was that the two approaches were not necessarily mutually exclusive, but were best viewed as being complementary".[442]

324. Egypt stressed the importance of combining a needs-based approach and a rights-based approach in order to provide States with practical guidance on ways in which to address the effects of sea-level rise on persons and communities, and of also incorporating a capacity-based perspective to take into account the resources and capacities of both the affected and the assisting States.[443] The Bahamas pointed out that the Commission should not only focus on the needs and rights of the current generation, but also consider commitments to future generations.[444]

## V. Support for the topic, future work of the Study Group and final outcome

325. The growing interest in and support for the topic – as described in the first issues paper[445] and the additional paper thereto,[446] and in second issues paper[447] and the additional

[434] Russian Federation (A/C.6/79/SR.24, para. 33).
[435] Indonesia (A/C.6/79/SR.22, para. 30).
[436] Spain (A/C.6/79/SR.23, para. 16).
[437] Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 63).
[438] Malta (A/C.6/79/SR.22, para. 104).
[439] Australia (A/C.6/79/SR.21, para. 113).
[440] Papua New Guinea (A/C.6/77/SR.29, para. 24) and Holy See (Observer) (A/C.6/77/SR.29, para. 72).
[441] Austria (A/C.6/79/SR.20, para. 99), Egypt (A/C.6/79/SR.22, para. 83), Maldives (A/C.6/79/SR.24, para. 106) and Spain (A/C.6/79/SR.23, para. 16).
[442] Austria (A/C.6/79/SR.20, para. 99). See also *Yearbook ... 2016*, vol. II (Part Two), para. 49.
[443] Egypt (A/C.6/79/SR.22, para. 83).
[444] Submission of the Bahamas in 2024, p. 4 (see footnote 105 above).
[445] A/CN.4/740 and Corr.1, paras. 8–9 and 19.
[446] A/CN.4/761, paras. 9–15.
[447] A/CN.4/752, paras. 23–43.

paper thereto –[448] was confirmed as a trend during the debates in the Sixth Committee of the General Assembly in 2024 and in the recent written submissions of States.

326. A number of States underlined the need to address all three subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – in a manner that was connected and sensitive to their interlinkages and mutual influences.[449] The Kingdom of the Netherlands suggested that the Commission consider incorporating the three subtopics on the basis of different scenarios regarding the extent to which a State was submerged and/or uninhabitable.[450]

327. While some States had previously noted that different outcomes could potentially be appropriate, depending on the subtopic in question, a large number of States in 2024 supported the idea of a joint final report covering all three subtopics, to be prepared by the Co-Chairs in 2025.[451] Particularly in relation to the final outcome, several States emphasized that it should explore the interlinkages between the three subtopics.[452] A few States expressed doubts as to the desirability of producing a final outcome in 2025, insisting that the Commission should take the necessary time to address the issues in sufficient depth, and considering that the Commission's work on the topic was far from finished.[453]

328. Concerning the scope of the final outcome, some States cautioned that the Commission should not exceed its mandate as outlined in the 2018 syllabus.[454] Austria, for instance, stated that the issue of responsibility for sea-level rise should not be addressed in the report as that would go beyond the Commission's mandate.[455] Several States noted the desirability of presenting and mapping all relevant existing legal frameworks, on the basis of which, as far as possible, the relevant issues should be addressed.[456] In that context, some States invited the Commission to engage in evolutive interpretation and innovative application of existing treaties and arrangements in State practice.[457] Similarly, Malaysia

[448] A/CN.4/774, paras. 20–22.

[449] Czechia (A/C.6/79/SR.21, para. 106), Estonia (statement in 2024, p. 4; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#24mtg) (see also A/C.6/79/SR.24, para. 71), France (A/C.6/79/SR.21, para. 52), Ireland, (A/C.6/79/SR.21, para. 19), Japan (A/C.6/79/SR.22, para. 14), Liechtenstein (A/C.6/79/SR.22, para. 98), Republic of Korea (A/C.6/79/SR.22, para. 37), Russian Federation (A/C.6/79/SR.24, para. 33) and Singapore (A/C.6/79/SR.21, para. 26).

[450] Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 99).

[451] Armenia (A/C.6/79/SR.25, para. 61), Australia (A/C.6/79/SR.21, para. 114), Austria (A/C.6/79/SR.20, para. 100), Chile (A/C.6/79/SR.24, para. 41), China (statement in 2024, p. 5; see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11), Colombia (A/C.6/79/SR.23, para. 33), Cyprus (A/C.6/79/SR.25, para. 39), Czechia (A/C.6/79/SR.21, para. 106), Eritrea (A/C.6/79/SR.22, para. 58), Estonia (statement in 2024, p. 4; see footnote 449 above) (see also A/C.6/79/SR.24, para. 71), European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova, Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 42), France (A/C.6/79/SR.21, para. 52), Iceland (statement in 2024 on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (p. 8; available from https://www.un.org/en/ga/sixth/79/summaries.shtml#20mtg) (see also A/C.6/79/SR.20, paras. 55–58), Ireland (A/C.6/79/SR.21, para. 19), Italy (A/C.6/79/SR.20, para. 89), Japan (A/C.6/79/SR.22, para. 14), Liechtenstein (A/C.6/79/SR.22, para. 98), Micronesia (Federated States of) (A/C.6/79/SR.24, para. 15), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 99), New Zealand (A/C.6/79/SR.22, para. 123), Papua New Guinea (A/C.6/79/SR.24, para. 124), Philippines (A/C.6/79/SR.22, para. 48), Portugal (A/C.6/79/SR.21, para. 86), Republic of Korea (A/C.6/79/SR.22, para. 35), Singapore (A/C.6/79/SR.21, para. 26), United Kingdom (A/C.6/79/SR.22, para. 127) and United States (A/C.6/79/SR.23, para. 7).

[452] Colombia (A/C.6/79/SR.23, para. 33), Estonia (statement in 2024, p. 4; see footnote 449 above) (see also A/C.6/79/SR.24, para. 71), France (A/C.6/79/SR.21, para. 52), Ireland (A/C.6/79/SR.21, para. 19), Japan (A/C.6/79/SR.22, para. 14), Liechtenstein (A/C.6/79/SR.22, para. 98) and Singapore (A/C.6/79/SR.21, para. 26).

[453] Chile (A/C.6/79/SR.24, para. 41) and Guinea (A/C.6/79/SR.24, para. 76). See also submission of the United States in 2024, p. 3 (see footnote 120 above).

[454] China (A/C.6/79/SR.21, para. 10).

[455] Austria (A/C.6/79/SR.20, para. 100).

[456] Austria (A/C.6/79/SR.20, para. 100), China (A/C.6/79/SR.21, para. 11), India (A/C.6/79/SR.24, para. 7) and Singapore (A/C.6/79/SR.21, para. 26).

[457] Armenia (A/C.6/79/SR.25, para. 59) and China (A/C.6/79/SR.21, para. 11).

urged the Commission to ensure that the final outcome on the topic reflected both practical realities and respect for international legal principles.[458] Some States cautioned that the Commission should limit such evolutive interpretation only to instances where necessary. China indicated that the Commission should strike a balance between preserving the existing legal order and developing rules to keep pace with the times.[459] Israel stated that the Study Group should not attempt, in its final report, to rewrite existing international legal frameworks, but should rather further address possible consequences of sea-level rise.[460] Others States invited the Commission to identify the thematic areas that required further progressive development,[461] on the basis of which the future work of the Study Group could be decided at a later stage.[462] Echoing statements in previous debates,[463] a number of States expressed hope that the Commission would not only faithfully capture the current trends in international law on the matter and summarize its legal analysis, but also provide the international community with actionable recommendations on the next steps to further develop international law.[464] Armenia explicitly invited the Commission to reconsider its decision, referred to in the 2018 syllabus for the topic, not to propose amendments to the United Nations Convention on the Law of the Sea.[465] Guatemala noted that it would be helpful if the Commission identified topics requiring further progressive development, with the aim of preparing a set of draft articles that would serve as a foundation for States to use.[466]

329. Some States also expressed their views regarding the labelling of the final report. The United States cautioned against using the term "conclusions" with respect to the final report, as the outcome of the work of the Study Group should be clearly differentiated from the more formal work products of the Commission.[467] Chile, on the other hand, asked the Commission to prepare a set of draft articles that States could use as a basis for cooperation agreements.[468]

330. Ireland stated that the final report should enable States to determine the appropriate next steps.[469] El Salvador indicated that it considered that a legally binding instrument on the issues covered by the Study Group should be developed.[470] The Philippines also envisioned the possibility of the future negotiation of a treaty.[471] Samoa, speaking on behalf of the Alliance of Small Island States, stated that, in the final report by the Study Group, the Co-Chairs should not only summarize their work to date but also chart a path forward as to how the various areas of law should be developed to confront sea-level rise and the climate crisis.[472]

# VI. General Assembly high-level meeting on sea-level rise

331. Sea-level rise has been the subject of discussions in the Security Council and General Assembly, as discussed in the issues papers and the additional papers to the issues papers.[473] The Council considered the agenda item entitled "Sea-level rise: implications for international peace and security" at its 9260th meeting, held on 14 February 2023, and the

[458] Malaysia (A/C.6/79/SR.23, para. 58).
[459] Statement of China in 2024, p. 5 (see footnote 371 above) (see also A/CN.6/79/SR.21, para. 11).
[460] Israel (A/C.6/79/SR.21, para. 68).
[461] Chile (A/C.6/79/SR.24, para. 42).
[462] India (A/C.6/79/SR.24, para. 7).
[463] A/CN.4/774, para. 60.
[464] Micronesia (Federated States of) (A/C.6/79/SR.24, para. 15), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 7) and Tuvalu (A/C.6/79/SR.25, para. 71).
[465] Armenia (A/C.6/79/SR.25, para. 61).
[466] Guatemala (A/C.6/79/SR.24, para. 11).
[467] United States (A/C.6/79/SR.23, para. 7). See also submission of the United States in 2024, p. 3 (see footnote 120 above).
[468] Chile (A/C.6/79/SR.24, para. 42).
[469] Ireland (A/C.6/79/SR.21, para. 19).
[470] El Salvador (A/C.6/79/SR.22, para. 25).
[471] Philippines (A/C.6/79/SR.22, para. 48).
[472] Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 7).
[473] For example, A/CN.4/774, paras. 177–178.

Assembly held an informal plenary meeting on existential threats of sea-level rise amid the climate crisis was held on 3 November 2023.[474]

332. On 16 January 2024, the General Assembly decided to convene a one-day high-level plenary meeting on addressing the existential threats posed by sea-level rise, on 25 September 2024.[475] The high-level meeting was held in New York on 25 September 2024, on the overall theme of "Addressing the threats posed by sea-level rise".[476] The focus of the high-level meeting was on building common understanding, mobilizing political leadership and promoting multisectoral and multi-stakeholder collaboration and international cooperation towards the objective of addressing the threats posed by sea-level rise.[477] The high-level meeting comprised a plenary segment and four multi-stakeholder thematic panel discussions, on the following topics: (a) sea-level rise and its legal dimensions; (b) adaptation, finance and resilience in relation to sea-level rise; (c) livelihoods, socioeconomic challenges and culture and heritage in relation to sea-level rise; and (d) knowledge, data and science to inform sea-level rise risk assessments and decision-making.[478] The high-level meeting ended with a closing segment in which the co-chairs of each multistakeholder panel presented summaries of the panel discussions.[479]

333. During the high-level meeting, many delegations welcomed the work of the Commission on the topic, and the hope was expressed that the Commission's work could constitute a foundational pillar to resolving open legal questions in relation to sea-level rise and providing practical solutions.[480] The General Assembly acknowledged the ongoing work of the Study Group and encouraging States to share their views on the various aspects of the topic with the Commission.[481]

334. The work of the Commission was at the centre of the thematic panel discussion on the legal dimensions of sea-level rise, during which one of the Co-Chairs of the Study Group was a panellist.[482] Participating delegations highlighted the work of the Commission on the topic.[483]

335. In the discussions on the law of the sea and statehood in the plenary segment, there was very broad support among States for the continuity of statehood and the preservation of maritime zones.[484] Delegations referred to the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise and the 2024 Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-Level Rise and Statehood.[485] Delegations emphasized the importance of the preservation of baselines notwithstanding any physical changes to the coast.[486] Strong support was expressed for the presumption of continuity of statehood; some delegations took the positions on continuity of

[474] See S/PV.9260, S/PV.9260 (Resumption 1) and https://www.un.org/pga/78/2023/10/20/letter-from-the-president-of-the-general-assemblyinformal-plenary-meeting-on-sea-level-rise-3-nov-concept-note/.
[475] General Assembly decision 78/544 of 16 January 2024.
[476] General Assembly resolution 78/319 of 1 August 2024, para. 1. See also https://www.un.org/pga/78/high-level-meeting-on-sea-level-rise.
[477] General Assembly resolution 78/319, para. 2.
[478] *Ibid.*, paras. 3–4; and Secretary-General's summary of the high-level meeting on addressing the threats posed by sea-level rise, para. 2.
[479] General Assembly resolution 78/319, para. 3 (d).
[480] Secretary-General's summary, para. 21.
[481] General Assembly resolution 78/319, preamble. See also the oral statements by Ireland and Antigua and Barbuda at the high-level meeting, available at https://webtv.un.org/en/asset/k1d/k1dftbxgfe.
[482] See the concept note for the high-level meeting, available at https://www.un.org/pga/wp-content/uploads/sites/108/2024/08/SLR-Concept-Notes-for-HL-Panels.pdf.
[483] Secretary-General's summary, para. 35.
[484] *Ibid.*, para. 9.
[485] *Ibid.*, paras. 20–21.
[486] *Ibid.*, para. 37.

established maritime zones and statehood notwithstanding sea-level rise as a matter of policy, while others considered them already as a matter of international law.[487]

336. The protection of persons affected by sea-level rise was highlighted as a foremost concern by a number of States in the plenary segment,[488] and it was recalled that the impact of sea-level rise, including forced displacement, was already a reality for many communities.[489] There were expressions of commitment to supporting communities on the front line.[490] The Australia-Tuvalu Falepili Union Treaty and the Pacific Regional Framework on Climate Mobility[491] were highlighted as examples of good practice.[492] The protection of persons was discussed during the thematic panel discussion on livelihoods, socioeconomic challenges and culture and heritage, which covered the threat that sea-level rise posed to coastal communities, including in terms of livelihoods, socioeconomic conditions and cultural heritage, and the displacement of populations as a result of the disruption of traditional livelihoods, economic hardship, coastal erosion, loss of marine ecosystems and freshwater resources, and inundation, exacerbating existing socioeconomic inequalities.[493] Displacement as a result of sea-level rise was linked to the erosion of cultural landscapes and irreparable harm to tangible and intangible cultural heritage and traditional knowledge of persons affected, and heritage could not be "packed into suitcases".[494] It was emphasized that any relocation must be planned, with affected communities taking the lead in decision-making.[495]

337. Delegations referred to several cross-cutting issues relevant to sea-level rise in their statements in the plenary segment and thematic panel discussions. The principles of equity and solidarity was raised by several delegations,[496] some recognizing equity and fairness as a central principle.[497] The need for international cooperation, and the importance of that principle, was highlighted throughout the plenary and panel sessions, both explicitly[498] and through repeated reminders that sea-level rise was a global issue that no country could address alone,[499] calls for the coming together of States on the issue[500] and references to the collective duty or responsibility to act.[501] Likewise, delegations highlighted the importance of the right of peoples to self-determination.[502]

338. A one-day high-level plenary meeting of the General Assembly is due to be held at its eight-first session to continue discussions with the intention of adopting a declaration on the

[487] *Ibid.*, para. 38.
[488] See the oral statements by Nigeria, Indonesia and France, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[489] Secretary-General's summary, paras. 7–8 and 55.
[490] See the oral statement by the Republic of Korea, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[491] Available at https://forumsec.org/publications/communique-52nd-pacific-islands-leaders-forum2023.
[492] Secretary-General's summary, para. 18; and see the oral statement by Australia, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[493] Concept note (see footnote 482 above).
[494] Secretary-General's summary, paras. 52 and 54.
[495] *Ibid.*, para. 54.
[496] See the oral statements by Mauritius, available at https://webtv.un.org/en/asset/k1d/k1dftbxgfe; and Samoa and Yemen, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[497] See the oral statement by Antigua and Barbuda, available at https://webtv.un.org/en/asset/k1d/k1dftbxgfe; and Secretary-General's summary, para. 36.
[498] See the oral statements by Sierra Leone, Indonesia, Singapore, the Pacific Islands Forum and New Zealand, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f; and Antigua and Barbuda, available at https://webtv.un.org/en/asset/k1d/k1dftbxgfe.
[499] See the oral statements by Maldives, available at https://webtv.un.org/en/asset/k12/k12c8s2klm; Tuvalu, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f; and Mauritius, available at https://webtv.un.org/en/asset/k1d/k1dftbxgfe.
[500] See the oral statements by Seychelles, Republic of Korea, Nigeria, Australia and New Zealand, available at: https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[501] See the oral statements by the European Union and South Africa, available at: https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.
[502] Secretary-General's summary, para. 36.

issue of sea-level rise.[503] The Prime Minister of Tuvalu, as a representative of the States most affected by sea-level rise, emphasized that such a declaration could cover climate mobility with dignity, the protection of cultural heritage, and the protection of the continuity of statehood and maritime zones.[504]

# VII. Regional and bilateral declarations and initiatives

## A. Regional declarations

339. Regional declarations on the issue of sea-level rise adopted up to early 2024, including by the Pacific Islands Forum and the Alliance of Small Island States, were discussed in the additional papers to the issues papers.[505]

340. The first was the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, adopted by the leaders of the Pacific Islands Forum on 6 August 2021. It expressly declared a common interpretation of the United Nations Convention on the Law of the Sea among Forum members: that it did not impose an affirmative obligation to keep baselines and outer limits of maritime zones under review or to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations, and that maintaining maritime zones established in accordance with the Convention, and rights and entitlements that flow from them, notwithstanding climate change-related sea-level rise, was supported by both the Convention and the legal principles underpinning it.

341. The Declaration was subsequently affirmed by other regional bodies, notably the Alliance of Small Island States (39 members), in the Leaders' Declaration adopted on 22 September 2021;[506] the Climate Vulnerable Forum (55 members, comprising 25 members from Africa and the Middle East, 19 members from Asia and the Pacific and 11 members from Latin America and the Caribbean);[507] and the Organization of African, Caribbean and Pacific States (79 members).[508]

342. As referred to in the additional paper to the second issues paper,[509] at the fifty-second meeting of Pacific Islands Forum Leaders, held in the Cook Islands from 6 to 10 November 2023, the leaders of Forum members endorsed the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise. The leaders called on all States to support the Declaration, and committed to continued support for and engagement with the ongoing study by the Commission on the topic of sea-level rise in relation to international law.

343. In 2024, the 56 Commonwealth Heads of Government adopted the Apia Commonwealth Ocean Declaration, in which they supported an interpretation of the United Nations Convention on the Law of the Sea that allowed for the preservation of maritime zones.[510] Specifically, the Declaration provided the following:

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503 General Assembly decision 78/558 of 1 August 2024. See also the oral statement of the President of the General Assembly at the closing of the plenary segment of the high-level meeting, available at https://webtv.un.org/en/asset/k1x/k1xrvxcm7f.

504 Secretary-General's summary, paras. 7 and 17.

505 For example, A/CN.4/761, paras. 77–81, and A/CN.4/774, paras. 148–152.

506 Alliance of Small Island States Leaders' Declaration, 22 September 2021, para. 41. Available at https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/.

507 Dhaka-Glasgow Declaration of the Climate Vulnerable Forum, 2 November 2021. Available at https://cvfv20.org/dhaka-glasgow-declaration-of-the-cvf/.

508 Declaration of the Seventh Meeting of the Organization of African, Caribbean and Pacific States Ministers in Charge of Fisheries and Aquaculture, 8 April 2022. Available at https://www.oacps.org/wp-content/uploads/2022/05/Declaration_-7thMMFA_EN.pdf.

509 A/CN.4/774, paras. 70, 87, 148, 285 and 296.

510 The Heads of Government of the Commonwealth met in Apia in October 2024. As a result of this meeting, the following documents were issued: the Leader's Statement, the Samoa Communiqué of

> We, the Heads of Government of the Commonwealth: … In view of the urgent threat of climate change-related sea-level rise, and the fundamental need to secure the rights, entitlements, and interests of all States and peoples of the Commonwealth, *affirm* that members can maintain their maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with [the United Nations Convention on the Law of the Sea], and the rights and entitlements that flow from them, [which] shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. We *acknowledge* the work of the International Law Commission on sea-level rise and the discussions that took place in September 2024 at the high-level plenary meeting of the United Nations General Assembly on addressing the threats posed by sea-level rise.[511]

344. In the Forum Communiqué in relation to the fifty-third Pacific Islands Forum, held in Nuku'alofa from 26 to 30 August 2024,[512] the Forum leaders reaffirmed the 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise and the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, acknowledged the unanimous advisory opinion delivered by the International Tribunal for the Law of the Sea in May 2024 – in which the Tribunal clarified the obligations of all States relating to protection of the marine environment – and strongly called for the inclusion of sea-level rise as a stand-alone agenda item in the General Assembly and other relevant United Nations processes.

345. On 23 September 2024, the Heads of State and Government of the Alliance of Small Island States adopted the Declaration on Sea-level Rise and Statehood.[513] Several States endorsed this Declaration during the high-level meeting on sea-level rise held in New York on 25 September 2024.[514] In the preamble to the Declaration, the Alliance leaders emphasized that small island developing States, as oceanic States, were disproportionately impacted and specially affected by climate change-related sea-level rise, and reaffirmed the 2021 Alliance of Small Island States Leaders' Declaration with regard to the preservation of maritime zones. Importantly, they recognized as a principle of international law that the State, once established, would continue to exist and endure, and maintain its status and effectiveness, and that international law did not contemplate the demise of statehood in the context of climate change-related sea-level rise.

346. Moreover, the preamble to the Declaration continues as follows:

> *Further recognizing* that continuity of statehood in the face of climate change-related sea-level rise is consistent with important principles and rights of international law, including the right of peoples to self-determination, the right to a nationality, the protection of territorial integrity and political independence, principles of equity and fairness, the maintenance of international peace and security …, the right of a State to provide for its preservation, the duty of cooperation, the sovereign equality of States, and permanent sovereignty over natural resources[.]

The Declaration concludes with a call to "the international community, consistent with the duty to cooperate, to support this Declaration and cooperate in achieving its purposes".

347. In the additional paper to the first issues paper, the Co-Chairs noted that, together, the Pacific Islands Forum and the Alliance of Small Island States represented 43 members, of which 41 were parties to the United Nations Convention on the Law of the Sea, comprising

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the Commonwealth Heads of Government Meeting and the Apia Commonwealth Ocean Declaration: "One Resilient Common Future", adopted on 26 October 2024. Available at https://thecommonwealth.org/news/chogm2024/Samoa-communique-leaders-statement-and-declarations.

511 Apia Commonwealth Ocean Declaration, para. 13.

512 Forum Communiqué in relation to the fifty-third Pacific Islands Forum, Nuku'alofa, 26–30 August 2024, 29 August 2024, paras. 30–34. Available at https://forumsec.org/publications/reports-communique-53rd-pacific-islands-leaders-forum-2024.

513 Available at https://www.aosis.org/aosis-leaders-declaration-on-sea-level-rise-and-statehood/.

514 Secretary-General's summary of the high-level meeting on addressing the threats posed by sea-level rise, para. 20.

approximately 25 per cent of all parties to the Convention.[515] These regional declarations, then, provide an important gauge of States' positions, in addition to the statements made in the Sixth Committee and submissions to the Commission. Notably, the Organization of African, Caribbean and Pacific States and the Commonwealth include States from Africa, which, as a region, has made relatively fewer statements. Yet 45 African States are members of the Organization of African, Caribbean and Pacific States, of which 20 are also members of other regional bodies that have endorsed the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise.[516]

348. This demonstrates very widespread agreement among States on the importance of legal stability, certainty and predictability in relation to baselines and maritime zones, linked to a common interpretation of United Nations Convention on the Law of the Sea that allows for the preservation of baselines and maritime zones established in conformity with the Convention and that no obligation exists for States to update charts or coordinates in the case of sea-level rise. In addition, there is a clear consensus that the principle of fundamental change of circumstances does not apply to maritime boundaries, which enjoy the same legal protection under the Vienna Convention on the Law of Treaties as land boundaries.

## B. Regional and bilateral initiatives

349. In the additional paper to the second issues paper, reference was made to regional and bilateral initiatives such as the Pacific Regional Framework on Climate Mobility[517] and the Australia-Tuvalu Falepili Union.[518]

350. Since the issuance of that additional paper, the Australia-Tuvalu Falepili Union Treaty entered into force, on 28 August 2024,[519] following the conclusion of an explanatory memorandum between the two countries on 8 May 2024.[520]

351. More recently, a joint communiqué between Latvia and Tuvalu was signed by the Ministers of Foreign Affairs of the two States in New York on 24 September 2024. It includes the following:

> In light of Latvia's experience of continuing statehood since foundation in 1918, Latvia expressed its readiness to continue to recognize the statehood of Tuvalu and its existing maritime boundaries, even if Tuvalu's population is displaced or it loses its land surface due to sea-level rise.[521]

[515] A/CN.4/761, para. 85.

[516] Four are members of the Alliance of Small Island States (Cabo Verde, Mauritius, Sao Tome and Principe and Seychelles) and 18 are members of the Commonwealth (Botswana, Cameroon, Eswatini, Gabon, Gambia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Nigeria, Rwanda, Seychelles, Sierra Leone, Togo, Uganda, United Republic of Tanzania and Zambia).

[517] A/CN.4/774, para. 153–155.

[518] *Ibid.*, paras. 156–157.

[519] See https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union.

[520] See https://www.dfat.gov.au/sites/default/files/explanatory-memorandum-falepili-union-between-tuvalu-australia.pdf.

[521] Available at https://www.mfa.gov.lv/en/media/15961/download?attachment. A precedent in this regard is the joint communiqué between Tuvalu and the Bolivarian Republic of Venezuela, signed on 4 August 2021 and transmitted to Member States in a note verbale (NV/2021/37) dated 30 August 2021, by which the two States announced the establishment of diplomatic relations. It includes the following:

> [B]oth States recognize climate change as an existential threat to Tuvalu and a shared global problem. They further commit to recognizing the statehood of Tuvalu as permanent and its existing maritime boundaries as set, even if Tuvalu's population is displaced or it loses its land territory due to sea-level rise. This is in accordance with international law, which holds that recognition is unconditional and irrevocable.

# VIII. Advisory proceedings related to climate change

## A. International Tribunal for the Law of the Sea

352. On 12 December 2022, the Commission of Small Island States on Climate Change and International Law[522] submitted to the International Tribunal for the Law of the Sea a request for an advisory opinion.[523] The following questions were submitted for the Tribunal's consideration:

> What are the specific obligations of State[s] [p]arties to the United Nations Convention on the Law of the Sea …, including under Part XII:
>
> (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea-level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere;
>
> (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea-level rise, and ocean acidification?

353. It is notable that the questions made specific reference to sea-level rise in relation to specific obligations of States parties to the United Nations Convention on the Law of the Sea to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment in relation to the impact of climate change.

354. In total, written statements were submitted by 34 States parties to the United Nations Convention on the Law of the Sea, including the European Union, and 9 international organizations, including the Commission of Small Island States on Climate Change and International Law. Oral hearings were held between 11 and 25 September 2023, during which 34 States parties and 4 intergovernmental organizations made statements. The Tribunal delivered its advisory opinion on 21 May 2024.[524] Several written statements included comments on the negative impact of sea-level rise on coastal communities and on livelihoods and human rights.[525]

355. In its unanimous advisory opinion, the Tribunal addressed a broad range of issues. Notably, the Tribunal concluded that anthropogenic greenhouse gas emissions into the atmosphere constituted pollution of the marine environment within the meaning of article 1, paragraph 1 (4), of the United Nations Convention on the Law of the Sea.[526] In regard to obligations of States to prevent, reduce and control pollution of the marine environment, under article 194 of the Convention, the Tribunal stated the following:

> [T]he standard of due diligence States must exercise in relation to marine pollution from anthropogenic [greenhouse gas] emissions needs to be stringent. However, its implementation may vary according to States' capabilities and available resources.

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[522] The current member States of Commission of Small Island States on Climate Change and International Law (and the years in which they became members) are Antigua and Barbuda (2021), Tuvalu (2021), Palau (2021), Niue (2022), Vanuatu (2022), Saint Lucia (2022), Saint Vincent and the Grenadines (2023) and Saint Kitts and Nevis (2023). See https://www.cosis-ccil.org/organization/members.

[523] Available at https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/.

[524] International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024, Case No. 31.

[525] For example, Commission of Small Island States on Climate Change and International Law (written statement, para. 95), Sierra Leone (written statement, para. 42), Djibouti (written statement, para. 7) and Pacific Community (written statement, paras. 32–33).

[526] Advisory opinion, para. 179.

> Such implementation requires a State with greater capabilities and sufficient resources to do more than a State not so well placed.[527]

The Tribunal went on to state that "[t]he standard of due diligence under article 194, paragraph 2, [of the Convention] can be even more stringent than that under article 194, paragraph 1, because of the nature of transboundary pollution".[528]

356. On global and regional cooperation, the Tribunal found the following:

> The Tribunal notes that almost all of the participants in the present proceedings shared the view that countering the effects of anthropogenic [greenhouse gas] emissions on the marine environment necessarily requires international cooperation.
>
> …
>
> [T]he Tribunal notes that the duty to cooperate is an integral part of the general obligations under articles 194 and 192 of the [United Nations Convention on the Law of the Sea] given that the global effects of these emissions necessarily require States' collective action.[529]

357. The Tribunal also concluded that the United Nations Convention on the Law of the Sea "impose[s] specific obligations on States [p]arties to cooperate, directly or through competent international organizations, continuously, meaningfully and in good faith in order to prevent, reduce and control marine pollution from anthropogenic [greenhouse gas] emissions".[530]

358. The Tribunal noted that "most of the participants in the present proceedings were of the view that assistance to developing States is indispensable in combating pollution of the marine environment from anthropogenic [greenhouse gas] emissions".[531] On the specific obligations of States in relation to scientific and technical assistance to developing States and preferential treatment for developing States, the Tribunal found the following:

> The Tribunal notes that articles 202 and 203 of [the United Nations Convention on the Law of the Sea] do not refer to the principle of common but differentiated responsibilities and respective capabilities. However, the obligation of assistance to developing States under these articles has some elements underlying that principle. …
>
> In the view of the Tribunal, scientific, technical, educational and other assistance to developing States that are particularly vulnerable to the adverse effects of climate change is a means of addressing an inequitable situation. Although they contribute less to anthropogenic [greenhouse gas] emissions, such States suffer more severely from their effects on the marine environment.
>
> …
>
> To conclude, the Tribunal is of the view that articles 202 and 203 of the Convention set out specific obligations to assist developing States, in particular vulnerable developing States, in their efforts to address marine pollution from anthropogenic [greenhouse gas] emissions.[532]

359. The Tribunal found that while the United Nations Convention on the Law of the Sea did not use the term "adaptation measures", the global goal of enhancing adaptive capacity, under the Paris Agreement, was compatible with the obligations of the Convention. Specifically, the Tribunal noted "that measures of adaptation and resilience-building frequently require significant resources", recalling, in this respect, the obligations under the Convention on the provision of technical assistance to developing States.[533]

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[527] *Ibid*., para. 241.
[528] *Ibid.*, para. 258.
[529] *Ibid*., paras. 295 and 299.
[530] *Ibid*., para. 321.
[531] *Ibid*., para. 325.
[532] *Ibid.*, paras. 326–327 and 339.
[533] *Ibid*., paras 392–394. Paris Agreement (Paris, 12 December 2015), United Nations, *Treaty Series*, vol. 3156, No. 54113, p. 79.

360. In relation to the general obligation of States to protect and preserve the marine environment, under article 192 of the United Nations Convention on the Law of the Sea, the Tribunal concluded the following:

> Where the marine environment has been degraded, this may require restoring marine habitats and ecosystems. This obligation is one of due diligence. The standard of due diligence is stringent, given the high risks of serious and irreversible harm to the marine environment from climate change impacts and ocean acidification.[534]

361. While the Tribunal did not directly address the issues of baselines, maritime zones, statehood and the protection of persons in its advisory opinion, the Tribunal's conclusions and findings have relevance to the work of the Study Group, considering that sea-level rise was referred to in the questions presented. In particular, the obligation of States to provide scientific and technical assistance to developing States is of great relevance to States that are facing the multiple adverse effects of sea-level rise. This obligation includes the provision of technical assistance to adapt to loss of land territory, including measures to restore or for the displacement of persons. Likewise, the Tribunal made quite clear that there is a very strong obligation under the United Nations Convention on the Law of the Sea for cooperation among States, either directly or through international organizations. The Tribunal also recognized that "climate change represents an existential threat and raises human rights concerns".[535]

## B. International Court of Justice

362. The General Assembly, at its 64th plenary meeting of its seventy-seventh session, held on 29 March 2023, unanimously adopted resolution 77/276, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change".[536]

363. In this resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

> Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
>
> (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;
>
> (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

[534] Advisory opinion, para. 400.

[535] *Ibid.*, para. 66.

[536] For further information on the work of the International Court of Justice with regard to the obligations of States in respect of climate change, see https://www.icj-cij.org/case/187.

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?[537]

364. The advisory proceedings before the International Court of Justice drew a record level of participation. Several of the 91 States and international organizations that submitted written statements underscored the diverse effects of sea-level rise, emphasizing its far-reaching consequences and the urgent need for international legal clarity on the matter.[538]

365. Sea-level rise was referred to by 77 participants in their written statements and by 66 participants in their oral statements during the hearings, which illustrates the growing concern about this particular adverse effect of climate change and its legal consequences.

### 1. References to sea-level rise and to the law of the sea, statehood and the protection of persons

366. In their written statements, many States referred to sea-level rise as a consequence of climate change,[539] and as affecting them potentially or actually.[540]

367. Although not expressly one of the questions posed to the Court, many States included in their written and oral statements matters relating to the impact of sea-level rise on their coastline, baselines and maritime entitlements, making clear their national positions in support of the preservation ("freezing") of baselines and maritime zones,[541] including

[537] General Assembly resolution 77/276 of 29 March 2023. International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966), United Nations, *Treaty Series*, vol. 993, No. 14531, p. 3; United Nations Framework Convention on Climate Change (New York, 9 May 1992), *ibid.*, vol. 1771, No. 30822, p. 107; and Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948.

[538] For the written statements, made by 91 States and international organizations, and written comments on those statements, see https://www.icj-cij.org/case/187/written-proceedings. For the oral statements, made by 96 States and 11 international organizations, see the verbatim records of the oral proceedings, available at https://www.icj-cij.org/case/187/oral-proceedings.

[539] Written statements of Democratic Republic of the Congo (para. 91), Portugal (para. 16), Colombia (para. 1.8), Sierra Leone (para. 3.91), Peru (para. 73), Namibia (para. 69), Madagascar (para. 28), Singapore (paras. 3.81 and 3.50), Nauru (paras. 19–22), Bahamas (para. 14), Sri Lanka (para. 29), Melanesian Spearhead Group (para. 14), Organization of African, Caribbean and Pacific States (paras. 30 and 109–110), Kuwait (paras. 121 and 138), Kiribati (para. 23), Pacific Islands Forum Secretariat (paras. 12–37), Commission of Small Island States on Climate Change and International Law (para. 47 (c)), Antigua and Barbuda (paras. 65–71), European Union (para. 293), United Arab Emirates (para. 9), Egypt (paras. 41, 152, 275–276 and 312), South Africa (para. 24), Mauritius (paras. 58–61 and 65–67), Chile (para. 30), Marshall Islands (para. 5), Barbados (paras. 11, 55–65, 81 and 98–100), Vanuatu (paras. 77–129), Spain (paras. 3–4), Liechtenstein (paras. 51 and 68), Kenya (paras. 3.14–3.31), Iran (Islamic Republic of) (para. 135), France (paras. 9, 16 and 62), Dominican Republic (paras. 2.14 and 4.29), Burkina Faso (paras. 16, 142, 150, 206–207 and 362), Costa Rica (paras. 101 and 113), Brazil (para. 90), Romania (paras. 17 and 23), Seychelles (para. 58) and Australia (para. 1.6).

[540] Written statements of Portugal (paras. 15–17), Colombia (paras. 2.15, 2.23–2.24, 2.68 and 2.71), Sierra Leone (paras. 3.93–3.97), Micronesia (Federated States of) (paras. 24–25), Palau (paras. 6–8 (b)), Cook Islands (paras. 44–48), Tonga (paras. 84–90), Madagascar (paras. 70–71), Saint Vincent and the Grenadines (paras. 8–9, 13, 45–46, 66–71, 73 and 131), Grenada (paras. 16, 29–30, 70–72 and 79), Saint Lucia (paras. 27 and 30), India (paras. 91–92), Philippines (paras. 5 and 28.e), Belize (paras. 8–9), Albania (paras. 61 and 122), Ghana (para. 33), Parties to the Nauru Agreement Office (para. 20), Tuvalu (paras. 5–6, 29–60 and 136), Bahamas (paras. 20 (b), 24–30 and 38–45), Sri Lanka (paras. 56–59 and 70–87), Melanesian Spearhead Group (paras. 108, 116 and 213–214), Uruguay (paras. 34 and 37–38), Organization of African, Caribbean and Pacific States (paras. 47–48 and 51), Kiribati (paras. 32–82), United Arab Emirates (paras. 21–32), Egypt (para. 54), Mauritius (paras. 3, 22–23 and 25–29), Marshall Islands (para. 96–106), Barbados (paras. 113–126 and 294), New Zealand (paras. 7–13), Vanuatu (paras. 299–302, 354, 543 and 591), Indonesia (paras. 69 and 87 (v)), Nauru (written statement, paras. 7–25), Kenya (para. 3.27), Solomon Islands (paras. 25–30), Mexico (para. 26), Viet Nam (paras. 37–41), Gambia (para. 1.2), Samoa (paras. 16, 23–28, 46 and 78), Seychelles (paras. 22–38 and 85), Bangladesh (paras. 47–78) and Timor-Leste (paras. 34 and 54–58).

[541] Costa Rica (written statement, paras. 125–127), Burkina Faso (written statement, para. 345), Colombia (written comments, para. 1.21), El Salvador (written comments, para. 9), Cook Islands

endorsements of the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise.[542] For example, Tonga expressed the following view:

> [A]n interpretation of [the United Nations Convention on the Law of the Sea] to the effect that maritime entitlements are ambulatory in nature is inconsistent with growing State and regional practice in support of a view that once established pursuant to [the Convention], maritime entitlements are not subject to any such reduction.[543]

A number of States expressed support for the statement made by the Commission of Small Island States on Climate Change and International Law that "at least 104 States – representing a strong majority of island and coastal States – acknowledge that maritime baselines remain fixed at their current coordinates notwithstanding physical coastline changes brought about by sea-level rise".[544]

368. The Alliance of Small Island States noted the following:

> [T]he overwhelming practice of States in maritime zone notifications since the entry into force of [the United Nations Convention on the Law of the Sea] is further evidence of the stability of maritime zones. In the 164 maritime zone notifications filed since 1995, only a single State has revised their baselines because of a change in the baselines. Other States have provided additional detail or additional basepoints, but none have changed their baselines.[545]

It also stated that "the principle of equity demands the stability of maritime zones".[546] Tuvalu stated that it shared "the consensus of over 100 States that respect for sovereignty and territorial integrity requires recognition that maritime baselines remain fixed despite physical changes to the coastline due to sea-level rise".[547] The Bahamas observed that there was "broad support for – and no opposition to – the fixing of baselines and maritime entitlements, as well the continuation of statehood, irrespective of physical changes to the affected States' coastlines resulting from sea-level rise".[548] Highlighting its own vulnerability to sea-level rise as an archipelagic State, the Bahamas expressed the following view:

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(written comments, para. 111), Mauritius (written comments, para. 147), Timor-Leste (written comments, para. 82), Côte d'Ivoire (oral statement, verbatim record 2024/39, p. 40), Papua New Guinea (oral statement, verbatim record 2024/43, p. 26), Romania (oral statement, verbatim record 2024/48, p. 41), Tonga (oral statement, verbatim record 2024/51, p. 41), Alliance of Small Island States (oral statement, verbatim record 2024/52, p. 48), Bahamas (written statement, para. 221; and written comments, paras. 6 (g) and 91–95), United States (written statement, para. 1.13), Commission of Small Island States on Climate Change and International Law (written statement, para. 71) and Pacific Islands Forum Secretariat (written statement, paras. 14 and 16; and oral statement, verbatim record 2024/53, p. 41).

542 New Zealand (written statement, para. 13; and oral statement, verbatim record 2024/46, p. 31), Dominican Republic (written statement, para. 4.40), Australia (written statement, para. 1.17), El Salvador (oral statement, verbatim record 2024/39, p. 71), Fiji (oral statement, verbatim record 2024/40, p. 67), Papua New Guinea (oral statement, verbatim record 2024/43, p. 22), Latvia (oral statement, verbatim record 2024/44, p. 14), Pacific Islands Forum Fisheries Agency (written statement, paras. 38–40) and Pacific Islands Forum Secretariat (oral statement, verbatim record 2024/53, pp. 42–43).

543 Tonga (written statement, para. 234; see also oral statement, verbatim record 2024/51, p. 41). See also Micronesia (Federated States of) (written statement, para. 115), Parties to the Nauru Agreement Office (written statement, paras. 57 and 66) and Alliance of Small Island States (oral statement, verbatim record 2024/52, p. 48).

544 Commission of Small Island States on Climate Change and International Law (written statement, para. 72). See also Tuvalu (oral statement, verbatim record 2024/51, p. 60), Bahamas (written comments, para. 6 (g)) and Kiribati (written comments, para. 41).

545 Alliance of Small Island States (oral statement, verbatim record 2024/52, p. 53).

546 *Ibid.*

547 Tuvalu (oral statement, verbatim record 2024/51, p. 60).

548 Bahamas (written comments, para. 6 (g)). See also Cook Islands (written comments, para. 111), Costa Rica (written statement, paras. 125–127), Dominican Republic (written statement, para. 4.40), El Salvador (written statement, para. 55; and oral statement, verbatim record 2024/39, pp. 71–72),

> The principle that States' baselines (and correlative marine entitlements) remain fixed despite physical changes due to sea-level rise is consistent with the terms of [the Convention]. The Convention … does not envisage any changes to baselines or charts to reflect subsequent changes in the physical environment. Thus, the terms of [the Convention] suggest that baselines remain legally fixed despite the effects of sea-level rise.[549]

369. Liechtenstein added that "[u]nder the *rebus sic stantibus* principle enshrined in [a]rticle 62 (1) of the [Vienna Convention on the Law of Treaties], a fundamental change of circumstances would have no effect on existing maritime delimitation treaties".[550] The Federated States of Micronesia highlighted the growing consensus that:

> [T]he [United Nations Convention on the Law of the Sea] does not impose an obligation on coastal States [p]arties to keep their maritime baselines and outer limits of their maritime zones under review [or] to update charts or lists of geographical coordinates of points once deposited.[551]

370. Many States included comments on legal certainty, stability and predictability in relation to the overall impact of climate change and in relation to the stability of maritime boundaries and entitlements.[552] Nauru noted that "[t]he Security Council, exercising its primary responsibility for the maintenance of international peace and security, has in a Presidential Statement recognized 'the adverse effects of climate change, ecological changes and natural disasters' on regional stability".[553] The Bahamas stated that the "principle of fixed baselines is also consistent with the principles of legal stability and equity".[554]

371. The well-recognized principle of permanent sovereignty over natural resources was commented on by many States in relation to the preservation of maritime zones and entitlements, self-determination and the continuity of statehood.[555] However, the United

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Micronesia (Federated States of) (written statement, para. 115), Kiribati (written comments, para. 41), Liechtenstein (written statement, paras. 76–77; and oral statement, verbatim record 2024/44, p. 26), Marshall Islands (written statement, para. 105), Mauritius (written statement, para. 154), Nauru (written statement, paras. 12–13), Solomon Islands (written statement, paras. 215–217; and written comments, paras. 13–14), Tonga (written statement, para. 234), Tuvalu (written statement, para. 54 (d)), Alliance of Small Island States (written statement, annex I, paras. 5–6, and annex II, paras. 4–7; and oral statement, verbatim record 2024/52, pp. 52–54), Commission of Small Island States on Climate Change and International Law (written statement, paras. 71–72), Pacific Islands Forum Secretariat (written statement, para. 14; and oral statement, verbatim record 2024/53, pp. 42–43), Côte d'Ivoire (oral statement, verbatim record 2024/39, p. 40) and Romania (oral statement, verbatim record 2024/48, p. 41).

549 Bahamas (written statement, para. 221).

550 Liechtenstein (written statement, para. 78; see also oral statement, verbatim record 2024/44, p. 26).

551 Micronesia (Federated States of) (written statement, para. 115). See also Romania (oral statement, verbatim record 2024/48, pp. 40–41).

552 Parties to the Nauru Agreement Office (written statement, para. 54), Bahamas (written statement, para. 223; and written comments, para. 90), Solomon Islands (written statement, para. 209), El Salvador (written comments, para. 10), Mauritius (written comments, para. 150), Vanuatu (written comments, para. 199), Timor-Leste (written comments, para. 80), Pacific Islands Forum Secretariat (written comments, para. 8; and oral statement, verbatim record 2024/53, p. 42), Papua New Guinea (oral statement, verbatim record 2024/43, p. 22), Romania (oral statement, verbatim record 2024/48, pp. 40–41), Alliance of Small Island States (oral statement, verbatim record 2024/52, p. 51), Nauru (written statement, para. 24) and Kiribati (written statement, para. 190).

553 Nauru (written statement, para. 24, referring to S/PRST/2018/17).

554 Bahamas (written statement, para. 223).

555 Liechtenstein (written statement, para. 77), Bangladesh (written statement, paras. 120–123), Costa Rica (written statement, paras. 71–72), El Salvador (written comments, para. 10; and oral statement, verbatim record 2024/39, p. 72), Ghana (written comments, para. 3.53), African Union (written statement, para. 198), Kiribati (written statement, paras. 169 and 187; and oral statement, verbatim record 2024/43, pp. 40–48), Pacific Islands Forum Secretariat (written statement, para. 12), Pacific Islands Forum Fisheries Agencies (written statement, para. 36), Papua New Guinea (oral statement, verbatim record 2024/43, pp. 25–27), Vanuatu (written statement, paras. 293, 295 and 514) and Alliance of Small Island States (oral statement, verbatim record 2024/52, pp. 51 and 54).

States expressed the opinion that the principle of permanent sovereignty over natural resources was not relevant to the advisory proceedings.[556]

372. Several participants in the proceedings, either at the written or oral phases, expressed support for the continuity of statehood, and referred to the declarations of the Pacific Islands Forum in 2023 and the Alliance of Small Island States in 2024 on the matter. They included El Salvador, Latvia, Tonga, New Zealand, the Marshall Islands, Kiribati, the Pacific Islands Forum Secretariat and the Alliance of Small Island States. The Bahamas summed up the positions taken in the following way:

> Dozens of written statements have also addressed the issue of continued statehood. Notably, no [p]articipant has contested the principle that sea-level rise does not eviscerate the legal personality of a State. Therefore, the Bahamas agrees with [the Commission of Small Island States on Climate Change and International Law] that the "presumption of the continuation of the State is a well-established principle of international law" and submits that it should apply to the context of sea-level rise. Just as the Bahamas, the [Pacific Islands] Forum Fisheries Agency and the Pacific Islands Forum also framed continuity of statehood as consistent with the bedrock duty of cooperation.[557]

Furthermore, for instance, the Dominican Republic expressed support for the preliminary conclusion reached by the Study Group in the second issues paper that, with regard to small island developing States whose territory could be covered by the sea or become uninhabitable owing to exceptional circumstances outside their will or control, a strong presumption in favour of continuing statehood should be considered, and that such States had to provide for their preservation, and international cooperation would be of particular importance in that regard.[558]

373. The protection of persons affected by sea-level rise, including resulting displacement, was also specifically mentioned,[559] including by the Pacific Islands Forum Secretariat, the Alliance of Small Island States, Vanuatu, Tonga, Solomon Islands, the Marshall Islands, Portugal, the Kingdom of the Netherlands and Australia, with some participants referencing or emphasizing the importance of the work of the Commission on the topic.[560] The question of measures to address displacement owing to climate change-induced sea level rise, and other displacement drivers, was discussed in the context of legal satisfaction[561] or as a question for the Court to address.[562] Several participants in the proceedings also argued the relevance and applicability of the right to a clean, healthy and sustainable environment in the context of the impact of climate change, including sea-level rise.[563]

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556 United States (written comments, para. 4.65).

557 Bahamas (written comments, para. 96). See also Commission of Small Island States on Climate Change and International Law (written statement, para. 72).

558 Dominican Republic (written statement, para. 4.39, referring to A/CN.4/752, para. 194).

559 Written statements of Democratic Republic of the Congo (para. 93), Tonga (paras. 85, 90, 108 and 262), Madagascar (paras. 86–87), Saint Vincent and the Grenadines (para. 13), Philippines (para. 43), Netherlands (Kingdom of the) (para. 5.38), Tuvalu (paras. 59 and 148), Uruguay (para. 34), Kiribati (para. 10), Commission of Small Island States on Climate Change and International Law (para. 53 (i)), Antigua and Barbuda (paras. 94–96 and 105), El Salvador (paras. 46–48), Egypt (para. 17), Mauritius (paras. 138–141), Marshall Islands (paras. 107–117), New Zealand (para. 4), Vanuatu (paras. 127, 300–301, 353 and 487), Ecuador (para. 1.12), Liechtenstein (paras. 31, 63 and 71), Nauru (para. 17), Kenya (para. 5.68), Solomon Islands (paras. 22, 45, 173, 196 and 217–227), Samoa (para. 16), Bangladesh (paras. 68–69) and Timor-Leste (paras. 41 and 175).

560 Written statements of Netherlands (Kingdom of the) (para. 5.44), Marshall Islands (para. 112) and Dominican Republic (paras. 4.37–4.39).

561 Madagascar (written statement, para. 95).

562 Saint Vincent and the Grenadines (written statement, para. 5).

563 Written statements of African Union (para. 192), Albania (para. 96 (c)), Antigua and Barbuda (paras. 180–185), Argentina (para. 38), Bangladesh (para. 110), Barbados (paras. 160–165), Bolivia (Plurinational State of) (para. 17), Burkina Faso (para. 219), Costa Rica (paras. 80–85), Democratic Republic of the Congo (paras. 147–155), Ecuador (paras. 3.103–3.108), European Union (para. 258), Micronesia (Federated States of) (paras. 78–80), Iran (Islamic Republic of) (paras. 139–142), Kenya

### 2. Submissions on cross-cutting issues and interlinkages

374. In their written and oral statements to the International Court of Justice, States and international organizations also addressed cross-cutting issues and interlinkages relevant to sea-level rise, which are later discussed in this report.

375. Some States highlighted interlinkages between the right to self-determination, the principle of permanent sovereignty over natural resources and the right to subsistence, fixed baselines, territorial integrity and State continuity, which could all be threatened by climate change. For example, the African Union stated that the right to permanent sovereignty over natural resources was a key component of self-determination, enabling nations to exercise control over their resources in the interest of their national development and the well-being of their people, and it highlighted the interconnection between self-determination and sustainable development.[564] Madagascar emphasized that the right to self-determination of all peoples implied the right not to be deprived their means of subsistence, which was threatened by climate change. The loss of territory and of agricultural viability, and forced displacement, owing to the impact of climate change jeopardized livelihoods and survival.[565] The Bahamas underscored the connection between self-determination and other rights, including permanent sovereignty over natural resources.[566] The Bahamas also observed that other participants, in their written statements, had argued that recognition of fixed baselines could be a remedy for breach of the right to self-determination or territorial integrity owing to climate change.[567] The relationship between the rights to self-determination and to permanent sovereignty over natural resources was also raised by Bangladesh.[568] The Dominican Republic highlighted the impact of climate change on the right to self-determination, as it severely affected peoples' control over their national resources and means of subsistence, and agreed with other States that the right to self-determination was linked to the obligation to respect territorial integrity.[569] Kiribati stressed that the right to self-determination encompassed the right to permanent sovereignty over natural resources and the right to exercise control over territory, as recognized under customary international law and international human rights law.[570] Albania drew a connection between the right to self-determination and the right of peoples not to be deprived of their own means of subsistence, noting that the former right included the latter.[571] Liechtenstein linked the fixing of States' maritime boundaries with sovereignty over natural resources, even as coastlines receded, in alignment with the principles of United Nations Convention on the Law of the Sea.[572] Liechtenstein reaffirmed the inalienable nature of self-determination and the presumption of continued statehood, including and in particular for States whose land territories become inundated by rising sea levels, and whose populations might as a result be relocated. Referring to the Convention, it further noted that baselines for State territory should remain fixed, even as sea levels moved landward as a result of sea-level rise.[573] The Commission of Small Island States on Climate Change and International Law expressed the view that international law recognized a direct connection between peoples' right to self-determination and the land on which they lived, with the presumption of State continuity even when territories were at risk.[574] The European Union drew attention to the close link between self-determination, on the one hand, and sovereignty over natural resources and territorial

(paras. 5.73–5.75), Liechtenstein (paras. 45–47), Madagascar (paras. 61–64), Melanesian Spearhead Group (paras. 283–289), Mexico (paras. 87–103), Namibia (paras. 121–126), Netherlands (Kingdom of the) (paras. 3.33–3.34), Portugal (paras. 69–88), Seychelles (paras. 136–146), Slovenia (paras. 17–48), Spain (para. 15), Switzerland (para. 60), Tuvalu (paras. 98–100) and Vanuatu (para. 389).

564 African Union (written statement, paras. 198–199 and 220).

565 Madagascar (written statement, paras. 59–60).

566 Bahamas (written statement, paras. 154–157).

567 Bahamas (written comments, paras. 90–97).

568 Bangladesh (written statement, paras. 120–123).

569 Dominican Republic (written comments, paras. 4.20–4.24).

570 Kiribati (written statement, paras. 168–171).

571 Albania (written statement, para. 96.)

572 Liechtenstein (written statement, paras. 73–77).

573 Liechtenstein (oral statement, verbatim record 2024/44, p. 26).

574 Commission of Small Island States on Climate Change and International Law (written statement, paras. 74–78).

integrity, on the other, and stated that the right to self-determination should not be compromised by sea-level rise.[575]

376. Several States submitted that the principle, or requirement,[576] of equity constituted a general principle of international law,[577] with some pairing it with the concept of climate justice,[578] or referring to it as a cornerstone principle of the international climate change regime.[579] The principle of equity was referred to as a "core" or "guiding" principle,[580] on which the response to climate change was centred.[581] Others described its influence on the regime, arguing that contemporary international law, particularly in the area of climate change, was sensitive to considerations of equity and solidarity.[582] State submissions referred to the principle of equity with varying connections to the principle of common but differentiated responsibilities. Some referred to it as a stand-alone principle,[583] or as one that sat alongside the principle of common but differentiated responsibilities.[584] Others submitted that the general principle of equity had gained a different meaning in the context of the climate regime and stood apart from the principle of common but differentiated responsibilities.[585]

377. The principle of solidarity was referred to by a number of States,[586] and characterized as "the only way forward" in the context of international cooperation.[587] It was referred to alongside the principle of equity[588] and the obligation of cooperation with developing countries.[589] It was submitted that the contemporary international law, particularly in the area of climate change, was sensitive to considerations of equity and solidarity.[590]

[575] European Union (written statement, paras. 235–238, 257 and 266).
[576] United Arab Emirates (written statement, para. 133).
[577] Written statements of Micronesia (Federated States of) (para. 69), Pakistan (para. 44) and Ecuador (para. 3.55).
[578] Written statements of Mauritius (para. 215), Pakistan (para. 44), Kenya (para. 5.38) and Romania (paras. 46–55).
[579] Antigua and Barbuda (written statement, paras. 466 and 488).
[580] Written statements of South Africa (paras. 47 and 129), Indonesia (paras. 65–71 and 87 (iv)) and Iran (Islamic Republic of) (paras. 76–83).
[581] Written statements of South Africa (para. 27) and New Zealand (paras. 16 and 129).
[582] France (written statement, paras. 214–240).
[583] Written statements of Saint Lucia (para. 97 (iii)), Albania (para. 8), Mauritius (paras. 217 and 221 (b)–(c)), Solomon Islands (paras. 123–132) and Romania (para. 109).
[584] Written statements of Portugal (paras. 46, 50 and 53), Micronesia (Federated States of) (paras. 67–77), Saint Lucia (para. 37), Albania (para. 8), United States (para. 3.22), Antigua and Barbuda (paras. 230 and 265), Ecuador (para. 1.34) and Vanuatu (para. 312).
[585] European Union (written statement, paras. 164–212).
[586] Written statements of Madagascar (para. 52), Saint Vincent and the Grenadines (para. 118), Solomon Islands (para. 58.5), Bangladesh (paras. 124–126), Germany (17 and 118) and Timor-Leste (paras. 199–211, 264 and 346).
[587] China (written statement, para. 40).
[588] Cook Islands (written statement, para. 137).
[589] Burkina Faso (written statement, paras. 114, 123–159, 350 and 355).
[590] France (written statement, para. 214).

378. Several States included submissions on the duty to cooperate,[591] the principle of cooperation,[592] the obligation to cooperate[593] or the requirement to cooperate in relation to climate change.[594] Some States specifically identified the duty of cooperation as holding customary status,[595] with some identifying it as a fundamental principle[596] or the defining feature of international law.[597] Others characterized it as a general principle of international law.[598] Alongside the general duty to cooperate, many States addressed specific duties arising in the context of specific regimes. With regard to environmental law, the duty to cooperate was variously characterized as the "*Grundnorm*" of customary international law relating to the protection of the environment,[599] as a core requirement in international environmental law,[600] as fundamental pillar, or fundamental principle,[601] of international environmental law,[602] and as the concept on which international environmental law was grounded.[603]

379. Cooperation was identified as a core principle of the climate change regime.[604] The duty to cooperate was described as being of paramount importance, or essential,[605] in the context of climate change,[606] including in relation to loss and damage.[607] The obligation to cooperate was specifically mentioned with respect to the effects of sea-level rise.[608] Many States emphasized the practical necessity of cooperation in the case of climate change, even if not identifying it as a duty.[609] In this context, cooperation was sometimes characterized as

[591] Written statements of Democratic Republic of the Congo (paras. 221–242), Portugal (paras. 128–161), Grenada (paras. 43–46), Colombia (para. 3.63), Sierra Leone (para. 3.26), Micronesia (Federated States of) (paras. 65–66), Saint Lucia (paras. 74–78), Philippines (paras. 71–79), Belize (paras. 56 (e) and 59), Albania (paras. 83–93), Netherlands (Kingdom of the) (para. 4.23), Tuvalu (para. 103), Bahamas (paras. 105–111 and 208–232), Alliance of Small Island States (para. 6), Uruguay (paras. 114–124 and 176), Organization of African, Caribbean and Pacific States (paras. 91–95), Pacific Islands Forum Secretariat (para. 38), African Union (paras. 124–129 and 299 (a) (iii)), Commission of Small Island States on Climate Change and International Law (paras. 118–141), Egypt (paras. 219–220 and 257), Republic of Korea (paras. 38–40), Mauritius (paras. 206–207), Marshall Islands (paras. 31–38 and 124), Vanuatu (paras. 308–313 and 515), Iran (Islamic Republic of) (paras. 31–32, 84–104, 145 and 163), Solomon Islands (paras. 116–122), Mexico (paras. 74–85), Viet Nam (paras. 30–36), Burkina Faso (paras. 232–240), Samoa (paras. 142–158), Australia (paras. 4.2–4.6) and Timor-Leste (paras. 180–198).

[592] Written statements of Saudi Arabia (para. 4.10), Albania (paras. 8 and 85–87), Sri Lanka (para. 94 (c)), Egypt (annex, para. 26), China (paras. 40–41), New Zealand (para. 129), Indonesia (para. 64), Peru (paras. 80 and 87) and Bangladesh (para. 100).

[593] Written statements of Albania (paras. 83–93), Antigua and Barbuda (para. 142), Barbados (paras. 208–226), France (paras. 224–225), Kuwait (para. 77), Mexico (para. 74), Nepal (para. 20) and Costa Rica (paras. 92 (k) and 123–128).

[594] Antigua and Barbuda (written statement, paras. 417–444 and 509).

[595] Written statements of Antigua and Barbuda (para. 402), Mexico (para. 33), Romania (para. 98) and Australia (paras. 4.2–4.6).

[596] Written statements of United Arab Emirates (para. 73), Marshall Islands (para. 31) and Timor-Leste (para. 182).

[597] Kenya (written statement, para. 5.17).

[598] Written statements of Romania (para. 110) and Sri Lanka (para. 94 (c)).

[599] United Arab Emirates (written statement, para. 73).

[600] Solomon Islands (written statement, paras. 116–122).

[601] Written statements of Sierra Leone (para. 3.26), Australia (para. 3.27) and Timor-Leste (para. 182).

[602] Written statements of Colombia (para. 3.63) and Micronesia (Federated States of) (paras. 65–66).

[603] Kenya (written statement, para. 5.18).

[604] Written statements of Iran (Islamic Republic of) (paras. 31–32, 84–104, 145 and 163), Solomon Islands (paras. 117–121), Sierra Leone (para. 3.26) and Australia (para. 4.6).

[605] Mauritius (written statement, paras. 206–207).

[606] Written statements of Albania (para. 83) and Uruguay (para. 123)

[607] Written statements of Tonga (312), Melanesian Spearhead Group (para. 336), Marshall Islands (para. 84), Vanuatu (para. 606), France (para. 231) and Dominican Republic (para. 4.67).

[608] Bahamas (written statement, paras. 111 and 217–226).

[609] Written statements of Tonga (para. 203), Colombia (para. 3.63), Switzerland (para. 7), Peru (para. 105), Canada (para. 36), Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) (para. 4), Saudi Arabia (paras. 1.4 and 3.11), Albania (para. 84), Ghana (para. 10), Netherlands (Kingdom of the) (para. 3.13), Antigua and Barbuda (para. 417), Argentina (paras. 10 and 45–46), Republic of Korea (para. 16), Mauritius (para. 221 (b)), Barbados (para. 79), Pakistan (para. 64),

arising as a legal effect of the principles of equity and common but differentiated responsibilities,[610] or as having a special function in promoting equity.[611]

380. Several States recognized a specific duty to cooperate applying particularly to the cross-border movement of people as a consequence or in anticipation of the adverse effects of climate change.[612] That duty might include entering into bilateral or regional arrangements,[613] undertaking global initiatives[614] and coordinating efforts to find sustainable and durable solutions for displaced persons, including in cases, as with sea-level rise, where return is impractical or impossible.[615] The duty to cooperate was described as extending more broadly to persons affected by climate change, including sea-level rise.[616]

## C. Inter-American Court of Human Rights

381. A request for an advisory opinion on the climate emergency and human rights remains pending before the Inter-American Court of Human Rights.[617]

382. The request, submitted to the Court by Colombia and Chile, contains questions regarding States' obligations under the American Convention on Human Rights to address the effects of climate change.[618] The request focuses on the obligation to prevent and mitigate the adverse effects of climate change, with particular attention paid to its differentiated impact on vulnerable groups, including Indigenous Peoples, Afrodescendent communities, women, children and future generations. The Court is asked to define the scope of States' obligations to protect the right to a healthy environment and other interconnected rights, such as the rights to life, health, food and property, particularly for populations and regions disproportionately affected by climate change. Furthermore, Colombia and Chile request guidance on measures that States should take to ensure alignment with the principles of equity and sustainability, and compliance with their broader human rights obligations under international law.

383. The Court convened a series of hearings in Barbados and Brazil in April and May 2024, respectively, as part of its advisory proceedings. More than 150 delegations participated, including representatives from States (both members and non-members[619] of the Organization of American States), international organizations, non-governmental organizations, academic institutions and groups of individuals.

384. States from the region expressed their views on the interrelationship between international environmental law and human rights law,[620] and on the existence of an autonomous human right to a healthy environment under the American Convention on

Spain (para. 8), Indonesia (para. 47), Japan (para. 1), Kenya (paras. 5.18 and 5.21), Iran (Islamic Republic of) (para. 164), Solomon Islands (para. 122), Mexico (paras. 75–76), Slovenia (paras. 45–46), Brazil (para. 96), Romania (para. 39), Samoa (paras. 149 and 214), Australia (paras. 2.1, 2.61, 3.65, 6.2 and 6.4) and Timor-Leste (paras. 38, 40 and 367).

610 Written statements of Portugal (paras. 128–161), Sierra Leone (para. 3.30), Saint Lucia (paras. 48 and 64), Uruguay (para. 134), Kuwait (para. 137 (3) (i)), African Union (para. 52) and Democratic Republic of the Congo (paras. 221–242).

611 Albania (written statement, paras. 90–91).

612 Written statements of Portugal (para. 148), Netherlands (Kingdom of the) (paras. 5.43–5.44), Bahamas (paras. 111 and 227–232) and Solomon Islands (para. 226).

613 Written statements of Portugal (para. 148) and Tonga (paras. 114–116).

614 Tonga (written statement, para. 114).

615 Portugal (written statement, para. 148).

616 *Ibid.* (para. 155).

617 The request for the advisory opinion, the written observations submitted by States and further information on the advisory proceedings are available at https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634.

618 American Convention on Human Rights: "Pact of San José, Costa Rica" (San José, 22 November 1969), United Nations, *Treaty Series*, vol. 1144, No. 17955, p. 123.

619 For example, Vanuatu.

620 Written observations submitted by Barbados (paras. 117 ff.), Brazil (paras. 20 ff.), Chile (pp. 96 ff.), Colombia (paras. 21–31), El Salvador (pp. 4 and 8–11), Mexico (paras. 280–316) and Paraguay (paras. 7 and 18).

Human Rights.[621] They emphasized the duty to cooperate,[622] the principle of non-discrimination,[623] the right of access to justice and information,[624] intergenerational equity,[625] the rights of Indigenous Peoples[626] and the duty to provide reparations to States and communities that have been adversely affected by climate change,[627] including as a result of sea-level rise.

# IX. Other relevant recent judicial developments

385. On 9 April 2024, the Grand Chamber of the European Court of Human Rights decided on three applications concerning climate change and the human rights obligations of States.[628]

386. The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[629] concerned a complaint by four women and a Swiss association that considered that the Swiss authorities were not taking sufficient action to mitigate the effects of climate change. The Court found that the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) encompassed a right to effective protection by the State authorities from the serious adverse effects of climate change on life, health, well-being and quality of life. However, it held that the four individual applicants did not fulfil the victim-status criteria under the Convention and declared the application inadmissible in respect of them. It found that the applicant association, in contrast, had the right to bring a complaint. The Court held that there had been violations under the Convention of the right to respect for private and family life and the right of access to court. The Court found that the respondent State had failed to comply with its duties ("positive obligations") under the Convention with regard to climate change.

387. The case *Duarte Agostinho and Others v. Portugal and 32 Others*[630] concerned the current and future severe effects of climate change, which the applicants attributed to the respondent States, and which they claimed affected their lives, well-being, mental health and peaceful enjoyment of their homes. As concerned the extraterritorial jurisdiction of the respondent States other than Portugal, the Court found that there were no grounds in the Convention for the extension of their extraterritorial jurisdiction in the manner requested by the applicants. Having regard to the fact that the applicants had not pursued any legal avenue in Portugal concerning their complaints, the Court also found the applicants' complaint against Portugal inadmissible, for non-exhaustion of domestic remedies. The Court declared inadmissible the applications lodged against Portugal and the other States on the issue of climate change.

621 Written observations submitted by Barbados (para. 151), Chile (pp. 62–72), El Salvador (pp. 2–7), Mexico (paras. 55, 86 and 185) and Paraguay (para. 24).

622 Written observations submitted by Barbados (paras. 117 ff.), Brazil (paras. 33–46), Chile (pp. 99–101), Colombia (paras. 76–91), El Salvador (p. 25), Mexico (paras. 172–179) and Paraguay (paras. 7 and 18).

623 Written observations submitted by Barbados (para. 295), Chile (pp. 52–53), El Salvador (p. 25), Mexico (paras. 245 ff.) and Paraguay (para. 53).

624 Written observations submitted by Brazil (paras. 69–77), Chile (p. 72), Colombia (paras. 100–132), El Salvador (pp. 17–18), Mexico (paras. 124–131) and Paraguay (para. 24).

625 Written observations submitted by Barbados (para. 309), Brazil (para. 114), Chile (pp. 72 ff.), Colombia (paras. 32–47), El Salvador (pp. 4 ff.), Mexico (paras. 115–116) and Paraguay (para. 24).

626 Written observations submitted by Barbados (para. 295), Colombia (paras. 168–189), El Salvador (pp. 18 ff.), Mexico (paras. 108 ff.) and Paraguay (para. 12).

627 Written observations submitted by Barbados (paras. 232 ff.), Chile (pp. 78–82 and 97–100) and Mexico (paras. 159 ff.).

628 See https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases. See also European Court of Human Rights, *Carême v. France*, Application No. 7189/21, Decision, 9 April 2024.

629 European Court of Human Rights *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024.

630 European Court of Human Rights, *Duarte Agostinho and Others v. Portugal and 32 Others*, Application No. 39371/20, Decisions, 9 April 2024.

# X. Work by other bodies

## A. Inter-American Juridical Committee

388. The Inter-American Juridical Committee is continuing its work on the topic entitled "Legal implications of sea-level rise in the inter-American regional context".[631]

## B. Inter-American Commission on Human Rights

389. On 30 December 2024, the Inter-American Commission on Human Rights issued resolution No. 2/24 on human mobility caused by climate change.[632] This resolution is intended to provide a comprehensive response to climate mobility, providing guidance for States in the region in developing regulations, programmes and public policies to protect the rights of people who are compelled to move owing to the adverse effects of climate change.

## C. International Law Association final report and Athens resolution

390. At the Eighty-First Conference of the International Law Association, held in Athens from June 25 to 28 2024, the Committee on International Law and Sea-Level Rise presented its final report,[633] offering a comprehensive review of key legal issues related to statehood, human rights and international cooperation in the context of climate change-induced sea-level rise.

391. Resolution 01/2024, [634] adopted by the International Law Association at the Conference, addresses the legal and humanitarian challenges posed by climate change-induced sea-level rise, particularly for small island developing States. The resolution emphasizes the importance of maintaining legal stability, ensuring equity and fostering international cooperation to safeguard statehood and the human rights of affected populations. It underscores the need for global cooperation to manage displacement and migration resulting from sea-level rise, ensuring that responses are aligned with established human rights frameworks and prevent forcible returns (*refoulement*) of displaced individuals.

392. The resolution reaffirms that individuals displaced by sea-level rise retain their rights under international law, with States holding responsibilities to protect them, including when relocation occurs across borders. A tiered approach is proposed, whereby the affected State, while it retains habitable territory, holds the primary responsibility to respect, protect and fulfil the human rights of the members of its population, but as its territory becomes increasingly uninhabitable owing to sea-level rise, host States assume increased obligations. Enhanced international cooperation, including the provision of funding and legal frameworks such as dual or multiple nationality and absentee voting, is considered essential to support both the displaced populations and the host countries. This resolution advocates global solidarity to address the growing crisis of climate change and sea-level rise.

631 See https://www.oas.org/en/sla/iajc/docs/CJI-RES_283_CIII-O-23_ENG_rev1.pdf and https://www.oas.org/en/sla/iajc/docs/Legal_Implications_of_Sea-Level_Rise_in_the_Inter-American_Regional_Context.pdf.

632 Available (in Spanish) at https://www.oas.org/es/cidh/decisiones/pdf/2024/Resolucion_cambio_climatico.pdf.

633 Available at https://www.ila-hq.org/en/documents/final-report-committee-on-international-law-and-sea-level-rise-22-05-2024.

634 Available at https://www.ila-hq.org/en/documents/ila-resolution-1-committee-on-international-law-and-sea-level-rise-en-1.

# XI. Cross-cutting issues and interlinkages

393. In the discussions in the Study Group, in the debates in the Sixth Committee and in States' written submissions to the Commission, it was often underlined[635] that the work on the topic of sea-level rise should be guided by basic principles of international law, such as sovereign equality of States, non-intervention in internal affairs, international cooperation, equity and solidarity, and human dignity. Reference was also made to self-determination and the principle of permanent sovereignty over natural resources. The importance of maintaining legal stability, certainty and predictability was broadly underscored.[636]

394. The purpose of the present section of the report is to discuss the relevance and applicability of some of these principles as cross-cutting issues and to identify the interlinkages between them and the subtopics of the law of the sea, statehood and the protection of persons affected by sea-level rise.

## A. Stability, certainty and predictability

395. In the first issues paper and the additional paper thereto, on issues related to the law of the sea, the Co-Chairs examined in detail the importance of legal stability, certainty and predictability in relation to the preservation of baselines and maritime zones in the face of climate change-related sea-level rise. As discussed in the present, final report, since the issuance of the first issues paper in 2020, a very large number of Member States – in their statements in the Sixth Committee, in their submissions to the Commission and in their statements in other United Nations and regional bodies – have made clear their views that there exists a direct link between legal stability, certainty and predictability and the preservation of baselines and maritime zones in the face of climate change-related sea-level rise.[637] In particular, several States stressed the importance of legal stability for the maintenance of peace and security.[638] Consequently, the Co-Chairs made the preliminary observation that legal stability (and security, certainty and predictability) was viewed among Member States as having a very concrete meaning, and had been linked to the preservation of maritime zones through the fixing of baselines (and outer limits of maritime zones measured from those baselines).[639]

396. However, the importance of legal stability, certainty and predictability is not limited to the preservation of baselines and maritime zone. It has a broader, direct application to the need to maintain territorial integrity, statehood, self-determination and the protection of persons, including their human rights, in the face of the consequences of sea-level rise.

397. For example, in the additional paper to the second issues paper, in relation to the subtopic of statehood, the Co-Chairs noted that there was a need for care in drawing a distinction between, on the one hand, situations resulting from the application of article 1 of

[635] See, for instance, Brazil (A/C.6/79/SR.20, paras. 72–74), Cameroon (A/C.6/79/SR.22, paras. 113–116), Cuba (A/C.6/79/SR.21, paras. 30–34), Cyprus (A/C.6/79/SR.25, paras. 32–39), El Salvador (A/C.6/79/SR.22, paras. 24–27), Iceland (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/79/SR.20, paras. 55–58), Mexico (A/C.6/79/SR.20, paras. 123–126), Papua New Guinea (A/C.6/79/SR.24, paras. 121–124), Peru (A/C.6/79/SR.22, paras. 131–132) and Romania (A/C.6/79/SR.20, paras. 133–136).

[636] Cyprus A/C.6/79/SR.25, paras. 32–39), Eritrea (A/C.6/79/SR.22, paras. 54–58), Guinea A/C.6/79/SR.24, paras. 73–76), Israel (A/C.6/79/SR.21, paras. 66–68), Peru A/C.6/79/SR.22, paras. 131–132), Philippines (A/C.6/79/SR.22, paras. 45–48) and Portugal (A/C.6/79/SR.21, paras. 85–86).

[637] A/CN.4/761, paras. 20–97.

[638] Bahamas (submission in 2024, p. 2; see footnote 105 above), Guatemala (A/C.6/78/SR.27, paras. 80–81), Colombia (submission in 2024, p. 4; see footnote 113 above), Denmark (on behalf of the Nordic countries, namely Denmark, Finland, Iceland, Norway and Sweden) (A/C.6/78/SR.23, paras. 68–76), Cyprus (A/C.6/78/SR.28, paras. 42–47), Estonia (A/C.6/78/SR.24, paras. 43–46), Philippines (A/C.6/78/SR.28, para. 66–70), Thailand (A/C.6/76/SR.22, paras. 3–5), Bulgaria (A/C.6/77/SR.29, paras. 65–66) and Viet Nam (A/C.6/76/SR.21, para. 83–85).

[639] A/CN.4/761, para. 98 (a).

the Convention on the Rights and Duties of States (Montevideo Convention),[640] containing the criteria or requirements to be met for a State to exist; and, on the other hand, situations where the State clearly existed already and therefore maintained various types of relations, including diplomatic relations, with other members of the international community, had treaty-making capacity and could be a member of universal and regional international organizations, where there might be circumstances in which the State had lost one of the criteria or requirements of article 1 of the Montevideo Convention without it being assumed, in practice, that the State concerned had ceased to exist. The Co-Chairs went on to assert that any interpretation to the contrary would result in a manifestly unjust and inequitable outcome, which would also run counter to the certainty, predictability and stability.[641] They also observed that, in relation to the presumption of the continuity of statehood, focus should be placed on the principles of security, stability, certainty and predictability.[642]

398. In the same paper, in regard to the subtopic of the protection of persons affected by sea-level rise, the Co-Chairs observed that, while action to ensure the enjoyment by all persons of their human rights in the context of climate change was demanding and complex, international human rights law already provided a series of key principles that contributed to legal certainty and stability and ensured predictability as to who was obliged to protect the human rights of persons affected by the adverse effects of climate change.[643]

399. The importance of stability in international relations for the maintenance of international peace and security was likewise referred to in the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, issued by the leaders of the Pacific Islands Forum on 9 November 2023.[644]

## B. Preservation of existing rights

400. The physical consequences of sea-level rise resulting from climate change are well established and accepted by the scientific community. Among these consequences is the physical loss of territory resulting from rising sea levels and erosion caused by increasing storm surges and tides. These physical losses, in turn, threaten the existence or the continuation of specific legal rights of States. In examining the issue, the Co-Chairs, in the additional paper to the first issues paper, concluded that the principle of historic waters, title or rights provided an example of the preservation of existing rights in maritime areas that would otherwise not be in accordance with international law.[645] Indeed, the preservation of lawfully acquired rights is a general principle of law that would apply to sea-level rise.

401. While the work of the Study Group has been thematically focused on the three different subtopics, it has become evident that they are closely interrelated.

402. This interlinkage has been observed by States in relation to maritime rights and statehood. For example, Malaysia, Jamaica, Papua New Guinea and Peru emphasized that the preservation of the maritime rights of States was closely linked to the continuity of statehood.[646] Belarus drew attention to statehood and the preservation of identity.[647] The Federated States of Micronesia and Croatia highlighted the relationship between international cooperation and the preservation of statehood and maritime entitlements.[648] Sierra Leone and New Zealand noted that the principle of international cooperation could play an important

[640] Convention on the Rights and Duties of States (Montevideo, 26 December 1933), League of Nations, *Treaty Series*, vol. CLXV, No. 3802, p. 19.
[641] A/CN.4/774, para. 76.
[642] *Ibid.*, para. 90.
[643] *Ibid.*, para. 205.
[644] Para. 9. Available at https://forumsec.org/publications/2023-declaration-continuity-statehood-and-protection-persons-face-climate-change.
[645] A/CN.4/761, para. 169.
[646] Malaysia (A/C.6/77/SR.27, para. 15), Jamaica (A/C.6/78/SR.28, para. 31), Papua New Guinea (A/C.6/78/SR.27, para. 87) and Peru (A/C.6/77/SR.29, para. 40).
[647] Belarus (A/C.6/77/SR.26, para. 125).
[648] Micronesia (Federated States of) (A/C.6/77/SR.28, para. 106) and Croatia (A/C.6/77/SR.25, para. 30).

role for States to provide for their own preservation.[649] Estonia, in relation to statehood, expressed the view that the main goal should be the preservation of legal stability, security, certainty and predictability in international relations.[650] Liechtenstein noted the importance of the preservation of an affected population as a people for the purposes of exercising the right of self-determination.[651] Malta, on the preservation of rights, stated that no effort should be spared to ensure that any sovereign nation whose territorial integrity was affected by sea-level rise did not lose any existing rights.[652]

403. In the additional paper to the second issues paper, the Co-Chairs emphasized that the idea was not to afford new rights to States affected by sea-level rise, possibly affecting or reducing those of third States, but to ensure the preservation of the legitimate rights of the affected States under international law, including those relating to their living or non-living natural resources, and to the exploitation and sustainable use of those resources for the benefit of present and future generations of their populations.[653] This important point is also closely linked to equity and to the overarching principle of ensuring stability, certainty and predictability. The Co-Chairs went on to assert that going against legal certainty and validly acquired rights would give rise to manifestly unjust, inequitable, arbitrary and unpredictable situations, and serious risks for international peace and security.[654]

404. Both the first issues paper and the additional paper thereto included an examination of the possible consequences on the existing rights and obligations of States in maritime zones in the case of a landward shift of the baseline resulting in a landward shift of the maritime zones. The conclusion was that third States would gain additional rights overall, but at the considerable expense of the coastal State, which stood to lose existing rights.[655] In particular, the potential economic loss to the coastal State in the case of losing maritime space in the exclusive economic zone was highlighted in the first issues paper,[656] and the additional paper drew attention to considerations of equity where one party stood to gain significantly more than another for circumstances that were not caused by the coastal State, noting that such changes in maritime entitlements brought the risk of creating uncertainty, instability and the possibility of disputes.[657] The preservation of existing rights would prevent such consequences.

405. Moreover, the preservation of maritime entitlements is also inherently linked to the preservation of statehood. Even in the situation of complete or partial submergence rendering the land territory uninhabitable, the continuity of statehood supported by the continuity of the benefits derived from access to the natural resources afforded by maritime entitlements preserves the rights of self-determination, identity and citizenship. This in turn is further linked to preservation of the existing human rights of an affected population, including that of human dignity, as discussed in the additional paper to the second issues paper.[658] Furthermore, as stated in the same paper, persons affected by sea-level rise have a general entitlement to protection of their human rights.[659] The principle of preservation of rights ensures the maintenance of these rights. As observed in the additional paper, while action to ensure the enjoyment by all persons of their human rights in the context of climate change is demanding and complex, international human rights law already provides a series of key principles that contribute to legal certainty and stability and ensure predictability.[660]

406. In sum, the preservation of existing rights is an essential principle that needs to be applied both to the consequences of sea-level rise on the physical territory of States and to

[649] Sierra Leone (A/C.6/77/SR.27, para. 28) and New Zealand (submission in 2023, p. 1; available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms).
[650] Estonia (A/C.6/77/SR.27, para. 63).
[651] Liechtenstein (A/C.6/77/SR.29, para. 30).
[652] Malta (A/C.6/78/SR.27, para. 36).
[653] A/CN.4/774, para. 110.
[654] *Ibid.*
[655] A/CN.4/761, paras. 195 and 214.
[656] A/CN.4/740 and Corr.1, paras. 180–181.
[657] A/CN.4/761, para. 214 (b).
[658] A/CN.4/774, paras. 186–193.
[659] *Ibid.*, para. 201.
[660] *Ibid.*, para. 205.

intangible consequences such as the enjoyment of existing rights, including human rights. This principle in turn is directly linked to, and will ensure, the principle of legal stability, certainty and predictability. International law must ensure that States can transition to unprecedented situations on a mass scale with clarity and prevent potential chaos or conflict in international relations.

## C. Self-determination

407. Self-determination is one of the fundamental principles of international law. The Charter of the United Nations includes it among the purposes of the Organization (Article 1, paragraph 2). Subsequently, it was further developed in various instruments, including the Declaration on the Granting of Independence to Colonial Countries and Peoples,[661] the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[662] article 1 of both the International Covenant on Civil and Political Rights[663] and the International Covenant on Economic, Social and Cultural Rights,[664] the United Nations Declaration on the Rights of Indigenous Peoples[665] and the American Declaration on the Rights of Indigenous Peoples.[666]

408. The International Court of Justice has established the *erga omnes* character of the right to self-determination, while the work of the Commission on peremptory norms of general international law (*jus cogens*)[667] includes the right of self-determination as an example of such a norm.

409. In the context of the topic of sea-level rise in relation to international law, the right to self-determination has been considered a fundamental principle to be taken into account under all three subtopics: the law of the sea, statehood and the protection of persons. For example, in relation to statehood, it has been stressed that any alternative chosen must be compatible with the right to self-determination of the populations of the States and countries concerned, which must in all cases be consulted. The Pacific Islands Forum, in its 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise, explicitly cites self-determination as one of the principles underpinning the continuity of statehood (para. 9). The Alliance of Small Island States, in its 2024 Declaration on Sea-Level Rise and Statehood, also mentions self-determination as a basis for such continuity (seventh preambular paragraph) while emphasizing that statehood will cease only if another form of expression of the right to self-determination of a small island developing State's population is explicitly sought and freely exercised by that population (para. 4).

410. A number of States referred to self-determination in their statements during the 2024 debate in the Sixth Committee. For example, the Kingdom of the Netherlands noted that State practice demonstrated the existence of a presumption of continuity in cases in which one or more criteria for statehood were no longer met. That presumption of continuity was, *inter*

[661] General Assembly resolution 1514 (XV) of 14 December 1960.
[662] General Assembly resolution 2625 (XXV) of 24 October 1970.
[663] International Covenant on Civil and Political Rights (New York, 16 December 1966), United Nations, *Treaty Series*, vol. 999, No. 14668, p. 171.
[664] International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966), *ibid.*, vol. 993, No. 14531, p. 3.
[665] General Assembly resolution 61/295 of 13 September 2007.
[666] Adopted on 15 June 2016, Organization of American States, General Assembly, forty-sixth regular session, Santo Domingo, 13–15 June 2016, *Proceedings*, vol. I, OEA/Ser.P/XLVI-O.2, resolution AG/RES.2888 (XLVI-O/16).
[667] The text of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*j*us cogens) adopted by the Commission at its seventy-third session, and the commentaries thereto, can be found in *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10* (A/77/10), paras. 43 and 44.

*alia*, inextricably linked to the right of external self-determination of the people or peoples inhabiting the State in question.[668]

411. The Kingdom of the Netherlands also stated that when a State was fully submerged and fully uninhabitable and its population became displaced, several issues merited further consideration, such as how the Government of a State that continued to exist could exercise jurisdiction over its population that resided in a third State after being relocated, and how to implement the right of self-determination and the human rights of the population.[669]

412. In such a situation, when the Government of a State directly affected by sea-level rise is located in the territory of another State, it must be able to act independently of any other State or international organization in performing the various State functions, including those relating to services for its nationals around the world. To this end, it would be very important for the State to develop digital platforms with which to provide services to its nationals, who, while maintaining their nationality of origin, could also acquire the nationality of their State of residence or a possible common citizenship.

413. In addition, the domestic law of the affected State and any agreements it may conclude with other States should provide for mechanisms for consulting the population concerned on the most important decisions; establish modalities for the election of authorities and representatives; envisage ways of preserving the people's cultural heritage and identity; and ensure the enjoyment of the benefits resulting from any exploitation of living and non-living resources in areas under the jurisdiction of the State whose land territory is totally submerged and uninhabitable.

414. Slovenia stressed that the continuity of statehood was closely linked to self-determination, among other principles, and that it was essential to preserve the legal entitlements of affected States to land and maritime areas under their jurisdiction.[670]

415. Poland noted that self-determination should always serve as guidance for the interpretation of international law.[671]

416. Mexico also emphasized self-determination,[672] while Romania recognized the importance of agreement by the concerned populations with any solution identified.[673] Ireland stated that the principle of self-determination supported a presumption in favour of the continuity of statehood.[674]

417. Singapore, meanwhile, referred to self-determination as one of the fundamental principles closely related to statehood,[675] while France advocated a cautious approach to this principle.[676] Portugal referred to self-determination as a cardinal principle of international law[677] and the Kingdom of the Netherlands emphasized that the right of self-determination was linked to the continuity of statehood not only in the context of decolonization but also in other situations.[678]

418. Samoa, speaking on behalf of the Alliance of Small Island States, expressed the view that the continuity of statehood would cease only if, in exercise of the right to self-determination, the population of the State concerned opted for another form of organization.[679]

668 A/C.6/79/SR.21, para. 93.
669 *Ibid*., para. 99.
670 A/C.6/79/SR.20, paras. 82 and 83.
671 *Ibid*., para. 108.
672 *Ibid*., para. 124.
673 *Ibid*., para. 134.
674 A/C.6/79/SR.21, para. 18.
675 *Ibid*., para. 22.
676 *Ibid*., para. 50.
677 *Ibid*., para. 86.
678 *Ibid*., para. 96.
679 A/C.6/79/SR.22, para. 2.

419. Hungary emphasized the importance of self-determination, which was recognized as a *jus cogens* norm in the Commission's draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*).[680]

420. The State of Palestine, in its capacity as observer, also emphasized self-determination as a *jus cogens* norm[681] and Liechtenstein stressed that the right to self-determination had particularly relevant implications for the law on statehood.[682]

421. The Federated States of Micronesia reaffirmed that statehood could not be extinguished except through a voluntary act by the population of a State, in particular an act of self-determination,[683] and Chile emphasized that the legal foundation for the presumption of continuity lay primarily in the right to self-determination of peoples, which was of a *jus cogens* character.[684] Argentina, on the other hand, took the view that the right of self-determination had been principally related to the process of decolonization.[685]

422. Algeria and Bulgaria recognized the significance of self-determination,[686,687] while Cyprus noted that the special historical and legal contexts of the right of self-determination should be preserved.[688]

423. Lastly, the Bahamas took the view that self-determination was paramount,[689] while Germany expressed the belief that a presumption of the continuity of statehood was consistent with important principles, including self-determination.[690]

## D. Permanent sovereignty over natural resources

424. In chapter IX of the additional paper to the first issues paper,[691] the Co-Chairs examined the relationship between the principle of permanent sovereignty over natural resources in relation to sea-level rise and the preservation of maritime entitlements in the context of the law of the sea. The principle of permanent sovereignty over natural resources, which, together with self-determination, emerged as an important component of decolonization, is accepted as customary international law. It is well accepted that the principle of permanent sovereignty over natural resources is vital to the economic development of States.[692] Sea-level rise owing to climate change poses a threat to the territorial integrity of many coastal States, to their existing maritime entitlements and to the marine resources over which they exercise sovereign rights. Such maritime entitlements are critical to the economic well-being of many States, including developing States, in particular small island developing States.

425. These important points were highlighted in the additional paper to the first issues paper. According to the Co-Chairs' preliminary observations, permanent sovereignty over natural resources is inherent to the sovereignty of the State (see General Assembly resolution 626 (VII) of 21 December 1952) and is inalienable, meaning that States cannot be deprived of it against their volition. Moreover, it is integral to the social and economic rights of developing States. The principle of permanent sovereignty over natural resources applies equally to marine resources, as reflected in numerous General Assembly resolutions.[693]

680 *Ibid*., para. 60.
681 *Ibid*., para. 68.
682 *Ibid*., para. 96.
683 A/C.6/79/SR.24, para. 13.
684 *Ibid*., para. 44.
685 *Ibid*., para. 81.
686 *Ibid*., para. 103.
687 *Ibid*., para. 115.
688 A/C.6/79/SR.25, para. 35.
689 Submission of the Bahamas in 2024.
690 Submission of Germany in 2024, para. 4.
691 A/CN.4/761, paras. 184–194.
692 *Ibid.*, para. 187.
693 *Ibid.*, para. 192.

426. The Co-Chairs recognized that the loss of marine natural resources important for the economic development of States as a result of sea-level rise would be contrary to the principle of the permanent sovereignty over natural resources, whereas the legal and practical solution of the preservation of existing maritime entitlements would be in line with that principle.[694]

427. Several States brought attention to the relationship between statehood, self-determination and permanent sovereignty over natural resources. In the additional paper to the second issues paper, the Co-Chairs addressed the principle of permanent sovereignty over natural resources within the context of the presumption of the continuity of statehood. In their preliminary observations, the Co-Chairs emphasized the right of the State concerned to safeguard its own existence, by taking measures to ensure the following: (a) the maintenance of its territory, which is understood to be a unit under its sovereignty and subject to its sovereignty rights, comprising both the land surface and the maritime spaces under its jurisdiction; and (b) the conservation and sustainable use of the natural resources existing therein and the preservation of its biodiversity and ecosystems, thus safeguarding its population and taking account of present and future generations.[695]

428. In the same paper, the Co-Chairs went on to emphasize the applicability of the principles of self-determination, protection of the territorial integrity of the State, sovereign equality of States and their permanent sovereignty over their natural resources, the maintenance of international peace and security, and the stability of international relations.[696]

429. An overwhelming number of Member States have expressed support for the preservation of baselines and maritime zones that have been duly established in accordance with the United Nations Convention on the Law of the Sea as part of the need to ensure legal stability, certainty and predictability. There is also overwhelming support for the view that, in the same interests of ensuring stability, predictability and certainty, maritime boundaries, similarly to land boundaries, are not subject to the principle of fundamental change of circumstances under the Vienna Convention on the Law of Treaties. Moreover, many States expressly drew linkages between the continuity of statehood,[697] the preservation of baselines

[694] *Ibid.*, para. 194 (b).

[695] A/CN.4/774, para. 297.

[696] *Ibid.*, para, 298.

[697] Papua New Guinea (A/C.6/77/SR.29, para. 23) noted that, as a believer in a strong presumption of continuity of statehood, it was pleased that, in paragraph 162 of the second issues paper, the Co-Chairs had acknowledged that Papua New Guinea had drawn attention to the fact that the preservation of the maritime rights of States was closely linked to the preservation of their statehood, since only States could generate maritime zones. Cyprus (A/C.6/79/SR.25, para. 34) expressed agreement with the view that there was a need, in the process of ascertaining the legal basis for the continuity of statehood, to prioritize legal stability, security, certainty and predictability in international relations, and to apply the principles of territorial integrity, sovereign equality of States and permanent sovereignty over natural resources. Samoa (A/C.6/79/SR.22, para. 2), speaking on behalf of the Alliance of Small Island States, observed that the physical reality of land territory disappearing or becoming uninhabitable must not be conflated with the legal rules concerning statehood and sovereignty, including permanent sovereignty over natural resources. Antigua and Barbuda (submission in 2021, at para. 33, available from https://legal.un.org/ilc/guide/8_9.shtml#govcoms) maintained that "[a]mbulatory baselines would violate State sovereignty and the principle of permanent sovereignty of people and States over their natural wealth and resources". Chile (A/C.6/78/SR.24, para. 99) stated that it would be helpful to reconsider the application of the principle that "the land dominates the sea", and also that of the principle of permanent sovereignty over natural resources, in the context of the subtopic on statehood.

and maritime zones, legal stability, security and certainty, [698] equity [699] and self-determination [700] with the principle of the permanent sovereignty over natural resources.[701]

430. Several members of the Study Group, during discussions on the additional paper to the first issues paper, underlined the links between the principle of permanent sovereignty over natural resources and the right of peoples to self-determination, and between that principle and the presumption of continuity of statehood, as addressed in the subtopic of statehood. [702] Permanent sovereignty over natural resources also was discussed by the members of the Study Group in the context of the additional paper to the second issues paper.

431. The application of the principle of permanent sovereignty over natural resources as a continuing right notwithstanding the partial or total submergence of land territory would preserve existing sovereign rights of States over marine resources and the related right to economic development. This in turn would provide the much-needed economic sources for the continued enjoyment of the right of self-determination and would support other human rights. For example, Papua New Guinea referred to the principle of permanent sovereignty over natural resources, which was consistent with international human rights covenants, as having legal implications on the protection of persons affected by sea-level rise.[703]

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[698] Samoa (A/C.6/78/SR.27, paras. 3 and 5–6), speaking on behalf of the Alliance of Small Island States, noted that maritime zones and the rights and entitlements that flowed from them continued to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. Many nations supported that interpretation, including large coastal States, such as the United States, which had recognized the need for States to have continued access to their marine resources and the importance of ensuring legal stability, security, certainty and predictability. The principle of permanent sovereignty over natural resources, as a widely recognized principle of customary international law, reinforced the need to preserve the maritime rights and entitlements of the members of the Alliance. The preservation of baselines and maritime zones and the rights and entitlements that flowed from them was not merely a matter of legal certainty and political stability, but also a matter of equity. Spain (statement in 2024, p. 16, available from https://www.un.org/en/ga/sixth/79/summaries.shtml#23mtg; see also A/C.6/79/SR.23, para. 15) stated that the concept of legal stability with respect to existing borders, together with the relevance of security and principles such as stability, certainty, predictability, equity, justice, the sovereign equality of States and the permanent sovereignty of States over their natural resources, were of the greatest importance in guiding the conclusions of the Study Group. Ireland (A/C.6/78/SR.25, para. 42) observed that arrangements must now be made to ensure that baselines established in accordance with the United Nations Convention on the Law of the Sea were to be regarded as permanently settled. Only through such arrangements would it be possible to achieve the legal stability needed to avoid future conflict while also properly reflecting the principle of a State's permanent sovereignty over its natural resources, including those located within its duly delineated maritime limits. Papua New Guinea (A/C.6/76/SR.22, para. 35) recognized the principles of legal stability, security, certainty and predictability that underpinned the Convention and the relevance of those principles to the interpretation and application of the Convention in the context of sea-level rise and climate change.

[699] The Federated States of Micronesia (A/C.6/78/SR.27, paras. 51–52) stated that equity should be applied in favour of the preservation of existing maritime rights and entitlements in the face of climate change-related sea-level rise. The principle of permanent sovereignty over natural resources was a principle of customary international law and the loss of maritime resources as a result of climate change-related sea-level rise would be contrary to that principle. It further stated (A/C.6/76/SR.21, para. 148) that the preservation of maritime zones and the rights and entitlements that flowed from them in the face of climate change-related sea-level rise was supported by the United Nations Convention on the Law of the Sea and the principles underpinning it, thereby reflecting the right of the countries concerned to permanent sovereignty over their natural resources.

[700] Ireland (A/C.6/79/SR.21, para. 18) stated that once a people had exercised its right of self-determination by establishing a State, that State enjoyed permanent sovereignty over the natural resources located within its land territory and appurtenant maritime zones. Permanent sovereignty so established could not be extinguished by rising sea levels.

[701] Note that the principle of permanent sovereignty over natural resources is included within the right to self-determination.

[702] A/78/10, para. 207.

[703] Papua New Guinea (A/C.6/79/SR.24, para. 124). See also State of Palestine (Observer) (A/C.6/79/SR.22, para. 68).

## E. Equity and solidarity

432. The principle of equity[704] may be considered relevant in the context of sea-level rise as many of the States most affected, in particular small island developing States, have contributed the least to the release of greenhouse gas emissions that is resulting in climate change-induced sea-level rise. The preservation of maritime zones, continuity of statehood and the protection of affected persons is therefore a question of equity and solidarity.

433. In the Pact for the Future, adopted by the General Assembly in September 2024, States reiterated the need to be guided by the principle of equity in the context of climate change, and, specifically, reaffirmed the importance of accelerating action in that critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty.[705] In the preamble to the Declaration on Future Generations, annexed to the Pact for the Future, States observed that many existing national legal systems, as well as some cultures and religions, sought to safeguard the needs and interests of future generations and promote intergenerational solidarity, justice and equity.[706]

434. In the debate in the Sixth Committee in 2024, a number of Member States expressed solidarity with the most vulnerable States.[707] Several States underlined the importance of the principle of equity in the context of the subtopics addressed by the Study Group.[708] The concept of solidarity was often reflected alongside references to the principles of fairness and the sovereign equality of States.[709] Eritrea welcomed the fact that equity and legal stability were guiding principles of the work of the Study Group on the topic.[710]

435. The importance of considerations of equity were particularly emphasized in the context of the continuity of statehood.[711] In connection with considerations of equity, many States noted the need for legal certainty and the relevance of the international principles of stability, justice and the sovereign equality of States.[712] El Salvador noted that the principle of common but differentiated responsibilities should equally be considered in that context.[713]

436. Equity and solidarity were also invoked in the context of the necessity for and obligation of international cooperation.[714] Chile emphasized the importance of defining not

[704] At the seventy-fourth session of the Commission (2023), the Study Group discussed equity in the context of the subtopic of the law of the sea (A/78/10, paras. 195–203).

[705] General Assembly resolution 79/1 of 22 Sept 2024, para. 28.

[706] *Ibid.*, annex II.

[707] Eritrea (A/C.6/79/SR.22, para. 58), Mexico (A/C.6/79/SR.20, para. 123), Viet Nam (A/C.6/79/SR.22, para. 20) and State of Palestine (Observer) (A/C.6/79/SR.22, para. 70).

[708] Indonesia (A/C.6/79/SR.22, para. 30), Papua New Guinea (A/C.6/79/SR.24, para. 123) and Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, paras. 2 and 6–7).

[709] Cameroon (A/C.6/79/SR.22, para. 115), Indonesia (A/C.6/79/SR.22, para. 30), Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 61), Papua New Guinea (A/C.6/79/SR.24, para. 123) and Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, paras. 2 and 6–7).

[710] Eritrea (A/C.6/79/SR.22, para. 54).

[711] El Salvador (A/C.6/79/SR.22, para. 26), Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 61), Mexico (A/C.6/79/SR.20, para. 124), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 2) and Singapore (A/C.6/79/SR.21, para. 22).

[712] Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 61), Mexico (A/C.6/79/SR.20, para. 124), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 2) and Singapore (A/C.6/79/SR.21, para. 22).

[713] Statement of El Salvador in 2024, p. 5. Available from https://www.un.org/en/ga/sixth/79/summaries.shtml#22mtg. See also El Salvador (A/C.6/79/SR.22, para. 26).

[714] New Zealand (A/C.6/79/SR.22, para. 121), Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6) and Singapore (A/C.6/79/SR.21, para. 24).

only the duty to cooperate, but also the principle of solidarity, which it found was not defined in international law.[715]

437. Application of the principle of equity to the preservation of maritime zones, as they may be affected by sea-level rise,[716] could help avoid issues of *non liquet* and ensure that the States that did not cause the problem are not further prejudiced or face injustice. The role of equity in addressing maritime boundary issues more generally is not conceptually novel, given its application by the International Court of Justice in other maritime delimitation matters.[717] The preamble to the United Nations Convention on the Law of the Sea and the call therein for equity may also support more generally the use of equity to address legal questions that fall under the ambit of the Convention, as may express provisions in specific articles calling for the use of equity or equitable principles.

438. At the seventy-fifth session of the Commission (2024), the Study Group noted the relevance of equity to the issue of sea-level rise and statehood, including the fact that the effects of an anthropogenic phenomenon such as sea-level rise were not caused by those States suffering its consequences the most,[718] and the relevance of equity and fairness in discussions related to international cooperation to address the impact of sea-level rise and statehood.[719] In expressing general support for continuity of statehood, the Study Group made reference to the profound injustice that would come about from termination of statehood from sea-level rise caused by climate change.[720]

439. Similarly, the principle and right of self-determination, also recognized by the Study Group as being relevant to discussions of sea-level rise and statehood,[721] suggest the continuity of statehood within the context of equity. The right of self-determination provides a right of peoples to choose their political status.[722] To the extent that vulnerable and at-risk States have expressed a preference with respect to their external status – and specifically, to remain a State – such preference should be afforded significant weight when viewed from the perspective of equity as contained within the legal regime on climate change.

440. At the same session, the Study Group broadly agreed with the notion that human dignity should constitute a guiding principle for any action to be taken in the context of sea-level rise and the protection of persons.[723] In this context, equity may again be of relevance in avoiding *non liquet* and in addressing novel questions related to the human rights obligations of States as they may pertain to the impact of sea-level rise on individuals. The

[715] Chile (A/C.6/79/SR.24, para. 46).

[716] A/78/10, para. 140.

[717] *North Sea Continental Shelf* (see footnote 185 above); *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment I.C.J. Reports 1982*, p. 18; *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13; *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993*, p. 38; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303; *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 61; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624; and *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 3.

[718] A/79/10, para. 368.

[719] *Ibid.*, para. 392.

[720] *Ibid.*, para. 362.

[721] For example, *ibid.*, paras. 42, 350, 359, 368, 373, 384 and 392–393.

[722] See General Assembly resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations; Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 12 July 1993 (A/CONF.157/23) and endorsed by the General Assembly in its resolution 48/121 of 20 December 1993; and Declaration on Principles Guiding Relations between Participating States (Helsinki, 1 August 1975), Final Act of the Conference on Security and Cooperation in Europe, *International Legal Materials*, vol. 14 (1975), p. 1292, at p. 1295 (available from https://www.osce.org/files/f/documents/5/c/39501.pdf), principle VIII, para. 2. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 21 (1996) on the right to self-determination, para. 4.

[723] A/79/10, para. 402.

impact of sea-level rise on collective human rights may also require the application of equitable principles. In the context of Indigenous self-determination, international law recognizes a connection between peoples and their traditional lands, territories and resources, a connection which is particularly important in the context of cultural integrity and cultural transmission to youth.[724] Equity may therefore impose particular or special measures[725] to protect the existence and survival of Indigenous Peoples in the context of sea-level rise.

## F. International cooperation

441. International cooperation is a general principle of international law.[726] It can be argued that this principle establishes an obligation for the international community to assist the States that are most affected by sea-level rise. Cooperation among States and other members of the international community is considered crucial to addressing the impact of sea-level rise in relation to the preservation of maritime zones, the preservation of statehood and the protection of persons affected by sea-level rise.

442. International cooperation is rooted, *inter alia*, in the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[727] and the United Nations Convention on the Law of the Sea. It is also a foundational principle of international human rights law, the law of the sea, climate change law, environmental law and disaster law.

443. The Pact for the Future, adopted by the General Assembly in September 2024, contains numerous references to the need for cooperation and solidarity. According to the Pact, in order to address rising catastrophic and existential risks, a recommitment to international cooperation based on respect for international law is required, as is sustained international cooperation guided by trust and solidarity for the benefit of all and harnessing the power of those who can contribute from all sectors and generations.[728] In the context of climate change, the Pact contains a commitment to significantly enhance international cooperation and the international enabling environment to stimulate ambition in the next round of nationally determined contributions,[729] and to strengthen international cooperation on the environment and implement and comply with multilateral environmental agreements.[730]

444. Reflecting statements in previous debates,[731] a large number of States during the debate in the Sixth Committee in 2024 highlighted the vital importance of international cooperation to address the issues analysed by the Study Group.[732] Some States viewed as

[724] Committee on Economic, Social and Cultural Rights, *J.T. et al. v. Finland* (E/C.12/76/D/251/2022-E/C.12/76/D/289/2022), paras. 14.3–14.5.

[725] See, for example, Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgment (Preliminary Objections, Merits, Reparations and Costs), Series C, No. 172, 28 November 2007, paras. 85–86 and 91.

[726] At the seventy-third (2022) and seventy-fifth (2024) sessions of the Commission, the Study Group discussed international cooperation in the context of the subtopics of statehood and the protection of persons affected by sea-level rise (A/77/10, paras. 189–190, 220 and 235–236; and A/79/10, paras. 373, 377, 392, 396, 410 and 412).

[727] General Assembly resolution 2625 (XXV) of 24 October 1970.

[728] General Assembly resolution 79/1, paras. 2 and 5.

[729] *Ibid.*, para. 28 (h).

[730] *Ibid.*, para. 29 (f).

[731] See A/CN.4/755, para. 63, and A/CN.4/746, paras. 89–90. See also Peru (A/C.6/77/SR.29, para. 38), Türkiye (A/C.6/77/SR.29, para. 46), Hungary (A/C.6/77/SR.27, para. 4), Nicaragua (A/C.6/77/SR.29, para. 41), Jamaica (A/C.6/77/SR.29, para. 28), Antigua and Barbuda (on behalf of the Alliance of Small Island States) (A/C.6/77/SR.28, paras. 5–8) and Samoa (on behalf of the Pacific small island developing States) (A/C.6/77/SR.28, para. 23).

[732] Argentina (A/C.6/79/SR.24, para. 80), Estonia (A/C.6/79/SR.24, para. 71), India (A/C.6/79/SR.24, para. 7), Indonesia (A/C.6/79/SR.22, para. 30), Israel (A/C.6/79/SR.21, para. 67), Japan (A/C.6/79/SR.22, para. 13), Maldives (A/C.6/79/SR.24, para. 107), Mexico (A/C.6/79/SR.20, para. 126), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98), Peru (statement in 2024,

particularly valuable the Study Group's recognition of international cooperation as vital to addressing sea-level rise.[733] Some delegations suggested that the Study Group could consolidate and further develop the existing rules on cooperation in the specific context of sea-level rise, taking into account the United Nations Convention on the Law of the Sea and other sources of public international law.[734]

445. States referred to international cooperation in different manners. Some referred to it as a principle of international law[735] – Cuba referring to it as essential[736] – while others spoke of a duty or obligation to cooperate.[737] Samoa, speaking on behalf of the Alliance of Small Island States, referred to the duty of cooperation as a general principle of international law,[738] while others noted the necessity of international cooperation to tackle issues related to sea-level rise without offering a legal qualification.[739]

446. Samoa, speaking on behalf of the Alliance of Small Island States, stated that as a general principle of international law, which was rooted in the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, the duty of cooperation established an obligation for the international community to assist the States that were most affected by sea-level rise.[740] Other States observed that the duty to cooperate was embedded in the United Nations Convention on the Law of the Sea and other international instruments and must be upheld in order to provide technical and legal assistance to vulnerable countries.[741]

447. Chile noted that the context of sea-level rise could offer an occasion to define the duty to cooperate and the principle of solidarity.[742] Japan expressed hope that, if the Commission were to suggest obligations and responsibilities of States in the context of sea-level rise, careful consideration would be given to the basis for and the specific content of such obligations and responsibilities, including the obligation to cooperate.[743] Slovenia considered that the international community had a collective responsibility and an obligation to cooperate and assist particularly affected States in protecting their people, and the Kingdom

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para. 10; see footnote 409 above) (see also A/C.6/79/SR.22, paras. 131–132), Sierra Leone (A/C.6/79/SR.21, para. 78), Singapore (A/C.6/79/SR.21, para. 24) and Asian-African Legal Consultative Organization (Observer) (A/C.6/79/SR.30, paras. 150–151 and 155).

733 Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62).

734 Estonia (A/C.6/79/SR.24, para. 71) and European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 47).

735 Brazil (A/C.6/79/SR.20, para. 72) and Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6).

736 Cuba (A/C.6/79/SR.21**,** para. 32).

737 Bahamas (submission in 2024, p. 3; see footnote 105 above); Chile (A/C.6/79/SR.24, para. 46); Germany (submission in 2024, para. 4; see footnote 212 above); Jamaica (A/C.6/79/SR.24, para. 61), Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62), Maldives (A/C.6/79/SR.24, para. 107), Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98), Nigeria (A/C.6/79/SR.22, para. 107), Papua New Guinea (A/C.6/79/SR.24, para. 123), Singapore (A/C.6/79/SR.21, para. 24) and Spain (A/C.6/79/SR.23, para. 16).

738 Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22, para. 6).

739 Algeria (A/C.6/79/SR.24, para. 101), Bulgaria (A/C.6/79/SR.24, para. 117), Cameroon (A/C.6/79/SR.22, para. 114), Cuba (A/C.6/79/SR.21, para. 34), European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 46), India (A/C.6/79/SR.24, para. 7), Ireland (A/C.6/79/SR.21, para. 19), Japan (A/C.6/79/SR.22, para. 13), Mexico (A/C.6/79/SR.20, para. 126), New Zealand (A/C.6/79/SR.22, para. 123), Portugal (statement in 2024, p. 9; see footnote 365 above) (see also A/C.6/79/SR.21, para. 87), Russian Federation (A/C.6/79/SR.24, para. 32), South Africa (A/C.6/79/SR.21, para. 36) and Viet Nam (A/C.6/79/SR.22, para. 20).

740 Samoa (on behalf of the Alliance of Small Island States) (A/C.6/79/SR.22).

741 Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62).

742 Chile (A/C.6/79/SR.24, para. 46).

743 Japan (A/C.6/79/SR.22, para. 13).

of the Netherlands considered that, should persons become displaced because of sea-level rise and its effects, States had a duty to cooperate to ensure that such persons were relocated.[744] Equatorial Guinea stated that the international community had a shared responsibility for the devastating effects that sea-level rise had on local communities around the world, and that that shared responsibility should be linked to the strengthening of international cooperation to address the issue effectively.[745]

448. Nigeria noted that while the obligation to cooperate was important, any international intervention, including the provision of technical assistance, must have the consent of the affected State and be guided by international law concerning the principles of sovereignty and non-interference.[746] Singapore noted that Member States had a general duty to cooperate under the Charter of the United Nations, and that States parties to United Nations treaties on human rights and climate change might have more specific treaty obligations to cooperate that were relevant in the context of sea-level rise.[747]

449. For Latvia, speaking on behalf of the Baltic States (Estonia, Latvia and Lithuania), the duty to cooperate, embedded in the United Nations Convention on the Law of the Sea and other international instruments, must be upheld in order to provide technical and legal assistance to vulnerable countries.[748] The European Union, Jamaica and South Africa noted that international cooperation could take such forms as scientific and technical assistance, technology transfer and financing.[749] The European Union noted that the International Tribunal for the Law of the Sea, in its advisory opinion on climate change and international law, had found that under article 202 of the United Nations Convention on the Law of the Sea, States parties to the Convention had the specific obligation to assist developing States, in particular vulnerable developing States, to address marine pollution from anthropogenic greenhouse gas emissions.[750] Related to those observations, some States underlined the particular relevance of the principles of equity, common but differentiated responsibilities and respective capabilities, in the light of national circumstances, in the context of duty to cooperate.[751] Brazil referred to principle 7 of the Rio Declaration on Environment and Development.[752] New Zealand and Papua New Guinea highlighted the importance of equity, fairness and the sovereign equality of States in relation to international cooperation.[753] Similarly, in the context of statehood, Germany referred to the "duty of cooperation" as forming part of relevant "important principles and rights of international law", along with "the right to self-determination, stability in international relations, equity and fairness, maintenance of peace and security [and] the right of a State to ensure its preservation".[754]

450. In its advisory opinion on the obligations of States under the United Nations Convention on the Law of the Sea in relation to climate change, the International Tribunal for the Law of the Sea came to several important conclusions with respect to the duty to

[744] Netherlands (Kingdom of the) (A/C.6/79/SR.21, para. 98) and Slovenia (A/C.6/79/SR.20, para. 83).
[745] Equatorial Guinea (A/C.6/79/SR.24, para. 89).
[746] Nigeria (A/C.6/79/SR.22, para. 107).
[747] Singapore (A/C.6/79/SR.21, para. 24).
[748] Latvia (on behalf of the Baltic States, namely Estonia, Latvia and Lithuania) (A/C.6/79/SR.20, para. 62).
[749] European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 46), Jamaica (A/C.6/79/SR.24, para. 61) and South Africa (A/C.6/79/SR.21, para. 36).
[750] European Union (in its capacity as observer; also on behalf of the candidate countries Albania, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of Moldova, and Ukraine; and, in addition, Monaco) (A/C.6/79/SR.20, para. 46).
[751] Argentina (A/C.6/79/SR.24, para. 80), Brazil (A/C.6/79/SR.20, para. 72), Cameroon (A/C.6/79/SR.22, para. 115), Singapore (A/C.6/79/SR.21, para. 24) and Viet Nam (A/C.6/79/SR.22, para. 20).
[752] Brazil (A/C.6/79/SR.20, para. 72). *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (A/CONF.151/26/Rev.1 (Vol. I) and Corr.1, United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.
[753] New Zealand (A/C.6/79/SR.22, para. 121) and Papua New Guinea (A/C.6/79/SR.24, para. 123).
[754] Submission of Germany in 2024, para. 4 (see footnote 212 above).

cooperate and the Convention.[755] It reiterated that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law", and held that it was applicable to the issue of climate change and States parties' obligations under the Convention.[756]

451. The International Tribunal went on to state the following:

> "Most multilateral climate change treaties, including the [United Nations Framework Convention on Climate Change] and the Paris Agreement, contemplate and variously give substance to the duty to cooperate on the assumption, as indicated in the preamble of the [Framework Convention], that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response".[757]

452. The duty to cooperate may therefore entail obligations for States to cooperate to prevent the marine pollution that is causing sea-level rise. It may also entail an obligation for States to develop additional procedures and rules related to the impact of sea-level rise, including an obligation to provide aid and assistance under the United Nations Convention on the Law of the Sea. States could therefore have an obligation to cooperate with respect to supplementary international agreements on the issue of sea-level rise and the law of the sea in order to minimize the impact on at-risk States, including threats to statehood.

453. More generally, international cooperation relates, *inter alia*, to the maintenance of international peace and security and the economic development of developing States. Loss of statehood could have serious implications for international peace and security on account of the legal, practical and governance uncertainty caused by such loss, or even the threat of such loss. Loss of statehood could also negatively affect the right of development of affected peoples through loss of sovereignty over resources and loss of economic control over a given territory.

454. The duty of States to promote the equal rights and self-determination of peoples, in accordance with the Charter of the United Nations as described in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, also entails a duty to promote friendly relations and co-operation among States, explicitly connecting self-determination and international cooperation. States expressing a desire to maintain their statehood in the face of sea-level rise are stating a legal and political position related to their external self-determination, which may then trigger a duty to cooperate among all States to maintain and respect such preferred external status.

455. Also of vital importance is international cooperation in terms of providing technical or logistical assistance and qualified human or financial resources to States especially affected by sea-level rise that do not have sufficient capacities of their own, and considering the possibility, on the basis of the specificities of each case, of combining the installation or reinforcement of coastal barriers or artificial islands with the use of natural measures. It is thus essential for the international community to respond to sea-level rise through international cooperation in favour of the States most affected, with an emphasis on the durability and sustainability of formulas that go beyond the short term and are compatible with individual rights, in particular the right to self-determination of the affected populations.

456. A need for international cooperation is especially clear with regard to the protection of persons affected by climate change. Even though the primary responsibility for protecting its own population rests with the affected State in most cases, the protection of persons affected by climate change can ultimately only be fully achieved through international cooperation.

457. In the context of sea-level rise and the protection of persons, the framework of international cooperation suggests that States should (a) devise and implement preventive

[755] International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion (see footnote 524 above).

[756] *Ibid.*, paras. 296–297.

[757] *Ibid.*, para. 298.

frameworks to identify challenges posed by sea-level rise to respect for and the protection and fulfilment of human rights obligations concerning the persons affected, and (b) take steps to implement such cooperation and to support other States in such implementation.

458. A form of cooperation that assumes great importance in the case of climate change-induced sea-level rise relates to persons displaced as a consequence or in anticipation of its effects. Depending on the circumstances, non-affected States might have the duty to facilitate the cross-border movement of persons or offer possibilities of temporary or permanent residence in their territory. Cooperation might also include the creation of bilateral or regional arrangements to manage migratory and displacement patterns. In certain circumstances, some effects of climate change, such as sea-level rise, might make the return of persons to their place of original residence impractical or impossible. For this reason, cooperation should also include the coordination of efforts to find sustainable and durable solutions for displaced persons.

459. Cooperation can take many forms, including negotiations to develop the normative and institutional landscape relating to the protection of persons affected by sea-level rise, communication and exchange of information, scientific and technical assistance, transfer of technology and know-how and financial support for affected States.

460. In principle, all States bear the duty to cooperate with affected States to protect persons affected by climate change. A set of criteria, however – both factual and legal, derived both from formally binding international law and from soft law – might be offered to guide, in each concrete situation, the identification of specific duty bearers and the extent of the obligations borne by them. Such criteria might include the existence of agreements in force between affected and other States, whether an affected State has addressed requests for outside assistance, the financial and technical capabilities of States, the possible existence of States with particularly relevant expertise, and the geographical proximity of affected and non-affected States.

## G. International law as adaptation

461. Adaptation is an integral part of the climate change regime. It has been as codified in the United Nations Framework Convention on Climate Change and the Paris Agreement. The Intergovernmental Panel on Climate Change defines adaptation as follows:

> In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects.[758]

462. Adaptation is featured in many provisions of the Paris Agreement. For example, under article 7:

> 1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the [goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels].
>
> 2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent

[758] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, Cambridge University Press, 2022), annex II, p. 2897, at p. 2898.

> and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.
>
> …
>
> 7. Parties should strengthen their cooperation on enhancing action on adaptation, … including with regard to:
>
> …
>
> (d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices.

463. Adaptation to climate change is a broad concept that traditionally involves various types of physical responses, such as enhancing dykes, taking flood protection measures, fortifying coastal areas by building sea walls, and even constructing artificial islands.[759] However, the definition of adaptation as a "process of adjustment" is not necessarily limited to physical measures of adaptation and could also include policy and legal measures. The goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, as established in article 7 of the Paris Agreement, can equally be applied to the legal framework, including the framework of international law. However, for purposes of the present report, the point is not to undertake an interpretation of the Paris Agreement, but to provide a foundation for the way in which the application, interpretation, modification or adoption of laws and regulations may be seen as part of a process of adaptation to sea-level rise resulting from climate change. Laws are an essential part of ensuring that the needs of States in terms of adaptation may be adequately addressed, which, drawing upon the advisory opinion of the International Tribunal for the Law of the Sea,[760] may be seen as part of their due diligence obligations to address the adverse effects of climate change, such as sea-level rise.

464. For example, in face of the serious consequences of climate change-induced sea-level rise, the application and interpretation of existing treaties, principles and rules of international law should be aligned so as to provide an adaptive response to the needs of States and communities. Such a response could entail the interpretation of existing laws, rules and principles in a manner appropriate to response to climate change specifically, or the modification or adoption of new ones where necessary. An adaptive legal approach can also enhance the adaptive capacity and resilience of a State to climate change.

465. An adaptive approach to the interpretation of instruments such as the United Nations Convention on the Law of the Sea, which was adopted before climate change and sea-level rise were known as risks to coastal States, would take into account climate change and sea-level rise without having to amend the instrument. This approach is in line with the position of many States. Consequently, an adaptive approach would support an interpretation of the Convention that allows for the preservation of existing, lawfully established baselines and maritime zones in the face of changes to the coastal configuration as a result of sea-level rise. The needs that would be met would include ensuring legal stability, certainty and predictability, in line with the definition by the Intergovernmental Panel on Climate Change of adaptation as the process of adjustment to actual or expected climate and its effects, in order to moderate harm.[761]

466. This adaptive approach to international law could also be applied to issues concerning statehood and the protection of persons affected by sea-level rise, including with regard to

[759] Nilüfer Oral, "International law as an adaptation measure to sea-level rise and its impacts on islands and offshore features", in *International Journal of Marine and Coastal Law*, vol. 34, No. 3 (August 2019), pp. 415–439, at p. 417.

[760] International Tribunal for the Law of the Sea, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion (see footnote 524 above).

[761] Intergovernmental Panel on Climate Change, *Climate Change 2022* (see footnote 758 above), p. 2898.

displacement and human rights. Where the existing international law framework lacked responses to the consequences of sea-level rise, an adaptive approach would entail interpretation, modification or adoption of laws, rules and principles to respond adequately to the needs of States and communities.

467. The adaptive approach to international law in the context of sea-level rise is consistent with the dynamic or evolutive approaches to treaty interpretation. The adaptive approach, however, is specifically aligned with the need to adjust existing interpretation to meet the needs of climate change and its effects.

468. The evolutive approach, which is more temporal in its scope, applies in relation to the interpretation of existing terminology over a period of time. In its advisory opinion in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, the International Court of Justice adopted an evolutive interpretation of existing terminology:

> [T]he Court must take into consideration the changes that have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation. In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments.[762]

469. The Court continued to adopt an evolutive interpretation in other cases.[763] In its judgment in *Aegean Sea Continental Shelf* case, for example, the Court rejected an interpretation that terms used were "intended to have a fixed content regardless of the subsequent evolution of international law".[764] In its judgment in *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, the Court adopted the same approach, explaining the following:

> [The Court's reasoning] is founded on the idea that, where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is "of continuing duration", the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.[765]

The focus is on the so-called intent of the parties, taking an existing term or clause and interpreting it according to changes that have taken place over time.

470. In its resolution on limits to evolutive interpretation of the constituent instruments of international organizations, the Institute of International Law noted that "interpretation is necessary when the constituent instrument of an international organization is ambiguous or silent on a specific issue". It went on to affirm that "[i]nternational organizations may resort to evolutive interpretation of their constituent instruments to address current challenges and to fill unforeseen gaps".[766]

471. The same approach would apply to other treaties, such as the United Nations Convention on the Law of the Sea, in the case of ambiguity or silence. In the current context, there is broad agreement among Member States in the Sixth Committee that as the Convention was adopted before climate change and sea-level rise were perceived to pose risks, the drafters were silent on the possible consequences on baselines, maritime zones, the

[762] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at p. 31, para. 53.

[763] See Eirik Bjorge, *The Evolutionary Interpretation of Treaties* (Oxford, Oxford University Press, 2014).

[764] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3, at p. 32, para. 77.

[765] *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, p. 213, at p. 243, para. 66.

[766] Institute of International Law, resolution on limits to evolutive interpretation of the constituent instruments of the organizations within the United Nations system by their internal organs, 4 September 2021, preamble and para. 1. Available from www.idi-iil.org.

status of offshore features, archipelagic waters and requirements to update nautical charts and coordinates. Article 5 of the Convention, for example, which establishes that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast, does not state whether the low-water line is ambulatory. It is a question of interpretation. In all cases, regardless, it is clear that the Convention does not expressly require the low-water line to be updated.

472. The Study Group has studied in detail the consequences of an interpretation based on an ambulatory approach that would require modification of baselines and the associated maritime zone and entitlements. It has found that such an approach would be considerably detrimental to the coastal State, creating an inequitable situation where third States would benefit from the losses of the coastal State. However, most important is the concern expressed by many Member States regarding legal stability, predictability and certainty, and the impact that an interpretation requiring the updating baselines and maritime zones would have on State relations. States have adopted a similar approach in their interpretation as to whether article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties applies to maritime boundaries. There is a clear consensus that the same interest of ensuring peaceful relations and maintaining legal stability that applies to land boundaries applies also to maritime boundaries.

473. Moreover, in line with concerns by States to maintain the integrity of the United Nations Convention on the Law of the Sea, an adaptive or evolutive interpretation does not require modification of any terms of the Convention. For example, Germany expressed support for a contemporary reading and interpretation of the Convention, rather than the development of new customary rules.[767] A similar view has been expressed by other States, as reported in the additional paper to the first issues paper.[768]

474. It is clear how the adaptive approach can be applied to the interpretation of the United Nations Convention on the Law of the Sea, and it can also apply in the case of other relevant instruments. For example, using the adaptive approach, the Montevideo Convention may be interpreted as applying to the creation of a State but not to its continuation once in existence and recognized. Moreover, an adaptive approach could also be taken in the interpretation of human rights treaties, such as the International Covenant on Civil and Political Rights and its provisions on the right to life (art. 6) and the prohibition of torture and cruel, inhuman or degrading treatment or punishment (art. 7).

475. Related to the adaptive and evolutive approaches to the interpretation of treaties are the requirements under the Vienna Convention on the Law of Treaties that any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions (art. 31, para. 3 (a)) and/or any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (art. 31, para. 3 (b)) be taken into account.

476. In its draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, the Commission states that subsequent agreements and subsequent practice can support an evolutive interpretation, by assisting in determining whether an evolutive interpretation is appropriate with regard to a particular treaty term.[769] For example, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea has emphasized that the rules of State liability in the United Nations Convention on the Law of the Sea are apt to follow developments in the law and are "not considered to be static".[770] Subsequent agreement and/or practice regarding the evolutive nature of the Convention provisions in question, if identified, could be relevant in strengthening a

[767] Germany (A/C.6/76/SR.21, para. 80). See also submission of Germany in 2022, p. 1 (see footnote 124 above).

[768] A/CN.4/761, para. 13 (e). See also Samoa (on behalf of the Pacific small island developing States) (A/C.6/77/SR.28, para. 20), Micronesia (Federated States of) (A/C.6/77/SR.28, paras. 107 and 111), Papua New Guinea (A/C.6/77/SR.29, para. 20) and New Zealand (A/C.6/77/SR.29, para. 55), Italy (A/C.6/78/SR.23, para. 127), Malaysia (A/C.6/78/SR.27, paras. 56–57) and Germany (submission in 2023, p. 4; see footnote 128 above).

[769] A/73/10, para. 52, paras. (4)–(5) of the commentary to draft conclusion 8.

[770] *Ibid.*, para. 52, para. (7) of the commentary to draft conclusion 8.

conclusion that an evolutive approach to the question of baselines and associated questions should be taken.

477. In draft conclusion 10, the Commission states the following:

> 1. An agreement under article 31, paragraph 3 (*a*) and (*b*), requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept. Such an agreement may, but need not, be legally binding for it to be taken into account.
>
> 2. The number of parties that must actively engage in subsequent practice in order to establish an agreement under article 31, paragraph 3 (*b*), may vary. Silence on the part of one or more parties may constitute acceptance of the subsequent practice when the circumstances call for some reaction.[771]

478. The application, interpretation, modification or adoption of laws and regulations can be seen as part of a process of adaptation to sea-level rise as a result of climate change.

479. Subsequent agreement and/or practice between the parties to the United Nations Convention on the Law of the Sea may be established regarding the interpretation of certain provisions of the Convention. Such agreement and/or practice may further support a conclusion that an evolutive approach to particular provisions of the Convention should be taken.

480. This section has outlined in detail the development of State views on the interpretation of specific provisions of United Nations Convention on the Law of the Sea related to baselines and maritime zones and the updating of nautical charts, and provisions of the Vienna Convention on the Law of Treaties related to the principle of fundamental change of circumstances. In short, it is abundantly clear that there is a broad agreement that States are not prevented from preserving existing baselines and maritime zones, that there is no obligation for States to update nautical charts or coordinates, that the principle of the immutability of boundaries applies to maritime boundaries and that the principle of fundamental change of circumstances does not apply to maritime boundaries in the case of sea-level rise.

# XII. Conclusion

## A. Reflections and final observations of the Co-Chairs

481. During the period from 2020 to 2024, the Co-Chairs submitted a total of four reports on the three subtopics, which were discussed by the open-ended Study Group and extensively commented upon by Member States in their statements in the Sixth Committee and in written submissions in response to questions posed by the Commission.

482. Support among Member States for the topic and the work undertaken has grown significantly since the topic was first proposed in 2018, as reflected not only in quantitative terms, with broad cross-regional support, but also in the substantive contributions of States to the crystallization of issues that were initially ambiguous. For example, in its written statement submitted for the climate change advisory proceedings before the International Court of Justice, the Commission of Small Island States on Climate Change and International Law noted that a total of 104 States had taken position in support of the preservation of baselines and maritime zone.[772]

483. Specifically in relation to the subtopic of the law of the sea, the Co-Chairs observed in the first issues paper that it was early to draw, at that stage, a definitive conclusion on the emergence of any customary rule of international law.[773] However, in the light of the developments summarized in the present report, it is clear that such may no longer be the

[771] *Ibid.*, para. 51.

[772] Commission of Small Island States on Climate Change and International Law (written statement, para. 72) (see footnote 538 above).

[773] A/CN.4/740 and Corr.1, para. 104 (i).

case. Statements made by States in the Sixth Committee, Security Council and General Assembly and before the International Court of Justice and the International Tribunal for the Law of the Sea are strongly indicative of general practice and *opinio juris* reflecting agreement that States are not prevented from preserving existing baselines and maritime zones, that there is no obligation for States to update nautical charts or coordinates, and that the principle of fundamental change of circumstances (*rebus sic stantibus*) does not apply to maritime boundaries in the case of sea-level rise.[774]

484. The strong support and interest in the topic are further reflected in the work of other bodies of the United Nations, including a dedicated meeting of the Security Council, held on 14 February 2023, and a high-level plenary meeting of the General Assembly, held 25 September 2024. In addition, sea-level rise featured prominently in States' written and oral statements during the advisory proceedings held the International Tribunal for the Law of the Sea and the International Court of Justice. States clearly expressed their understanding of the serious consequences that sea-level rise will have on the international community, especially for small island developing States, and the need to find solutions. As reflected in the present report, there has been a clear convergence of views on the importance of legal stability, certainty and predictability as a principle in support of the preservation of baselines and maritime zones in face of climate change-related sea-level rise, and on the continuity of statehood and the protection of persons affected by sea-level rise.

485. Many States from different regions have expressed strong support for the several declarations adopted by States, such as those adopted by the Pacific Islands Forum in 2021 and 2023, the Alliance of Small Island States in 2021 and 2024, the Organization of African, Caribbean and Pacific States in 2022 and the Commonwealth in 2024.

486. States have begun to engage in regional and bilateral initiatives to address legal and practical issues that arise from sea-level rise. The Pacific Regional Framework on Climate Mobility and the Australian-Tuvalu Falepili Union Treaty, for example, have been highlighted as examples of good practice.

487. Regional human rights courts have increasingly been called upon to address the implications of climate change on human rights, with important contentious decisions recently delivered by the European Court of Human Rights and a request for an advisory opinion on the climate emergency and human rights currently pending before the Inter-American Court of Human Rights.

488. Other bodies, such as the Inter-American Juridical Committee and the Inter-American Commission on Human Rights, are undertaking regional work relevant to the topic, and the Committee on International Law and Sea-Level Rise of the International Law Association has completed its work.

489. In just a few years, the international community has, in different forums – the Commission, the Sixth Committee, the Security Council, the General Assembly, the International Court of Justice, the International Tribunal for the Law of the Sea and other bodies – come to recognize the significance of the consequences of sea-level rise for it as a whole and the need to address the multiple adverse effects of sea-level rise using existing instruments, principles and rules under international law in a practical and cooperative way.

490. The final observations of the Co-Chairs that follow are drawn from the mapping study conducted in the first and second issues papers and the respective additional papers thereto, and from the present final consolidated report. They take into account State practice, as evidenced by the statements of States as described in the previous and present papers, which reflects a strong trend and a convergence of views.

### 1. Final observations on the law of the sea

491. The following final observations reflect a clear convergence of views and practice expressed by States and in the Study Group:

[774] Draft conclusions on identification of customary international law (A/73/10, para. 65), draft conclusions 6 and 10.

(a) At the time of the negotiation and adoption of the United Nations Convention on the Law of the Sea, sea-level rise was not perceived as an issue that needed to be addressed. Consequently, no provision is made in the Convention to address climate change or sea-level rise in relation to baselines, maritime zones and the status of islands and of archipelagic waters;

(b) The Convention is of fundamental importance, its integrity is to be preserved and any solution relating to sea-level rise must be consistent with it;

(c) The preservation of legal stability, certainty and predictability is directly linked to an interpretation of the Convention that allows for the preservation of baselines and maritime zones notwithstanding changes to the coastline as a result of sea-level rise. Bringing into question agreed-upon or otherwise duly established maritime boundaries owing to sea-level rise would risk creating legal uncertainly and insecurity that could lead to new disputes between States;

(d) An approach that required baselines and maritime zones to shift landward as a result of sea-level rise would create an inequitable outcome whereby third States would gain rights in maritime zones, in particular in the exclusive economic zone, to the detriment of the coastal State;

(e) There is no provision in the Convention that imposes an obligation on States to update baselines and coordinates once duly deposited with the Secretary-General in accordance with Convention, and nor is there evidence of widespread State practice to that effect. Consequently, States are under no obligation to update baselines to account for changes as a result of climate change-related sea-level rise;

(f) There is no provision in the Convention that imposes an obligation on States to update nautical charts in relation to baselines, and nor is there evidence of widespread State practice to that effect. Consequently, States are under no obligation to update nautical charts to account for changes as a result of climate change-related sea-level rise;

(g) There is no provision in the Convention that prevents States from preserving existing and lawfully established baselines and maritime zones once duly deposited with the Secretary-General;

(h) There is broad support among States for the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise;

(i) General State practice of exists, as evidenced by statements expressing widespread and consistent support, with regard to the preservation of baselines and maritime zones notwithstanding sea-level rise in the interests of maintaining legal stability, certainty and predictability;

(j) In the interests of legal stability, predictability and certainty, the principle of the immutability of boundaries applies to lawfully established maritime boundaries;

(k) The principle of fundamental change of circumstances (*rebus sic stantibus*), as codified in article 62, paragraph 1, of the Vienna Convention on the Law of Treaties, does not apply to maritime delimitation agreements, as they are covered by the exclusion for treaties establishing boundaries under article 62, paragraph 2 (a);

(l) The preservation of baselines and maritime zones is consistent with the principle of permanent sovereignty over natural resources, which is a principle of customary international law that also applies to marine resources.

### 2. Final observations on statehood

492. The following final observations reflect a convergence of views in the Study Group and expressed by States:

(a) There is strong support for the presumption of continuity of statehood and international legal personality in relation to climate change-induced sea-level rise. States can take all necessary measures, such as physical, legal and socioeconomic measures, in order to

preserve their statehood, rights and entitlements and sovereignty, including membership of the United Nations and other international organizations;

(b) The criteria in article 1 of the Montevideo Convention, generally accepted as establishing the existence of a State as a subject of international law, do not themselves address the question of the continuity of statehood. State practice reveals a degree of flexibility in the application of international law to issues of statehood;

(c) The continuity of statehood has been affirmed by States in the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise and the 2024 Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood;

(d) The continuity of statehood is based on the right of States to preserve their existence, the role of recognition of such continuity by other States and members of the international community, the right of each State to defend its territorial integrity, the right of peoples to self-determination, and consent on the part of the State facing a loss of habitable territory. It is linked to security, stability, certainty and predictability, equity and justice, the sovereign equality of States, permanent sovereignty of States over their natural resources, the maintenance of international peace and security, the stability of international relations, international cooperation and the right to a nationality;

(e) Different measures, physical and legal, may be taken with regard to different levels of submergence of land surface or situations of habitability. States have a right to provide for their preservation, and such provision may take many forms, including various adaptation measures to reduce the impact of sea-level rise;

(f) International cooperation in relation to the preservation of statehood – including international cooperation between affected States and other members of the international community on the basis of the sovereign equality of States, and considerations of equity and fairness – is essential;

(g) The preservation of statehood is an essential element of the right to self-determination of the populations concerned, who cannot be deprived of the continuity of the State without their consent. Respect for the right to self-determination of the populations concerned, including Indigenous Peoples, requires consultation with them in good faith as to alternatives that may be applied in each case to preserve international legal personality and their identities.

### 3. Final observations on the protection of persons affected by sea-level rise

493. The following final observations reflect a convergence of views in the Study Group and expressed by States:

(a) The current international legal frameworks that are potentially applicable to the protection of persons affected by sea-level rise are fragmented and mostly not specific to sea-level rise;

(b) In view of the absence of a dedicated legal framework, there is a need to develop legal and practical solutions to better protect persons affected by sea-level rise, including those who remain *in situ* and those who are displaced by it;

(c) On the basis of the current international legal frameworks, elements for legal protection of persons affected by sea-level rise include the protection of human dignity as a guiding principle for any action to be taken in the context of sea-level rise;

(d) Other elements for legal protection include the need for a combination of needs-based and rights-based approaches as the basis for the protection of persons affected by sea-level rise; the recognition that persons affected by sea-level rise remain rights holders and that States have a duty to respect, protect and fulfil their human rights obligations, including with regard to civil, political, economic, social and cultural rights; the need to delineate the human rights obligations of the different human rights duty bearers involved, namely the affected State and the host States; and the need to protect persons in vulnerable situations, who may be disproportionately affected;

(e) There are various practical tools that may be used to address the protection of persons affected by sea-level rise, such as special climate mobility agreements, pathways and other alternative arrangements, humanitarian visas and similar administrative policies, and measures to prevent the loss of nationality and statelessness;

(f) International cooperation is required to protect persons and communities affected by sea-level rise, including to protect their cultural heritage, identity and dignity and to meet their essential needs;

(g) Affected persons and communities should be kept informed, be consulted and participate in decisions affecting them in the context of sea-level rise.

### 4. Final observations on cross-cutting issues and interlinkages

494. The three subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – are all interconnected. The loss or diminution of one will result in the same for the others. The continuity of statehood is directly linked to the preservation of maritime zones and entitlements and is integral to the preservation of existing rights, as the sovereignty of the State is the foundation for sovereign rights over natural resources. The preservation of maritime zones and entitlements is also directly linked to the economic well-being and livelihoods of the population, including present and future generations. At the same time, States have an important duty in ensuring the protection of their people, and continuity of statehood is necessary and fundamental to the provision of that protection, including to prevent situations of loss of nationality and statelessness. The ability of the State to continue to fulfil its human rights obligations is, therefore, also connected with the issue of continuity of statehood.

495. A common thread among the subtopics is the question as to how to preserve and protect existing rights in face of the serious and unprecedented consequences of sea-level rise for States, especially small island States and low-lying coastal States.

496. Legal stability, predictability and certainty, as broadly recognized by many States, serve as cross-cutting principles for the preservation of maritime zones and entitlements, the continuity of statehood, self-determination, permanent sovereignty over natural resources, the protection of affected populations, and the maintenance of peace and security and avoidance of conflict at the domestic level.

497. The preservation of existing lawful rights in relation to sea-level rise is an overarching principle for the continuity of statehood, the preservation of maritime entitlements and the protection of persons affected. It is closely related to the principle of equity. A practical legal response should be one that prevents the loss of existing lawful rights, whether territorial or maritime, owing to sea-level rise. Sea-level rise cannot be a reason for any State to lose the rights associated with statehood, such as maritime entitlements, self-determination and permanent sovereignty over natural resources. Moreover, the preservation of such rights is fundamental for the State to be able to continue to promote, respect and fulfil the human rights of affected persons.

498. Fundamental principles of international law, such as sovereign equality, respect for territorial integrity, immutability of boundaries, self-determination and permanent sovereignty over natural resources, and the promotion and protection of human rights are recognized as customary international law and should not be undermined by climate change-induced sea-level rise. Any legal solutions to address the territorial and maritime consequences of sea-level rise need to be based on considerations of legal stability, security, certainty and predictability, sovereign equality, equity and the right to self-determination.

499. Equity, as another cross-cutting principle, applies to sea-level rise as the States most affected, in particular small island developing States, have contributed the least to climate change-induced sea-level rise but will suffer the impact disproportionately to other States. The preservation of maritime zones, continuity of statehood and protection of affected persons are therefore matters of equity and solidarity.

500. International cooperation is a general principle of international law. This principle establishes an obligation for the international community to assist States that are most affected by sea-level rise. It is rooted, *inter alia*, in the Charter of the United Nations, the

Universal Declaration of Human Rights, the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and the United Nations Convention on the Law of the Sea. It is also a foundational principle of international human rights law, the law of the sea, climate change law, environmental law and disaster law. Cooperation among States and other members of the international community is critical to addressing the impact of sea-level rise in relation to the preservation of maritime zones, statehood and the protection of persons of affected populations.

501. The interpretation and application of existing international law should be based on an approach that can meet the needs of States and populations affected in the face of the possible adverse consequences of climate change and sea-level rise to ensure legal stability, certainty and predictability, equity and the preservation of existing rights. Such an approach may entail adaptive or evolutive interpretation and consideration of subsequent agreements and practice.

## B. Possible ways forward

502. Based on the above, the following approaches, individually or combined, may be considered by States, international organizations and other relevant stakeholders in developing responses to address the legal issues arising from sea-level rise in relation to international law:

(a) In the light of the views expressed by many States in favour of practical solutions that do not entail the amendment of existing instruments, an approach may be adopted that allows for the interpretation of existing instruments to take account of the adverse impact of sea-level rise;

(b) Existing instruments may be interpreted in a manner that is adaptive to the impact of sea-level rise, that is evolutive, to allow for a contemporary interpretation, and that takes into account the duty of international cooperation, equity and solidarity, self-determination, permanent sovereignty over natural resources, the preservation of existing rights and the maintenance of stability, certainty and predictability as cross-cutting principles that apply to the legal consequences of sea-level rise;

(c) An interpretative statement may be adopted by the States parties to the United Nations Convention on the Law of the Sea regarding the preservation of baselines and maritime boundaries and associated entitlements, applicable to maritime boundaries duly established and deposited with the Secretary-General unilaterally, by agreement or by adjudication;

(d) The 12 elements for legal protection of persons affected by sea-level rise, as identified by the Co-Chairs and discussed in the Study Group, may be taken into account, as appropriate, in the interpretation and application of binding and non-binding instruments applicable to the protection of persons affected by sea-level rise;

(e) The General Assembly or other international organizations may adopt resolutions or decisions containing interpretative statements, declarations or other binding or non-binding instruments, as needed, that specifically address the legal issues arising from sea-level rise;

(f) The General Assembly may adopt a resolution or declaration in relation to the continuity of statehood and the preservation of sovereignty and membership of the United Nations and other international organizations;

(g) Binding or non-binding instruments applicable to the protection of persons affected by sea-level rise may be adopted at the bilateral, regional or international level, and may include, as appropriate and *inter alia*, the 12 elements for legal protection of persons affected by sea-level rise, as identified by the Co-Chairs and discussed in the Study Group;

(h) Mechanisms may be developed within the United Nations or other international bodies, as appropriate, including at the regional level, to strengthen cooperation in addressing the adverse impact of sea-level rise;

(i) Requests may be submitted to the relevant international courts and tribunals for advisory opinions on international legal matters concerning specific issues related to sea-level rise and international law.

# Annex

## Draft final report of the Study Group

### 1. Introduction

1. The purpose of the final report of the Study Group is to present a consolidated final report on the three subtopics as a whole, with a set of conclusions.[1] It should be read together with the final consolidated report of the Co-Chairs.

2. The conclusions are not intended to be normative. They are a set of conclusions of the work of the Study Group, as referred to in the syllabus for the topic prepared in 2018.[2] It will be left for States, in the framework of the Sixth Committee or other appropriate forums, to discuss follow-up to the work of the Commission on the topic.

3. A set of recommendations on possible ways forward is also proposed.

### 2. Background

4. At its seventieth session (2018), the Commission decided to recommend the inclusion of the topic "Sea-level rise in relation to international law" in its long-term programme of work.[3] The Federated States of Micronesia had submitted a written request for such inclusion of the topic, which was taken into consideration by the Commission.[4] Subsequently, in its resolution 73/265 of 22 December 2018, the General Assembly noted the inclusion of the topic in the long-term programme of work of the Commission.

5. At its seventy-first session (2019), the Commission decided to include the topic in its programme of work. The Commission also decided to establish an open-ended Study Group on the topic, to be co-chaired, on a rotating basis, by Mr. Bogdan Aurescu, Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria.[5] The topic would include three subtopics: issues related to the law of the sea, issues related to statehood and issues related to the protection of persons affected by sea-level rise.

6. The mandate of the Study Group was to undertake a mapping exercise concerning the legal questions raised by sea-level rise and interrelated issues, [6] and to propose recommendations.

7. The protection of environment, climate change *per se*, causation, responsibility and liability were excluded from the topic, as provided in the 2018 syllabus.[7] Moreover, the Commission would not propose modifications to existing international law, such as United Nations Convention on the Law of the Sea.[8]

8. During the period from 2020 to 2024, the Co-Chairs examined each of the three subtopics in a series of four reports: the first issues paper[9] and the second issues paper,[10] followed by an additional paper to each issues paper.[11] Each of the reports presented a set of preliminary observations of the Co-Chairs, which were discussed by the Study Group and

[1] *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 10* (A/79/10), para. 417.
[2] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), annex B, para. 26.
[3] *Ibid.*, para. 369.
[4] *Ibid.*, annex B, para. 7.
[5] *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10* (A/74/10), para. 265.
[6] A/73/10, annex B, para. 18.
[7] *Ibid.*, para. 14.
[8] *Ibid.* United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 3.
[9] A/CN.4/740 and Corr.1.
[10] A/CN.4/752.
[11] A/CN.4/761 and A/CN.4/774.

commented on by States in the Sixth Committee, as reflected in the annual reports of the Commission.

9. In accordance with 2018 syllabus, the Co-Chairs have prepared a final consolidated report, to be considered by the Commission at its seventy-sixth session. The report presents a set of conclusions of the work of the Study Group[12] and recommendations on possible ways forward.

10. The open-ended Study Group has convened in 2021, 2022, 2023, 2024 and 2025. Summaries of the work of the Study Group may be found respectively in: chapter IX of the 2021 annual report of the Commission, on the subtopic of issues related to the law of the sea;[13] chapter IX of the 2022 annual report of the Commission, on the subtopics of issues related to statehood and to the protection of persons affected by sea-level rise;[14] chapter VIII of the 2023 annual report of the Commission, on the subtopic of issues related to the law of the sea;[15] and chapter X of the 2024 annual report of the Commission, on the subtopics of issues related to statehood and to the protection of persons affected by sea-level rise.[16]

11. The first issues paper,[17] on the subtopic of issues related to the law of the sea, was considered by the Study Group at the seventy-second session of the Commission (2021). Issues covered included the following: (a) the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces measured from the baselines, on maritime delimitations, and on the exercise of sovereign rights and jurisdiction of the coastal State and its nationals, as well as on the rights of third States and their nationals in maritime spaces in which boundaries or baselines had been established, including the possible legal effects of sea-level rise on islands insofar as their role in the construction of baselines and in maritime delimitations was concerned; and (b) the possible legal effects of sea-level rise on the status of islands, including rocks, and on the maritime entitlements of a coastal State with fringing islands, and the legal status of artificial islands, reclamation or island fortification activities as response/adaptive measures to sea-level rise. A presentation on the practice of African States regarding maritime delimitation was given to the Study Group during the session. The first issues paper presented a number of preliminary observations.

12. The Study Group held eight meetings, from 1 to 4 June and on 6, 7, 8 and 19 July 2021. At its 3550th meeting, on 27 July 2021, the Commission took note of the joint oral report of the Co-Chairs of the Study Group. During discussions on the first issues paper, members of the Study Group recognized the importance of the topic and the legitimacy of the concerns expressed by those States affected by sea-level rise, together with the need to approach the topic in full appreciation of its urgency. The discussions concluded with suggestions for additional study by the Co-Chairs.[18]

13. The additional paper to the first issues paper[19] was considered by the Study Group at the seventy-fourth session of the Commission (2023). On the basis of the exchanges of views during meetings of the Study Group in 2021, the following issues and principles were studied in the paper: the issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones; the immutability and intangibility of boundaries; fundamental changes of circumstances (*rebus sic stantibus*); the effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlapped, and the issue of objective regimes; effects of the situation whereby an agreed land boundary terminus ended up being located out at sea; the judgment of the International Court of Justice in the *Maritime Delimitation in the Caribbean*

[12] A/73/10, para. 26.
[13] *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10), paras. 247–296.
[14] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10* (A/77/10), paras. 153–237.
[15] *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 10* (A/78/10), paras. 128–230.
[16] A/79/10, paras. 331–417.
[17] A/CN.4/740 and Corr.1.
[18] See A/76/10, chap. IX. See also *ibid.*, para. 20.
[19] A/CN.4/761.

*Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* case;[20] the principle that "the land dominates the sea"; historic waters, title and rights; equity; permanent sovereignty over natural resources; possible loss or gain by third States; nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation; and the relevance of other sources of law. The additional paper presented a number of preliminary observations.

14. The Study Group held 12 meetings, from 26 April to 4 May and from 3 to 5 July 2023. At its 3655th meeting, on 3 August 2023, the Commission considered and adopted the report of the Study Group. During its discussions, the Study Group engaged in an exchange of views on the principles examined in the additional paper, as reflected in the annual report of the Commission.[21]

15. The second issues paper,[22] on the subtopics of statehood and the protection of persons affected by sea-level rise, was considered by the Study Group at the seventy-third session of the Commission (2022). Issues covered on the subtopic of statehood included the criteria for the creation of a State, some representative examples of actions taken by States and other subjects of international law, concerns relating to the phenomenon of sea-level rise in relation to statehood and some measures that had been taken in that regard, and possible alternatives for the future in respect of statehood. With regard to the subtopic of the protection of persons affected by sea-level rise, issues contained a mapping exercise, covering the following: the existing legal frameworks potentially applicable to the protection of persons affected by sea-level rise, and State practice and the practice of relevant international organizations and bodies regarding the protection of persons affected by sea-level rise. Preliminary observations and guiding questions were presented for the Study Group on both subtopics.

16. The Study Group held nine meetings, from 20 to 31 May and on 6, 7 and 21 July 2022. At its 3612th meeting, on 5 August 2022, the Commission considered and adopted the report of the Study Group on its work at that session. The work of the Study Group during that session on the subtopics of issues related to statehood and to the protection of persons affected by sea-level rise is summarized in the annual report of the Commission.[23]

17. The additional paper to the second issues paper[24] was considered by the Study Group at the seventy-fifth session of the Commission (2024). Issues covered on the subtopic of statehood included the configuration of a State as a subject of international law and continued existence of the State, scenarios relating to statehood in the context of sea-level rise and the right of the State to provide for its preservation, and possible alternatives for addressing the phenomenon in relation to statehood. On the subtopic of the protection of persons affected by sea-level rise, the paper contained an analysis of the relevant legal issues and a set of 12 possible elements for legal protection of persons affected by sea-level rise. Preliminary observations were presented to the Study Group on both subtopics.

18. The Study Group held 10 meetings, from 30 April to 9 May and from 2 to 8 July 2024. The Study Group had also before it a 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, in particular in relation to statehood and the protection of persons affected by sea-level rise.[25] At its 3694th and 3698th meetings, on 26 August and 30 July 2024 respectively, the Commission considered and subsequently adopted the report of the Study Group on its work at that session. The work of the Study Group during that session on the subtopic of issues related to statehood and to the protection of persons affected by sea-level rise is summarized in the annual report of the Commission.[26]

[20] *Maritime Delimitation in the Caribbean Sea and in the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2018, p. 139.

[21] See A/78/10, chap. VIII. See also *ibid.*, para. 18.

[22] A/CN.4/752.

[23] See A/77/10, chap. IX. See also *ibid.*, para. 19.

[24] A/CN.4/774.

[25] A/CN.4/768.

[26] See A/79/10, chap. X. See also *ibid.*, paras. 40–45.

### 3. Conclusions of the Study Group

19. The following conclusions are based on the reports by the Co-Chairs, the discussions in the Study Group, comments and submission by States, and other relevant developments, such as regional declarations, regional and bilateral initiatives, discussions in United Nations bodies and international judicial proceedings and decisions, that constitute evidence of State practice on the topic of sea-level rise in relation to international law. They are not intended to be normative conclusions.

#### (a) Law of the sea

20. At the time of the negotiation and adoption of the United Nations Convention on the Law of the Sea, sea-level rise was not perceived as an issue that needed to be addressed, Consequently, no provision is made in the Convention to address climate change or sea-level rise in relation to baselines, maritime zones and the status of islands and of archipelagic waters.

21. The United Nations Convention on the Law of the Sea is of fundamental importance, its integrity is to be preserved and any solution relating to sea-level rise must be consistent it.

22. The preservation of legal stability, certainty and predictability is directly linked to an interpretation of the United Nations Convention on the Law of the Sea that allows for the preservation of baselines and maritime zones notwithstanding changes to the coastline as a result of sea-level rise. Bringing into question agreed-upon or otherwise duly established maritime boundaries owing to sea-level rise would risk creating legal uncertainly and insecurity that could lead to new disputes between States.

23. An approach that required baselines and maritime zones to shift landward as a result of sea-level rise would create an inequitable outcome whereby third States would gain rights in maritime zones, in particular in the exclusive economic zone, to the detriment of the coastal State.

24. There is no provision in the United Nations Convention on the Law of the Sea that imposes an obligation on States to update baselines and coordinates once duly deposited with the Secretary-General in accordance with Convention, and nor is there evidence of a widespread State practice to that effect. Consequently, States are under no obligation to update baselines to account for changes as a result of climate change-related sea-level rise.

25. There is no provision in the United Nations Convention on the Law of the Sea that imposes an obligation on States to update nautical charts in relation to baselines, and nor is there evidence of a widespread State practice to that effect. Consequently, States are under no obligation to update nautical charts to account for changes as a result of climate change-related sea-level rise.

26. There is no provision in the United Nations Convention on the Law of the Sea that prevents States from preserving existing and lawfully established baselines and maritime zones once duly deposited with the Secretary-General.

27. There is broad support among States for the 2021 Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise.[27]

28. General State practice exists, as evidenced by statements expressing widespread and consistent support, with regard to the preservation of baselines and maritime zones notwithstanding sea-level rise in the interests of maintaining legal stability, certainty and predictability.

29. In the interests of legal stability, predictability and certainty, the principle of the immutability of boundaries applies to lawfully established maritime boundaries.

[27] Pacific Islands Forum Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise, 6 August 2021. Available at https://forumsec.org/publications/declaration-preserving-maritime-zones-face-climate-change-related-sea-level-rise.

30. The principle of fundamental change of circumstances (*rebus sic stantibus*), as codified in article 62, paragraph 1, of the Vienna Convention on the Law of Treaties,[28] does not apply to maritime delimitation agreements, as they are covered by the exclusion for treaties establishing boundaries under article 62, paragraph 2 (a).

31. The preservation of baselines and maritime zones is consistent with the principle of permanent sovereignty over natural resources, which is a principle of customary international law that also applies to marine resources.

**(b) Statehood**

32. There is strong support for the presumption of continuity of statehood and international legal personality in relation to climate change-induced sea-level rise. States can take all necessary measures, such as physical, legal and socioeconomic measures, in order to preserve their statehood, rights and entitlements and sovereignty, including membership of the United Nations and other international organizations.

33. The criteria in article 1 of the Convention on the Rights and Duties of States (Montevideo Convention),[29] generally accepted as establishing the existence of a State as a subject of international law, do not themselves address the question of the continuity of statehood. State practice reveals a degree of flexibility in the application of international law to issues of statehood.

34. The continuity of statehood has been affirmed by States in the 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise[30] and the 2024 Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood.[31]

35. The continuity of statehood is based on the right of States to preserve their existence, the role of recognition of such continuity by other States and members of the international community, the right of each State to defend its territorial integrity, the right of peoples to self-determination, and consent on the part of the State facing a loss of habitable territory. It is linked to security, stability, certainty and predictability, equity and justice, the sovereign equality of States, permanent sovereignty of States over their natural resources, the maintenance of international peace and security, the stability of international relations, international cooperation and the right to a nationality.

36. Different measures, physical and legal, may be taken with regard to different levels of submergence of land surface or situations of habitability. States have a right to provide for their preservation, and such provision may take many forms, including various adaptation measures to reduce the impact of sea-level rise.

37. International cooperation in relation to the preservation of statehood is essential – including international cooperation between affected States and other members of the international community on the basis of the sovereign equality of States, and considerations of equity and fairness – is essential.

38. The preservation of statehood is an essential element of the right to self-determination of the populations concerned, who cannot be deprived of the continuity of the State without their consent. Respect for the right to self-determination of the populations concerned, including Indigenous Peoples, requires consultation with them in good faith as to alternatives

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

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

[30] Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-level Rise, 9 November 2023. Available at https://forumsec.org/publications/reports-communique-52nd-pacific-islands-leaders-forum-2023.

[31] Declaration of the Heads of State and Government of the Alliance of Small Island States on Sea-level Rise and Statehood, 23 September 2024. Available at https://aosis-website.azurewebsites.net/aosis-leaders-declaration-on-sea-level-rise-and-statehood/.

that may be applied in each case to preserve international legal personality and their identities.

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

39. The current international legal frameworks that are potentially applicable to the protection of persons affected by sea-level rise are fragmented and mostly not specific to sea-level rise.

40. In view of the absence of a dedicated legal framework, there is a need to develop legal and practical solutions to better protect persons affected by sea-level rise, including those who remain *in situ* and those who are displaced by it.

41. On the basis of the current international legal frameworks, elements for legal protection of persons affected by sea-level rise include the protection of human dignity as a guiding principle for any action to be taken in the context of sea-level rise.

42. Other elements for legal protection include the need for a combination of needs-based and rights-based approaches as the basis for the protection of persons affected by sea-level rise; the recognition that persons affected by sea-level rise remain rights holders and that States have a duty to respect, protect and fulfil their human rights obligations, including with regard to civil, political, economic, social and cultural rights; the need to delineate the human rights obligations of the different human rights duty bearers involved, namely the affected State and the host States; and the need to protect persons in vulnerable situations, who may be disproportionately affected.

43. There are various practical tools that may be used to address the protection of persons affected by sea-level rise, such as special climate mobility agreements, pathways and other alternative arrangements, humanitarian visas and similar administrative policies, and measures to prevent the loss of nationality and statelessness.

44. International cooperation is required to protect persons and communities affected by sea-level rise, including to protect their cultural heritage, identity and dignity and to meet their essential needs.

45. Affected persons and communities should be kept informed, be consulted and participate in decisions affecting them in the context of sea-level rise.

### (d) Cross-cutting issues and interlinkages between the subtopics of the law of the sea, statehood and the protection of persons affected by sea-level rise

46. The three subtopics – the law of the sea, statehood and the protection of persons affected by sea-level rise – are all interconnected. The loss or diminution of one will result in the same for the others. The continuity of statehood is directly linked to the preservation of maritime zones and entitlements and is integral to the preservation of existing rights, as the sovereignty of the State is the foundation for sovereign rights over natural resources. The preservation of maritime zones and entitlements is also directly linked to the economic well-being and livelihoods of the population, including present and future generations. At the same time, States have an important duty in ensuring the protection of their people, and continuity of statehood is necessary and fundamental to the provision of that protection, including to prevent situations of loss of nationality and statelessness. The ability of the State to continue to fulfil its human rights obligations is, therefore, also connected with the issue of continuity of statehood.

47. A common thread among the subtopics is the question as to how to preserve and protect existing rights in face of the serious and unprecedented consequences of sea-level rise for States, especially small island States and low-lying coastal States.

48. Legal stability, predictability and certainty, as broadly recognized by many States, serve as cross-cutting principles for the preservation of maritime zones and entitlements, the continuity of statehood, self-determination, permanent sovereignty over natural resources, the protection of affected populations, and the maintenance of peace and security and avoidance of conflict at the domestic level.

49. The preservation of existing lawful rights in relation to sea-level rise is an overarching principle for the continuity of statehood, the preservation of maritime entitlements and the protection of persons affected. It is closely related to the principle of equity. A practical legal response should be one that prevents the loss of existing lawful rights, whether territorial or maritime, owing to sea-level rise. Sea-level rise cannot be a reason for any State to lose the rights associated with statehood, such as maritime entitlements, self-determination and permanent sovereignty over natural resources. Moreover, the preservation of such rights is fundamental for the State to be able to continue to promote, respect and fulfil the human rights of affected persons.

50. Fundamental principles of international law, such as sovereign equality, respect for territorial integrity, immutability of boundaries, self-determination and permanent sovereignty over natural resources, and the promotion and protection of human rights are recognized as customary international law and should not be undermined by climate-induced sea-level rise. Any legal solutions to address the territorial and maritime consequences of sea-level rise need to be based on considerations of legal stability, security, certainty and predictability, sovereign equality, equity and the right to self-determination.

51. Equity, as another cross-cutting principle, applies to sea-level rise as the States most affected, in particular small island developing States, have contributed the least to climate change-induced sea-level rise but will suffer the impact disproportionately to other States. The preservation of maritime zones, continuity of statehood and protection of affected persons are therefore matters of equity and solidarity.

52. International cooperation is a general principle of international law. This principle establishes an obligation for the international community to assist States that are most affected by sea-level rise. It is rooted, *inter alia*, in the Charter of the United Nations, the Universal Declaration of Human Rights,[32] the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[33] and the United Nations Convention on the Law of the Sea. It is also a foundational principle of international human rights law, the law of the sea, climate change law, environmental law and disaster law. Cooperation among States and other members of the international community is critical to addressing the impact of sea-level rise in relation to the preservation of maritime zones, statehood and the protection of persons of affected populations.

53. The interpretation and application of existing international law should be based on an approach that can meet the needs of States and populations affected in the face of the possible adverse consequences of climate change and sea-level rise to ensure legal stability, certainty and predictability, equity and the preservation of existing rights. Such an approach may entail adaptive or evolutive interpretation and consideration of subsequent agreements and practice.

### 4. Recommendations on possible ways forward

54. The Co-Chairs and the Study Group have examined in detail the issues under international law that arise from the impact of sea-level rise, and State practice, and have presented a number of conclusions. There is overall agreement that in relation to sea-level rise, existing instruments, such as the United Nations Convention on the Law of the Sea, the Montevideo Convention and human rights instruments, were developed at a time when sea-level rise was not a concern of the international community, and consequently do not address the many legal issues raised. Consequently, there is broad recognition of the need for practical solutions that meet the needs of States in responding to these issues. In the light of these considerations, the following approaches, individually or combined, may be considered by States, international organizations and other relevant stakeholders in developing responses to address the international legal issues arising from sea-level rise in relation to international law:

[32] Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948.

[33] General Assembly resolution 2625 (XXV) of 24 October 1970.

(a) In the light of the views expressed by many States in favour of practical solutions that do not entail the amendment of existing instruments, an approach may be adopted that allows for the interpretation of existing instruments to take account of the adverse impact of sea-level rise;

(b) Existing instruments may be interpreted in a manner that is adaptive to the impact of sea-level rise, that is evolutive, to allow for a contemporary interpretation, and that takes into account the duty of international cooperation, equity and solidarity, self-determination, permanent sovereignty over natural resources, the preservation of existing rights and the maintenance of stability, certainty and predictability as cross-cutting principles that apply to the legal consequences of sea-level rise;

(c) An interpretative statement may be adopted by the States parties to the United Nations Convention on the Law of the Sea regarding the preservation of baselines and maritime boundaries and associated entitlements, applicable to maritime boundaries duly established and deposited with the Secretary-General unilaterally, by agreement or by adjudication;

(d) The 12 elements for legal protection of persons affected by sea-level rise, as identified by the Co-Chairs and discussed in the Study Group, may be taken into account, as appropriate, in the interpretation and application of binding and non-binding instruments applicable to the protection of persons affected by sea-level rise;

(e) The General Assembly or other international organizations may adopt resolutions or decisions containing interpretative statements, declarations or other binding or non-binding instruments, as needed, that specifically address the legal issues arising from sea-level rise;

(f) The General Assembly may adopt a resolution or declaration in relation to the continuity of statehood, the preservation of sovereignty and membership of the United Nations and other international organizations;

(g) Binding or non-binding instruments applicable to the protection of persons affected by sea-level rise may be adopted at the bilateral, regional or international level, and may include, as appropriate and *inter alia*, the 12 elements for legal protection of persons affected by sea-level rise, as identified by the Co-Chairs and discussed in the Study Group;

(h) Mechanisms may be developed within the United Nations or other international bodies, as appropriate, including at the regional level, to strengthen cooperation in addressing the adverse impact of sea-level rise;

(i) Requests may be submitted to the relevant international courts and tribunals for advisory opinions on international legal matters concerning specific issues related to sea-level rise and international law.